

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

NUCOR CORPORATION

**PLAINTIFF/
COUNTERDEFENDANT**

V.

3:08CV00067 JMM

J. BAKER & ASSOCIATES, INC.

**DEFENDANT/
COUNTERCLAIMANT/
THIRD PARTY PLAINTIFF**

V.

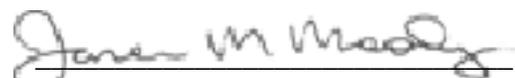
NUCOR-YAMATO STEEL CO.

THIRD PARTY DEFENDANT

ORDER

Pending is the Supplemental Motion in Limine filed by J.Baker & Associates, Inc. (“JBA”). To clarify the Court’s previous Order of November 17, 2009, the Court finds that Paragraph 9 of the Agreement is ambiguous. Therefore, agreements or negotiations prior to or contemporaneous with the adoption of the Agreement are admissible in evidence to establish the meaning of the writing. *See* RESTATEMENT 2D OF CONTRACTS § 214. Further, any evidence of agreement, course of dealing, and course of performance subsequent to the Agreement may also be admissible, subject to the Rules of Evidence, to aid in interpretation of the Agreement. *L.F. Brands Mktg., Inc. v. Dillard’s, Inc.*, 2009 Ark. App. 174 (2009)(citing *Bank of Am. v. CD. Smith Motor Co.*, 106 S.W.3d 425 (Ark. 2003)). The Supplemental Motion in Limine (Docket # 86) is DENIED.

IT IS SO ORDERED this 2nd day of December, 2009.



James M. Moody
United States District Judge