

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 99-8364-CIV-HURLEY/LYNCH

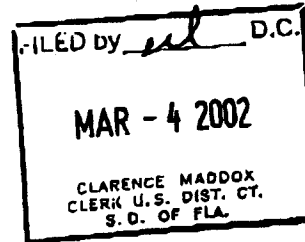
JUAN ROMAGOZA ARCE,  
NERIS GONZALEZ and  
CARLOS MAURICIO,

Plaintiffs,

v.

JOSE GUILLERMO GARCIA,  
and individual, CARLOS EUGENIO  
VIDES CASANOVA, an individual,  
and DOES 1 through 50, inclusive,

Defendants.



**REPORT AND RECOMMENDATION ON PLAINTIFFS' MOTION  
TO EXCLUDE EXPERT TESTIMONY OF DEFENDANTS'  
PROPOSED WITNESS EDWIN G. CORR [D.E. #184]**

THIS CAUSE having come on to be heard upon the aforementioned motion and this Court having reviewed the motion, the Defendants' response, the reply as well as the expert report filed on or about February 6, 2002, and the Court's previous orders setting this case for trial, this Court recommends to the District Court as follows:

1. The Plaintiffs seek to exclude the testimony of the Defendants' expert, Edwin G. Corr, because the Defendants did not file a copy of Mr. Corr's report in accordance with Judge Hurley's deadlines.
2. Apparently, at a telephonic status conference with Judge Hurley and the parties on November 14, 2001, Judge Hurley directed that the Defendants shall serve the expert report for Ambassador Corr no later than December 7, 2001. Obviously, that did not occur based upon the filing of the report some two months later.

3. This case was set for trial for January 2, 2002, by virtue of Judge Hurley's order of June 27, 2001. Judge Hurley then entered an order on November 14, 2001, at the conclusion of the telephonic status conference, setting the case for trial on January 7, 2002. On December 14, 2001, Judge Hurley entered an order vacating that previous order which set the case for a trial date certain. This order stated that a new trial date would be set by separate order. This Court does not see any new trial date yet in docketing.

4. The Defendants respond to the Motion to Exclude and state that requiring Ambassador Corr to reiterate his previously stated and recorded observations and opinions in a report is a "hardship", but that it would be done.

5. The Plaintiffs reply that Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure requires that such expert reports be submitted at least ninety days before the case is set for trial to enable the parties to properly review the expert reports, prepare for deposition/trial and prepare their own expert witnesses in response thereto. The Local Rules of this Court, Rule 16.1(K), reiterates the requirements of Rule 26.

6. The Defendants respond that the Plaintiffs are not prejudiced since the case has not been reset for trial. However, failure to strictly adhere to Judge Hurley's previous orders is not excused simply by a resetting of the trial date. This Court as well as the District Court routinely denies motions to extend discovery cutoff dates and other pretrial dates even in situations where a trial date is extended or continued. An extension or continuation of the trial date does not automatically reset any of the deadlines previously set by Judge Hurley's scheduling orders, especially in this case wherein Judge Hurley specifically stated that this particular expert witness report was to be filed no later than December 7, 2001.

7. The Plaintiffs argue that they are prejudiced because they do not have the requisite amount of time to prepare their experts, review the report and prepare for trial. There are specific reasons why the Federal Rules of Civil Procedure as well as the Local Rules of this Court require a period of no less than ninety (90) days for the submission of such expert witness reports. To simply state that the Plaintiffs are not prejudiced and can go to trial at any time that Judge Hurley sets the case without strict adherence to his orders relating to this particular expert witness, would fly in the face of Judge Hurley's directives and specific orders in this regard. This Court is not prepared to recommend that be the case.

**ACCORDINGLY**, this Court recommends to the District Court that the Plaintiffs' Motion to Exclude Expert Testimony of Defendants' Proposed Witness Edwin G. Corr [D.E. #184] be **GRANTED** in light of the fact that Judge Hurley had specific deadlines set in regards to this expert witness which the Defendants admit were not met in accordance with Judge Hurley's order.

The parties shall have ten (10) days from the date of this Report and Recommendation within which to file objections, if any, with the Honorable Daniel T. K. Hurley, United States District Judge assigned to this case.

**DONE AND ORDERED** this 4<sup>th</sup> day of March, 2002, at Fort Pierce, Northern Division of the Southern District of Florida.

  
FRANK J. LYNCH, JR.  
UNITED STATES MAGISTRATE JUDGE

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