

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

**JOHN PLUMMER and
DEZIRIE PLUMMER**

PLAINTIFFS

v.

No. 2:12-cv-192-DPM

**TEREX SOUTH DAKOTA, INC.,
f/k/a TEREX-TELECT**

DEFENDANT

FORMERLY FORESTRY, INC.

CROSS-CLAIMANT

v.

**TEREX CORPORATION;
TEREX USA, LLC; TEREX
UTILITIES, INC.; TEREX SOUTH
DAKOTA, INC. f/k/a TEREX-TELECT**

CROSS-DEFENDANTS

ORDER

For the reasons stated on the record at the 21 May 2014 hearing, the

Court makes the following order:

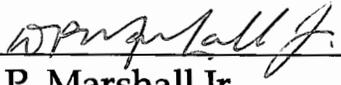
- The Plummers' motion, *No. 67*, is denied without prejudice to limiting instructions being given at trial as need be.
- The Plummers' motion, *No. 80*, is granted in part and denied without prejudice in part. Olson is qualified as an expert, but the Plummers may raise the asserted changes in his opinions by separate motion.
- The Plummers' motion, *No. 82*, is granted in part and denied in part. Moore is qualified as an expert in engineering, but cannot offer testimony on the warnings issues.

- The Plummers' motion, *No 126*, is mostly granted, except as to Geasland's testimony. The Court held consideration of the apportionment issue in abeyance.
- Terex's motion, *No 84*, as supplemented by *No 103*, is denied.
- Terex's motion, *No 94*, is denied without prejudice to the Court's reconsideration of the issue.
- The Plummers' motion for partial summary judgment on the issue of foreseeable misuse, *No 87*, is denied.
- Terex's motion for summary judgment, *No 86*, as supplemented by *No 105 & 111*, is granted as to the strict liability claim, and denied as to the negligence, warnings, and warranty claims.
- The Plummers' motion to strike Terex's cross-claim, *No 90*, remains under advisement.

The Court also took the following actions:

- The Court granted the Plummers' oral motion to amend their complaint to include a notice allegation for their breach-of-warranty claims.
- The Court requested simultaneous briefs, no more than ten pages in length, on the pending cross-claim issues. Briefs due 30 May 2014.
- The Court rescheduled trial to begin Wednesday, 16 July 2014. Counsel should be ready by 8:30 a.m. We should have the *venire* by 9:30 a.m.

So Ordered.



 D.P. Marshall Jr.
 United States District Judge