



By the order of the court, Judge David A. Wiseman

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FOR PUBLICATION



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CNMI SUPERIOR COURT
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IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

HERMAN INDALECIO,)	CIVIL CASE NO. 14-0065
)	
Plaintiff,)	ORDER DENYING PLAINTIFF'S
)	MOTION TO STRIKE DEFENDANT'S
v.)	EXPERT WITNESS
)	
MOBIL OIL MARIANA ISLANDS,)	
INC.,)	
)	
Defendant.)	
)	

I. INTRODUCTION

THIS MATTER came before the Court on July 2, 2015, at 1:30 p.m. in Courtroom 223A on Plaintiff Herman Indalecio ("Indalecio")'s Motion to Strike Defendant's Expert Witness And/Or In The Alternative Allow Plaintiff's Expert Witness, filed on June 12, 2015.¹ Indalecio was represented by Attorney Victorino DLG. Torres. Defendant Mobil Oil Marianas Islands, Inc. ("Mobil Oil") was represented by the Law Firm of BLAIR STERLING JOHNSON & MARTINEZ, P.C. and Attorney Thomas E. Clifford.

Based on review of the filings, oral arguments, and applicable law, the Court hereby **DENIES** Indalecio' motion.

II. BACKGROUND

On February 24, 2014, Indalecio filed the instant negligence claim against Mobil Oil. Indalecio alleges that he was injured when he fell into a ditch on Mobil Oil's premises. On July 21, 2014, this Court granted a stipulated scheduling order ("July 21 Pre-Trial Scheduling Order"). Among other items, the July

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¹ This matter was transferred to the undersigned judge on April 30, 2015 through a case assignment order.

*Law
Firm*

1 21 Pre-Trial Scheduling Order contained the following provisions:

- 2 2. Expert witnesses may be deposed following designation without further order of this
3 Court. The Parties shall designate expert witnesses pursuant to the following schedule:
4 a. The parties shall designate any expert witness not later than October 31, 2014;
5 and
6 b. The parties shall designate any rebuttal expert witnesses not later than November
7 28, 2014.
8 3. Discovery shall be completed by December 31, 2014.

9 *Indalecio v. Mobil Oil Mariana Islands, Inc.*, Civ. No. 14-0065 (NMI Super. Ct. July 21, 2014) ([Proposed]
10 Scheduling Order at 2).

11 On February 11, 2015, upon Mobil Oil's Motion to Modify Scheduling Order, this Court granted a
12 modified scheduling order.² However, on March 16, 2015, this Court granted another stipulated scheduling
13 order ("March 16 Pre-Trial Scheduling Order"). The March 16 Pre-Trial Scheduling Order, by its own terms,
14 withdrew said Mobil Oil's Motion to Modify Scheduling Order. It further amended the July 21 Pre-Trial
15 Scheduling Order. Among other items, the March 16 Pre-Trial Scheduling Order removed any reference to
16 expert witnesses. It further provided the discovery cut-off date of June 15, 2015.

17 III. DISCUSSION

18 Indalecio complains that Mobil Oil failed to timely submit an expert report for Mobil Oil's rebuttal
19 expert witness, Cynthia Fricke. Indalecio argues that Mobil Oil's failure to submit a timely expert report
20 warrants sanctions under two categories of the Commonwealth Rules of Civil Procedure: (1) Rule 26 and
21 Rule 35(b) of the Commonwealth Rules of Civil Procedure; and (2) Rule 16 of the Commonwealth Rules
22 of Civil Procedure. Upon review of the record and the parties' submissions, the Court finds that sanctions
23 are not warranted under either category.

24 1. Sanctions are not warranted under Rule 26 and Rule 35(b)

25 Indalecio argues that Mobil Oil is subject to the Court's sanction for Mobil Oil's alleged failure to

² A review of the court records does not disclose that this Court vacated the scheduling order as granted on February 11, 2015. However, the Court finds that an order vacating said scheduling order is not necessary at this time. Both parties assert that the controlling discovery deadline is June 15, 2015—as opposed to July 31, 2015, the discovery cut-off date provided in said scheduling order.

1 comply with Rule 26(a). NMI R. Civ. P. 26(a) (" . . . Parties may obtain discovery by one or more of the
2 following methods: deposition upon oral examination or written questions, written interrogatories,
3 production of documents or things or permission to enter upon land or other property, for inspection and
4 other purposes; physical and mental examination; and requests for admission."). Specifically, Indalecio
5 argues that Mobil Oil should be sanctioned for its alleged failure to comply with Rule 35(b).

6 However, the Court is not persuaded that the Commonwealth Rules of Civil Procedure provides for
7 sanctions under Rule 26(a) or Rule 35(b). To support his arguments, Indalecio relies on *Torres v. City of Los*
8 *Angeles*, 584 F.3d 1197, 1213 (9th Cir. 2008) and *Salgado by Salgado v. General Motors Corp.*, 150 F.3d
9 735, 742 (7th Cir. 1998). Indalecio's reliance on said cases is misplaced. Both *Torres* and *Salgado by*
10 *Salgado* discuss sanctions under Rules 26(a)(2)(B) and 37(c)(1) of the Federal Rules of Civil
11 Procedure—not the Commonwealth Rules of Civil Procedure.

12 Because the Commonwealth Rules of Civil Procedure are patterned after the Federal Rules of Civil
13 Procedure, this Court may rely on federal interpretation for guidance. *Commonwealth Dev. Auth. v.*
14 *Camacho*, 2010 MP 19 ¶ 16. However, where there is no equivalent rule to interpret, the Court does not read
15 into the Commonwealth Rules of Civil Procedure a rule that has yet to be adopted by the Commonwealth
16 Supreme Court.

17 Here, the distinction between the Commonwealth and Federal Rules of Civil Procedure cannot be
18 overlooked. Federal Rule 26(a)(2)(B) requires that pre-trial disclosure of anticipated expert testimonies be
19 accompanied by a written report. Failure to comply with Federal Rule 26(a)(2)(B)³ may result in explicit
20 sanctions provided under Federal Rule 37(c)(1). Fed. R. Civ. P. 37(c)(1) (" . . . A party that without
21 substantial justification fails to disclose information required by [Federal] Rule 26(a) or 26(e)(1) shall not,
22 unless such failure is harmless, be permitted to use as evidence at a trial . . . "). This Court is not aware of
23 any case law, rule, or method promulgated by the Commonwealth Supreme Court that implements specific
24

25 ³ Federal Rule 26(a)(2)(B) was incorporated in the Federal Rules of Civil Procedure through the 1993 Amendments.

1 pre-trial disclosure sanctions *vis-a-vis* Federal Rules 26(a)(2)(B) and 37(c)(1). Therefore, sanctions are not
2 warranted under Rule 26(a) of the Commonwealth Rules of Civil Procedure.

3 Rule 35(b) of the Commonwealth Rules of Civil Procedure is inapposite to the matter at hand. Said
4 Rule specifically applies to physical or mental examinations as ordered by the Court under Rule 35(a). NMI
5 R. Civ. P. 35(b) (" . . . If requested by the party against whom an order is made under Rule 35(a) or the
6 person examined, the party causing the examination to be made shall deliver to the requesting party a copy
7 of the detailed written report of the examiner setting out the examiner's findings, including all tests made,
8 diagnoses and conclusions, together with like reports of all earlier examinations of the same condition.").
9 No such applicable order has been made in regards to Mobil Oil's rebuttal expert witness. Therefore,
10 sanctions are not warranted under Rule 35(b).

11 **2. Sanctions are not warranted under Rule 16(f)**


12 Ignacio also requests that the Court issue a sanction against Mobil Oil pursuant to Rule 16(f) of the
13 Commonwealth Rules of Civil Procedure. Rule 16(f) provides that, "If a party or a party's attorney fails to
14 obey a scheduling or pretrial order . . . the judge, upon motion or the judge's own initiative, may make such
15 orders with regard thereto as are just . . ." The Court finds that Mobil Oil has not violated the March 16 Pre-
16 Trial Scheduling Order.

17 The controlling scheduling order by the Court is the March 16 Pre-Trial Scheduling Order. As
18 provided below, by its own terms, said Order *amends* the July 21 Pre-Trial Scheduling Order.

- 19 1. Defendant Mobil Oil Marianas Islands, Inc.'s Motion to Modify Scheduling Order is
20 withdrawn, and the July 21, 2014 Scheduling Order is amended as follows:
- 21 2. Discovery shall be completed by June 15, 2015.
 - 22 3. All dispositive motions, including Daubert motions, shall be filed so as to be heard by
23 August 17, 2015.
 - 24 4. The parties shall be prepared to discuss their lists of exhibits and witnesses at the pre-trial
25 conference, and shall exchange and file with the court their final lists of exhibits and
witnesses not later than five calendar days following the pre-trial conference.
 5. The pre-trial [sic] conference shall be held on September 8, 2015 at 9:00 a.m.
 6. The jury trial of this case shall commence on September 21, 2015 at 9:00 a.m.

Indalecio, Civ. No. 17-0065 (NMI Super. Ct. Mar. 16, 2015) (Stipulation and [Proposed] Order Amending

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Court: MP CNMI Superior Court
Division/Courtroom: N/A
Case Class: Civil
Case Type: Personal Injury
Case Number: 14-0065-CV
Case Name: Indalecio, Herman vs Mobil Oil Mariana Islands Inc

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1 Document(s)

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 Order Denying Plaintiff's Motion to Strike Defendant's Expert Witness

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Party	Party Type	Attorney	Firm	Attorney Type
N/A	N/A	Wiseman, David A	MP CNMI Superior Court	Primary Judge

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Delivery Option	Party	Party Type	Attorney	Firm	Attorney Type	Method
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Service	Clifford, Thomas E	Defendant	Clifford, Thomas E	Clifford, Thomas E-Saipan	Attorney for Defendant	E-Service
Service	Indalecio, Herman	Plaintiff	Torres, Victorino Dlg	Torres Brothers LLC-Saipan	Attorney for Plaintiff	E-Service
Service	Johnson, Richard L	Defendant	Johnson, Richard L	Blair Sterling Johnson & Martinez	Attorney in Charge	E-Service
Service	Mobil Oil Mariana Islands Inc	Defendant	Johnson, Richard L	Blair Sterling Johnson & Martinez	Attorney in Charge	E-Service

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