

E-Filed 7/20/09

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

DONG AH TIRE & RUBBER CO., LTD,
Plaintiff,
v.
GLASFORMS, INC.,
Defendant/Third-Party
Plaintiff.
v.
CTG INTERNATIONAL (NORTH AMERICA)
INC., and TAISHAN FIBERGLASS, INC.,
Third-Party Defendants.

Case Number C 06-3359 JF (RS)
**ORDER¹ OVERRULING IN PART
OBJECTIONS TO MAGISTRATE
JUDGE’S ORDER**
RE: Docket No. 315

Third-party Defendant Taishan Fiberglass, Inc. (“Taishan”) objects to the Magistrate Judge’s order imposing sanctions for its alleged spoliation of evidence after litigation reasonably was anticipated. The Court has considered the full record before it, the Magistrate Judge’s

¹ This disposition is not designated for publication in the official reports.

1 order, and the arguments of counsel, and finds that with respect to all but Taishan's purported
2 duty to preserve or track its graphite rollers, the order was not clearly erroneous or contrary to
3 law. *See* Fed. R. Civ. P. 72(a). With respect to Taishan's purported duty to preserve or track the
4 use of its graphite rollers, the source of such a duty is unclear, and the Court will request further
5 briefing, as set forth below.

6 Glasforms used Taishan-manufactured glass in its insulators from June 2004 until
7 sometime in December 2004. Adopting the September 6, 2005 date established by the
8 Magistrate Judge as the point at which Taishan reasonably should have anticipated litigation, the
9 fact remains that approximately nine months had passed since Glasforms ceased using Taishan
10 glass to make its rods—meaning that *well over* nine months likely had passed since Taishan
11 actually manufactured the glass. Taishan has asserted in declarations that the subject rollers
12 bear no identification marks, are physically identical, and are used interchangeably, being
13 rotated onto and off of the production line as required. At least at present, the Court is aware of
14 no evidence that contradicts this assertion, or that indicates why Taishan should have been
15 expected to preserve or track the rollers in the highly detailed manner urged by Glasforms and in
16 effect required by the Magistrate Judge's order.

17 Glasforms may file opposition to Taishan's objections with respect to the graphite rollers
18 not later than Thursday July 23, 2009 at 5 PM. Taishan may file a reply in support of its
19 objections not later than Monday July 27, 2009 at 5 PM. In all other respects, Taishan's
20 objections are overruled.

21 **IT IS SO ORDERED.**

22
23 DATED: 7/20/09

24
25 
26 JEREMY FOGEL
United States District Judge

1 This Order has been served electronically upon the following persons:

2 April E. Sellers april.sellers@bakerd.com

3 David K. Herzog david.herzog@bakerd.com

4 Eugene Ashley eashley@hopkinscarley.com, ihernandez@hopkinscarely.com,
5 ihernandez@hopkinscarley.com, jdooley@hopkinscarley.com

6 Jennifer M. Phelps jennifer.phelps@bakerd.com, debora.schmid@bakerd.com

7 Kevin M. Toner kevin.toner@bakerd.com, judy.ferber@bakerd.com

8 Lisa J. Cummins lcummins@campbellwarburton.com

9 Noelle Dunn gcordova@hopkinscarley.com, ndunn@hopkinscarley.com

10 Robert A. Christopher rchristopher@hopkinscarley.com, ihernandez@hopkinscarley.com

11 Sophie N. Froelich sfroelich@nossaman.com, ntorpey@nossaman.com

12 Tod C. Gurney tgurney@hopkinscarley.com

13 Notice has been delivered by other means to:

14 Glasforms Inc.,
15 William Whitcom Faulkner
16 McManis, Faulkner & Morgan
17 50 West San Fernando St., Suite 1000
18 San Jose, CA 95113
19
20
21
22
23
24
25
26
27
28