

BIRNBERG & ASSOCIATES

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November 12, 2009

VIA E-FILE WITH CHAMBERS COPY

Chief Magistrate Judge James Larson
United States District Court - Northern California
Courtroom F, 15th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *Doss v. Hyundai, et al.*
DOI: 01/12/06
Case No. C-06-7072- JL
Our File No: 2557

Dear Judge Larson:

On behalf of the parties in this case, I am writing to update you as to the progress of the case prior to the status conference. It was our understanding a short letter would suffice.

At the last status conference on March 18, 2009, we advised that we are taking depositions. We have taken the depositions of Safety Manager Ed Hughlett and Pier 80 Site Supervisor Terry Hirsch of Marine Terminals Corp. ("MTC"). MTC was plaintiff's employer. The parties have completed Mr. Hirsch's deposition. In addition, MTC has declared the "ship's file", which was likely to contain relevant documents, as lost.

As previously reported we took the deposition of another ship superintendent, named Nathan Banks, who were a percipient witness to the accident, and the deposition of the Gang Boss George Galarza and Rob Dumlao, have been taken.

The defendant Essenberger wished to depose further longshoreman and has subpoenaed the Ship Boss- Walking Boss for deposition which is now set for December 11, 2009. Plaintiff has propounded written discovery to the defendant Essenberger and to defendant Hyundai; responses are due November 16. Defendant Essenberger has requested to November 30th which Plaintiff has granted. Similarly if HMM requires to the 30th it will be granted. Defendant Hyundai has propounded additional written discovery to plaintiff, responses to which are due November 28.

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Plaintiff plans to take the deposition of the Person Most Knowledgeable from Essenberger regarding the ISM Code and the obligations regarding storage of the cargo. Defendant Essenberger may object to that deposition. Plaintiff will also take the deposition of the Person Most Knowledgeable from HMM, regarding the loading and stowage of the cargo. These may involve overseas depositions. Essenberger represents that the crew is no longer available for depositions.

Tonita Doss currently contemplates further surgery and the re-breaking of certain facial structures to adjust the nasal air passage way which caused a narrowing and subsequent sleep apnea. Plaintiff has obtained a second medical opinion and the longshore employer has objected. An informal conference has been requested and the parties are entering into a mediation regarding this authorization for surgery. Once plaintiff is recovered from surgery, defendants will complete her deposition and arrange for IMEs.

The parties suggest that the Case Management conference be continued for 90 days out to allow the parties to finish the further discovery.

Sincerely yours,
BIRNBERG & ASSOCIATES

/s/ *Cory Birnberg*

Cory A. Birnberg

cc: James Tamulski, Kevin O'Dell and Jeanine Tede (by email).

The Case Management Conference shall be continued to February 17, 2010 at 10:30 a.m.

Date: November 12, 2009

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