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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SIERRAPINE, INC.,

No. 2:08-cv-02144-MCE-KJN

Plaintiff,

v.

FINAL PRETRIAL ORDER

REFINER PRODUCTS MANUFACTURING,

TRIAL DATE: **October 1, 2012**

Defendant.

TIME: **9:00 a.m.**

_____/

Pursuant to Court Order, a Final Pretrial Conference was held on May 3, 2012. Shelley Addison, M. Max Steinheimer, and Treven Tilbury appeared as counsel for Plaintiff. John Heller and Lauren Kramer appeared as counsel for Defendant. After hearing, the Court makes the following findings and orders:

I. JURISDICTION/VENUE

Jurisdiction is predicated upon 28 U.S.C. section 1332. Jurisdiction and venue are not contested.

II. NON-JURY

A jury trial was not requested by any of the parties pursuant to Rule 38(b) of the Federal Rules of Civil Procedure. Accordingly, this matter will be tried by the Court.

1 III. UNDISPUTED FACTUAL ISSUES

2 **Undisputed facts that pertain to all claims**

3 1. In 2005, SierraPine purchased two used RGP 50-54
4 refiner systems from a paper mill in Millinocket, Maine. The
5 refiner systems were to be installed at SierraPine's Rocklin,
6 California plant in connection with the refining of wood products
7 for the manufacture of medium density fiberboard.

8 2. The refiner system at issue in this case consists of
9 several components, which include, in rough order of process: a
10 surge bin, a plug screw feeder and throat assembly (which is
11 driven by a motor), a pre-heater or digester, a discharge screw,
12 a refiner infeed screw assembly, a refiner shaft assembly (also
13 known as a "drop in," "RSA," "rotating assembly" or quill
14 assembly), a hydraulic unit, a jack shaft, motor and couplings,
15 inertia block, segment holders, and a blow line which leads to a
16 dryer. A RSA is a rotating assembly that transmits power from a
17 motor through the jack shaft to the refiner's rotating disk,
18 which grinds wood product into fiber. It consists of a rotating
19 shaft attached to a rotor. Grinding plates, also known as
20 segments, are attached to plate holders, which are then attached
21 to the rotor and stator. The RSA contains mechanical and
22 hydraulic components in its bearing pre-load assemblies that
23 maintain proper clearance between the bearing rollers and races.

24 3. A plug screw feeder assembly transfers raw material
25 from an in-feed chute to the preheater (digester). Driven by a
26 motor, the plug screw rotates inside a fixed throat, compressing
27 the material into a plug and moving it into the top of the
28 preheater (digester).

1 In the preheater (digester), the raw material is heated with
2 steam and then fed out the bottom of the preheater with the
3 discharge screw, into the refiner infeed screw, then into the
4 refiner housing between the rotating and static disks. Large
5 metal refiner plates attached to these disks grind the wood
6 product into fiber. The fiber is then dried and otherwise
7 treated to make fiberboard.

8 4. In 2005, SierraPine commissioned RPM to rebuild two
9 used RGP 50-54 refiner shaft assemblies (RSA). RPM provided a
10 guarantee that "[a]ll material and workmanship supplied by RPM
11 for the rebuild of this rotating element are guaranteed to be
12 free from defects and will operate to SierraPine's satisfaction
13 for a minimum of one year from the date of installation." During
14 2006, SierraPine also ordered from RPM several screw and throat
15 assemblies.

16 **Undisputed facts pertaining to claims regarding alleged**
17 **defects in RPM's rebuild**

18 5. The amount charged by RPM to rebuild each of the "drop
19 in" shaft assemblies was approximately \$45,000.

20 6. The RGP 50-54 shaft assemblies were delivered and
21 installed in the RGP 50-54 refiners in SierraPine's plant in
22 Rocklin, California. The first such assembly was installed in
23 March 2006 in the refiner known as the "No. 2 refiner." The
24 second was installed in June 2006 in the refiner known as the
25 "No. 1 refiner."

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1 **Undisputed facts pertaining to claims regarding alleged**
2 **defects in plug screws/throats**

3 7. The first set of RPM plug screws and throats was
4 delivered to SierraPine's Rocklin plant in January 2006.

5 8. During 2006, SierraPine advised RPM of premature wear
6 of the plug screws and throats, and RPM supplied replacement
7 screws and throats under warranty.

8 IV. DISPUTED FACTUAL ISSUES

9 The remaining claims for trial are:

10 **Disputed facts that pertain to all claims**

11 1. Whether SierraPine has established that it suffered any
12 compensable economic loss as the result of its alleged plant
13 downtime.

14 **Disputed facts pertaining to claims regarding alleged**
15 **defects in RPM's rebuild**

16 2. Whether SierraPine has established that there were any
17 defects in RPM's rebuild services.

18 3. Whether SierraPine has established that any vibration
19 or other problems it experienced were the result of defective
20 rebuild services by RPM.

21 4. Whether SierraPine has established downtime,
22 consequential and out-of-pocket losses due to alleged defects in
23 RPM's rebuild services.

24 5. SierraPine attributes vibration that it experienced in
25 the refiners to the rebuild work performed by RPM. RPM denies
26 that its rebuild work was defective, and that such work is the
27 source of any vibration problems.

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1 6. SierraPine attributes plant down time and out-of-pocket
2 losses to vibration that it contends is attributable to RPM's
3 rebuild work. RPM denies that SierraPine has established such
4 economic loss, and disputes that its rebuild work caused any such
5 loss.

6 **Disputed facts pertaining to claims regarding alleged**
7 **defects in plug screws/throats.**

8 7. Whether SierraPine has established that there were any
9 defects in the plug screws and throats supplied by RPM or that
10 any issues were not resolved.

11 8. Whether SierraPine has established that RPM was the
12 cause of any alleged problems associated with the plug screws and
13 throats.

14 9. Whether SierraPine has established downtime,
15 consequential and out-of-pocket losses due to alleged defects in
16 RPM's manufacture of plug screws and throats.

17 10. SierraPine attributes plant down time and out-of-pocket
18 losses to alleged defects in the RPM plug screws and throats.
19 RPM maintains that its work was not defective, denies that
20 SierraPine has established such economic loss, and disputes that
21 its work caused any such loss.

22 All issues of fact remaining in dispute are subject to proof
23 at the time of trial.

24 V. WITNESSES

25 Plaintiff anticipates calling the witnesses listed on
26 Attachment "A".

27 Defendant anticipates calling the witnesses listed on
28 Attachment "B".

1 Each party may call a witness designated by the other.

2 A. No other witnesses will be permitted to testify unless:

3 (1) The party offering the witness demonstrates that
4 the witness is for the purpose of rebutting evidence which could
5 not be reasonably anticipated at the Final Pretrial Conference,
6 or

7 (2) The witness was discovered after the Final
8 Pretrial Conference and the proffering party makes the showing
9 required in "B" below.

10 B. Upon the post-pretrial discovery of witnesses, the
11 attorney shall promptly inform the Court and opposing parties of
12 the existence of the unlisted witnesses so that the Court may
13 consider at trial whether the witnesses shall be permitted to
14 testify. The evidence will not be permitted unless:

15 (1) The witnesses could not reasonably have been
16 discovered prior to pretrial;

17 (2) The Court and opposing counsel were promptly
18 notified upon discovery of the witnesses;

19 (3) If time permitted, counsel proffered the witnesses
20 for deposition;

21 (4) If time did not permit, a reasonable summary of
22 the witnesses' testimony was provided by opposing counsel.

23 VI. EXHIBITS - SCHEDULES AND SUMMARIES

24 At present, Plaintiff contemplates by way of exhibits those
25 listed on Attachment "C".

26 At present, Defendant contemplates by way of exhibits those
27 listed on Attachment "D".

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1 **Plaintiff's exhibits shall be listed numerically.**

2 **Defendant's exhibits shall be listed alphabetically.** The parties
3 shall use the standard exhibit stickers provided by the Court
4 Clerk's Office: pink for Plaintiff and blue for Defendant.
5 After three letters, note the number of letters in parenthesis
6 (i.e., "AAAA(4)" to reduce confusion during the trial. All
7 multi-page exhibits shall be stapled or otherwise fastened
8 together and each page within the exhibit shall be numbered. All
9 photographs shall be marked individually. The list of exhibits
10 shall not include excerpts of depositions which may be used to
11 impeach witnesses.

12 Each party may use an exhibit designated by the other. In
13 the event that Plaintiff and Defendant offer the same exhibit
14 during trial, that exhibit shall be referred to by the
15 designation the exhibit is first identified. The Court cautions
16 the parties to pay attention to this detail so that all concerned
17 will not be confused by one exhibit being identified with both a
18 number and a letter.

19 A. No other exhibits will be permitted to be introduced
20 unless:

21 (1) The party proffering the exhibit demonstrates that
22 the exhibit is for the purpose of rebutting evidence which could
23 not be reasonably anticipated at the Pretrial Scheduling
24 Conference, or

25 (2) The exhibit was discovered after the Pretrial
26 Scheduling Conference and the proffering party makes the showing
27 required in paragraph "B", below.

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1 B. Upon the post-pretrial discovery of exhibits, the
2 attorneys shall promptly inform the Court and opposing counsel of
3 the existence of such exhibits so that the Court may consider at
4 trial their admissibility. The exhibits will not be received
5 unless the proffering party demonstrates:

6 (1) The exhibits could not reasonably have been
7 discovered prior to pretrial;

8 (2) The Court and counsel were promptly informed of
9 their existence;

10 (3) Counsel forwarded a copy of the exhibit(s) (if
11 physically possible) to opposing counsel. If the exhibit(s) may
12 not be copied, the proffering counsel must show that he has made
13 the exhibit(s) reasonably available for inspection by opposing
14 counsel.

15 C. As to each exhibit, each party is ordered to exchange a
16 copy identical to the Court's copy, or other reproduction of the
17 exhibit(s) in a three-ring binder(s) by **September 17, 2012**. The
18 attorney or representative for each party is directed to present
19 the original and two (2) copies of the exhibit(s) and exhibit
20 list to the Court Clerk's Office, no later than **3:00 p.m.,**
21 **September 17, 2012**, or at such earlier time as may be ordered by
22 the Court. **NO EXCEPTIONS.**

23 D. **The Court shall be presented with a copy of the**
24 **exhibit(s) in a 3-ring binder(s) with a side tab identifying each**
25 **exhibit by number or letter. Each binder shall be no larger than**
26 **three inches in width and have an identification label on the**
27 **front and side panel.**

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1 VII. DISCOVERY DOCUMENTS

2 A. Filing Depositions. It is the duty of counsel to
3 ensure that any deposition which is to be used at trial has been
4 lodged with the Clerk of the Court. In addition, two unmarked
5 copies of the transcripts must be delivered to the Court Clerk's
6 Office. Counsel are cautioned that a failure to discharge this
7 duty may result in the Court precluding use of the deposition or
8 imposition of such other sanctions as the Court deems
9 appropriate.

10 B. Use of Depositions. The parties are ordered to file
11 with the Court and exchange between themselves by **September 17,**
12 **2012** a statement designating portions of depositions intended to
13 be offered or read into evidence (except for portions to be used
14 only for impeachment or rebuttal).

15 C. Interrogatories. The parties are ordered to file with
16 the Court and exchange between themselves by **September 17, 2012**
17 the portions of Answers to Interrogatories which the respective
18 parties intend to offer or read into evidence at the trial
19 (except portions to be used only for impeachment or rebuttal).

20 VIII. FURTHER DISCOVERY OR MOTIONS

21 Pursuant to the Court's Pretrial Scheduling Order, all
22 discovery and law and motion was to have been conducted so as to
23 be completed as of the date of the Final Pretrial Conference.
24 That Order is confirmed. The parties are free to engage in
25 informal agreements regarding discovery and law and motion
26 matters. However, any such agreements will not be enforceable in
27 this Court.

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1 IX. AUDIO/VISUAL EQUIPMENT

2 The parties are required to **file electronically** a joint
3 request to the Courtroom Deputy Clerk, Stephanie Deutsch, by
4 **September 10, 2012** if they wish to reserve and arrange for
5 orientation with all parties on the Court's mobile audio/visual
6 equipment for presentation of evidence. There will be one date
7 and time for such orientation.

8 X. DATE AND LENGTH OF TRIAL

9 A court trial is scheduled for **October 1, 2012** and will last
10 a total of **nine (9) days** as explained at the final pretrial
11 conference. Counsel are to call Stephanie Deutsch, Courtroom
12 Deputy, at (916) 930-4207, by **September 17, 2012** to confirm the
13 dates for trial.

14 XI. OBJECTIONS TO PRETRIAL ORDER

15 Each party is granted five (5) court days from the date of
16 this Final Pretrial Order to object to any part of the order or
17 to request augmentation to it. A Final Pretrial Order will be
18 modified only upon a showing of **manifest injustice**. If no
19 objection or modifications are made, this Order will become final
20 without further order of the Court and shall control the
21 subsequent course of the action, pursuant to Rule 16(e) of the
22 Federal Rules of Civil Procedure.

23 IT IS SO ORDERED.

24 Dated: May 4, 2012

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26 MORRISON C. ENGLAND, JR.
27 UNITED STATES DISTRICT JUDGE
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