

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
TENNESSEE, NASHVILLE DIVISION

1900 Market LLC et al. v. Omnia LLC et al.

1900 Market · No. 3:23-cv-00954 · Decided March 17, 2026

SUMMARY

The court denies defendants’ motion to exclude documents produced after the close of fact discovery and to strike portions of plaintiffs’ expert report. Applying the factors from *Howe v. City of Akron*, the court concludes that any surprise or prejudice can be minimized because the expert may be deposed and a trial date has not been reset.

CASE DETAILS

COURT	United States District Court for the Middle District of Tennessee, Nashville Division
WRITING FOR THE COURT	Luke A. Evans
JURISDICTION	United States District Court for the Middle District of Tennessee, Nashville Division
DECIDED	March 17, 2026
DOCKET	3:23-cv-00954
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved to exclude documents produced after the close of fact discovery and to strike portions of plaintiffs' expert report.
STANDARD OF REVIEW	The court applied the five-factor test from <i>Howe v. City of Akron</i> for determining whether late-disclosed discovery should be excluded.
PRECEDENTIAL VALUE	Nonprecedential memorandum order

TOPICS

- discovery dispute
- expert testimony
- evidence
- civil procedure
- commercial litigation

PRACTICE AREAS

- civil procedure
- evidence
- commercial litigation

QUESTIONS PRESENTED

1. Whether documents produced after the close of fact discovery and portions of plaintiffs' expert report should be excluded or stricken because of the late disclosure.

HOLDINGS

1. The court denied defendants' motion to exclude the late-produced discovery and strike portions of plaintiffs' expert report because the applicable factors did not require exclusion.

KEY QUOTATIONS

“Whether late discovery should be excluded depends on “(1) the surprise to the party against whom the evidence would be offered; (2) the ability of that party to cure the surprise; (3) the extent to which allowing the evidence would disrupt the trial; (4) the importance of the evidence; and (5) the nondisclosing party’s explanation for its failure to disclose the evidence.””

FACTUAL BACKGROUND

Plaintiffs produced documents after the close of fact discovery and submitted an expert report concerning damages. Defendants sought exclusion of the late-produced documents and to strike portions of the expert report. The court found that the expert's opinions were important to damages, that the expert could be deposed, and that no trial date had yet been reset.

PROCEDURAL HISTORY

On May 2, 2025, defendants filed a motion to exclude late-produced discovery and strike portions of plaintiffs' expert Tammy Hersh's March 28, 2025 report. The court held a telephonic conference on March 17, 2026, considered the parties' submissions and arguments, and denied the motion.

DISPOSITION

other

CASES CITED

- *Howe v. City of Akron*, 801 F.3d 718, 748 (6th Cir. 2015)

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