

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BOOZ ALLEN HAMILTON HOLDING  
CORPORATION, *et al.*,

**Case No. 1:22-cv-01603-CCB**

**PLAINTIFF'S MOTION *IN LIMINE*  
TO EXCLUDE EXPERT  
TESTIMONY FROM DR.  
ELIZABETH BAILEY OR, IN THE  
ALTERNATIVE, FOR A REOPENED  
DEPOSITION**

**REDACTED VERSION**

The United States moves to exclude the expert testimony of Dr. Elizabeth Bailey or, in the alternative, to reopen Dr. Bailey's deposition for three hours on Tuesday, September 13, subject to an order that she provide responsive answers to Plaintiff's questions. In Dr. Bailey's deposition on September 7, 2022, she refused to offer responsive answers to many of the questions asked by Plaintiff's counsel, even after Plaintiff's counsel made clear on the record that she was repeatedly providing evasive, frequently rambling answers. Dr. Bailey's non-responsiveness has left the United States without a full understanding of the opinions that she intends to express at the hearing, justifying the exclusion of her testimony or, at the very least, additional deposition time to avoid unfair prejudice to Plaintiff.

Where an expert intends to offer testimony at a hearing or trial that has not previously been disclosed to the opposing party, both the Federal Rules of Civil Procedure and the court's inherent authority permit it to preclude the expert from offering such testimony. *See* Fed. R. Civ. P. 26(a)(2)(B)(i), (e)(2) (requiring expert witnesses to provide "a complete statement of all opinions . . . and the basis and reasons for them" and "to supplement" the statement if necessary); Fed. R. Civ. P. 37(c)(1) ("If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless."); *United States v. Shaffer Equipment Co.*, 11 F.3d 450, 462 (4th Cir. 1993) (court has "inherent power" to "issue orders, . . . bar persons from the courtroom, . . . and dismiss actions"). In addition, where a deponent fails to answer a question—including by providing "an evasive or incomplete . . . answer," Fed. R. Civ. P. 37(a)(4)—a party may move to compel a response, Fed. R. Civ. P. 37(a)(3)(B)(i), and "[t]he court *must* allow additional time" for the deposition "consistent with Rule 26(b)(1) and (2) if needed to fairly examine the

deponent or if the deponent, another person, or any other circumstance impedes or delays the examination,” Fed. R. Civ. P. 30(d)(1) (emphasis added).

These provisions entitle the United States to relief. At Dr. Bailey’s deposition, she repeatedly disregarded and evaded counsel’s questions to such an extent that the United States was unable to adequately explore the nature and bases of her opinions. For example, Plaintiff’s counsel asked Dr. Bailey whether [REDACTED]

[REDACTED] Bailey Dep. Tr. at 78:19–22. Rather than answer that straightforward question, Dr. Bailey claimed to need additional clarification and asked: [REDACTED]

[REDACTED] *Id.* at 79:8–9. When counsel rephrased the question, Dr. Bailey provided a nearly two-page response that failed to include an answer. *Id.* at 79:16–81:17. Twice more, Dr. Bailey resisted providing any answer by claiming—incredibly—that she had not [REDACTED]

[REDACTED] *Id.* at 82:14–83:15.

This pattern repeated itself throughout the entirety of Dr. Bailey’s deposition. For example:

- When asked [REDACTED]  
[REDACTED], Dr. Bailey refused to offer a responsive answer, instead mechanically (and irrelevantly) repeating that [REDACTED]  
[REDACTED] *See id.* at 71:7–8 [REDACTED]  
[REDACTED]; *id.* at 71:20–22 [REDACTED]  
[REDACTED]; *id.* at 72:2–3 [REDACTED]);  
72:14–16 [REDACTED]; *id.* at 72:16–

17 [REDACTED] *id.* at 75:7–8 [REDACTED]  
[REDACTED]; *see generally id.* at 70:15–78:2.

- When asked whether she had [REDACTED]  
[REDACTED] Dr. Bailey failed to reply, stating only  
that she could [REDACTED]  
[REDACTED] *Id.* at 56:7–10. Dr. Bailey  
provided a version of this non-response six more times over the next few minutes of  
her deposition. *Id.* at 56:17–57:7 [REDACTED]  
[REDACTED]; *id.* at 57:21–58:1 [REDACTED]  
[REDACTED]; *id.* at 58:10–13 [REDACTED]  
[REDACTED]  
[REDACTED]; *id.* at 59:10–11  
[REDACTED]; *id.* at 60:9–  
11 [REDACTED]  
[REDACTED]; *id.* at 61:9–11 [REDACTED]  
[REDACTED].

- When asked simply whether she had defined a relevant market, Dr. Bailey stated over  
and over again that [REDACTED]  
[REDACTED]  
a relevant market herself. *See id.* at 90:3–4 [REDACTED]  
[REDACTED]; *id.* at 91:4–6 [REDACTED]  
[REDACTED]

[REDACTED]; *id.* at 92:11–12 [REDACTED]  
[REDACTED]; *see generally id.* at 89:22–93:2.<sup>1</sup>

In other cases, Dr. Bailey delayed the deposition by giving long, non-responsive answers that sometimes went on for minutes and occupy multiple pages of the transcript. *See, e.g., id.* 258:11–262:9 (providing nearly three-page, non-responsive answer to yes-or-no question: [REDACTED]  
[REDACTED]  
[REDACTED]).

Courts regularly preclude expert evidence “that a party seeks to offer but has failed to properly disclose.” *See S. States Rack & Fixture, Inc. v. Sherwin-Williams Co.*, 318 F.3d 592, 596 (4th Cir. 2003). Dr. Bailey’s evasions and delays caused by her rambling nonresponsive answers were so frequent that they prevented the United States from fully covering planned lines of questioning and from understanding basic aspects of her intended testimony, including whether she plans to offer an opinion defining the relevant market and whether she thinks that competition matters in light of federal regulations—issues that will be joined at the upcoming hearing. *See id.* at 597 (holding that courts should consider, among other factors, “the surprise to the party against whom the evidence would be offered,” “the extent to which allowing the evidence would disrupt the trial,” and “the importance of the evidence” in deciding whether to exclude expert testimony based on inadequate disclosure); *Thibeault v. Square D. Co.*, 960 F.2d 239, 246 (1st Cir. 1992) (“[T]he focus of a preclusion inquiry is mainly upon surprise and prejudice . . . .”); *Sullivan v. Glock, Inc.*, 175 F.R.D. 497, 506–07 (D. Md. 1997) (similar). Because Dr. Bailey’s unjustified refusal to provide responsive testimony has prejudiced the

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<sup>1</sup> Defendants are not required to define a relevant market, and Dr. Bailey is not required to form an opinion on the relevant market. But Dr. Bailey should be required to answer whether she has done so.

United States' ability to prepare for the hearing, the Court should preclude her from testifying. *See Carroll v. Allstate Fire & Cas. Ins. Co.*, No. 12-cv-00007-WJM-KLM, 2014 WL 859238, at \*8, \*11 (D. Colo. Mar. 4, 2014) (excluding expert witness's testimony based on "obstructionist tactics" at deposition that "impede[d] . . . counsel from gathering information from [the expert]").

Exclusion is especially appropriate here because the few opinions that Dr. Bailey did express in her deposition were often purported interpretations of laws, regulations, and contracts, even though Dr. Bailey [REDACTED].

Bailey Dep. Tr. at 28:3–33:10. For example, Dr. Bailey testified [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 151:22–155:5. Such legal opinions are beyond the province of this expert witness under Federal Rule of Evidence 702 and are matters reserved for the court. *See, e.g., United States v. McIver*, 470 F.3d 550, 562 (4th Cir. 2006) (“[O]pinion testimony that states a legal standard or draws a legal conclusion by applying law to the facts is generally impermissible.”); *In re Titanium Dioxide Antitrust Litig.*, No. RDB-10-0318, 2013 WL 1855980, at \*3 (D. Md. May 1, 2013) (same).

Alternatively, the Court should permit the United States to depose Dr. Bailey for three additional hours and order her to provide responsive answers to counsel's questions. Courts commonly order this remedy under Rule 30(d) when a witness has stonewalled counsel's efforts to elicit answers or where additional time is necessary to ensure a fair deposition. *See Baker & Taylor, Inc. v. College Book Rental Co.*, No. 3:12-CV-553-MOC-DCK, 2014 WL 2931057, at \*3 (W.D.N.C. June 27, 2014) (ordering additional deposition time where time limits on deposition

“did not allow for a fair examination” and defendant’s “obstructionist approach prevented [him] from being deposed on topics relevant to the case”); *Williams v. Horry-Georgetown Technical College*, No. 4:11-cv-429-RBH-TER, 2013 WL 642802, at \*2 (ordering additional deposition time where improper privilege assertions prevented witness from answering relevant questions); *Osborne v. Columbia Helicopters, Inc.*, No. 1:08-00305, 2009 WL 2215076, at \*5 (S.D. W. Va. July 20, 2009) (ordering additional deposition time where plaintiffs provided “incomplete and inaccurate” discovery responses, requiring counsel to spend deposition time eliciting “basic information which he would have had if Plaintiffs had responded fully and completely” to written discovery); *Moore v. CVS Corp.*, No. 7:04CV054, 2005 WL 581357, at \*4 (W.D. Va. Mar. 11, 2005) (granting additional deposition time where “one of the two defendants was left with only fifteen minutes to explore plaintiff’s allegations against him”); *Boyd v. Univ. of Md. Med. Sys.*, 173 F.R.D. 143, 148–49 (D. Md. May 2, 1997) (ordering additional deposition time where attorney improperly instructed witness not to answer relevant questions).

Plaintiff therefore moves to exclude Dr. Bailey’s expert testimony or, in the alternative, to reopen Dr. Bailey’s deposition for three hours at Plaintiff’s office on Tuesday, September 13.

Dated this 9th day of September, 2022.

Respectfully submitted,

**FOR PLAINTIFF UNITED STATES OF AMERICA:**

\_\_\_\_\_/s/\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 9, 2022, I electronically filed the foregoing Motion *in Limine* To Exclude Expert Testimony From Dr. Elizabeth Bailey Or, In The Alternative, For A Non-Filibustered Deposition, a redacted copy of Plaintiff's Memorandum of Law, and redacted exhibits, with the Clerk of Court using the CM/ECF system, and served, via electronic filing, counsel of record for all parties.

\_\_\_\_\_/s/\_\_\_\_\_

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