

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

WILLIAM A. LINK, et al.,

Plaintiffs,

v.

Case No.: 4:21cv271-MW/MAF

MANNY DIAZ, JR., et al.,

Defendants,

_____ /

ORDER DENYING PLAINTIFFS' MOTION IN LIMINE

This Court has considered, without hearing, Plaintiffs' motion in limine seeking to exclude Defendants' expert witness's testimony at the bench trial in this case, ECF No. 187, and Defendants' response in opposition, ECF No. 197. Plaintiffs assert Defendants' expert, Dr. Wilfred McClay, should not be permitted to testify as an expert, citing deficiencies in his expert report and because his proffered opinions fail to meet the gatekeeping requirements under the Federal Rules of Evidence and *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Defendants respond that Dr. McClay's testimony should not be excluded due to the "technical error" of their "first-time expert," ECF No. 197 at 6, and that Plaintiffs' quarrels with his report and testimony go to its weight rather than its admissibility.

While a close call, this Court agrees that the failure to provide complete disclosures of Dr. McClay's updated CV and list of publications is harmless. If this

were a jury trial, this Court would allow Plaintiffs an opportunity to conduct a follow-up deposition to explore this new information. However, given that this case is set to proceed to a bench trial, Plaintiffs can explore this information during cross-examination. This Court is fully capable of separating the wheat from the chaff.

Just as it said in addressing Defendants' motions to exclude Plaintiffs' experts' opinions, this Court finds that an adversarial presentation at trial will put it in the best position to determine what weight—if any—to give Dr. McClay's testimony. Plaintiffs identify no reason for this Court to change course as it relates to Dr. McClay. Accordingly, Plaintiffs' motion, ECF No. 187, is **DENIED**.

SO ORDERED on December 8, 2022.

s/Mark E. Walker

Chief United States District Judge