

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

HOYT A. FLEMING,

Plaintiff,

v.

ESCORT, INC. and BELTRONICS
USA, INC.,

Defendants.

Case No. 1:09-CV-105-BLW

**MEMORANDUM DECISION AND
ORDER**

The parties held a telephone conference with the Court's Law Clerk, and requested two points of clarification which were submitted to me for review. I discuss those issues below.

Demonstrative Exhibits

The parties request clarification regarding the deadline for submitting demonstrative exhibits. In the order setting trial, I set a deadline for the exchange of "all trial exhibits" and "all exhibit lists" by May 7, 2012. *See Order Setting Trial (Dkt. No. 172)* at p. 2. I did not intend for that deadline to include the exchange of demonstrative exhibits. Later, in its Pretrial Order, I directed counsel to provide a list of witness and the demonstrative exhibits they will use 36 hours in advance of their testimony. *See Pretrial Order (Dkt. No. 237)*. That was the deadline I intended for demonstrative exhibits. Thus, I will not exclude demonstrative exhibits that were not exchanged on May 7, 2012.

Memorandum Decision & Order - 1

Escort makes a persuasive argument that if a witness is going to use an involved demonstrative exhibit – like an animation or complex chart – the 36-hour rule gives very little time to develop any response. Fleming agrees and suggest increasing the time. I agree and will direct counsel to provide demonstratives by no later than 5:00 p.m. three business days before their intended use. For example, a party expecting to use a demonstrative with a witness on a Thursday morning at 8:30 a.m. must have provided that demonstrative to opposing counsel the previous Monday by 5:00 p.m. And a party expecting to use a demonstrative with a witness on a Monday morning must have provided that demonstrative to opposing counsel the previous Wednesday by 5:00 p.m.

Exhibit Objections

In its Pretrial Order, I required that “[a]t least one week before trial, counsel will provide the Court with (1) a list of trial exhibits which have not been agreed upon, (2) the basis for the objection, and (3) the response to those objections.” *Id.* at p. 1. Fleming requests that the Court order the parties to exchange a list of all objections they have to their opponent’s exhibits before holding a conference on the trial exhibits. While this advance knowledge would be helpful, the lists will likely be a mere repetitive listing of technical objections. The better course may be that suggested by Escort’s counsel, involving a “horse-trading” session where objections are bartered for concessions. Ultimately, Escort’s counsel recommended that I not direct the parties but simply hold to the original deadline set in the Pretrial Order, however that is accomplished. I agree.

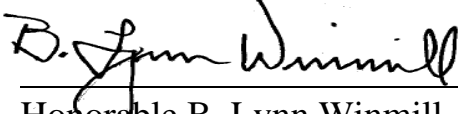
ORDER

In accordance with the Memorandum Decision set forth above,

NOW THEREFORE IT IS HEREBY ORDERED, that the Pretrial Order (docket no. 237) is AMENDED, so that a party is required to provide a list of the demonstrative exhibits they intend to use at trial to the opposing party by 5:00 p.m. three business days in advance of the time they intend to use those demonstrative exhibits at trial.



DATED: **June 4, 2012**


Honorable B. Lynn Winmill
Chief U. S. District Judge