

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

WILLIAM C. FRAZIER, *et al.*,

Plaintiffs,

v.

LAYNE CHRISTENSEN COMPANY, *et al.*,

Defendants.

ORDER

04-C-315-C

Before the court is plaintiffs' January 24, 2006 motion for a protective order, seeking to quash the deposition of Tatiana A. Scanlon, currently scheduled for tomorrow, January 31, in Kansas City. The thrust of the motion is that this deposition is a waste of time and money because Scanlon cannot testify at trial. Because plaintiffs' concerns currently are speculative, I am denying the motion and allowing the deposition to proceed as scheduled. If, however, plaintiffs' speculation solidifies into actuality, then they may file a new motion to strike and for sanctions, including reimbursement of the costs associated with attending the January 31, 2006 deposition.

Because time is short and the parties need an answer immediately, I will not dwell on the reasons for this decision. I will simply note that although the plaintiffs might have legitimate fears that defendants are trying to sneak a late-disclosed expert in through the back door, and might be correct that Scanlon has no relevant information to offer that would make her testimony admissible at trial, defendants dispute both points, claiming that

Scanlon is not an expert and that she does have admissible, or at least relevant, testimony to offer. At this point then, defendant is correct and the court has no reason to prevent her deposition.

Plaintiffs are correct, however, that the deadline to disclose experts passed long ago and there is no basis to view Scanlon's testimony as legitimate or timely supplementation as allowed by Rule 26(e). *See, e.g.*, this court's January 25, 2005 order (dkt. 116) in *Bondpro Corp. v. Siemens Westinghouse Power Corp.*, 04-C-26-C. If it turns out that defendants misrepresented the nature, relevance or potential admissibility of Scanlon's testimony, then plaintiffs may file a new motion raising their concerns at that time.

Given the tight time constraints governing the briefing and resolution of this dispute, coupled with the conditional nature of the court's ruling, at this time each side shall bear its own costs on this motion.

Entered this 30th day of January, 2006.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge