

89-R-99001

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OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

Hon. D. Jeremy Whitmire
Clerk of Mississippi Appellate Courts
Post Office Box 249
Jackson, Mississippi 39205

RE: Proposed Amendment to Rule 26 Regarding Rebuttal Experts

Dear Mr. Whitmire:

I am a licensed, practicing attorney in good standing with the Mississippi Bar Association who primarily represents defendants in civil litigation, having done so for over 42 years. I am a member of the Federal Rules Committee and have reviewed proposed changes to Rule 26 of the Mississippi Rules of Civil Procedure which purport to expand that rule to provide for 'rebuttal' expert witnesses. For the reasons set forth below, I must object to the language of amendment.

As a threshold matter, the amendment as written only permits Plaintiffs the opportunity to designate so-called rebuttal witnesses. There is no similar provision permitting Defendants the opportunity to respond to a Plaintiff's 'rebuttal' expert; indeed, the drawing of a line where this process terminates would prove difficult.

Secondarily, the amendment as proposed opens the door to a potentially endless back-and-forth of expert designations by the parties. This would serve to prolong the pre-trial period when timely trials are more and more difficult to achieve. It builds yet another layer of discovery and the concomitant opportunity for discovery disputes, delaying resolution of the matter and driving the cost of litigation ever higher.

Thirdly, Rule 26 as written accommodates the Plaintiff's opportunity to rebut any expert designated by a Defendant; Plaintiff's may (and should routinely) reserve the right to modify their expert's opinion upon review of the opinions and bases of the Defendant's designated expert. The amendment is unnecessary.

MOTION# 2018 2403
attachment

Hon. D. Jeremy Whitmire

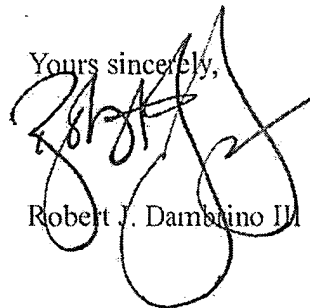
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Finally, the Plaintiff in any suit bears the burden of proof. It is incumbent upon the Plaintiff to adequately plead his/her case, and to support it with all required expert testimony if needed. The Amendment creates a circumstance wherein Defendants will be used by Plaintiffs to detect and rectify weaknesses in their experts and their theory of the case. Plaintiffs could further find new experts in rebuttal, creating an unfair advantage on the part of Plaintiff, inasmuch as the amendment does not afford the same opportunity to Defendants. The amendment would keep the goalposts moving, and unnecessarily undermine the orderly discovery process currently in place in our Rules.

This amendment creates problems without solving them. I appreciate the opportunity to be heard on the matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Dambrino III", written over the typed name below.

Robert J. Dambrino III

RJDIII:tbn