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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

TRINITY INDUSTRIES, INC.,)	
<i>et al.</i> ,)	
)	Case No. 1:11-cv-937
Plaintiffs,)	Alexandria, Virginia
)	
v.)	August 28, 2012
)	12:02 p.m.
SPIG INDUSTRY, LLC, <i>et al.</i> ,)	
)	
Defendants.)	

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE T. RAWLES JONES, JR.
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs:	Wendy West Feinstein, Esq.
	William D. Ledoux, Jr., Esq.
	Edward J. Longosz, II, Esq.
For the Defendants:	Jennifer L. Swize, Esq.
	Tara Lynn R. Zurawski, Esq.

1 Administration. We have produced all communications with state
2 departments of transportation. Mr. Harman's testimony about a
3 communication was by phone. That's in his deposition. So
4 there's no document to produce there.

5 I really don't know how to be any more clear. Our case
6 does not rest to performance of the products on the highways.
7 It rests on approval. There's a clear line. If plaintiffs have
8 concerns, we would submit they can file a motion in limine.

9 THE COURT: Well, the line is not as clear as you would
10 like it to be. And it has become increasingly obvious as this
11 dispute has festered that the line, to the extent that it
12 exists, is a fuzzy one.

13 I don't think it's appropriate to leave plaintiffs to
14 the remedy of a motion in limine. It's clear at this point.
15 And I find that correspondence, to the extent that it exists
16 with respect to performance, is relevant to the claims and
17 defenses of the parties. And to the extent that it hasn't been
18 produced, it should be produced within the next five days.

19 MS. SWIZE: Thank you, Your Honor.

20 THE COURT: That motion is granted.

21 MS. FEINSTEIN: Thank you, Your Honor.

22 THE COURT: All right. That takes me chronologically
23 to defendants' motion to compel photo analysis of the May 27,
24 2005, crash test, motions No. 279. Is there more -- I need to
25 talk to plaintiffs about this one.

1 MS. SWIZE: Certainly.

2 THE COURT: Is there more than one iteration or version
3 or counterpart of this document or piece of ESI?

4 MR. LEDOUX: No, Your Honor. It's simple math and
5 geometry, and it's a photograph and ratios. It's just that one
6 document. Been produced, was produced as a TIFF as the
7 discovery plan requires us to do. We produced it as we're
8 required to produce it.

9 THE COURT: Do you want to respond to the replies
10 observation about the handwriting on it and the other ways in
11 which it doesn't appear to be something that was given to a
12 government agency in that form?

13 MR. LEDOUX: Your Honor, I don't think there's been
14 representation that that was given to a government agency or
15 that there was some photo analysis that was prepared as a formal
16 submission to a federal agency.

17 That was an analysis of the photograph that was
18 conducted by Roger Bligh where he took measurement, compared the
19 different components, and confirmed that the size of the channel
20 is 4 inches. He did those measurements and placed that Post-It
21 note showing his ratio calculation, and he sent that to counsel
22 as he was requested to do. That's how it was prepared.

23 It was never relied upon during conversations with the
24 Federal Highway Administration to say that Roger Bligh had done
25 this. Roger Bligh sent an e-mail regarding it. But this was

1 for counsel, sent to counsel. It was never relied upon by
2 Trinity employees during their conversations with the Federal
3 Highway Administration, and it was produced as a document that
4 was in the control of Trinity at the time that we produced it.

5 THE COURT: Okay. All right. This motion is moot.

6 No. 286, defendants' motion to compel with respect to
7 interrogatories and requests for admission, do defendants want
8 to add anything to what's already in the papers?

9 MS. SWIZE: Thank you, Your Honor. I would like to
10 make it clear that these are all relevant questions. If you
11 look at the responses that we quoted in our reply brief,
12 plaintiffs do this response where they answer one by saying
13 these are not -- we don't have any relevant, for example,
14 simulations or they're privileged, and then they follow their
15 answers thereafter pointing back to that response. So they just
16 compound the error.

17 This Court has already ruled that there were computer
18 simulations that are relevant and nonprivileged and should have
19 been produced. And so we are entitled, as this Court has said
20 on numerous occasions, to the stationary target, a written
21 response, and pointing us back to an answer that says there are
22 no relevant, nonprivileged computer simulations is not only
23 inaccurate, but it doesn't give us the stationary target and the
24 written response that we are entitled to.

25 This tracks through the remainder of the responses where