

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
KENTUCKY, CENTRAL DIVISION

**Brenda Hale v. Wal-Mart Stores East, Limited Partnership**

Hale · No. 5:24-cv-00327-DCR · Decided January 15, 2026

SUMMARY

The United States District Court for the Eastern District of Kentucky denied Walmart’s motion to strike Brenda Hale’s supplemental expert disclosures and to exclude her liability expert under Federal Rule of Evidence 702. The court concluded that the delayed disclosures were substantially justified or harmless and that the expert’s premises-safety analysis was reliable and helpful to the jury. The underlying action concerns Hale’s slip-and-fall injury at a Walmart store.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                         |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Eastern District of Kentucky, Central Division                                                                                                                                                                     |
| WRITING FOR THE COURT | Danny C. Reeves                                                                                                                                                                                                                                         |
| JURISDICTION          | United States District Court for the Eastern District of Kentucky, Central Division                                                                                                                                                                     |
| DECIDED               | January 15, 2026                                                                                                                                                                                                                                        |
| DOCKET                | 5:24-cv-00327-DCR                                                                                                                                                                                                                                       |
| DISPOSITION           | other                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Defendant moved to strike the plaintiff's supplemental expert disclosures under Federal Rules of Civil Procedure 26 and 37 and to exclude the plaintiff's liability expert under Federal Rule of Evidence 702. The district court denied both requests. |
| STANDARD OF REVIEW    | The court applied its broad discretion to determine whether untimely expert disclosures should be excluded and performed its gatekeeping function under Federal Rule of Evidence 702 and Daubert.                                                       |
| PRECEDENTIAL VALUE    | Unknown                                                                                                                                                                                                                                                 |

TOPICS

- discovery dispute
- sanctions
- expert testimony
- daubert standard
- premises liability

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether Hale's supplemental disclosures concerning her treating surgeon and damages expert should be stricken as untimely under Rules 26 and 37 of the Federal Rules of Civil Procedure.
2. Whether Hale's liability expert, David Johnson, should be excluded under Federal Rule of Evidence 702 and Daubert because his methods were allegedly unreliable and his opinions would not assist the jury.

## HOLDINGS

1. The supplemental disclosures should not be excluded because any delay was substantially justified and harmless. Walmart could not establish prejudice where its own scheduling conduct caused the relevant depositions to occur near or after the discovery deadline, Hale provided notice of the possible changes, and Walmart had a fair opportunity to address the updated opinions.
2. David Johnson's proposed testimony was not excluded at this stage because his forensic premises-safety methods were reliable and his specialized review of surveillance footage, safety-sweep practices, and industry materials would assist the trier of fact. Walmart's arguments concerning particular legal conclusions or testimony beyond common knowledge could be renewed in a motion in limine after pretrial disclosures.

## KEY QUOTATIONS

*"Thus, exclusion is improper where Hale's disclosure delay was substantially justified due to Walmart's scheduling shenanigans and was otherwise harmless because she provided notice to Walmart and a fair opportunity for Walmart to address the potential change in both expert's opinions."* (Motion to Strike)

*"The undersigned agrees that Johnson's methods are standard and that his opinions will assist the trier of fact concerning the adequacy of Walmart's practices."* (Motion to Exclude)

*"ORDERED that Walmart's Motion to Strike and Exclude [Record No. 33] is DENIED."* (Conclusion)

## FACTUAL BACKGROUND

Hale slipped on a slimy gel substance in a Walmart beverage aisle in Nicholasville, Kentucky, and fractured her left hip. Surveillance footage showed that the substance remained on the floor for approximately eighteen minutes, during which several customers and a Walmart employee passed near it. Hale's treating surgeon later recommended a future hip arthroplasty, causing updates to the damages expert's future-care and cost projections.

## PROCEDURAL HISTORY

Brenda Hale brought a premises-liability action against Wal-Mart Stores East, Limited Partnership in federal court. During discovery, Walmart moved to strike supplemental disclosures concerning Hale's treating surgeon and damages expert and to exclude liability expert David Johnson. The district court denied the motion in a memorandum opinion and order.

## DISPOSITION

other

#### CASES CITED

- Price v. BIC Corp., 218 F.3d 566, 578 (6th Cir. 2000)
- Trilogy Commc'ns v. Times Fiber Commc'ns, 109 F.3d 739 (Fed. Cir. 1997)
- Sexton v. Uniroyal Chem. Co., Inc., 62 F. App'x 615, 616 n.1 (6th Cir.)
- Howe v. City of Akron, 801 F.3d 718, 747-750 (6th Cir. 2015)
- Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 592 (1993)
- Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999)
- Gross v. Comm'r, 272 F.3d 333, 339 (6th Cir.)

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