

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

IN RE COPPER ANTITRUST LITIGATION

ORDER

ALL CASES

MDL Docket No. 1303

ASARCO, INCORPORATED,

Plaintiff,

v.

03-C-314-C

J.P. MORGAN CHASE & COMPANY and
MORGAN GUARANTY TRUST COMPANY
OF NEW YORK,

Defendants.

KENNECOTT UTAH COPPER CORPORATION,
LEVITON MANUFACTURING CO., INC. and
AMERICAN INSULATED WIRE CORPORATION,

Plaintiffs,

v.

03-C-316-C

J.P. MORGAN CHASE & COMPANY and
MORGAN GUARANTY TRUST COMPANY
OF NEW YORK,

Defendants.

ESSEX ELECTRIC, INC.,

Plaintiff,

v.

03-C-317-C

J.P. MORGAN CHASE & COMPANY and
MORGAN GUARANTY TRUST COMPANY
OF NEW YORK,

Defendants.

MUELLER COPPER TUBE COMPANY, INC. and
MUELLER COPPER TUBE PRODUCTS INC.,

Plaintiffs,

v.

03-C-318-C

J.P. MORGAN CHASE & COMPANY and
MORGAN GUARANTY TRUST COMPANY
OF NEW YORK,

Defendants.

SUPERIOR TELECOM INC.,

Plaintiff,

v.

03-C-368-C

J.P. MORGAN CHASE & COMPANY and
MORGAN GUARANTY TRUST COMPANY
OF NEW YORK,

Defendants.

Before the court is defendants' motion to preclude portions of the revised affirmation of Professor Christopher Gilbert on the grounds that those portions contravene this court's preliminary pretrial conference order entered April 25, 2006 and Fed. R. Civ. P. 26(e). For the reasons stated below, I am denying the motion.

Defendants are correct that the pretrial conference order prohibits third round expert reports and thus would preclude Professor Gilbert from supplementing his initial report either in rebuttal of another expert or after his deposition was taken by defendants. However, experience in similar cases has shown that requiring an expert to rely solely on her or his initial report without the benefit of rebuttal is often impractical and leads to confusion

in subsequent testimony. As a result, I have decided to revise the pretrial conference order as it relates to supplementing expert reports and allow up to a third round of rebuttal expert reports in the above-captioned matter. To avoid prejudice to defendants, I will permit defendants to depose Professor Gilbert on the subject of his rebuttal report. In sum, plaintiffs may rely on Professor Gilbert's revised affirmation if they promptly make Professor Gilbert available for deposition in the United States (either in person or via telephone).

Accordingly, defendants' motion is DENIED. Any further motions to strike supplemental or rebuttal expert reports in the above-captioned matter must be filed no later than 10 calendar days from the date of this order.

Entered this 16th day of February, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge