

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FILED

OCT 23 2007

LORI ANDREWS and  
JEREMY ANDREWS, her husband,

N.D. DISTRICT COURT  
MARTINSBURG, WV 26101

*and*

CRYSTAL ROSETTA,  
Plaintiffs,

vs.

Civil Action No.: 5:06CV112  
(Chief Judge Keeley)

UNITED PARCEL SERVICE, INC.,

*and*

JEFFREY W. LITTLE,  
Defendants.

**ORDER**

On October 19, 2007, Plaintiffs filed their Motion and Memorandum in Support "To Exclude Defendants' Expert Witness, Dr. Lawson F. Bernstein" because his report of a Court-authorized IME of Plaintiff was received by counsel for Plaintiffs two days after the ordered date of October 10, 2007. [Docket Entries 87 and 88.] Plaintiffs cite no actual prejudice suffered by them because of their receipt of the report on October 12<sup>th</sup> instead of October 10<sup>th</sup> as required under the Court's order.

This matter is not complex and does not require a response or hearing.

Plaintiffs do not assert any wilfulness incident to the failure to provide the report by October 10<sup>th</sup>. Plaintiffs do not assert they suffered any actual prejudice by the failure to provide the report by October 10<sup>th</sup>. While Plaintiffs cite heavily to FR CivP 35(b)(1), 16 (f) and 37(b)(2)(B) and (D), they ignore the discretion of the Court that is built into the enforcement of those rules. Absent prejudice or disadvantage, the rules are not to be arbitrarily applied solely to prevent one party or

another from presenting his case.

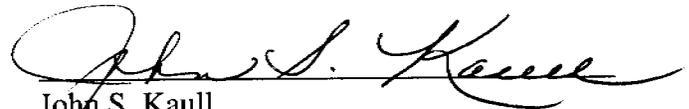
Plaintiffs now have the report in hand.

For the reasons stated herein, Plaintiffs' Motion To Exclude Defendants' Expert Witness, Dr. Lawson F. Bernstein [Docket Entry 87] on the ground that his report was received after October 10, 2007 (to wit: received on or about October 12, 2007) is **DENIED**.

It is so **ORDERED**.

The United States Court Clerk for the Northern District is directed to provide a copy of this order to counsel of record.

Dated: October 23, 2007 @ 9:45AM



John S. Kaull  
United States Magistrate Judge