

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

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|---------------------------|---|-------------------------|
| MIKE STOKES, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. CIV-13-507-KEW |
| |) | |
| LAKE RAIDER, INC. d/b/a |) | |
| VOYAGER MARINE, |) | |
| |) | |
| Defendant/ Third-Party |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| 150 BOAT SALES, L.L.C., |) | |
| |) | |
| Third-Party |) | |
| Defendant. |) | |

OPINION AND ORDER

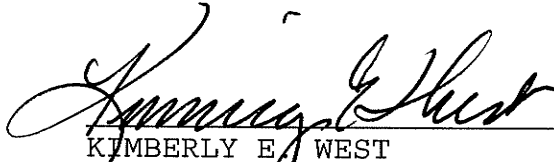
This matter comes before the Court on Plaintiff's Motion to Dismiss Certain Claims Without Prejudice filed September 2, 2014 (Docket Entry #65). Plaintiff seeks to dismiss the claims against Defendant based in theories of the failure to inspect or any other claim of negligence, defective warning, and breach of warranty while maintaining the action on the sole theory of manufacturers' products liability. Defendant does not object to the dismissal but asserts that the elimination of these claims does not waive certain defenses regarding safety guards and warnings which Defendant contends is relevant to the issue of proximate cause.

Dismissal as couched by Plaintiff in the Motion is appropriate without regard to the effect upon any defenses which Defendant may raise in relation to the products liability claim. Fed. R. Civ. P.

41(a)(2). The propriety of these defenses is a separate issue which may be addressed and resolved by alternative means.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Dismiss Certain Claims Without Prejudice filed September 2, 2014 (Docket Entry #65) is hereby **GRANTED**. Accordingly, Plaintiff's claims for the failure to inspect or any other claim of negligence, defective warning, and breach of warranty are hereby **DISMISSED** without prejudice to refileing. This action will proceed on the sole claim for manufacturers' products liability.

IT IS SO ORDERED this 17th day of November, 2014.


KIMBERLY E. WEST
UNITED STATES MAGISTRATE JUDGE