

**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.

ORDER VACATING TRIAL AND SETTING BRIEFING SCHEDULE

On December 2, 2010, a telephonic chambers conference was held in this matter. Mr. Samuel J. Pace, Jr. of Dugan, Brinkmann, Maginnis and Pace, and Mr. Terence M. Ridley of Wheeler Trigg O'Donnell appeared by telephone on behalf of Plaintiffs Fairfield Development, Inc. d/b/a Fairfield Development LP ("Development") and Axis Surplus Insurance Company (together, "Plaintiffs"). Messrs. Bradley W. Maudlin and Andrew J. Carafelli of Dewhirst & Dolven, LLC appeared by telephone on behalf of Defendant J.D.I. Contractor & Supply, Inc. ("JDI").

The parties have represented that they have been unable to resolve the outstanding issues discussed at the Final Trial Preparation Conference held in this matter on December 1, 2010, and jointly wish to continue the trial, currently set to commence on December 6, 2010, in order to submit motions on these issues. The Court therefore ORDERS as follows:

1. The parties shall submit a joint motion to continue the trial in this matter no later than 5:00 p.m. on Friday, December 3, 2010.

2. The trial dates currently set to commence on December 6, 2010, are VACATED.

3. No later than December 13, 2010, Plaintiffs may file a motion for leave to amend under Federal Rule of Civil Procedure 15 the First Amended Complaint (Doc. 60). Such motion shall be limited to a request for leave to (a) drop Development as a plaintiff and (b) dismiss with prejudice Plaintiffs' breach of contract claim against JDI.

4. No later than December 13, 2010, JDI may file a motion to dismiss Plaintiffs' First Amended Complaint (Doc. 60), as currently pled, under Federal Rule of Procedure 12(c).

5. No later than January 10, 2011, each side shall file a memorandum in support of its motion, not to exceed 15 pages.

6. No later than January 24, 2011, each side shall file a response brief to the other side's motion, not to exceed 15 pages. JDI may move in its response brief for dismissal of Plaintiffs' proposed complaint, as amended, under Rule 12(c). JDI may also set forth in its response brief what additional discovery, if any, it requests should Plaintiffs' motion to amend be granted.

7. No later than February 4, 2011, each side shall file a reply brief in support of its motion, not to exceed 10 pages.

8. If Plaintiffs' motion for leave to amend is granted, JDI shall be granted leave to file, if desired, a motion to add Development as a designated nonparty pursuant to C.R.S. § 13-21-111.5.

9. If this matter is to proceed to trial following the Court's ruling on the motions, the parties are to call this Court's chambers to schedule a trial date.

10. The deadlines set forth in this Court's Order Re Final Trial Preparation Conference (Doc. 153) are WITHDRAWN.

Dated this 3rd day of December, 2010.

BY THE COURT:

s/ David M. Ebel

U. S. CIRCUIT COURT JUDGE