

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

JAMES HOLDER,

Plaintiff,

v.

OPINION AND ORDER

16-cv-343-wmc

THE INTERLAKE STEAMSHIP CO.,
and CAPSTAN CORP.,

Defendants,

THE INTERLAKE STEAMSHIP CO.,

Cross-Claimant,

v.

FRASER SHIPYARDS, INC.,

Cross-Defendant.

The court held a final pretrial conference today, hearing argument or reserved motions in limine and directing the parties to file supplemental briefing on certain issues. The purpose of this order is to formalize those rulings.

IT IS ORDERED that:

- 1) The court will hold a telephonic pretrial conference at 2:30 p.m. on April 20, 2018, to address outstanding matters, including exhibits, deposition designations, and the matters to be briefed as set forth below.
- 2) Interlake shall file a brief explaining why it believes it prevails on its cross-claim as a matter of law by Monday, April 16, 2018.¹ Fraser Shipyards shall have until 4:30 p.m. on Thursday, April 19 to respond. These submissions are to be consistent with this court's summary judgment procedures, including proposed findings of fact.

¹ Upon reflection, the court recognizes that the original deadline for Interlake's briefing -- "this Friday" -- did not provide enough time.

- 3) Experts may rely on admitted portions of Nicholas Minardi's *deposition transcript* as a substitute for statements in Minardi's "sworn statement," direct reference to which is excluded. Notice must be given to opposing counsel as to the substitute designation language to which plaintiff's expert will rely. Accordingly, the reserved portion of Capstan's MIL No. 1 (dkt. #192) is GRANTED IN PART AND DENIED IN PART.
- 4) While plaintiff may not affirmatively call Dr. Marion Fedoruk in his case-in-chief, his counsel may cross-examine him on opinions he offered. Accordingly, Capstan's supplemental motion to exclude additional opinions of Dr. Fedoruk (dkt. #273) is DENIED.
- 5) Fraser's motion to exclude Walter F. Curran's opinions (dkt. #246) is GRANTED as unopposed.
- 6) Interlake shall propose a brief jury instruction on OSHA's Multi-Employer Policy by Tuesday, April 17, with a response due Thursday, April 19.
- 7) At trial, the parties' counsel and their experts may discuss OSHA policy and regulations as considerations in arriving at the standard of care, but they will not be able to offer evidence about OSHA's enforcement powers, including whether OSHA did or did not issue citations arising out of the work on the *Jackson*.
- 8) As to defendants' proffer of evidence concerning plaintiff's drug and alcohol use: (1) the proposed "no particular reason" as to why plaintiff stopped using marijuana is STRUCK; (2) the reference to plaintiff's termination because of a positive marijuana urine test is STRUCK as unfairly prejudicial; and (3) the reference to a court order requiring plaintiff to undergo alcohol treatment after receiving a DUI is STRUCK, unless plaintiff opens the door by suggesting that his alcohol treatment was voluntary.
- 9) The parties may have until Monday, April 16, to object to or otherwise propose changes to the closing instructions for the first two phases of trial. Responses are due on Wednesday, April 18.
- 10) Interlake's motion to strike plaintiff's proposed expert narrative statements (dkt. #261) is GRANTED IN PART and DENIED IN PART. Plaintiff may have until Monday, April 16, to shorten the expert narratives for Jones, Parker and Sullivan. Defendants may have until Wednesday, April 18, to raise any further objections.

- 11) Plaintiff's objection to the statement in Dr. Fedoruk's expert narrative that "[f]ewer than 50 physicians . . . hold board certifications in both Occupational Medicine and Toxicology" (dkt. #269) is GRANTED.
- 12) The parties are to exchange exhibits and deposition designations on Monday, April 16, with objections filed by Thursday April 19.

Entered this 12th day of April, 2018.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge