

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

M. DIANE KOKEN, AS LIQUIDATOR )  
ON BEHALF OF RELIANCE INS. CO. )  
(IN LIQUIDATION), )  
 )  
Plaintiff, )  
 )  
v. )  
 ) Civil No. 02-83-B-C  
 )  
AUBURN MANUFACTURING, INC., )  
ET AL., )  
 )  
Defendants. )  
\_\_\_\_\_ )

**ORDER ON APPELLATE REVIEW OF THE MAGISTRATE JUDGE’S  
ORDER (DOCKET ITEM NO. 282) ON AUBURN’S MOTION TO  
EXCLUDE THE TESTIMONY OF ROBERT WAITE,  
RONALD DOWNING, AND DR. THOMAS EAGER  
(DOCKET ITEM NO. 180)**

Before the Court for review pursuant to 28 U.S.C. § 636(b)(1)(A) is the Magistrate Judge’s action on Defendant Auburn Manufacturing, Inc.’s Motion to Exclude “Warnings” Experts (Docket Item No. 180).

The Magistrate Judge granted the Motion “to exclude Mr. Waite’s testimony that Auburn’s blanket was rendered unreasonably dangerous because it lacked a warning that it was not adequate for torch cutting operations.” Memorandum of Decision (Docket Item No. 282) at 16. She denied the Motion as to exclusion of the testimony of Ronald Downing. *Id.* She granted the Motion to exclude the challenged testimony of Dr. Eager, pursuant to Fed. R. Evid. 702, “not because Dr. Eager is unqualified to offer it or because his opinion is not supported by reason and analysis, but because the materials speak for

themselves, can be adequately introduced to fact witnesses and the relative clarity or ambiguity of the materials can be determined by the jury without the aid of expert testimony,” *id.* at 17, and because the testimony is immaterial.

These actions of the Magistrate Judge have been “objected to” (not appealed, as required by 28 U.S.C. § 636(b)(1)(A), See Jacobsen v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., 594 F. Supp. 583, 585 (D Me. 1984)) by Plaintiff (Docket Item No. 287) and by Defendant Black & Veatch (Docket Item No. 289).

The Court has carefully reviewed the record made before the Magistrate Judge on the Motions and has fully reviewed the written Objections of the Defendants and of the Plaintiff in the context of appellate review pursuant to 28 U.S.C. § 636(b)(1)(A) and **FINDS** that Defendants have failed to demonstrate that the actions of the Magistrate Judge in the particulars set out above are clearly erroneous. 28 U.S.C. § 636(b)(1)(A); Jacobsen, 594 F. Supp. at 586.

The Appeal is **DENIED** and the action of the Magistrate Judge is hereby **AFFIRMED**.

**SO ORDERED**.

/s/Gene Carter \_\_\_\_\_  
GENE CARTER  
Senior District Court Judge

Dated at Portland, Maine this 15th day of October, 2004.

**Plaintiff**

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-

**M DIANE KOKEN, as** represented **ANTHONY R. ZELLE**  
**Liquidator on behalf of** by **ROBINSON & COLE**  
**Reliance Insurance** ONE BOSTON PLACE

***Company (in  
liquidation)***

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V.

**Defendant**

-----  
**PYRO SHIELD INC**

*TERMINATED: 11/04/2002*

**REDCO/O'CONNOR INC**

*TERMINATED: 08/05/2002*

**BLACK & VEATCH  
CONSTRUCTION, INC**

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*dba*  
REDCO/O'CONNOR

**ThirdParty Plaintiff**  
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**MICHAEL C. CASTELLON**  
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V.

**ThirdParty Defendant**  
-----

**PYRO SHIELD INC**  
*TERMINATED: 03/27/2003*

**Cross Claimant**  
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**MICHAEL C. CASTELLON**  
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*ATTORNEY TO BE NOTICED*

V.

**Cross Defendant**

-----  
**PYRO SHIELD INC**  
*TERMINATED: 11/19/2002*

**Cross Claimant**

-----  
**BLACK & VEATCH  
CONSTRUCTION, INC**

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**PATRICIA A. HAFENER**  
(See above for address)  
*TERMINATED: 04/28/2004*  
*ATTORNEY TO BE NOTICED*

V.

**Cross Defendant**  
-----

**PYRO SHIELD INC**  
*TERMINATED: 11/19/2002*

**REDCO INC**  
*TERMINATED: 09/11/2002*

*dba*  
**REDCO/O'CONNOR**

**Defendant**  
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**Cross Claimant**

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(See above for address)

TERMINATED: 04/28/2004

ATTORNEY TO BE NOTICED

V.

**Cross Defendant**

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**AUBURN MANUFACTURING  
INC**

**INPRO INC**

**Cross Claimant**

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**AUBURN MANUFACTURING  
INC**

V.

**Cross Defendant**

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**BLACK & VEATCH**

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INPRO INC

O'CONNOR CONSTRUCTORS  
INC

REDCO INC

Cross Claimant  
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O'CONNOR CONSTRUCTORS  
INC

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Cross Defendant  
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REDCO INC

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Cross Defendant

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Cross Defendant

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Cross Defendant

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**O'CONNOR CONSTRUCTORS  
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