

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

Lisa Tornabene v. City of Blackfoot

Tornabene · No. 4:22-cv-00180-AKB · Decided December 23, 2025

SUMMARY

The United States District Court for the District of Idaho denied Lisa Tornabene’s renewed motion in limine and motion for reconsideration concerning vocational expert DeLyn Porter’s opinion about available jobs. The court held that Porter disclosed the facts or data underlying his opinion by including the job-posting text in his expert report, and that the more specific expert-disclosure provision of Federal Rule of Civil Procedure 26(a)(2)(B)(ii) applied. The court limited Porter’s trial testimony to information contained in his report and permitted related testimony by Keith Pinkerton.

CASE DETAILS

COURT	United States District Court for the District of Idaho
WRITING FOR THE COURT	Amanda K. Brailsford
JURISDICTION	United States District Court for the District of Idaho
DECIDED	December 23, 2025
DOCKET	4:22-cv-00180-AKB
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for reconsideration of the Court's prior order reconsidering and allowing limited testimony from the defendant's vocational expert concerning available job openings. The Court decided the motion on the parties' briefing and denied it.
PRECEDENTIAL VALUE	Unknown
PARTIES	Lisa Tornabene v. City of Blackfoot, a political subdivision of the State of Idaho

TOPICS

- motion for reconsideration
- expert testimony
- evidence
- civil procedure
- employment law

PRACTICE AREAS

- civil procedure
- evidence
- employment law
- municipal law

QUESTIONS PRESENTED

1. Whether Federal Rule of Civil Procedure 26(a)(1)(A)(ii), rather than the more specific expert-disclosure provision in Rule 26(a)(2)(B)(ii), required separate disclosure of the job postings considered by the vocational expert.
2. Whether including the text and identifying information for the job postings in the expert report satisfied Rule 26(a)(2)(B)(ii)'s requirement to disclose the facts or data considered by the expert.
3. Whether the Court should reconsider its prior ruling allowing limited testimony concerning the job openings.

HOLDINGS

1. Federal Rule of Civil Procedure 26(a)(2)(B)(ii), the more specific provision governing expert disclosures, controls over the generalized initial-disclosure requirement in Rule 26(a)(1)(A)(ii) for facts or data considered by an expert witness.
2. The expert's inclusion of the text and identifying information for the job postings in his report satisfied the disclosure requirement in this case; separate production of copies of the postings was not required.
3. The Court denied Tornabene's renewed motion in limine and motion for reconsideration.

KEY QUOTATIONS

“At trial, Porter will be limited to testifying about the job openings based on the data he produced in his report regarding those openings.” (5)

“To the extent that Tornabene is asserting Porter was required to print the job posting for disclosure, the Court sees no meaningful distinction in this case between Porter including the text of the postings in his report or producing copies of the posting.” (5)

FACTUAL BACKGROUND

Vocational expert DeLyn Porter prepared a report identifying ten job openings within a fifty-mile radius of Blackfoot that he considered Tornabene qualified to pursue. The report included job-posting references and lengthy descriptions of the openings, but Tornabene argued that the underlying postings had not been separately produced. After reviewing the record and investigating the public availability of the postings, the Court permitted Porter to testify about the openings based only on the information contained in his report.

PROCEDURAL HISTORY

Tornabene initially moved in limine to exclude vocational expert DeLyn Porter's opinion concerning available employment opportunities. The Court initially excluded that opinion for lack of sufficient supporting facts and data, but later reconsidered and permitted limited testimony after determining that the underlying job-posting information was publicly available and reproduced in the expert report. Tornabene then filed the renewed motion in limine and motion for reconsideration at issue here.

DISPOSITION

other

CASES CITED

- Von Funderburk v. Block, 68 F.3d 482, 1995 WL 623413, at *2 (9th Cir. Oct. 20, 1995) (unpublished)
- In re Hejazi, 24 B.R. 608, 609 (B.A.P. 9th Cir. 1982)
- Daniels v. Big GRRRL Big Touring, Inc., No. CV 24-3571, 2025 WL 2947013 (C.D. Cal. Sept. 30, 2025)

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