THE HONORABLE RICHARD A. JONES

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELECTRIC MIRROR, LLC,

Plaintiff,

v.

AVALON GLASS AND MIRROR CO.,

Defendant.

No. 2:16-cv-00665-RAJ

ORDER

This matter comes before the Court on Defendant's motion *in limine.* Dkt. # 118. Defendant moves to exclude the expert report and testimony of Douglas McDaniel. Parties may file motions *in limine* before or during trial "to exclude anticipated prejudicial evidence before the evidence is actually offered." *Luce v. United States*, 469 U.S. 38, 40 n. 2 (1984).

Plaintiff engaged Mr. McDaniel to calculate lost profits allegedly resulting from Plaintiff's rebuild of custom mirrors for the Mandalay Bay Project. Defendant argues that Mr. McDaniel failed to account for a large number of variables that would presumably negatively affect his analysis. Expert testimony is a sufficient basis for an award of lost

profits, but expert opinion must be based on upon tangible evidence, and not speculation or hypothetical situations. *Farm Crop Energy, Inc. v. Old Nat. Bank of Washington*, 109 Wash. 2d 923, 928, 750 P.2d 231, 234 (1988). There is no indication that Mr. McDaniel's expert opinion is not based on tangible evidence, only that the parties do not agree on what factors should be considered in the lost profit analysis. While the parties' arguments are relevant for the Court to consider when calculating possible damages, Defendant does not provide convincing argument that Mr. McDaniel's testimony and expert report should be excluded in its entirety or that his opinion as an expert does not meet the standard for inclusion at trial. Defendant's attack on Mr. McDaniel's regression analysis or the variables they contend were not considered are relevant to weight not admissibility. Defendant will have the opportunity to challenge the analysis on cross-examination but no further relief is warranted at this time. Defendant's Motion to exclude the expert report and testimony of Mr. McDaniel is **DENIED**.

Dated this 5th day of November, 2018.

The Honorable Richard A. Jones
United States District Judge