

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

UNITED STARS INDUSTRIES,
INC.,

Plaintiff,

v.

PLASTECH ENGINEERED
PRODUCTS, INC.,

Defendant.

ORDER

06-C-0349-C

Before the court are three motions filed by plaintiff United Stars Industries, Inc.: (1) a motion to reconsider the magistrate judge's April 5, 2007 order denying plaintiff's motion to conduct supplemental depositions of two witnesses; (2) a motion to preclude the testimony of James Brown, Terry Ernst, Brad Frederick and Lee Ann Thompson; and (3) a motion to strike portions of the deposition of Maria Haughton. The first motion will be denied; the other two will be granted.

As to the motion to reconsider, plaintiff has not shown why the magistrate judge's decision was clearly erroneous or contrary to law, as it must under 28 U.S.C. § 636(b)(1)(A). Discovery orders are inherently close calls, given the inevitable limitations on the judicial

officer's opportunity to know first-hand the facts of a particular dispute. I cannot say that it was clearly erroneous in this situation for the magistrate judge to have denied plaintiff's request for a second deposition of witnesses Turner and Howell.

Defendant Plastech Engineered Products, Inc. did not provide plaintiff timely notice of their intent to call witnesses Brown, Ernst, Frederick and Thompson at trial. If they have evidence about which they will testify, they qualified long ago as persons with discoverable information. As employees of defendant, they should have been made known to plaintiff. Having kept plaintiff in the dark about their relevance to trial issues, defendant may not call them as witnesses at trial.

Haughton's testimony will be struck so far as she takes on the role of expert witness, as she does in pages 173 (line 13)-205 (line 6). I disagree with defendant's assertion that the cited testimony constitutes lay opinion. The calculations that Haughton performs require specialized knowledge of mathematics and physics, thus bringing the testimony under the ambit of Fed. R. Evid. 702. Because it is undisputed that Huaghton was never identified as an expert in this case, she may not testify as one.

ORDER

IT IS ORDERED that plaintiff United Stars Industries, Inc.'s motion for reconsideration of the magistrate judge's order of April 5, 2007 is DENIED; its motion to

preclude the testimony of James Brown, Terry Ernst, Brad Frederick and Lee Ann Thompson is GRANTED; and its motion to strike the deposition testimony of Maria Haughton is GRANTED. The deposition testimony running from line 13 of page 173 to line 6 of page 205 is STRICKEN.

Entered this 23d day of April, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge