



**TENNESSEE BUREAU OF WORKERS' COMPENSATION**  
**IN THE COURT OF WORKERS' COMPENSATION CLAIMS**  
**AT KNOXVILLE**

**ARIEL TAYLOR,** ) **Docket No. 2020-03-0716**  
                  **Employee,** )  
**v.** )  
**COCA COLA BOTTLING** )  
**COMPANY,** ) **State File No. 118242-2019**  
                  **Employer,** )  
**and** )  
**INDEMNITY INSURANCE OF** )  
**NORTH AMERICA,** ) **Judge Brian K. Addington**  
                  **Carrier.** )

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**ORDER GRANTING MOTION TO EXCLUDE**

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On June 29, 2023, Mr. Taylor filed a motion requesting the court to exclude the testimony of Michelle Weiss from his upcoming Compensation Hearing. Coca Cola filed a response opposing Mr. Taylor's motion. For the reasons below, Mr. Taylor's motion is granted.

**Claim History**

Mr. Taylor injured his back while working for Coca Cola in 2019. His authorized doctor assigned an impairment rating and Coca Cola's independent medical examiner agreed with the rating. In 2022, he settled his initial claim for benefits and when his compensation period expired later that year, he filed for additional benefits under Tennessee Code Ann. § 50-6-242.<sup>1</sup>

This court held a Scheduling Hearing and issued a Scheduling Order on March 22, 2023. During the hearing, the parties agreed to disclose all expert witnesses on or before May 5. A half hour after the Scheduling Hearing, Coca Cola's attorney sent an email to

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<sup>1</sup> Mr. Taylor gave Coca Cola a copy of his vocational expert's report in September 2022, before he filed his petition for increased benefits.

Mr. Taylor's attorney. The email asked if Mr. Taylor could be available for a vocational evaluation and listed some possible dates. Mr. Taylor attended the vocational evaluation on March 28 and on May 15, Coca Cola sent Mr. Taylor's attorney a copy of the vocational report.

In his motion, Mr. Taylor avers that Coca Cola did not comply with the court's Scheduling Order and disclose its expert witnesses by the scheduling deadline, and for that reason testimony from Coca Cola's vocational expert should be excluded. He argues that Rule 16.06 of the Tennessee Rules of Civil Procedure allows this court to appropriate sanctions under Rule 37.02 and 37.03 for failure to obey the March 22 Scheduling Order.

Coca Cola argues that Mr. Taylor's motion is "little more than a meritless airing of grievances against [its attorney and his firm]," and that the motion does not explain why Ms. Weiss's testimony should be excluded. It contends that it identified Ms. Weiss as an expert witness in the March 2023 email to Mr. Taylor's attorney requesting his availability for a vocational evaluation. Coca Cola further asserts that even if the Court holds that it did not timely notify Mr. Taylor, the Scheduling Order does not reference or require it to exchange expert reports, and Mr. Taylor is attempting to exclude her report under the coattail of the Court's expert disclosure deadline.

### **Analysis**

Tennessee Rules of Civil Procedure 16.06 allows a judge to address a party's failure to obey a scheduling order through Rule 37.02 and Tennessee Code Ann. §238(a)(3) makes it the duty of a workers' compensation judge to "make orders, decisions and determinations."

Here, the parties agree that they participated in a scheduling hearing, and a Scheduling Order was entered by agreement of the parties. The Scheduling Order stated that "The parties shall disclose all expert witnesses on or before May 5, 2023."

Coca Cola's argument that it disclosed Ms. Weiss as an expert witness in its March 22 email is unsupported. While Coca Cola's attorney's email states an intent to schedule a vocational evaluation with Ms. Weiss, it does not disclose that she will be called as its expert witness. Notably, the email discussions occurred before Mr. Taylor's evaluation. At that point, Mr. Taylor did not know whether Ms. Weiss would appear for trial or not.

Also, Ms. Weiss dated her report on May 5, coincidentally the disclosure deadline. It is unclear when Coca Cola received the report or decided Ms. Weiss would testify. However, Coca Cola did not act appropriately by requesting a deadline extension or relief before *or* after the deadline.

Rule 0800-02-21-.03 of the Tennessee Compilation Rules and Regulations allows a workers' compensation judge to:

- a) Extend the deadline if requested before expiration of the original deadline or before the deadline extended by a previous order; or
- b) Permit the act to be done late on motion made after the deadline has passed, if the failure to complete the act resulted from excusable neglect or good cause as determined by the judge.

The court finds Coca Cola failed to request an extension or file a motion requesting relief from the court to allow it to identify its expert. Coca Cola's response that Mr. Taylor did not provide a reason for why Ms. Weiss should be excluded is irrelevant. Parties are expected to comply with court orders. If a party is unable to comply, the appropriate remedy is to seek relief from the court. The court finds that Coca Cola failed to request an extension and failed to identify its expert by the deadline. Therefore, the court holds that Mr. Taylor's motion to exclude Michelle Weiss from testifying at trial is granted.

It is **ORDERED**.

**ENTERED July 7, 2023.**

[/s/ Brian K. Addington](#)


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**BRIAN K. ADDINGTON, JUDGE**  
**Court of Workers' Compensation Claims**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of this Order was sent on July 7, 2023.

Name	Certified Mail	Fax	Email	Service sent to:
Steven Fifield, Employee's Attorney			X	steven@rockylawfirm.com connie@rockylawfirm.com andrea@rockylawfirm.com
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