IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JEFFREY GADDY, **Plaintiff,** **v.** **AMERICAN INTERSTATE INSURANCE COMPANY,** **Intervenor Plaintiff,** **v.** **TEREX CORPORATION, TEREX SOUTH DAKOTA, INC., and TEREX UTILITIES, INC.,** **Defendants.**	**1:14-cv-1928-WSD**

OPINION AND ORDER

This matter is before the Court on Defendants Terex Corporation, Terex Utilities, Inc., and Terex South Dakota, Inc.'s (collectively, "Defendants" or "Terex") Motion *In Limine* No. 5 Exclude The Ongoing NHTSA Investigation Initiated by Plaintiff's Counsel [414] (the "Motion").

The parties, in anticipation of trial, have filed a number of motions in limine. In this Motion, Defendants seek to exclude any evidence or reference to the ongoing National Highway Traffic Safety Administration ("NHTSA") investigation into Defendants' pre-2004 XT machines. ([414] at 2). Specifically,

on May 14, 2015, during the fact discovery phase of the case, Plaintiff's counsel wrote NHTSA and requested the agency open an investigation into Defendants' pre-2004 XT machines based on the allegation that the machines are defective and fail to comply with ANSI A92.2 standards. (Id.). The agency did so. (Id.). The investigation has not concluded, nor has the NHTSA issued any findings or orders. (Id.).

Defendants argue that any evidence of the NHTSA investigation is "irrelevant, any probative value would be outweighed by the danger of unfair prejudice to [] Defendants and its tendency to mislead the jury and confuse the issues in this case, and it constitutes inadmissible hearsay." (Id. at 2-3). Plaintiff consents to such an exclusion, but "reserves the right to present any such evidence to the jury, or impeach Terex witnesses with that documentation/information, without mentioning that the evidence was filed with NHTSA or otherwise violating his agreement to abstain from referencing the ongoing NHTSA investigation." (Plaintiff's Response to Terex Defendants' Motion *In Limine* No. 5 to Exclude Reference to the Ongoing NHTSA Investigation Against Terex ("Response") at 2).

Considering that the parties agree to exclude any evidence of or reference to the ongoing NHTSA investigation, the Court grants the Motion.

Accordingly, for the foregoing reasons,

IT IS HEREBY ORDERED that Defendants Terex Corporation, Terex Utilities, Inc., and Terex South Dakota, Inc.'s Motion *In Limine* No. 5 Exclude The Ongoing NHTSA Investigation Initiated by Plaintiff's Counsel [414] is **GRANTED**.

SO ORDERED this 26th day of March, 2018.

WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE