

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

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JOHN R. TALMAGE,

Plaintiff,

v.

CHARLES B. HARRIS,  
DOAR, DRILL & SKOW, S.C.  
and CNA INSURANCE COMPANY,

Defendants.

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ORDER

03-C-0658-C

Plaintiff John R. Talmage has moved for reconsideration of the order entered on March 14, 2005, in which I granted defendants' motion in limine on plaintiff's fire loss damages. The motion will be denied. Nothing in plaintiff's motion persuades me that it was error to grant defendants' motion.

Although plaintiff argues that he was taken by surprise when defendants raised the issue of plaintiff's need for an expert witness to prove fire loss damages, he has not shown why he would not have known that he would need such an expert to prove that he sustained an actual loss equal to the amount he is claiming he would have been entitled to had the matter not been settled but had gone to trial. Plaintiff's theory is that defendant Harris

misled him into settling for significantly less than the value of his fire loss claim by telling him that he could recover in a separate suit against the insurance company for bad faith. It seems obvious that to prevail on such a claim, he has to prove the amount of his actual loss. He cannot prove that he should be reimbursed for the loss of a thing of value (his fire loss claim) without proving exactly what the value was. Whether he needs an expert witness to provide that proof depends on the nature of the loss. If he were claiming the loss of a car, he could probably prove it by reference to the blue book value; proving the value of other lost items is not as simple. It is not enough for a lay witness simply to testify that something burned and had to be replaced. Someone has to testify what the “something” was worth and what its fair replacement value was. It is particularly difficult to prove the cost of rebuilding a fire-damaged residence or commercial building. A claimant must show that rebuilding or replacing a specific part or fixture of the building was necessitated by the fire and that the new structure does not represent a larger or improved structure or, if it does, what portion of the cost of the new structure is fairly attributable to the loss. It is unlikely that a plaintiff could make such a showing without an expert witness.

At the final pretrial conference, plaintiff’s counsel gave no indication that he was prepared to prove up each and every expense constituting the fire loss claim he submitted to the insurance company for reimbursement. Therefore, I found that he could not argue that the claimed loss was an actual loss. My opinion has not changed.

ORDER

IT IS ORDERED that plaintiff John R. Talmage's motion for reconsideration of the March 14, 2005 order granting defendants' motion in limine is DENIED.

Entered this 25th day of March, 2005.

BY THE COURT:

BARBARA B. CRABB  
District Judge