

would “stipulate that the results of the ASTM E45 testing would be within normal and acceptable ranges for inclusion content.” Before the Order ([Doc. 160](#)) was filed Plaintiffs refused the offer. After plaintiffs’ motion to reconsider defendant made the offer again in its brief ([Doc. 165](#)) resisting plaintiffs’ motion. Plaintiffs filed a rebuttal brief ([Doc. 168](#)) without mentioning the proposed stipulation.

Given that plaintiffs “are going to argue there is a defect in SID 10314” and will not “stipulate that the results of the ASTM E45 testing would be within normal and acceptable ranges for inclusion content,” even though plaintiffs are not going to argue at trial that “testing would have revealed some sort of defect in SID 10314" there is enough of an issue about a defect in SID 10314 to justify destructive testing to determine the presence or absence of aluminum oxide inclusions.

The motion to reconsider has been considered, so the motion to reconsider is GRANTED, but the implicit motion to rescind the Order allowing destructive testing as described in [Document 160](#) is DENIED.

Dated this 9th day of April, 2010.

BY THE COURT:

s/John E. Simko

John E. Simko
United States Magistrate Judge