

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 08-cv-02792-DME-KMT

FAIRFIELD DEVELOPMENT, INC.  
D/B/A FAIRFIELD DEVELOPMENT LP and  
AXIS SURPLUS INSURANCE COMPANY,

Plaintiffs,

v.

J.D.I. CONTRACTOR & SUPPLY, INC.,

Defendant.

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**ORDER RE FINAL TRIAL PREPARATION CONFERENCE**

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In this matter, Plaintiffs Fairfield Development, Inc. d/b/a Fairfield Development LP ("Development") and Axis Surplus Insurance Company (together, "Plaintiffs") have brought claims for negligence and breach of contract against Defendant J.D.I. Contractor & Supply, Inc. ("JDI"). A Final Trial Preparation Conference was held in this matter at 10:00 a.m. on December 1, 2010. Based on the representations of the parties and the arguments presented, this Court **ORDERS** as follows:

1. The Plaintiffs' Motion In Limine to Exclude Any Reference to Insurance (Doc. 94) is **WITHDRAWN**.

2. JDI's Motion In Limine to Preclude Evidence of Its Insurance (Doc. 103) is **GRANTED**. Federal Rule of Evidence 411 applies in this case to preclude the admission of JDI's liability insurance for the purposes of proving that JDI acted negligently or otherwise wrongfully.

3. The parties shall submit no later than **12:00 p.m. (noon) on Thursday, December 2, 2010**, one of the following:
- a. A stipulation by all parties that the trial will go forward as scheduled beginning on Monday, December 6, 2010, at 7:30 a.m., along with the specific amendments that shall be made to Plaintiffs' First Amended Complaint (Doc. 60) pursuant to the agreement of the parties; or
  - b. A joint request by the parties to continue the trial date, along with (i) a description of Plaintiffs' anticipated motion to substitute parties, (ii) a description of JDI's anticipated motion to dismiss under Federal Rule of Procedure 12(c), and (iii) a briefing schedule for both motions. Should the parties move to continue the trial, the court will consider these motions based on the disclosures made in Court at the Final Trial Preparation Conference regarding the putative interests of Plaintiffs and their related entities. The Court will not allow the submission of any other motions or re-open the already-expired deadlines for other discovery or other pretrial matters.
4. In the event that the trial is to go forward as scheduled, counsel shall meet and confer regarding proposed jury instructions and shall submit no later than **Monday, December 6, 2010, at 7:30 a.m.**, a single set of stipulated jury instructions that contains mark-ups or otherwise identifies those portions of any

jury instructions that remain disputed, describes the reasons for the dispute(s), and provides a brief listing of supporting authorities.

5. In the event that the trial is to proceed as previously scheduled, the parties shall submit no later than **Monday, December 6, 2010, at 8:00 a.m.**, briefs on the following issues, which shall be no longer than five pages each:
  - a. Whether JDI may impute comparative negligence liability to Development if Development is neither a party to this case nor listed as a non-party defendant;
  - b. Whether the subpoena issued to Plaintiffs' expert witness David Norfleet should be quashed and the scope of any examination of Mr. Norfleet by JDI;
  - c. Whether evidence of Development's discontinued use of the portable propane heaters at issue after the fire is inadmissible as a subsequent remedial measure under Federal Rule of Evidence 407;
  - d. Whether and for what purpose evidence of the South Metro Fire Rescue Notice of Violation and Order to Correct dated January 22, 2008, is admissible; and
  - e. Whether this Court shall take judicial notice that Chapter 14, Section 1403 of the 2006 International Fire Code applies in unincorporated Arapahoe County.

Dated this   1st   day of   December  , 2010.

BY THE COURT:

*s/ David M. Ebel*

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U. S. CIRCUIT COURT JUDGE