

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MSC.SOFTWARE CORPORATION,

Plaintiff(s),

CASE NUMBER: 07-12807

HONORABLE VICTORIA A. ROBERTS

v.

**ALTAIR ENGINEERING, INC., MARC
KLINGER, ANDREA PERTOSA, STEPHAN
KOERNER, TOM RIEDEMAN, RAJIV RAMPALLI
MARK KRUEGER, and MICHAEL HOFFMAN,**

Defendant(s).

ORDER

This matter is before the Court on Defendants' Joint Motion to Exclude Evidence of Damages. (Doc. #404). Defendants ask the Court to exclude evidence of damages that MSC's damages expert abandoned or did not adequately address in his report.

Defendants rely on Fed. R. Civ. P. 37(b)(2)(A)(ii) and Fed. R. Civ. P. 37(c)(1).

Fed. R. Civ. P. 37(b)(2)(A)(ii) says:

If a party or a party's officer, director, or managing agent . . . fails to obey an order to provide or permit discovery, . . . the court where the action is pending may issue further just orders. They may include . . . prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence.

Fed. R. Civ. P. 37(c)(1) says:

If a party fails to provide information . . . as required by Rule 26(a) or (e), the party is not allowed to use that information . . . to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.

On December 17, 2009, the Court said it "will not accept dispositive motions until

after the depositions of rebuttal experts are completed.” See Doc. #427. As of now, dispositive motions, and motions in limine to exclude expert testimony, are due on September 13, 2010. See Scheduling Order dated October 30, 2009.

The Court finds Altair’s motion is essentially a motion for partial summary judgment and/or motion to exclude expert testimony, and it declines to decide either at this juncture.

Altair’s motion is **STRICKEN**. Altair may file a motion for summary judgment on the damages element of MSC’s claim, or a motion in limine to exclude expert testimony, at the appropriate time.

IT IS ORDERED.

s/Victoria A. Roberts

Victoria A. Roberts
United States District Judge

Dated: July 15, 2010

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on July 15, 2010.

s/Linda Vertriest

Deputy Clerk