

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Johnny Jones,	)	
	)	
<i>Plaintiff,</i>	)	
	)	No. 17-cv-8218
-vs-	)	
	)	<i>(Judge Rowland)</i>
Wexford Health Sources, Inc., a	)	
foreign corporation, and Dr.	)	
Marshall James,	)	
	)	
<i>Defendants.</i>	)	

**REPLY IN SUPPORT OF MOTION TO  
EXCLUDE OPINIONS OF DR. PRODOMOS**

Plaintiff has identified more than a dozen instances in which Dr. Prodromos, defendants' retained expert, viewed the record in the light most favorable to defendants in forming opinions on which defendants rely in their motion for summary judgment. (ECF No. 104.) This is, of course, not the standard for summary judgment, which requires the Court to read the record in the light most favorable to plaintiff, the non-moving party.

Defendants do not dispute that Dr. Prodromos formed his opinions by accepting defendants' version of the facts. Instead, defendants argue that expert opinions are not subject to the rules of summary judgment. The Court should reject this argument.

**I. Construing Facts in the Light Most Favorable to the Non-Moving Party is Not a “New and Novel Legal Standard”**

Defendants assert that plaintiff is seeking to bar Dr. Prodromos’s opinions because plaintiff does not agree with those opinions. (ECF No. 110 at 2.) This is incorrect. As plaintiff explained in his motion, the Court should bar Dr. Prodromos’s opinions at summary judgment because his opinions are based on disputed facts construed in the light most favorable to defendants. (ECF No. 104.) There is nothing novel about this argument. As explained by the Magistrate Judge in another case involving a Wexford defendant:

One flaw in Defendant’s reasoning is that her experts routinely construed the facts in a light most favorable to Defendant in order to reach their conclusions, whereas this Court must construe them in a light most favorable to Plaintiff.

*Williams v. Mary Diane Schwarz, P.A.*, No. 15 C 1691, 2018 WL 1961143, at \*6 (N.D. Ill. Apr. 26, 2018). The Court concluded in *Williams*: “All of these factual disputes must be resolved by a jury.” *Id.*

Defendants concede, as they must, that construing facts in the light most favorable to the non-moving party is “the standard for summary judgment motions generally.” (ECF No. 110 at 2.) Defendants state that the Court should rely on Dr. Prodromos’s opinions because they are “well-founded” (*id.*), but do not attempt to rebut plaintiff’s showing that the

opinions are founded on disputed facts construed in the light most favorable to defendants.

Rather than discuss the facts, defendants argue that plaintiff should have deposed Dr. Prodromos to inquire about the basis for his opinions. (ECF No. 110 at 3-4.) This argument is contrary to Federal Rule of Civil Procedure 26(a)(2)(B)(ii), which requires an expert report to include “the facts or data considered by the witness in forming” their opinions.

Defendants also suggest that barring an expert from relying on disputed facts at summary judgment means that summary judgment must be denied whenever there are experts on both sides. (ECF No. 110 at 4-5.) But plaintiff’s Motion to Bar has nothing to do with dueling experts. Any party that seeks to rely on expert opinions at summary judgment must rely on opinions that view the evidence in the light most favorable to the non-moving party. This rule is required because of the “fundamental principle that ‘at the summary judgment stage the judge’s function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.’” *Anderson v. City of Rockford*, 932 F.3d 494, 504 (7th Cir. 2019) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).)

## **II. Conclusion**

For all these reasons and those previously advanced, the Court should exclude the opinions of Dr. Prodromos from summary judgment proceedings.

Respectfully submitted,

/s/ Joel A. Flaxman  
Joel A. Flaxman  
ARDC No. 6292818  
Kenneth N. Flaxman  
200 S Michigan Ave Ste 201  
Chicago, IL 60604-2430  
(312) 427-3200  
jaf@kenlaw.com  
*Attorneys for Plaintiff*