

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

WESTERN SURETY COMPANY,
a South Dakota corporation, individually
and as assignee of WESTRA CONSTRUCTION
COMPANY, INC.,

Plaintiff
and Counter Defendant,

MEMORANDUM

06-C-326-C

v.

ALLIANCE STEEL CONSTRUCTION, INC.,
a Wisconsin corporation,

Defendant, Counter Plaintiff
and Third-Party Plaintiff,

v.

WESTRA CONSTRUCTION, INC.,
a Wisconsin corporation,

Third-Party Defendant.

Plaintiff Western Surety Company has filed a motion for partial summary judgment, which is now ripe for review. After briefing was completed, defendant Alliance Steel Construction, Inc. filed two more submissions in support of its response, one on May 1 and

the other on May 15. Both submissions consisted of additional documents.

Now, defendant has filed a letter that is unusual to say the least. First, defendant explains in detail the reason for its untimely filings, which boils down to the fact that at the time it filed its response, it had not yet obtained the documents from the Army Corps of Engineers. Second, defendant informs the court that plaintiff has “indicated that it considers the [submissions] to be improper and has threatened to bring a Motion to Strike.” Third, defendant requests a determination whether the court considers the additional documents to constitute a “Sur-Reply” and, if it does, defendant seeks permission to file the documents as a sur-reply. Finally, defendant says that it wishes to submit *another* document that it just received.

The short answer to this is one that defendant should have been able to anticipate: this court will not consider new evidence submitted by a party after the deadline for filing, particularly when the other parties have had no opportunity to respond to it. Any other rule would give one party an unfair advantage and allow continuous filings of new information every time a party finds a new piece of evidence it believes may be relevant. No court can efficiently rule on motions if the record changes on a daily basis.

Defendant does not suggest in its letter that plaintiff was the cause of the delay in obtaining the documents defendant now wishes the court to consider. Even if plaintiff had been withholding documents that defendant believed were necessary to respond effectively

to plaintiff's motion, the appropriate response would be a motion to compel or a motion under Fed. R. Civ. P. 56(f), not a request to file a sur-reply a month later. In deciding plaintiff's motion, the court will give no consideration to the documents defendant filed on May 1 and May 15.

Entered this 18th day of May, 2007.

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