

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
MISSOURI, EASTERN DIVISION

Phyllis Schlafly Revocable Trust, et al. v. Anne Cori

Cori · No. 4:16 CV 1631 RWS · Decided April 13, 2026

SUMMARY

The United States District Court for the Eastern District of Missouri grants Defendant Anne Cori’s motion for leave to disclose a rebuttal damages expert after the applicable expert-disclosure deadline. The court finds good cause for the delay, determines that the disclosure will not unfairly surprise or prejudice Plaintiffs or disrupt the litigation, and orders Cori to produce Ryan Clark’s expert report by April 24, 2026, with his deposition completed by May 8, 2026.

CASE DETAILS

COURT	United States District Court for the Eastern District of Missouri, Eastern Division
WRITING FOR THE COURT	Rodney W. Sippel
JURISDICTION	United States District Court for the Eastern District of Missouri, Eastern Division
DECIDED	April 13, 2026
DOCKET	4:16 CV 1631 RWS
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved for leave to disclose a rebuttal damages expert after the deadline in the case management order had passed.
STANDARD OF REVIEW	Whether the untimely expert disclosure was substantially justified or harmless, considering the reason for noncompliance, surprise and prejudice, disruption to the litigation, and the importance of the testimony.
PRECEDENTIAL VALUE	Unknown; memorandum and order from a federal district court
PARTIES	Anne Cori v. Phyllis Schlafly Revocable Trust, et al.

TOPICS

- discovery dispute
- civil procedure
- sanctions
- commercial litigation

PRACTICE AREAS

civil procedure

expert discovery

commercial litigation

trademark litigation

QUESTIONS PRESENTED

1. Whether Cori established good cause or substantial justification for disclosing a rebuttal expert after the deadline in the case management order.
2. Whether permitting the late disclosure would cause unfair surprise, prejudice, or disruption to the litigation.
3. Whether the importance of the proposed rebuttal testimony warranted allowing the untimely disclosure.

HOLDINGS

1. Cori demonstrated good cause for the delay because Plaintiffs' pending request to add another damages expert created uncertainty about the scope of the damages testimony Cori would need to rebut, and the deadline expired before that request was resolved.
2. Allowing Clark's disclosure would not unfairly surprise or prejudice Plaintiffs and would not disrupt the orderly progression of the litigation because Plaintiffs knew Cori had retained a rebuttal expert and the proposed deadlines remained within the existing discovery timeline.
3. The importance of Clark's testimony outweighed Plaintiffs' concerns about the untimeliness because Clark would rebut Plaintiffs' only damages expert.

KEY QUOTATIONS

“The exclusion of evidence is generally disfavored.” (Opinion text)

“Exclusion of evidence is a harsh penalty, and should be used sparingly.” (Opinion text)

“I find that Cori’s request is distinguishable from Plaintiffs’.” (Opinion text)

FACTUAL BACKGROUND

Plaintiffs had one damages expert, Brian Buss, whose opinions concerned actual damages and unjust enrichment, and Cori had already deposed him. Plaintiffs sought to add an expert concerning a new reasonable-royalty theory, but the court denied that request because the theory would require substantial additional fact discovery. Cori sought to disclose Ryan Clark as a rebuttal expert after the scope of Plaintiffs' damages expert testimony was resolved. Clark represented that he would offer no independent expert opinions and would rebut Plaintiffs' damages evidence without requiring additional fact discovery.

PROCEDURAL HISTORY

The court's case management order required Cori to disclose expert witnesses by February 6, 2026, and complete expert depositions by March 6, 2026. Plaintiffs had moved to disclose an additional damages expert, but the court denied that motion after a March 12, 2026 hearing. Cori then moved on March 23, 2026, for leave to disclose Ryan Clark as a rebuttal expert to Plaintiffs' damages expert Brian Buss. The court granted the motion and established April 24, 2026, and May 8, 2026, deadlines for Clark's report and deposition.

DISPOSITION

other

CASES CITED

- Wegener v. Johnson, 527 F.3d 687, 692 (8th Cir. 2008)
- ELCA Enters., Inc. v. Sisco Equip. Rental & Sales, Inc., 53 F.3d 186, 190 (8th Cir. 1995)
- Sherman v. Winco Fireworks, Inc., 532 F.3d 709, 716 (8th Cir. 2008)
- Lael v. Six Flags Theme Parks Inc., No. 4:13-CV-01226-SPM, 2014 WL 1389589, at *4 (E.D. Mo. Apr. 9, 2014)
- Wood v. Valley Forge Life Ins. Co., 478 F.3d 941, 946 (8th Cir. 2007)

OPINION

Cori

PER CURIAM.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

PHYLLIS SCHLAFLY REVOCABLE)

TRUST, et al.,)) Plaintiffs,)) v.) No. 4:16 CV 1631 RWS)

ANNE CORI,)

) Defendant.)

MEMORANDUM AND ORDER

This matter is before me on Defendant Anne Cori's Motion for Leave to Disclose Rebuttal Expert [412]. Cori seeks to disclose Ryan Clark¹ of Hoffman Clark, LLC, as a rebuttal expert to Plaintiffs' damages expert Brian Buss. On October 9, 2025, I entered a Case Management Order ("CMO") which provided that Cori shall disclose all expert witnesses pursuant to Rule 26(a)(2) no later than February 6, 2026. The CMO also required that Cori make expert witnesses available for depositions, and have depositions completed, no later than March 6, 2026. Cori filed her motion to disclose Mr. Clark on March 23, 2026, and therefore seeks to disclose Mr. Clark out of time. Plaintiffs oppose Cori's motion. 1 MBA, CPA, CVA, CFF, ABV. After careful review of the pleadings and for the reasons set forth below, I will grant Cori's motion. In determining whether to allow Cori to disclose her expert out of time, I consider whether Cori has shown good cause for the delay. When a party fails to timely disclose an expert, "[t]he district court may exclude the information or testimony as a self-executing sanction unless the party's failure to comply is substantially justified or harmless." Wegener v. Johnson, 527 F.3d 687, 692 (8th Cir. 2008) (citing Fed. R. Civ. P. 37(c)(1)). "When fashioning a remedy, the district court should consider, inter alia, the reason for noncompliance, the surprise and prejudice to the opposing party, the extent to which

allowing the information or testimony would disrupt the order and efficiency of the trial, and the importance of the information or testimony.” *Id.* The exclusion of evidence is generally disfavored. See, e.g., *ELCA Enters., Inc. v. Sisco Equip. Rental & Sales, Inc.*, 53 F.3d 186, 190 (8th Cir. 1995) (“Exclusion of evidence is a harsh penalty, and should be used sparingly.”). Here, Cori contends that she could not disclose her rebuttal expert until Plaintiffs’ Motion to Disclose was resolved. On December 19, 2025, Plaintiffs filed a Motion to Disclose an additional expert witness. They sought to disclose an expert to testify about an alternative theory of damages in the case. In accordance with my November 4th Order, Plaintiffs were required to explain the need and nature of the testimony of their proposed additional expert witness because they had requested that I extend their CMO deadline for disclosure.² On March 12, 2026 I held a hearing on Plaintiffs’ motion. After the hearing, I issued an Order denying Plaintiffs’ motion to disclose an additional expert. ECF No. 407. As a result, Plaintiffs have one damages expert, Mr. Buss, who has already provided his expert report and been deposed by Cori. In support of her motion, Cori argues that she was unable to disclose her rebuttal expert on the issue of damages because the scope of Plaintiffs’ expert opinions on damages had not yet been determined. ECF. No. 412 at 2. Once I denied Plaintiffs’ motion, Cori states that she was able to confirm the scope of Plaintiffs’ expert testimony on damages and confer with Mr. Clark to establish a timeline for his disclosure. *Id.* In their opposition, Plaintiffs contend that Cori should not be permitted to disclose her rebuttal expert because it would cause undue delay and prejudice to Plaintiffs. They point out that further delay in this already lengthy litigation was one of Cori’s main arguments in opposition to Plaintiffs’ disclosure of an additional expert. Plaintiffs argue that because I did not allow them to disclose an additional expert on damages out of time, I should not allow Cori to disclose an expert out of time. Plaintiffs also assert that Cori has failed to show good cause. ² Plaintiffs requested I extend the deadline because I had not yet ruled on their Motion to Add a Party and File their Third Amended Complaint. Specifically, they claim she cannot show that despite due diligence, the deadline could not have been met. (citing *Sherman v. Winco Fireworks, Inc.*, 532 F.3d 709, 716 (8th Cir. 2008)). ECF. No. 415 at 2. Plaintiffs note that Mr. Buss’s expert reports were available by January 2023, and Cori completed her deposition of Mr. Buss in 2023, which they argue would have left plenty of time to disclose Mr. Clark. *Id.* Moreover, Plaintiffs claim that if Cori’s rebuttal expert “will not be offering any independent expert opinions” and his testimony is “solely” to rebut Mr. Buss’s, then resolution of Plaintiffs’ motion was “irrelevant to Mr. Clark’s scope.” *Id.* at 3. While I recognize why Plaintiffs would oppose Cori’s motion to disclose when I denied their own, I find that Cori’s request is distinguishable from Plaintiffs’. Plaintiffs sought to disclose a new expert to provide his opinion on a new theory of damages based on reasonable royalties after spending the past nine years of litigation seeking relief only in the form of actual damages and unjust enrichment. Mr. Buss’s expert opinions are only about actual damages and unjust enrichment. I stressed at the hearing that I would be denying Plaintiffs’ motion to disclose in large part because “the factual underpinnings of the new theory of damages [would] require additional fact

discovery.” ECF. No. 411 at 44. I provided just a few examples of fact discovery that had not been pursued by either party yet in this case and found that “to open that door, [it would take] at least six months to effect discovery.” Id. at 42-43. Although I denied Plaintiffs’ motion, I find that Cori’s motion does not present these same concerns. Cori notes that Mr. Clark “will not be offering any independent expert opinions,” and allowing Cori to disclose a rebuttal expert will not require additional fact discovery. ECF. No. 412 at 3. As for Plaintiffs’ argument that Cori did not have to wait until Plaintiffs’ motion was resolved, Cori states that Mr. Clark would have “potentially offered rebuttal opinions to both Mr. Buss...and Mr. MacDonald (Plaintiffs’ second damages expert)” if I had granted Plaintiffs’ motion. ECF. No. 418 at 2. I find this reason for noncompliance is good cause for the delay. Plaintiffs sought to disclose an additional expert witness on the issue of damages within the case management timeline set for Cori to disclose her own experts. By the time Plaintiffs’ motion was resolved, Cori’s deadline for disclosure had passed. Further, I find that Cori disclosing an expert to rebut Plaintiffs’ damages expert should not come as a surprise to Plaintiffs. Mr. Buss has been disclosed in this case since 2022, and Cori put Plaintiffs on notice that she had retained a rebuttal expert in her opposition to Plaintiffs’ motion to disclose. See ECF. No. 383 at 14 n.6. Even if I determined that Cori should have disclosed her rebuttal expert several months ago, I fail to see how granting Cori’s motion now would “disrupt[] the orderly progression of the litigation.” *Lael v. Six Flags Theme Parks Inc.*, No. 4:13-CV-01226-SPM, 2014 WL 1389589, at *4 (E.D. Mo. Apr. 9, 2014). Cori’s proposed deadlines for producing Mr. Clark’s report and completing his deposition are still within the existing case management timeline for completing discovery. Additionally, I find that the importance of Mr. Clark’s testimony in allowing Cori to rebut Plaintiffs only damages expert outweighs Plaintiffs’ concerns over the untimeliness of the disclosure. See *Wegener*, 527 F.3d at 693 (concluding that the excluded expert’s testimony “was not important to Wegener’s case because it was offered to prove a point of which a substantial amount of other evidence was presented to the jury”); see also *Wood v. Valley Forge Life Ins. Co.*, 478 F.3d 941, 946 (8th Cir.2007) (finding the exclusion of the coroner’s testimony harmless because there was “significant testimony” from a different expert about the cause of death). Plaintiffs have only one damages expert for Cori to rebut. Neither party has indicated that Cori will be offering significant testimony on the issue of damages from an expert other than Mr. Clark. Applying the factors set forth by the Eighth Circuit in *Wegener*, I conclude that Cori has demonstrated good cause for seeking to disclose her rebuttal witness out of time. I will therefore grant Cori’s motion. Accordingly, IT IS HEREBY ORDERED that Defendant Cori’s Motion for Leave to Disclose Rebuttal Expert [412] is GRANTED. IT IS FURTHER ORDERED that Defendant Cori shall produce Ryan Clark’s expert report by no later than April 24, 2026. IT IS FURTHER ORDERED that Defendant Cori shall make Ryan Clark available for depositions, and have depositions completed, by no later than May 8, 2026. Oily

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RODNEY W. SIPPEL

UNITED STATES DISTRICT JUDGE

Dated this 13th day of April, 2026.

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