

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

THE DAVIS GROUP, INC.,

Plaintiff,

v.

Case No: 6:14-cv-251-Orl-TBS

ACE ELECTRIC, INC. and THE  
HARTFORD CASUALTY INSURANCE  
COMPANY,

Defendants.

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**ORDER**

This Order memorializes the Court's decision to deny Defendants Ace Electric, Inc., and Hartford Casualty Insurance Company's Motion in Limine (Doc. 96), announced on the record during trial.

The .xer files in the possession of Kurt Musser were not intentionally concealed, altered, or destroyed and therefore, there was no spoliation of evidence.

The post-project schedules and reports prepared by Musser are not compilations or summaries requiring the production of underlying data to lay a foundation for their admission into evidence. Instead, they are originals created by Musser when he modified the monthly scheduling updates he had previously prepared to reflect the percentages of completion actually found by the U.S. Army Corp of Engineers.

Plaintiff The Davis Group, Inc.'s principal, Jim Davis was not specially retained to give expert testimony in the case. Therefore, an expert report was not required. Like the other witnesses, he was permitted to testify based upon his knowledge of the project,

his role in the project, and his role in the formulation of Plaintiff's claims against Defendants.

Defendants never served a deposition subpoena on witness Robert Sullivan and therefore, their motion to exclude his testimony based upon his failure to appear for deposition was denied.

**DONE and ORDERED** in Orlando, Florida on September 30, 2015.



THOMAS B. SMITH  
United States Magistrate Judge

Copies furnished to Counsel of Record