

IN THE UNITED STATES DISTRICT COURT FOR THE  
 WESTERN DISTRICT OF MISSOURI  
 WESTERN DIVISION

THE WEITZ COMPANY, L.L.C.,	)	
	)	
Plaintiff/Third-Party Plaintiff	)	
	)	
vs.	)	Case No. 07-0103-CV-W-ODS
	)	
MacKENZIE HOUSE, L.L.C. and	)	
MH METROPOLITAN, L.L.C.,	)	
	)	
Defendants/Counterclaimants,	)	
	)	
ARROWHEAD CONTRACTING, INC.,	)	
CONCORDE CONSTRUCTION	)	
COMPANY, INC., POLAR AIRE	)	
HEATING AND COOLING SERVICE,	)	
INC., CONSTRUCTION BUILDING	)	
SPECIALTIES, INC. and FIDELITY	)	
DEPOSIT COMPANY OF MARYLAND,	)	
	)	
Third-Party Defendants.	)	

ORDER AND OPINION GRANTING DEFENDANTS’ MOTION TO STRIKE A PORTION  
 OF THE EXPERT TESTIMONY OF LIN HEATH

Third-Party Defendant Arrowhead Contracting, Inc. (“Arrowhead”) has designated Lin Heath as an expert witness. Defendants have filed a motion to strike (Doc. # 348), which targets paragraph 11 of Heath’s report. Arrowhead has not responded, and the time for doing so has passed. Defendants’ motion is granted.

In paragraph 11, Heath purports to interpret sections 4.7 and 4.71 of the A111 between Plaintiff and Defendants. The Court has previously ruled these provisions are ambiguous and their meaning will have to be determined by a jury. Heath – an expert in construction matters – does not have any expertise enabling him to testify about the parties’ understanding and intent. The Court agrees that Heath should not be allowed to offer his interpretation of the ambiguous contract language.

IT IS SO ORDERED.

/s/ Ortrie D. Smith  
 ORTRIE D. SMITH, JUDGE  
 UNITED STATES DISTRICT COURT

DATE: November 19, 2009