

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

American Steamship Company, a New
York Corporation, and Armstrong
Steamship Company, a Delaware
Corporation,

Plaintiffs,

ORDER

Civil File No. 09-2628 (MJD/LIB)

v.

Hallett Dock Company, a Minnesota
Corporation; Fraser Shipyards, Inc., a
Wisconsin Corporation; RJS Construction
LLC, a Wisconsin corporation; Chris Jensen
& Son Co., Inc., a Minnesota Corporation;
Reuben Johnson & Son, Inc., a Wisconsin
Corporation,

Defendants.

Brent L. Reichert, David E. Bland, Gerardo Alcazar, and Richard B. Allyn, Robins
Kaplan Miller & Ciresi LLP, Counsel for Plaintiffs.

David R. Hornig and Gueric S.D.L. Russell (pro hac vice), Nicoletti Hornig &
Sweeney, Counsel for Defendant Hallett Dock Company

Scott A. Witty and John D. Kelly, Hanft Fride PA, Counsel for Defendant Hallett
Dock Company

Nicholas Ostapenko and Paul W. Wojciak, Johnson Killen & Seiler, Counsel for
Defendant Fraser Shipyards, Inc.

Edward C. Radzik and Laura V. Block (pro hac vice), Marshall, Dennehey, Warner, Coleman, & Goggin, Counsel for Defendant Fraser Shipyards, Inc.

Daniel A. Haws, John Paul J. Gatto, and Krista J. Robertson, Murnane Brandt, PA, Counsel for Defendants RJS Construction LLC, Chris Jensen & Son Co., and Reuben Johnson & Son, Inc.

The above entitled matter comes before the Court on Defendant Hallett Dock Company's ("Hallett") Motion to Vacate or Modify United State Magistrate Judge Leo I. Brisbois' Order dated June 8, 2011 [Docket 201], which clarified Magistrate Judge Brisbois' Order dated May 25, 2011 [Docket No. 149]. The June 8 Order clarified that the meet and confer ordered in the May 25 Order was limited to the documents which were the subject of the motions to compel before Magistrate Judge Brisbois. By the June 8 Order, Magistrate Judge Brisbois stated that only the 39 documents Hallett enumerated in its Memorandum were part of the motion to compel, and accordingly Magistrate Judge Brisbois asserted that he would not consider additional documents which were not raised in the briefing.

Hallett objects to the June 8 Order by arguing that this Order was issued without due process because Hallett was not given an opportunity to respond to Plaintiffs' letter dated June 7, 2011 [Docket No. 179], which sought clarification of Magistrate Judge Brisbois' May 25 Order.

This Court will reverse a magistrate judge's order on a nondispositive issue if it is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); D. Minn. L.R. 72.2(a). In Hallett's Memorandum in Support of its Motion to Compel, Hallett specifically identified 39 documents which it claimed were not privileged [Docket No. 125]. In Exhibit 2 of the Declaration of David Hornig in Support of Hallett's Motion to Compel, Hallett's counsel lists 102 documents which Hallett claimed were not privileged [Docket No. 124]. Exhibit 2 included the 39 documents identified in Hallett's Memorandum, as well as an additional 63 documents. In its Memorandum, however, Hallett does not discuss the additional 63 documents or make reference to Exhibit 2 of the Hornig Declaration. Furthermore, Hallett's Motion to Compel does not identify or reference the additional 63 documents or reference Exhibit 2 [Docket No. 123]. As mentioned above, Magistrate Judge Brisbois' June 8 clarification Order stated that those documents which were not part of Hallett's briefing would not be considered as part of Hallett's Motion to Compel. The Court has reviewed the submissions and the record in this case and concludes that Magistrate Judge Leo I. Brisbois' June 8, 2011 Order, which clarified the May 25, 2011 Order is neither clearly erroneous nor contrary to law. Given the deferential standard of review

this Court applies to a magistrate judge's order on nondispositive issues the Court affirms the June 8 Order clarifying the May 25 Order.

Accordingly, based upon the files, records, and proceedings herein, **IT IS**

HEREBY ORDERED that:

1. Magistrate Judge Brisbois' June 8, 2011 Order [Docket No. 183] which clarified his May 25 Order is **AFFIRMED**.
2. Defendant Hallett Dock Company's Motion to Vacate or Modify United States Magistrate Judge Leo I. Brisbois' Order dated June 8, 2011 is **DENIED**.

Date: July 22, 2011

s/ Michael J. Davis

Michael J. Davis

Chief Judge

United States District Court