

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ROBERT STEPHEN SENTILLES

CIVIL ACTION

VERSUS

NO. 21-958

HUNTINGTON INGALLS
INCORPORATED (f/k/a
AVONDALE SHIPYARD), *et al.*

SECTION M (3)

ORDER & REASONS

Before the Court is a motion *in limine* to exclude or strike the testimony of defendant's expert industrial hygienist James Shea filed by plaintiff Robert Stephen Sentilles.¹ Defendant Huntington Ingalls Incorporated ("Avondale") responds in opposition.² Having considered the parties' memoranda, the record, and the applicable law, the Court denies the motion because there is no undue surprise and Sentilles's issues with Shea's testimony can be addressed at trial through vigorous cross-examination and the presentation of countervailing expert testimony.

I. BACKGROUND

This case involves claims for asbestos exposure. On October 27, 2020, Sentilles was diagnosed with mesothelioma.³ Sentilles filed this case asserting negligence and strict liability claims against several defendants, including Avondale, alleging that his disease was caused by asbestos exposure that occurred from the 1950s to the 1980s.⁴ With respect to Avondale, Sentilles asserts that he was personally exposed to asbestos when he worked at the shipyard in 1969 and that he was secondarily exposed from his brother Tom Sentilles's clothing "while living with,

¹ R. Doc. 362.

² R. Doc. 370.

³ R. Doc. 60 at 2-3.

⁴ *Id.* at 1-20.

encountering, and riding to and from work with [him] while [Tom was] employed by Avondale.”⁵ At his deposition, Sentilles testified that he was exposed to asbestos when he worked in Avondale’s insulation shop from May 28, 1969, to June 24, 1969, sewing asbestos blankets that were installed on vessels under construction in Avondale shipyard.⁶

Avondale hired James Shea as its expert industrial hygienist and produced to Sentilles two Shea reports dated March 8, 2022, and September 3, 2024, respectively.⁷ Shea was deposed on September 26, 2024.⁸ Thereafter, Sentilles filed the instant motion arguing that, at his deposition, Shea presented certain testimony and calculations that should be excluded from trial because they were not explicitly explained in his reports and would be confusing to the jury.⁹ Specifically, Sentilles takes issue with Shea’s calculations of Sentilles’s dosage exposure to asbestos that Shea handwrote the night before the deposition, arguing that Shea should have produced those calculations in his reports.¹⁰ Sentilles further argues that Shea’s calculations and related testimony should be excluded because they include analysis related to take-home exposures that have been dismissed and are based on assumptions not supported by the facts, specifically that Sentilles washed his brother Tom’s clothes.¹¹

In opposition, Avondale argues that Shea’s dose calculations should not be excluded from trial because they constitute “basic arithmetic” that is based on the methodology and “data explicitly set forth in his report” and account “for hours in the day, days in a week, and weeks in a year to arrive at the exposure doses in occupational and environmental years.”¹² Avondale

⁵ *Id.* at 4-5.

⁶ R. Doc. 346-1 at 2-10, 16-22.

⁷ R. Doc. 362-1 at 1.

⁸ *Id.*

⁹ *Id.* at 1-2.

¹⁰ *Id.* at 3-5.

¹¹ *Id.* at 6-7.

¹² R. Doc. 370 at 4-5 (citing R. Docs. 370-2 at 28; 370-6).

contends that Shea’s “calculations and related testimony are permissible extrapolations of the facts and figures contained [in his] report.”¹³ According to Avondale, Shea compared the calculated exposure doses to available epidemiological data to provide context, but he does not opine on whether the dose was sufficient to increase Sentilles’s risk of developing an asbestos-related disease.¹⁴ Further, Avondale argues that Shea had to assume that Sentilles laundered his brother Tom’s work clothes in order to utilize epidemiological data to calculate Sentilles’s potential take-home asbestos exposures because there is no data available for simply being around a person wearing asbestos-containing work clothing.¹⁵

II. LAW & ANALYSIS

Rule 26(a)(2)(B) provides that expert witnesses who are “retained or specially employed to provide expert testimony in the case” must submit expert reports that contain specified information. Fed. R. Civ. P. 26(a)(2)(B). Under Rule 26(a), expert reports must explain the “how” and “why” of the expert’s opinions with specificity. *See Sylla-Sawdon v. Uniroyal Goodrich Tire Co.*, 47 F.3d 277, 284 (8th Cir. 1995) (holding that report lacked specificity to give advance notice of substance of expert’s testimony so was deficient under Rule 26(a)); *Denley, v. Hartford Ins. Co. of the Midwest*, 2008 WL 2951926, at *4-5 (E.D. La. July 29, 2008) (finding that expert’s report was “seriously flawed” in failing to explain the “how” and “why” for its conclusion). The “basic purpose” of Rule 26 is “preventing prejudice and surprise.” *Reed v. Iowa Marine & Repair Corp.*, 16 F.3d 82, 85 (5th Cir. 1994).

Failure to abide by Rule 26(a)’s disclosure requirements prompts sanctions under Rule 37(c) of the Federal Rules of Civil Procedure. *Honey-Love v. United States*, 664 F. App’x 358,

¹³ *Id.* at 5.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 6-7.

361-62 (5th Cir. 2016). Rule 37(c)(1) states that “[i]f a party fails to provide information or identify a witness as required by Rule 26(a) ... the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at trial, unless the failure was substantially justified or is harmless.” Fed. R. Civ. P. 37(c)(1). In determining whether a violation of Rule 26 is harmless or substantially justified, courts consider: “(1) the importance of the evidence; (2) the prejudice to the opposing party of including the evidence; (3) the possibility of curing such prejudice by granting a continuance; and (4) the explanation for the party’s failure to disclose.” *Tex. A&M Rsch. Found. v. Magna Transp., Inc.*, 338 F.3d 394, 402 (5th Cir. 2003).


Here, Shea’s calculations and his testimony regarding Sentilles’s total dose of asbestos attributable to Avondale comply with Rule 26 and will not be excluded. As Avondale points out, the basis for Shea’s calculations is included in his report and all he did for the deposition was write out the arithmetic. Thus, there is no undue surprise to Sentilles in this regard. Sentilles could have had his experts perform the same math with the information provided in Shea’s report. Moreover, Sentilles can address Shea’s calculations at trial through vigorous cross-examination and the presentation of countervailing expert testimony. Further, Shea’s testimony regarding Sentilles’s take-home exposure is neither confusing nor inadmissible. Shea candidly admits that, for the purposes of his report, he made the assumption that, although the facts are otherwise, Sentilles’s laundered his brother Tom’s clothes because no epidemiological data exists for the scenario of simply being around a person wearing asbestos-containing work clothes. This discrepancy is easily explained to, and understood by, the jury and, again, can be addressed through vigorous cross-examination and the presentation of countervailing expert testimony. Accordingly, Sentilles’s motion to exclude Shea’s testimony is denied.

III. CONCLUSION

Accordingly, for the foregoing reasons,

IT IS ORDERED that Sentilles's motion *in limine* to exclude or strike Shea's testimony (R. Doc. 362) is DENIED.

New Orleans, Louisiana, this 31st day of October, 2024.


BARRY W. ASHE
UNITED STATES DISTRICT JUDGE