STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

DONALD R. COHEN, Individually and as Executor
of the Estate of SUSAN G. COHEN, Deceased

Plaintiff,

-against-

FAIRBANK RECONSTRUCTION CORPORATION
d/b/a FAIRBANK FARMS; THE PRICE CHOPPER INC.
d/b/a PRICE CHOPPER; THE GOLUB CORPORATION;
and GREATER OMAHA PACKING COMPANY, INC.,

Defendants.

DECISION AND ORDER
INDEX NO.: 4087-10
RJI NO.: 01-10-2012

Supreme Court Albany County All Purpose Term, August 21, 2012
Assigned to Justice Joseph C. Teresi

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TERESI, J.:

This action, arising from Susan Cohen's death due to her eating E. Coli 0157:H7 contaminated ground beef, is set to be tried before a jury on October 1, 2012. Previously, this Court rendered a Decision and Order, dated March 28, 2012 (hereinafter "Decision and Order"), relative to the parties' respective summary judgment motions. The facts underlying this action were set forth in such prior Decision and Order, and are incorporated herein by reference.

Now, Greater Omaha Packing Company, Inc. (hereinafter "GOPC"), Fairbank Reconstruction Corporation (hereinafter "Fairbank") and Plaintiff all move in limine for various relief. GOPC also moves, pursuant to CPLR §3101(d), to preclude the testimony of certain expert witnesses proffered by Price Chopper[1] and Fairbank or, in the alternative, compel supplemental disclosure. The parties opposes each others motions, each of which will be addressed separately.

GOPC'S MOTION TO PRECLUDE EXPERTS

GOPC failed to demonstrate its entitlement under CPLR §3101(d)(1) for an order precluding the testimony of Price Chopper and Fairbank's experts.

Failure to comply with CPLR §3101(d)(1) will only "warrant the sanction of preclusion if there is prejudice and a willful failure to disclose." (McColgan v Brewer, 84 AD3d 1573, 1576 [3d Dept 2011]; Mead v Dr. Rajadhyax' Dental Group, 34 AD3d 1139 [3d Dept 2006]). Here, however, GOPC did not allege that is has been prejudiced by Price Chopper and Fairbank's CPLR §3101(d)(1) expert disclosure. Nor did it allege a "willful" violation. As such, GOPC is not entitled to preclusion.

GOPC similarly failed to demonstrate its entitlement to a supplemental statement.

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[1] Price Chopper Operating Co., Inc. d/b/a Price Chopper and The Golub Corporation will all be collectively referred to as "Price Chopper."

"[U]nder the particular circumstances of this case, the expert disclosure statements... sufficiently disclose the subject matter on which the experts intend to testify, the substance of the facts and opinions on which they are expected to testify and a summary of the grounds for their opinions." (Mary Imogene Bassett Hosp. v Cannon Design, Inc., 97 AD3d 1030, 1031-32 [3d Dept 2012]). Moreover, despite the sufficiency of their initial expert disclosures, Price Chopper and Fairbank both submitted supplements to their expert disclosures.[2] As such, GOPC[3] is entitled to no further supplemental expert disclosure.

GOPC'S "IRRELEVANT / UNDUE PREJUDICE" MOTIONS IN LIMINE

GOPC's first through fifth, seventh through tenth and twelfth motions in limine all seek to preclude allegedly irrelevant and unduly prejudicial evidence. On this record, GOPC demonstrated its entitlement to preclusion on only its second, fifth and twelfth motions in limine.

"Evidence is relevant if it has any tendency in reason to prove the existence of any material fact, i.e., it makes determination of the action more probable or less probable than it would be without the evidence." (People v Scarola, 71 NY2d 769, 777 [1988]). However, relevant evidence may still "be excluded where its probative value is substantially outweighed by the danger that it will unfairly prejudice the other side or mislead the jury." (People v Caban, 14 NY3d 369, 374-75 [2010], quoting People v. Scarola, supra).

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[2] While both Price Chopper and Fairbank submitted supplemental CPLR §3101(d)(1) statements and cross moved for an order permitting the supplement, because the challenged expert disclosure statements are sufficient both motions are denied as moot.

[3] To the extent GOPC's Replies introduced new objections to the expert disclosures, they were impermissibly raised and are not considered. (Madden ex rel. Madden v Town of Greene, 95 AD3d 1426 [3d Dept 2012]; Schissler v Athens Assoc., 19 AD3d 979 [3d Dept 2005]; Albany County Dept. of Social Services v. Rossi, 62 AD3d 1049 [3d Dept. 2009]).

On their First and Seventh motions, GOPC failed to demonstrate the irrelevance of five positive E. coli test results, its erroneous recording of those results or its alleged "Hot Day" program. Plaintiff and Fairbank both allege that GOPC processed the tainted meat at issue in this action on September 11, 2009.[4] On such production date it is uncontested that there were five positive E. coli test results at GOPC's facility. While it is also uncontested that Ms. Cohen did not ingest any of the meat that tested positive, contrary to GOPC's framing of the issue, the inquiry does not end there. Rather, these positive test results are relevant not only to explain context but also for statistical analyses. As aptly noted by Fairbank, if these tests are irrelevant then GOPC's quality controls would serve no purpose. Moreover, the five positive test results allegedly violated GOPC's internal E. coli prevention protocols (i.e. the "Hot Day" program). While there is a sharp factual dispute as to GOPC's adoption of the "Hot Day" program, this motion in limine cannot resolve this factual issue. Nor can this motion in limine resolve the related erroneous recording issue, which may be relevant for cross-examination purposes. Rather, at issue on this motion is relevance and GOPC failed to demonstrate the irrelevance of this evidence. Nor did it sufficiently demonstrate that the jury would be confused by this evidence or that it would be unduly prejudiced. As such, GOPC's First and Seventh motions in limine are denied.

Similarly, GOPC failed to establish its entitlement to preclusion on its Third and Ninth motions in limine. By these motions, GOPC seeks to preclude evidence of the US Department of Agriculture's Food Service Inspection Service's (hereinafter "FSIS") Food Safety Assessment (hereinafter "FSA") of its facility. It is uncontested that the FSA of GOPC's facility started two months after the production date. Due to such delay, GOPC claims that the FSA is irrelevant

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[4] This date will hereinafter be referred to as the "production date."

because it does not show production date conditions. GOPC again framed the relevancy issue too narrowly. Not only is the production date relevant, so too is any evidence tending to prove the conditions at GOPC's facility on the production date. Here, although two months elapsed between the production date and the FSA, GOPC proffered no uncontroverted evidence to demonstrate that the conditions at its facility were materially different. To the extent that the FSA's tests and conclusions are relevant to production date conditions they are admissible. (State v Exxon Corp., 7 AD3d 926 [3d Dept 2004]). Additionally, contrary to GOPC's claims, the FSA's tests and conclusions are not rendered irrelevant by its not reporting a specific link between GOPC and the Northeast Outbreak.[5] Rather, its tests and conclusions may tend to prove such link. Moreover, this proof is not unduly prejudicial. Accordingly, GOPC's Third and Ninth motions in limine are denied

GOPC did demonstrate, however, its entitlement to preclusion on its Second and Fifth motions in limine. GOPC demonstrated that Ms. McKee was fired months after GOPC's production date. The firing was based upon her forwarding an "electronic copy" of GOPC's highly confidential hazard analysis plan to an FSIS investigator. Her providing FSIS's investigator with a copy of such document was not the problem because, as GOPC alleged, such document could be reviewed at their facility by FSIS inspectors at any time. Rather, because of its highly confidential nature, its electronic forwarding made the document unacceptably "flowable." Ms. McKee's termination on this basis is wholly irrelevant to this action. Moreover, the speculative concealment theories proffered in opposition, without any supporting proof, fail to

[5] "Northeast Outbreak" describes a cluster of E. coli 0157:H7 injuries. Plaintiff claims that Ms. Cohen was one of the individuals affected by the "Northeast Outbreak."

establish relevancy. Similarly, GOPC demonstrated that their management team's personal relationships are irrelevant. While a personal relationship may be relevant to an individual's bias, no proof was offered to show that any such bias was relevant to GOPC's allegedly producing the meat that killed Ms. Cohen. As such, GOPC's Second and Fifth motions in limine are granted.

GOPC next failed to demonstrate its entitlement to preclude any mention of Upton Sinclair's "The Jungle," as sought in its fourth motion in limine. Although Fairbank consented to this portion of GOPC's motion, Plaintiff requested that the issue be reserved for trial. As explained by counsel for Plaintiff and Fairbank, neither seeks to make many references to such novel or use it as evidence. Rather, it is a mere historical reference. Considering such potential use, blanket prohibition is unnecessary. As such, GOPC's motion is denied, without prejudice to being renewed at trial.

GOPC's eighth motion in liminie, because its relevancy argument rests upon disputed issues of fact, is also denied. GOPC points to specific evidentiary facts as proof that it did not ship meat to Culver City (a California beef processor) that was contaminated with the same genetic strain of E. coli 0157:H7 that killed Ms. Cohen. In opposition, Fairbank and Plaintiff proffer contrary evidence to demonstrate a connection. As the facts of this issue remain in dispute, GOPC failed to demonstrate that such evidence is irrelevant and its motion is denied.

GOPC also failed to establish its entitlement to an Order precluding the parties from mentioning an action commenced in the United States District Court for the District of Nebraska (hereinafter "Nebraska action"), on its tenth motion in limine. Although Fairbank and Plaintiff both effectively agree that the Nebraska action is factually irrelevant, both note its potential relevance for impeachment purposes. Because such relevance would be wholly dependent upon

GOPC's trial testimony, this motion is premature and denied.

Lastly, GOPC demonstrated its entitlement to preclude any mention of the verdict in two Federal Court actions venued in Main.[6] The Long/Smith actions' verdicts involved victims of the Northeast Outbreak. These individuals and their injuries, standing alone, are irrelevant to Ms. Cohen's death. Moreover, the prior jury finding against GOPC would be unduly prejudicial in this action. As such, the parties are precluded from mentioning the verdict, judgment or legal conclusion of the Long/Smith actions. This preclusion, however, does not prohibit proof of the facts adduced in the Long/Smith actions, including the Northeast Outbreak. The Northeast Outbreak is central to the issue of GOPC's involvement herein. Its facts, including those facts underlying the Long/Smith actions, are highly relevant and not unduly prejudicial. As such, GOPC's twelfth motion in limine is granted only to the extent that the parties are precluded from mentioning the verdict and judgment in the Long/Smith actions. The facts underlying such actions, however, may be introduced at trial.

GOPC'S "SPECULATIVE" MOTION IN LIMINE

GOPC's sixth motion in limine seeks to preclude evidence, characterized as speculative, of Fairbank's September 16, 2009 meat production. Such motion is denied because it seeks summary judgment on disputed factual issues, not an evidentiary ruling.

Here, GOPC characterizes numerous disputed factual issues in Plaintiff and Fairbank's proof as speculative. Such argument, however, does not seek an evidentiary ruling. Rather, it

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[6] Long v. Fairbank, No. 1:09–cv-592 and Smith v. Fairbank, 2:10-cv-60 will hereinafter be collectively referred to as the "Long/Smith actions."

seeks to resolve disputed issues of fact. As such, this portion of GOPC's motion is an "inappropriate substitute for a motion for [partial] summary judgment." (Ofman v Ginsberg, 89 AD3d 908, 909 [2d Dept 2011], quoting Rondout Elec., Inc. v Dover Union Free School Dist., 304 AD2d 808 [2d Dept 2003]; Brewi-Bijoux v City of New York, 73 AD3d 1112 [2d Dept 2010]; Downtown Art Co. v Zimmerman, 232 AD2d 270 [1st Dept 1996]).

Accordingly, GOPC's sixth motion in limine is denied.

GOPC'S MOTION IN LIMINE TO PRECLUDE DR. ZIRNSTEIN'S DEPOSITION TESTIMONY

By its eleventh motion in limine, GOPC failed to demonstrate the inadmissibility of the deposition testimony Dr. Zirnstein gave in the Long/Smith actions.[7]

CPLR §3117(c) provides that "[w]hen an action has been brought in any court of... the United States and another action involving the same subject matter is afterward brought between the same parties... all depositions taken in the former action may be used in the latter as if taken therein." For purposes of CPLR §3117(c), the subject matter need not be identical. Rather, the issues must be "substantially the same." (Prince, Richardson on Evidence §§ 8-504 and 8-511 [Farrell 11th ed], *see also* CPLR §4517).

Here, Dr. Zirnstein's deposition testimony fits squarely within CPLR §3117(c)'s provision. His prior deposition testimony was taken in the Long/Smith actions, i.e. actions

[7] To the extent that GOPC seeks preclusion due to Fairbank failure to disclose Dr. Zirnstein as their expert, they are not entitled to such relief because they did not demonstrate that the non-disclosure prejudiced them. (McColgan v Brewer, supra). Nor could GOPC claim prejudice, as Dr. Zirnstein was formerly their expert and Fairbank used his deposition testimony at the Long/Smith actions' trial.

pending in a "court of the... United States." Just as the Northeast Outbreak is a central issue in this action, it was similarly fundamental in the Long/Smith actions. Because the issues are substantially the same, Dr. Zirnstein's prior testimony about the Northeast Outbreak and related traceback proof may be used in this action as if taken herein. As such, depending upon the proof offered at trial, Dr. Zirnstein's deposition may be admissible under CPLR §3117(a)(3) or (a)(4).

GOPC's claims that Dr. Zirnstein's deposition is cumulative and unduly prejudicial is similarly unavailing. Without the context of a specific trial proffer, the cumulative nature of Dr. Zirnstein's deposition cannot be determined. Nor is Dr. Zirnstein's highly relevant deposition testimony unduly prejudicial.

Accordingly, GOPC's eleventh motion in limine is denied.

GOPC'S MOTION IN LIMINE TO LIMIT EXPERT TESTIMONY

GOPC's thirteenth motion in limine, seeking to limit Doctors Melnick, Harrison, Arbeit and Collea's expert testimony, is also unavailing.

While GOPC is correct that an expert must "be possessed of the requisite skill, training, education, knowledge or experience from which it can be assumed that the opinion rendered is reliable," on this record it failed to demonstrate its entitlement to pre-trial preclusion of any specific testimony. (Postlethwaite v United Health Services Hospitals, Inc., 5 AD3d 892, 895 [3d Dept 2004], quoting Enu v Sobol, 171 AD2d 302 [3d Dept 1991]).

After GOPC implicitly acknowledged that Doctors Harrison and Melnick are both "infectious disease epidemiology" experts, it failed to proffer sufficient proof to establish that they are unqualified to proffer traceback analysis testimony. Nor did GOPC demonstrate that these

Doctors cannot testify about the meat industry. Such potential trial testimony must be viewed within the context of their qualifications as they relate to the analysis proffered at trial. At this pre-trial stage, GOPC's motion is premature. (Kelly v Metro-N. Commuter R.R., 74 AD3d 483, 485 [1st Dept 2010]).

Similarly, GOPC failed to proffer any proof that Doctors Arbeit and Collea are not qualified to testify about the Northeast Outbreak's investigation or to offer traceback proof. Again, this expert testimony's admissibility will be determined at trial.

Additionally, contrary to GOPC's assertion, these experts may base their opinions upon facts adduced in the Long/Smith actions "provided that such data are of the type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject." (O'Brien v Mbugua, 49 AD3d 937, 938 [3d Dept 2008], quoting Borden v Brady, 92 AD2d 983, 983-984 [1983]). On this record, GOPC did not establish that these facts are not reasonably relied upon by experts in this field. In accord with the above, however, the experts are precluded from discussing the verdict and judgment in the Long/Smith actions.

PLAINTIFF'S MOTION IN LIMINE[8] TO PRECLUDE EVIDENCE OF MS. COHEN'S RAW GROUND BEEF CONSUMPTION

Plaintiff's motion in limine seeks an order precluding the parties from introducing testimony or medical record statements concerning Ms. Cohen's consumption of raw beef. Because Plaintiff demonstrated that these medical record statements are inadmissible hearsay, his

[8] Plaintiff also sought an order precluding the parties from mentioning his remarriage. As this portion of his motion is either unopposed or consented to, it is granted.

motion is granted.[9]

Although medical records are hearsay, they may be admissible under "the business records exception when they reflect[ ] acts, occurrences or events that relate to diagnosis, prognosis or treatment or are otherwise helpful to an understanding of the medical or surgical aspects of... [the particular patient's] hospitalization." (People v Ortega, 15 NY3d 610, 617 [2010], quoting Williams v Alexander, 309 NY 283 [1955][internal quotation marks omitted]; People v Bahr, 96 AD3d 1165 [3d Dept 2012]). Hearsay statements within medical records are not, however, automatically admissible. (People v Ortega, supra [Pigott, J. and Smith, J., concurring]). They too must qualify under the business record exception and, as is applicable here, be made by an individual with a "business duty to report" or constitute some other hearsay exception. (Matter of Leon RR, 48 NY2d 117, 122 [1979], citing Johnson v Lutz, 253 NY 124 [1930]; see generally Hayes v State, 50 AD2d 693 [3d Dept 1975] affd, 40 NY2d 1044 [1976]). For example, a hospital record's statement whose source is unknown is inadmissible hearsay, because no exception applies. (People v Townsley, 240 AD2d 955, 957 [3d Dept 1997], Ginsberg v. North Shore Hosp., 213 AD2d 592 [2d Dept 1995], lv. denied 86 NY2d 701 [1995]; Progressive Northeastern Ins. Co. v Randazzo, 24 AD3d 560 [2d Dept 2005]).

On this record, Plaintiff demonstrated the inadmissibility of the raw beef consumption statements found in Ms. Cohen's medical records. Plaintiff supports his motion with only his attorney's affirmation and a portion of the medical records. Such attorney's affirmation, because it lacks any evidentiary value, failed to demonstrate that the raw beef consumption statements

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[9] To the extent Plaintiff's Reply introduced an entirely new legal theory for preclusion, past behavior / habit evidence, it was improperly raised and is not considered. (Madden ex rel. Madden v Town of Greene, supra; Albany County Dept. of Social Services v. Rossi, supra).

were not for diagnosis or treatment. (Ahlers v Wildermuth, 70 AD3d 1154 [3d Dept 2010]). The medical records themselves, however, establish that the statements at issue are inadmissible. It is uncontested that the raw beef consumption statements were made by either unknown individuals, Plaintiff, Ms. Cohen's daughter or family members. Because not one of these individuals has a "business duty to report"[10] and no other hearsay exception applies, the raw beef consumption statements are hereby precluded and must be redacted from the medical records prior to their admission at trial.[11] Nor may the parties offer testimony about these medical record statements.

Accordingly, Plaintiff's motion is granted.

FAIRBANK'S FIRST, SECOND AND THIRD "COLLATERAL ESTOPPEL" MOTIONS IN LIMINE

Fairbank's first, second and third motions in limine, each arguing the collateral estoppel effect of the Long/Smith actions' verdict, are denied because they improperly seek summary judgement pursuant to CPLR §3212(e).

"Generally, the function of a motion in limine is to permit a party to obtain a preliminary order before or during trial excluding the introduction of anticipated inadmissible, immaterial, or prejudicial evidence or limiting its use." (State v Metz, 241 AD2d 192, 198 [1st Dept 1998]). As set forth previously, a "motion in limine is an inappropriate substitute for a motion for summary judgment." (Ofman v Ginsberg, supra 909, quoting Rondout Elec. v Dover Union Free

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[10] Feinstein v Goebel (144 Misc 2d 462, 466 [Sup Ct, Queens County 1989]) replaced the well recognized "business duty" to report with a more nebulous "filial duty" concept. As such precedent is not binding and has been followed by no other Court, it will not be applied herein.

[11] This holding does not, however, preclude the use of these statements for impeachment purposes. Any objection to their use for impeachment shall be made to the trial judge.

School Dist., supra; Brewi-Bijoux v City of New York, supra).

Here, Fairbank's first, second and third motions in limine are, effectively, motions for summary judgment to limit the issues at trial. (CPLR §3212[e]). Its first motion in limine seeks an order prohibiting GOPC from disputing either that the Fairbank Guarantee[12] governs their relationship or that GOPC violated it.[13] Its second motion in limine seeks an order precluding GOPC from arguing that Fairbank acted unreasonably or negligently; and its third motion in limine seeks and order instructing the jury that GOPC sold Fairbank E. coli adulterated raw beef in September 2009. These motions each seek, by operation of the doctrine of collateral estoppel, the resolution of disputed issues of material facts central to the action between GOPC and Fairbank pursuant to CPLR §3212(e). The arguments raised are simply not evidentiary issues. Instead, they effectively seek summary judgment. As such, these claims were improperly made as motions in limine. (Ofman v Ginsberg, supra; Brewi-Bijoux v City of New York, supra).

Moreover, these motions are denied because they constitute Fairbank's second summary judgement motion based upon collateral estoppel. Each of the separate arguments Fairbank made were proffered, or could have been proffered, within its earlier summary judgment motion resolved by the Decision and Order. Fairbank now makes this second motion for summary judgment, without "a showing of newly discovered evidence or other sufficient cause." (Town of

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[12] "Fairbank Guarantee" refers to a February 2009 "Indemnification and hold harmless agreement between" GOPC and Fairbank. (Long v Fairbank Farms Reconstruction Corp., 1:09-CV-592-GZS, 2011 WL 5117795, 3 [D Me Oct. 25, 2011]).

[13] Fairbank also claims entitlement to this relief because GOPC "waived" any objection to these issues when it opposed Fairbank's prior summary judgment motion. However, such waiver occurred, if at all, for purposes of the prior motion. Fairbank is not moving to reargue or renew its prior motion, and proffered no basis to reconsider the Decision and Order. As such, this claim is wholly unavailing.

Santa Clara v Yanchitis, 90 AD3d 1297, 1298 [3d Dept 2011], quoting Matter of Bronsky-Graff Orthodontics, P.C., 37 AD3d 946 [3d Dept 2007]; 2009 85th St. Corp. v WHCS Real Estate Ltd. Partnership, 292 AD2d 520 [2d Dept 2002]). As such, these successive summary judgment motions are defective and denied.

Accordingly, Fairbank's first, second and third motions in limine are denied.

FAIRBANK'S FOURTH MOTION IN LIMINE

Fairbank's fourth motion in limine, to preclude evidence of their facilities' production on dates not related to September 14, 15 and 16, 2009, is partially granted.

On this record, Fairbank admits that on September 15, 2009 it produced the E. coli tainted meat that killed Ms. Cohen. It then recalled all of the ground beef products that it produced on September 14, 15 and 16, 2009 (hereinafter "recall days"). Upon such uncontested facts, Fairbank now seeks to exclude evidence of its facility's production on all non-recall days.

Because their production date is not at issue, Fairbank is correct that its facilities' production of beef on non-recall days is irrelevant to the issues herein. Such holding does not, however, prohibit GOPC from introducing evidence tending to demonstrate Fairbank's production on the recall days. To the extent that investigations were performed to determine the conditions of production at Fairbank on the recall days, including all investigations relative to the Northeast Outbreak, such proof is relevant and not unduly prejudicial. Specifically, such proof is relevant because, contrary to Fairbank's contention, the Fairbank Guarantee remains a disputed issue of fact - subject to proof at trial.

Accordingly, Fairbank's fourth motion in limine is granted in part.

FAIRBANK'S FIFTH MOTION IN LIMINE

Fairbank's fifth motion in limine, which seeks an order excluding the introduction of evidence of "suppliers other than those that have been identified," is denied because it is premised upon unresolved factual issues. Such claim is based, in large measure, upon evidence adduced in the Long/Smith actions and during the course of discovery. This evidence, however, is in dispute. As set forth in the Decision and Order and above, the Long/Smith actions' verdict has not been given collateral estoppel effect in this action. Thus, Fairbank's reliance upon the Long/Smith actions' determinations as resolving facts in this action is unwarranted. Similarly disputed are Dr. Zirnstein's conclusions and Dr. Lutz's investigation. Rather than seeking an evidentiary ruling, this motion improperly seeks to resolve material issues of disputed facts.

Accordingly, Fairbaink's fifth motion in limine is denied.

To the extent not specifically addressed above, the parties' remaining contentions have been examined and found to be lacking in merit.

This Decision and Order is being returned to the attorneys for the Plaintiff. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: September 24, 2012
Albany, New York

JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion, dated March 30, 2012; Affirmation of Peter Balouskas, dated March 27, 2012, with attached Exhibits A-D.
2. Notice of Cross-Motion, dated August 14, 2012, Affidavit of Mackenzie Monaco, dated August 15, 2012, with attached Exhibits 1-C.
3. Notice of Cross-Motion, dated August 14, 2012, Affirmation of Jena Rotheim, dated August 15, 2012, with attached Exhibits A-H.
4. Affirmation of Sarah Brancatella, dated August 21, 2012.
5. Affirmation of Peter Balouskas, dated August 15, 2012, with attached Exhibit A.
6. Affirmation of Peter Balouskas, dated August 17, 2012, with attached Exhibit A.
7. Affirmation of Jena Rotheim, dated August 21, 2012, with attached Exhibit A.
8. Notice of Motion, dated August 1, 2012; Affirmation of Peter Balouskas, dated August 1, 2012, with attached Exhibits A-OO.
9. Affirmation of Dana Salazar, dated August 16, 2012, with attached Exhibits A-C.
10. Affirmation of Daniel Hurteau, dated August 17, 2012, with attached Exhibits A-U.
11. Affirmation of Sarah Brancatella, dated August 21, 2012, with attached Exhibits A-B.
12. Affirmation of Sarah Brancatella, dated August 21, 2012, with attached Exhibits A-L.
13. Notice of Motion, dated August 1, 2012; Affirmation of Dana Salazar, dated August 1, 2012, with attached Exhibits A-B.
14. Affirmation of Peter Balouskas, dated August 16, 2012, with attached Exhibits 1-4.
15. Affirmation of Jena Rotheim, dated August 17, 2012, with attached Exhibit A.
16. Affidavit of Mackenzie Monaco, dated August 17, 2012, with attached Exhibit A.
17. Affirmation of Dana Salazar, dated August 21, 2012, with attached Exhibit A.
18. Notice of Motion, dated August 1, 2012; Affirmation of Daniel Hurteau, dated August 1, 2012, with attached Exhibits A-Q.
19. Affirmation of Peter Balouskas, dated August 17, 2012, with attached Exhibits A-W.
20. Affirmation of Jena Rotheim, dated August 21, 2012, with attached Exhibits A-C.