

RULE 26(f) REPORT – PHASE II
INSTRUCTIONS
U.S. District Judge Rebecca F. Doherty

NOTE: Mail, e-mail, or deliver the original Phase II Report directly to the Magistrate Judge assigned to the case. **DO NOT SEND THIS REPORT TO THE CLERK OF COURT.** If you wish to e-mail the report, you must e-mail the ORDER in WORD PROCESSING format, and the Phase I Report in PDF format to the appropriate e-mail address. For Magistrate Judge Hill send to hill_orders@lawd.uscourts.gov. For Magistrate Judge Hanna sent to hanna_orders@lawd.uscourts.gov. You are still obligated to provide opposing counsel with a copy of the submission.

1. Expert Witnesses:

The parties shall list, by name (if not previously provided), any expert witness(es) they may call at trial, each expert's field of expertise, and the subject matter of each expert's testimony.

2. Treating Physicians:

Counsel for the injured party shall list, by name (if not previously provided), any treating physician (or other health care provider) counsel may call at trial, his or her field of expertise, and the subject matter of the testimony. Additionally, counsel shall declare if the treating physician (or other health care provider) will testify as to any matter which is beyond the basic facts known to him or her as the treating physician.

Counsel are hereby placed on notice, should they decline to provide a written report from the health care provider which conforms to FED. R. CIV. P 26(a)(2)(B), any testimony at trial will be strictly limited to a narrow reading of the reports and/or other office records regularly maintained by the treating physician in the normal course of treating a patient, assuming those records were timely provided to opposing counsel.¹ **The exception** to the foregoing rule is that counsel may stipulated, in writing, to some other arrangement (*e.g.* the parties will take a discovery deposition of the witness in lieu of a report, no report beyond the records regularly maintained by the physician is necessary, etc.)

3. Duration of Trial:

The parties shall indicate the expected duration of trial, which includes jury deliberations and one-half day for selecting a jury (if applicable).

4. Anticipated Dispositive Motions:

The parties shall list any anticipated dispositive motions.

5. Affirmation of Settlement Discussion:

Counsel are to state the date counsel conducted settlement discussions, the location, all persons present (and whether each participated in person or by telephone, and, **IN GENERAL TERMS ONLY**, why settlement discussions were unsuccessful – **NO SPECIFIC MONETARY AMOUNTS ARE TO BE REFERENCED.** (*See* Item No. 7 in the Scheduling Order (“Settlement Discussion”) for further information.

¹ For an illustrative discussion of this issue see *Robbins v. Ryan's Family Steak Houses East, Inc.*, 223 F.R.D. 448 (S.D.MS. 2004) and *Young v. U.S.*, 181 F.R.D. 344 (W.D.TX. 1997).

6. Electronic Courtroom:

The parties shall state whether this case will be document-intensive, i.e., requiring the admission of a large number of documents at trial. If so, counsel shall plan to conduct all discovery and trial presentation by way of scanned electronic documents.

7. Certification:

Counsel are to certify that the report is accurate and complete.