IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

HENRY LUCAS, JR., :
Plaintiff,
v. : Case No. 3:17-cv-00275
UNITED PARCEL SERVICE, INC., : JUDGE WALTER H. RICE
Defendant. :

DECISION AND ENTRY SUSTAINING IN PART AND OVERRULING IN PART AS MOOT DEFENDANT'S UNOPPOSED MOTION IN LIMINE TO EXCLUDE TESTIMONY OF WITNESSES NOT DISCLOSED PRIOR TO THE DISCOVERY CUT-OFF (DOC. #69)

Defendant, United Parcel Service, Inc. ("UPS"), has filed a Motion *in Limine* to Exclude Testimony of Witnesses Not Disclosed Prior to the Discovery Cut-Off, Doc. #69. The witnesses UPS moves to exclude are Dr. Richard Plumb, Dennis Robinson and Gary Robinson. UPS states that these three witnesses were never identified as potential witnesses in Plaintiff's initial disclosures and discovery responses, or prior to the discovery cut-off. It asserts that it would be unfairly prejudiced by this late disclosure. Plaintiff, Henry Lucas, Jr. ("Lucas" or "Plaintiff"), has not filed a response.

On February 2, 2020, the Court filed a Decision and Order sustaining Plaintiff's Motion for Leave to File a Rule 26 Supplement naming Dr. Plumb as a lay and expert witness. Doc. #74. This ruling was subject to Defendant being

permitted to depose this witness after the first day of trial and before he testifies. Alternatively, UPS was granted a continuance of the trial to depose Dr. Plumb and conduct any related discovery. *Id.* On February 4, 2020, Defendant filed its Unopposed Motion to Continue the Trial, Doc. #77. This motion was sustained by the Court.

Because the Court has ruled that Dr. Plumb can testify at trial provided that Defendant has an opportunity to depose him, Defendant's motion *in limine* to exclude Dr. Plumb due to Plaintiff's failure to include him in the initial disclosures and discovery responses, or prior to the discovery cut-off is overruled as moot. Defendant's motion to exclude the testimony of Dennis Robinson and Gary Robinson is sustained, since Plaintiff did not disclose these witnesses in his initial disclosures and discovery responses or prior to the discovery cut-off and he has failed to oppose Defendant's motion with any reason for this omission.

Accordingly, for the reasons stated in this Decision and Entry, Defendant's Unopposed Motion *in Limine* to Exclude the Testimony of Witnesses Not Disclosed Prior to the Discovery Cut-Off, Doc. #69, is overruled as moot with respect to Dr. Richard Plumb and sustained as to Dennis Robinson and Gary Robinson.

Date: October 1, 2020

(tp - per Judge Rice authorization after his review)

WALTER H. RICE
UNITED STATES DISTRICT JUDGE