

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

ERVIN GAGAS,

Plaintiff,

v.

WISCONSIN CENTRAL, LTD.,

Defendant and Third Party Plaintiff,

SAMUELS RECYCLING COMPANY and
RESIDUAL MATERIALS, INC.,

Third Party Defendants.

ORDER

06-C-651-C

With the amount of filings in this case, one would think that the parties were fighting over tens of millions of dollars rather than just the appropriate allocation of costs for the injuries of a single employee (who has already settled his claim). In the latest motion, defendant Wisconsin Central, Ltd. seeks “clarification” of the order in this case denying the parties’ motions for summary judgment. Dkt. #94.

The parties’ motions for summary judgment raised two issues: (1) whether an injury is covered only if it occurred on a particular section of track; and (2) whether Samuels must indemnify Wisconsin Central for its own acts of negligence. In the summary judgment opinion and order, I concluded that the indemnification agreement was not limited to a

particular location and that Samuels did not have to indemnify Wisconsin Central for its own negligence.

In its motion, Wisconsin Central asks whether third party defendant Samuels Recycling Company “has an obligation to indemnify [Wisconsin Central] in proportion to the portion of [plaintiff]’s injury that was caused other than by [Wisconsin Central]’s negligence.” Because that was not an issue raised in the parties’ motions for summary judgment, it is not an issue I can “clarify” now. Accordingly, Wisconsin Central’s motion for clarification is DENIED. To the extent the parties cannot agree on any remaining issues regarding the correct interpretation of the indemnification agreement, they will have to raise those issues in a motion in limine or a trial brief.

Entered this 7th day of November, 2007.

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