

31396/14920/JAF/KRB

ARDC # 6185413

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

ALLIANCE LOGISTICS, INC., n/k/a ALLIANCE)
3PL CORP., an Illinois corporation,)

Plaintiff,)

v.)

NEW PRIME, INC., et al.,)

Defendants.)

No. 07 CV 4944

Judge Bucklo

Magistrate Judge Cox

**DEFENDANT NEW PRIME, INC.’S RENEWED MOTION FOR JUDGMENT AS A
MATTER OF LAW, OR IN THE ALTERNATIVE, MOTION FOR A NEW TRIAL**

NOW COMES Defendant, NEW PRIME, INC., d/b/a PRIME, INC., (hereinafter “Prime”), a Missouri corporation, by and through its attorneys, James A. Foster and Cassidy Schade LLP, and pursuant to Rule 50(b) and Rule 59 of the Federal Rules of Civil Procedure, respectfully moves this Honorable Court to enter judgment in its favor as a matter of law as to Count I of Plaintiff’s Complaint, or, in the alternative, respectfully moves this Honorable Court for a new trial as to Count I. In support hereof, Prime states as follows:

1. Alliance Logistics, Inc., n/k/a Alliance 3PL Corporation, an Illinois corporation, (hereinafter “Alliance”) filed a three count Complaint against Prime on August 31, 2007. Count III was dismissed before trial. The case went to verdict on Counts I and II of Plaintiff’s Complaint. In Count I, Alliance sought damages under a breach of contract theory. In Count II, Alliance sought damages for tortious interference with the contract.

2. On August 14, 2009, after the trial of this matter before a jury, this Honorable Court entered judgment on behalf of Alliance as to Count I of Plaintiff's Complaint, and entered judgment in favor of Prime as to Count II of Plaintiff's Complaint.

3. The evidence adduced at the time of trial in this action so overwhelmingly favored Prime that reasonable jurors could arrive only at a verdict in Prime's favor. An objective review of the facts and inferences arising from those facts demonstrates that Prime is entitled to judgment as a matter of law pursuant to Federal Rule 50, the evidence being insufficient to support a verdict in favor of Alliance on Count I. As such, the jury's verdict in Alliance's favor on Count I should be set aside and judgment entered on Prime's behalf.

4. Alternatively, the verdict of the jury as to Count I is contrary to the manifest weight of the evidence such that this Court should exercise its discretion and grant the Defendant Prime a new trial on all issues as to Count I, setting aside the jury verdict in favor of Alliance and against Prime and the judgment entered thereon.

5. Lastly, and respectfully, this Court committed prejudicial error by excluding the testimony of Prime's expert witness, Lana Batts, by allowing the expert testimony of Alliance's expert witness Robert Walters, by allowing into evidence Prime's contracts with other companies, by admitting into evidence Prime's Response to Plaintiff's Local Rule 56.1 Statement of Facts, by refusing to give Prime's Instruction No. 32 (IPI 700.11) which instructed the jury on a necessary element of Plaintiff's cause of action, and refusing to give Prime's Instruction No. 34 (IPI 700.11 V) which appropriately asked the jury to answer a question on an essential element of Plaintiff's cause of action. As a result of some or all of the above rulings, the jury heard solely from Alliance's

expert on the issues relating to the meaning of the contract. The Court's rulings on the above and related matters respectfully were unduly prejudicial to Prime such that Prime was denied a fair trial and a new trial should be afforded to it.

6. Prime submits the attached Memorandum of Law in support of this Motion.

WEREFOR, Prime respectfully requests that this Honorable Court enter an Order for judgment as a matter of law in favor of Prime as to Count I of Plaintiff's Complaint, or in the alternative, an Order granting Prime a new trial on all issues as to Count I.

Respectfully submitted,

Cassiday Schade LLP

By: s/ James A. Foster
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d/b/a Prime, Inc., a Missouri Corporation

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