

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

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EMPIRE BUCKET, INC.,

Plaintiff,

v.

CONTRACTORS CARGO COMPANY,

Defendant.

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OPINION & ORDER

12-cv-233-wmc

The court held a final pretrial conference in this matter on May 21, 2013. The purpose of this order is simply to memorialize the court's rulings on the parties' motions in limine, the reasons for which were more fully explained on the record, as well as to note related deadlines, objections to exhibits and other issues. In light of the parties' submission and argument at the hearing,

IT IS ORDERED that:

- 1) Plaintiff's motion in limine #1 (dkt. #42) is DENIED as moot in light of the court's ruling on plaintiff's motion to dismiss.
- 2) Plaintiff's motion in limine #2 (dkt. #43) is GRANTED with respect to attorneys' fees and expert witness fees incurred in preparation for trial, and RESERVED with respect to expert fees incurred in testing the deck. Defendant may make a written proffer by 4:30 pm on Friday, May 24, as to the nature and amount of consequential losses suffered in hiring experts, and plaintiff shall have until noon on Wednesday, May 29, to file a response.
- 3) Plaintiff's motion in limine #3 (dkt. #44) is GRANTED without objection.
- 4) Plaintiff's motion in limine #4 (dkt. #48) is RESERVED. Defendant may make a written proffer by 4:30 pm on Friday, May 24, as to the testimony to be offered regarding the Charpy test, as well as its relevance in light of the absence of information about a Charpy test clause in the parties' contract, and plaintiff shall have until noon on Wednesday, May 29, to file a response contesting relevance and prejudice.
- 5) Plaintiff's motion in limine #5 (dkt. #49) is GRANTED without objection.

- 6) Plaintiff's motion in limine #6 (dkt. #50) is GRANTED IN PART AND RESERVED IN PART. The contested exhibit was not produced for the court's inspection, and thus may not be used as an admitted exhibit. The court leaves open the question of whether it can be used to aid a witness's recollection.
- 7) Defendant's motion in limine #1 (dkt. #37) is DENIED in light of the apparent late disclosures of information by defendant. Defendant shall have until **4:30 pm** on Friday, May 24, to submit evidence that information relied upon by plaintiff's expert in revising his opinions during his deposition was provided well in advance of his deposition, and plaintiff shall have until **noon** on Wednesday, May 29, to file a response.
- 8) Defendant's motion in limine #2 (dkt. #38) is DENIED. Defendant does not state an evidentiary basis for preventing Mr. Pax's testimony.
- 9) Defendant's motion in limine #3 (dkt. #39) is DENIED. Defendant does not state an evidentiary basis for preventing Mr. Pax's testimony.
- 10) Defendant's motion in limine #4 (dkt. #40) is DENIED in light of the denial of its motions #2 and #3 above.
- 11) Plaintiff is directed to submit a shortened expert narrative for Dr. Brusso not to exceed two pages, including caption, no later than **4:30 pm** on Friday, May 24.
- 12) Both sides shall provide the court with copies of all exhibits by **noon** on Wednesday, May 29, in CM/ECF, other electronic format and/or in hard copy as the parties deem most appropriate for the court's access. At the same time, the parties' should similarly file copies of all deposition transcripts they may use for impeachment at trial.
- 13) A final, telephonic pretrial conference to resolve any outstanding issues will be held at 10:00 am on Thursday, May 30. Any concerns about the court's proposed jury instructions and special verdict forms, or issues not raised at today's pretrial conference should be submitted in writing prior to this conference. Plaintiff is to initiate the call to the court.

Entered this 22nd day of May, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge