

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 are defendants' motions to strike the February 1, 2007 declaration of Christopher Gilbert and the February 20, 2007 affidavit of Dr. James McClave as impermissible and untimely under this court's pretrial conference orders. For the reasons stated below, I am granting the motions.

In conjunction with their opposition to summary judgment, plaintiffs filed yet another declaration of their damages expert, Professor Christopher Gilbert. Plaintiffs argue that Gilbert's fourth declaration more fully explains his prior substantive opinions for purposes of opposing summary judgment. In response to defendants' motion in limine to exclude the expert testimony and report of Professor Gilbert, plaintiffs filed an affidavit of

Dr. James McClave (a previously undisclosed expert) on February 20, 2007. Plaintiffs argue that the affidavit is permissible as a late filing because McClave's only role is to assist the court in resolving the Daubert motion and not testify at trial.

Defendants are correct that the preliminary pretrial conference order entered April 25, 2006 set a deadline of September 1, 2006 for disclosure of experts. The revised pretrial conference order entered February 16, 2007 allowed only up to a third round of supplemental reports. Plaintiffs' submissions clearly violate the pretrial conference orders, and permitting plaintiffs to file additional expert opinions at such a late date, even in the context of their opposition to either summary judgment or the motion in limine, would prejudice defendants. Accordingly, defendants' motions to strike are GRANTED.

Entered this 15th day of March, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge