

STATE OF MAINE

YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-13-99

PAF-YOR-08-25-14

MONICA B. MARINO,

Plaintiff

v.

ORDER ON PENDING MOTIONS

AGRO TREND MFG., et al.,

Defendants

Three motions have been briefed and argued.

I. MOTION TO EXCLUDE DUPLICATE EXPERTS

The first is the plaintiff's motion to exclude expert witness. The defendant has designated Roger Schildroth of Agro Trend and Jon Ver Halen, who has his own consulting business, as expert witnesses. Their designations indicate that they will provide nearly identical facts and opinions concerning the safety of the snowblower in question.

The plaintiff has moved to require the defendant to choose one witness and preclude it from offering the second as the duplicate testimony would violate the requirement in the standard scheduling order of June 24, 2013 that, "... each party may designate no more than one expert per issue." I will permit both witnesses to testify as Mr. Schildroth needs to explain what the defendant did and it is appropriate for an outside witness to also defend Agro's actions. However, at the time of any trial, restrictions will be imposed to avoid unnecessary duplication. The motion is denied.

II. DUTY TO WARN

The second motion is the defendant Agro Trend, Mfg.'s motion for partial summary judgment on the failure to warn claims found in portions of Counts I and VII of the complaint. Both Count I, based on strict liability and Count VII, based on negligence, contain a claim that Agro, in addition to the existence of any design defects, did not provide adequate warnings. For the multiple reasons stated in *Marois v. Paper Converting Machine Co.*, 539 A.2d 621, 624 (Me. 1988) the motion will be denied. This case does not involve deliberate misuse of a product. See *Hatch v. Maine Tank Co., Inc.*, 666 A.2d 90, 94-5 (Me. 1995), which cited *Marois*. Lastly, *Burns v. Architectural Doors and Windows*, 2011 ME 61, 19 A.3d 823 is distinguishable as it involved an appeal from a jury verdict, significant problems with the pleadings existed, it was a case where the plaintiff "... had been aware for years of the specific danger posed by the product at issue", ¶24, and because of severe causation issues, ¶25. *Burns* also referred to *Marois*. It did not change the key principles stated in *Marois* but only found them not to be applicable based on the facts in *Burns*. The motion is denied.

III. SCOPE OF THOMAS TESTIMONY

The final motion is the defendant Agro Trend, Mfg.'s request to limit the expert opinions of Steven R. Thomas, a liability expert for the plaintiff. Mr. Thomas has constructed a guard for the snowblower, conducted some additional tests and formulated some new opinions since he submitted his expert witness designation. Agro has moved to preclude him from rendering any opinions or stating any conclusions based on his January 27, 2014 inspection of the snowblower or which are beyond the extent of his September 23, 2013 disclosure.

I agree with the defendant that Mr. Thomas has belatedly expanded the scope of his opinions and potential testimony. Since a trial is still a substantial time away a

different remedy, other than limiting the testimony of Mr. Thomas, is appropriate. Mr. Thomas shall supplement his expert witness designation. The defendant's experts may supplement their designations as well to respond to the expanded opinions of Mr. Thomas. Agro will be permitted to re-inspect and re-test the snowblower. The motion is denied.

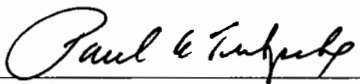
The entries are:

Plaintiff's motion to exclude expert witness is denied.

Defendant Agro Trend, Mfg.'s motion for partial summary judgment is denied.

Defendant Agro Trend, Mfg.'s motion to limit expert opinions of Steven R. Thomas is denied.

Dated: August 25, 2014



Paul A. Fritzsche
Justice, Superior Court

CV-13-099

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