

Can an Evidence Deposition Act as a Proper Disclosure Under Rule 213?

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Since the inception of Rule 213, attorneys have struggled to meet the disclosure requirements of the Rule. Rule 213 was a drastic change from the convoluted Rule 220; however, this change did not eliminate the wrangling over proper disclosure under the Rule. What was always clear under Rule 213 was the Supreme Court's requirement of full disclosure of all opinions prior to trial. Even with the recent modifications to Rule 213, full disclosure is still required. The majority of case law on this issue focuses on whether full disclosure was made.



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In a recent Fifth District Appellate Case that will have a great impact on the defense bar, the court ruled that a doctor's opinions that were disclosed for the first time at his evidence deposition, were admissible at trial under Rule 213. In *Morgan v. Richardson*, 343 Ill. App. 3d 733, 798 N.E.2d 1233, 278 Ill. Dec. 476 (Ill. App. 5 Dist. 2003), the plaintiffs were served with written discovery that included standard Rule 213 interrogatories. In response, the plaintiffs answered "Unknown at present other than treating medical personnel." In subsequent correspondence

between the parties, the records and bills of Dr. Naseer were referenced and the defense counsel subpoenaed records from Dr. Naseer. The plaintiffs never supplemented their answers to Rule 213 interrogatories. *Id.*

Dr. Naseer's evidence deposition was taken three months before trial. At the evidence deposition, defense counsel objected to opinions of the doctor based on an alleged Rule 213 violation. The defendant's expert witness's evidence deposition was taken two months prior to trial. *Id.*

At the trial, defense counsel moved to bar the opinions of the doctor based on the plaintiffs' failure to properly disclose Dr. Naseer's opinions. The trial court denied this motion and allowed the evidence deposition to be read to the jury. A verdict was entered in the plaintiffs' favor and the defendant appealed. *Id.*

The Fifth District Appellate Court held that the disclosure of these opinions was proper under Rule 213. The court quoted Rule 213(i) which states "if a deposition of an opinion witness is taken, the witness'[s] testimony at trial will be limited to the opinion expressed therein." The court held that the disclosure of these opinions in the doctor's evidence deposition was sufficient under Rule 213 and that the trial court did not abuse its discretion in allowing this testimony into evidence. *Id.*

Clearly, any evidence deposition could now act as a Rule 213 disclosure and be admissible at trial. Defense counsel may now be forced to take depositions of treating physicians even without a Rule 213 disclosure from the plaintiff.

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