

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DOLLAR PHONE CORP., et al.,

Plaintiffs,

- v -

ST. PAUL FIRE AND MARINE INSURANCE
COMPANY,

Defendant.
-----x

MEMORANDUM

CV-09-1640 (DLI)(VVP)

The defendant has submitted a letter to me objecting to the use, by the plaintiff, of an expert's affidavit in connection with the summary judgment motion now being briefed before Judge Irizarry. Any such objection must be raised with Judge Irizarry, as she will be deciding the motion. As the basis for the objection arises from one of my orders scheduling discovery, however, I set forth below the assumptions that led to the order.

The order was entered on June 18, 2010 in response to the plaintiff's application to permit an identification of experts and expert disclosures well after the deadlines that had been set by the court. In addition to granting the application, the order also permitted the parties to postpone the completion of expert disclosures and depositions until after the summary judgment motion was decided. The deferral of expert discovery was based on my understanding that any opinions by experts would have no bearing on any summary judgment motion, and therefore would not be offered by either side during summary judgment proceedings. Had I known that expert opinion would be included in those proceedings, I would have required the completion of expert discovery to insure that summary judgment could be decided on a complete record.

Viktor V. Pohorelsky

VIKTOR V. POHORELSKY
United States Magistrate Judge

Dated: Brooklyn, New York
November 4, 2010