

IN THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

FILED

SEP 20 1999 CTR-1

Anthony P. [Signature]
Clerk of the
Circuit Court

WILLIAM EBERT, d/b/a American)
Auto Body,)
)
Plaintiff,)
)
vs.)
)
STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)
)
Defendant.)

No. 93-L-58

MOTION TO BAR

Now comes the Defendant, State Farm Mutual Automobile Insurance Company, through its attorneys, REED, ARMSTRONG, GORMAN, COFFEY, GILBERT & MUDGE, P.C., and for its motion to bar additional opinions of Plaintiff's expert witness, Mr. Jay Buck, states as follows:

1. On or about February 10, 1998 Plaintiff answered Defendant's Rule 213(g) interrogatories. Included in those answers was a disclosure of Plaintiff's expert accountant, Mr. Jay Buck. Plaintiff's answers to the Rule 213(g) interrogatories indicated that Mr. Buck would testify as to damages suffered by the Plaintiff by reason of Defendant's conduct, Plaintiff's profits prior to Defendant's conduct, Plaintiff's profits subsequent to Defendant's conduct and the profits the Plaintiff would have realized absent Defendant's conduct. (Exhibit "A")

2. On or about March 31, 1988 Defendant took the discovery deposition of Mr. Jay

Buck, concerning his opinions in this case. At that deposition, Mr. Buck stated that Exhibit "1", the answers to interrogatories, contained all of his opinions in the case. (Exhibit "B")

3. In the year and a half since Mr. Buck's discovery deposition Defendant has received no supplemental answers to Rule 213(g) interrogatories concerning Mr. Buck. However, on September 15, 1999 - just 19 days before trial - Defendant received supplemental answers to Rule 213(g) interrogatories concerning Mr. Buck. (Exhibit "C")

4. While Defendant is in the midst of preparing for trial, and while numerous pre-trial motions will be decided, Plaintiff has suddenly offered previously undisclosed opinion testimony concerning his expert witness. This testimony includes additional opinions concerning gross receipts for the years 1997 and 1998, opinions concerning gross receipts from State Farm repairs for the years 1997 and 1998 as well as lost profits from repair jobs from State Farm insureds or claimants for those years.

5. Plaintiff has also suddenly offered what he characterizes as "rebuttal opinions" to Defendant's accountant, Mr. David Burnett. (Exhibit "C") These "rebuttal opinions" are summarized in a September 7, 1999 letter sent to Plaintiff's counsel's office and attached to the supplemental interrogatory answers. As the Court can see, these are completely new and never before disclosed opinions of Plaintiff's retained expert witness. They are in clear violation of Rule 213 disclosure requirements and should be barred.

6. Rule 213(I) entitled "Duty to supplement" provides as follows:

"A party has a duty to seasonally supplement or amend any prior answer or response whenever new or additional information subsequently becomes known to that party.

7. The Supreme Court Rules on discovery are also mandatory rules of procedure that

Courts and counsel must follow. Department of Transportation vs. Crull, 294 Ill.App.3d 531, 228 Ill.Dec. 834, 690 N.E.2d 143 (4th Dist. 1998). As the Fourth District has held:

“Rule 213 establishes more exacting standards regarding disclosure than did Supreme Court Rule 220 . . . Trial courts should be more reluctant under Rule 213 than they were under former Rule 220 (1) to permit the parties to deviate from the strict disclosure requirements, or (2) not to impose severe sanctions when such deviations occur. Indeed, we believe one of the reasons for new rule 213 was the need to require stricter adherence to disclosure requirements.” Department of Transportation vs. Crull, 294 Ill.App.3d 531, 228 Ill.Dec. 834, 690 N.E.2d 143 (4th Dist. 1998).

8. Clearly Defendant would be unfairly prejudiced by this very late disclosure of opinion testimony. Trial of this case is less than 3 weeks away. Indeed, Defendant had already deposed Plaintiff's expert witness concerning his opinions in the case. At that deposition Mr. Buck testified that all of his opinions were contained in the original answers to interrogatories. Plaintiff has never indicated that he would be offering rebuttal opinion testimony until only a few days before Defendant received the supplemental answers to Rule 213(g) interrogatories. Defendant never knew what those opinions were until September 15, 1999.

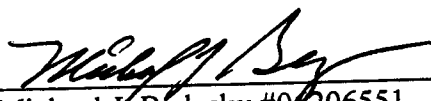
9. Under the new Supreme Court Rules, Defendant should have a right to rely upon a discovery deposition taken of Plaintiff's retained opinion witness. This is especially true given the fact that Rule 213 requires a party to “seasonably supplement” answers to interrogatories. Given the fact that Mr. Buck is a retained expert witness, Plaintiff's supplemental answers to the Rule 213 interrogatories can hardly be considered “seasonal” when they include brand new opinions less than 3 weeks before trial.

10. Accordingly, because Plaintiff's supplemental disclosure is clearly untimely and unfairly prejudicial the additional opinions of Mr. Buck should be barred from trial of this case.

WHEREFORE, Defendant prays that this Court grant its motion to bar additional opinion testimony of Mr. Jay Buck.

REED, ARMSTRONG, GORMAN, COFFEY,
GILBERT & MUDGE, P.C.

By:



Michael J. Bedesky #06206551
#1 Mark Twain Plaza, Suite 300
P.O. Box 368
Edwardsville, IL 62025
(618) 656-0257