

disclose their experts before trial and to provide to the opposing party a written report, prepared and signed by the expert witness, containing a complete statement of all opinions to be expressed by the expert and the basis and reasons therefor.

Pursuant to Rule 26(e) (1), Fed. R. Civ. P., a party is under a duty to supplement information contained in its experts' reports and information provided through the depositions of its experts at least 30 days before trial. See Rule 26(e) (1) and Rule 26(a) (3), Fed. R. Civ. P. Further, pursuant to Rule 26(e) (2),

[a] party is under a duty to seasonably amend a prior response to an interrogatory . . . if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(Emphasis added.)

There is no dispute that Raymond Woolson and John Ruth were properly disclosed as expert witnesses by plaintiff pursuant to Rule 26(a) (2) (B), Fed. R. Civ. P. However, defendant moves to exclude certain opinion testimony of Woolson and Ruth on the ground that plaintiff's disclosure of such opinions was untimely and inadequate.

Raymond Woolson

Defendant moves to preclude Raymond Woolson from testifying as to whether the bank's upset price was reasonable on the ground that plaintiff failed to disclose Woolson's opinion on this matter in a proper or timely manner.

Woolson was deposed on January 30, 1995, at which time he testified that he had no opinion as to whether the bank's upset price analysis was reasonable. See Deposition of Raymond B. Woolson at 84.

On March 16, 1995, plaintiff supplemented its response to defendant's interrogatory number 8 as follows: "Based on his review of the foreclosure worksheet and related documents prepared by Janet Oetheimer, Raymond Woolson will testify on the unreasonableness of the bank's upset price for GEM's property."

All discovery in this case closed on February 10, 1995, and trial is scheduled to begin on March 28, 1995.

The court finds that plaintiff's March 16, 1995, supplementation of its answer to defendant's interrogatory number 8 is untimely under this court's discovery completion deadline of February 10, 1995, and under Rule 26(e)(2), Fed. R. Civ. P. The court further finds that the proper remedy under the circumstances is to preclude Woolson from giving an expert opinion as to whether the upset price set by the bank was

reasonable. This order does not preclude Woolson from offering his expert opinion at trial as to other matters to which he testified at his deposition and of which defendant had notice.

John Ruth

At the time John Ruth was disclosed as an expert witness, plaintiff informed defendant that Ruth's opinions were set forth in his appraisal of plaintiff's Plaistow property.

In its March 16, 1995, supplemental response to defendant's interrogatory no. 8, plaintiff states, inter alia, "John Ruth will also testify as to the percentage of value lost in commercial real estate from the period from September 1988 to September 1991." Defendant moves to preclude Ruth's testimony on this matter (1) as untimely and (2) because plaintiff has failed to properly disclose what Ruth's opinions are on this matter or what the factual bases for those opinions are.

Plaintiff asserts that Ruth should be permitted to testify as to the percentage of value lost in commercial real estate during the time period in question because "[i]t is inherent in the work of an appraiser to keep track of the general trend of prices of real estate in a given geographical area." Plaintiff's Objection at 2.

The court finds that plaintiff's initial disclosure of Ruth

as an expert limited Ruth's opinion testimony to the information contained in his appraisal of the Plaistow property. If plaintiff wanted Ruth to offer expert opinion testimony as to any other matters, it had a duty to disclose such opinions, and the bases and reasons therefor, prior to the close of discovery in this case.

The court finds that plaintiff's attempt to supplement its prior disclosure as to the expert testimony of John Ruth is both untimely and inadequate under Rules 26(e)(1) and 26(e)(2), Fed. R. Civ. P. The court further finds that the proper remedy under the circumstances is to preclude John Ruth from offering expert opinion testimony at trial as to the percentage of value lost in commercial real estate from September 1988 to September 1991.

Conclusion

For the reasons set forth herein, defendant's motion in limine to exclude expert testimony (document 42) is granted.

SO ORDERED.

Shane Devine, Senior Judge
United States District Court

March 27, 1995

cc: James H. Gambrill, Esq.
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