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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

FRESNO ROCK TACO, LLC,
et al.,

Plaintiffs,

vs.

NATIONAL SURETY CORPORATION,
Defendant.

CASE NO. CV F 11-0845 LJO BAM

**ORDER ON PLAINTIFFS’ MOTIONS IN
LIMINE**

(Docs. 133-138.)

This Court issues the following rulings on plaintiffs’ motions in limine (“MIL”):

Plaintiffs’ MIL No. 1: This Court GRANTS as uncontested plaintiffs’ MIL No. 1 as to attorney fees.

Plaintiffs’ MIL No. 2: This Court DENIES plaintiffs’ MIL No. 2 as to expert Gary Gray in that the Magistrate Judge determined already late disclosure issues. Expert Gray may testify on the issue of liability only. His level of expertise goes to credibility and the weight of the evidence, both jury questions.

Plaintiffs’ MIL No. 3: This Court DENIES plaintiffs’ MIL No. 3 as to expert Paul Hamilton in that the Magistrate Judge determined already the late disclosure issues.

1 **Plaintiffs' MIL No. 4:** This Court DENIES plaintiffs' MIL No. 4 as to expert testimony on
2 ultimate factual issues in that F.R.Evid. 704 applies, even in a diversity case, since it is a rule of
3 procedure.

4 **Plaintiffs' MIL No. 5:** This Court DENIES plaintiffs' MIL No. 5 regarding expert opinion on
5 legal and ultimate issues on the same grounds as the denial of plaintiffs' MIL No. 4. Although counsel
6 believe that plaintiffs skipped No. 5, plaintiffs provided a courtesy copy of "Plaintiff's Motion in Limine
7 No. 5-- For an Order Excluding Expert Opinion Regarding Legal and/or Ultimate Issues).

8 **Plaintiffs' MIL No. 6:** Plaintiffs' MIL No. 6 is unclear whether it seeks to exclude a collateral
9 source or plaintiffs' other pending litigation. Assuming plaintiffs' MIL No. 6 seeks to exclude both
10 matters, this Court:

- 11 a. GRANTS plaintiffs' MIL No. 6 to the extent it seeks to exclude mention of a collateral
- 12 source; and
- 13 b. DEFERS ruling on exclusion of plaintiffs' other pending litigation in that such evidence
- 14 may be admitted for impeachment purposes.

15 This Court ORDERS the parties not to mention plaintiffs' other pending litigation in opening
16 statements.

17 **Plaintiffs' MIL No. 7:** This Court DENIES plaintiffs' MIL No. 7 in that despite whether the
18 search warrant and its execution were mentioned in the denial letter, the search warrant and its execution
19 are admissible if there is evidence that they were factors in defendants' claims decisions.

20 IT IS SO ORDERED.

21 **Dated: October 8, 2012**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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