

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SUSAN GIBBENS

CIVIL ACTION

VERSUS

NO. 11-868

CHAMPION INDUSTRIES, INC.

SECTION "C" (4)

ORDER AND REASONS

IT IS ORDERED that the motion for partial summary judgment on the issue of quantum filed by the plaintiff is DENIED. Rec. Doc. 189.

IT IS FURTHER ORDERED that the motion to exclude testimony of plaintiff's expert Matthew C. Person, CPA filed by Champion Industries, Inc., is PARTIALLY GRANTED and PARTIALLY DENIED. Rec. Doc. 170. The motion seeks to exclude the entire testimony of the plaintiff's expert. The motion is granted insofar as the plaintiff states that she has no intention to have the expert testify as to two categories of damages. Rec. Doc. 187 at 2. The motion is denied in all other respects. On November 30, 2012, the Court limited the plaintiff's damages "to the methodology and amounts set forth" in a letter from plaintiff's counsel referencing the defense expert report and "based on the evidence that would have been admissible at previously-set trial." Rec. Doc. 118 at 2. On March 20, 2013, the Court ruled on the defendant's first motion to

strike this witness by ordering that "to the extent that Person relies in his report on the data compiled and used by the defense experts, he will be allowed to testify." Rec. Doc. 151 at 3. That ruling was not appealed and any current objection to it is deemed waived. The fact that the defendant has now revised the subject expert report does not change the substance of those rulings, and any prejudice to the defendant arises from its own conduct. Otherwise, the arguments presented by the defendant in this motion as to this witness, who is a CPA, go to the weight to be given the testimony, not admissibility. However, the defense expert report itself remains inadmissible hearsay for purposes of trial, and the plaintiff's argument that the original expert report is a admission is rejected.

New Orleans, Louisiana, this 28th day of July, 2014.


HELEN G. BERRIGAN
UNITED STATES DISTRICT COURT