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ILLINOIS LAW MANUAL

CHAPTER XV

AMENDED SUPREME COURT RULE 213

D. CONCLUSION: WHEN IN DOUBT, DISCLOSE IT

While the amendments to Rule 213 provide for a relaxed approach to disclosure of witnesses and opinions, it would continue to be wise to err on the side of disclosure. Even if your opponent has not asked for specific information, if you intend to offer it at trial, you must disclose it fully. If you do not disclose the identity of a fact witness or meet all of the disclosure requirements for lay witnesses, independent expert witnesses, and controlled expert witnesses, the risk remains that these witnesses and their opinions could be barred by the trial court. Moreover, you must continue to disclose during the course of discovery as new information becomes available.

While a recent decision may appear to back off of Rule 213's strict requirements of disclosure of expert opinions, it is still recommended to err on the side of disclosure when in doubt. In *Timothy Whelan Law Associates, Ltd. v. Kruppe*, 2011 WL 1327036 (Ill. App. 2 Dist., 2011), disclosure that an independent expert witness would testify "regarding" damages allowed the expert witness to give his opinion that attorney fees were reasonable. The court reasoned that attorney fees are an essential element of proving damages.