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*Attorneys for Defendant/Counterclaimant
Midwest Industrial Supply, Inc.*

**UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF ARIZONA**

SOILWORKS, LLC, an Arizona corporation,

Plaintiff / Counterdefendant /
Counterclaimant,

v.

MIDWEST INDUSTRIAL SUPPLY,
INC., an Ohio corporation authorized to do
business in Arizona,

Defendant / Counterclaimant /
Counterdefendant.

NO.: 2:06-CV-2141-DGC

**MIDWEST INDUSTRIAL SUPPLY,
INC.'S MOTION IN LIMINE TO
BAR TESTIMONY AND EVIDENCE
OF LIABILITY INSURANCE**

I. INTRODUCTION

Defendant Midwest Industrial Supply, Inc. ("Midwest") moves this Court for an order, *in limine*, barring Plaintiff Soilworks, LLC ("Plaintiff") from introducing any evidence or testimony regarding Midwest's liability insurance.

1 **II. ARGUMENT**

2 Rule 402 of the Federal Rules of Evidence prohibit a party from introducing any
3 evidence that is not relevant. According to Fed.R.Evid. 401:
4

5 "Relevant evidence" means evidence having any tendency to make the
6 existence of any fact that is of consequence to the determination of the
7 action more probable or less probable than it would be without the
8 evidence.

8 In this case, Plaintiff has remaining claims against Midwest involve false advertising
9 under the Lanham Act, unfair state competition, and a declaratory judgment for patent
10 noninfringement. Midwest's remaining claims are for false advertising under the Lanham
11 Act, unfair state competition, patent infringement, and damages for trademark
12 infringement. Midwest's possession of liability insurance is not likely to make the
13 existence of any fact needed for the determination of these claims more or less probable.
14 Therefore, evidence of Midwest's insurance is not relevant to this case and Plaintiff
15 should be barred from introducing it at trial.
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18 Further, Fed.R.Evid. 403 allows the exclusion of relevant evidence if the probative
19 value of the evidence is substantially outweighed by its prejudicial effect. In this case,
20 any potential probative value of the evidence regarding Midwest's insurance coverage is
21 minimal. Either party can prove its claims without a necessary reference to Midwest's
22 liability insurance. The prejudicial effect of the liability insurance, however, is
23 substantial. Evidence of a party's insurance coverage is likely to be misused by the jury.
24 *Eichel v. New York Cent.R.Co.*, 375 U.S. 253, 255 (1963)("It has long been recognized
25 that evidence showing the defendant is insured creates a substantial likelihood of misuse
26 [by the jury]"). Therefore, the prejudicial effect of the evidence of Midwest's insurance
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1 substantially outweighs any probative value and the Court should exclude the evidence
2 from admission at trial.

3
4 Finally, Fed.R.Evid. 411 states:

5 Evidence that a person was or was not insured against liability is not
6 admissible upon the issue of whether the person acted negligently or
7 otherwise wrongfully.

8 In this motion, Midwest is seeking to preclude any evidence of its liability insurance. In
9 accordance with Rule 411, the Court should, at the very least, preclude any evidence of
10 Midwest's liability insurance when presented to prove Midwest acted negligently or
11 wrongfully.

12 **III. CONCLUSION**

13 For the foregoing reasons, the Court should enter an order precluding Plaintiff
14 from presenting any evidence or testimony of Midwest's liability insurance.
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Respectfully Submitted

By: /s/ Jill A. Bautista
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **MIDWEST INDUSTRIAL SUPPLY, INC.’S MOTION IN LIMINE TO BAR TESTIMONY AND EVIDENCE OF LIABILITY INSURANCE** has been electronically filed on this 17th day of September, 2008. Notice of this filing will be sent to all parties by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system.

/s/ Jill A. Bautista
Jill A. Bautista

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