

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

HARTZOG

CIVIL ACTION

VERSUS

NO: 11-1153

AXXIS DRILLING, INC.

SECTION: "J"(2)

ORDER AND REASONS

Before the Court are Plaintiff's **Motion In Limine to Strike, Limit, or Exclude Kenneth Boudreaux and Nancy Favaloro (Rec. Doc. 57)**, Defendant's opposition to same (**Rec. Doc. 65**), and Plaintiff's reply thereto (**Rec. Doc. 68**). Upon review of the record, the memoranda of counsel, and the applicable law, this Court now finds, for the reasons set forth below, that this motion should be **DENIED**.


The purpose of Daubert is "to ensure that only reliable and relevant expert testimony is presented to the jury." Rushing v. Kansas City Southern Ry. Co., 185 F.3d 496, 506 (5th Cir. 1999) (superseded by rule on other grounds), citing Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 590-93 (1993). Thus, "[m]ost of the safeguards provided for in Daubert are not as

essential in a case such as this where a district judge sits as the trier of fact in place of a jury." Gibbs v. Gibbs, 210 F.3d 491, 500 (5th Cir. 2000). "Daubert requires a binary choice--admit or exclude--and a judge in a bench trial should have discretion to admit questionable technical evidence, though of course he must not give it more weight than it deserves." SmithKline Beecham Corp. v. Apotex Corp., 247 F. Supp. 2d 1011, 1042 (N.D. Ill. 2003).

Given that this case is a bench trial, and thus that the objectives of Daubert, upon which this motion is premised, are no longer implicated, the Court finds that the motion in limine to exclude expert testimony should be denied at this time. Following the introduction of the alleged expert testimony at trial, the Court will either exclude it at that point, or give it whatever weight it deserves.

Accordingly, **IT IS ORDERED** that Plaintiff's motion should be and is hereby **DENIED**.

New Orleans, Louisiana this 7th day of August, 2012.


CARL J. BARBIER
UNITED STATES DISTRICT JUDGE