

08-10084.or52

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA**

Case Number: 08-10084-CIV-BROWN

THIS IS A CONSENT CASE

PETER HALMOS, INTERNATIONAL
YACHTING CHARTERS, INC., and HIGH
PLAINS CAPITAL,

Plaintiffs,

vs.

INSURANCE COMPANY OF NORTH
AMERICA, et al.,

Defendants.

ORDER RE: TESTIMONY OF DAVID BYRD

This matter is before this Court on review of the admissibility of the “rebuttal” testimony of David Byrd. The Court has considered the positions of counsel and ordered them to submit briefs on the subject. The Court then ordered submission of the report and deposition of Tom Danti - defendant’s expert witness whose testimony was allegedly being rebutted by recalling witness David Byrd on plaintiffs’ rebuttal.

The Court concludes that while it permitted Mr. Danti to testify on the towing issue in this matter, and while, in a most general sense his report allowed for same, it really does not support the argument that plaintiffs should have been prepared for same. In addition, while defense counsel correctly represented to the Court that the subject of towing was covered in the deposition of Mr. Danti, it was not covered in such a way so as to alert plaintiffs to the possibility of the testimony he offered.

The Court also finds that, while in a most general sense, plaintiffs have the burden of proving their case, this particular testimony was, also in a general sense, covered. It is the particular testimony of Mr. Danti, permitted by the Court, to which this rebuttal testimony is addressed.

A review of all the pertinent materials also causes this Court to conclude that Mr. Byrd's testimony on what he did was not expert testimony, but what he would or would not have done, and why, certainly is.

Therefore, and the Court being otherwise fully advised in the premises, it is hereby **ORDERED AND ADJUDGED** that the Court finds Mr. Byrd's testimony on rebuttal to be expert testimony, but will allow same.

DONE AND ORDERED in Chambers at Miami, Florida, this 7th day of July, 2011.

/s/Stephen T. Brown
STEPHEN T. BROWN
CHIEF UNITED STATES MAGISTRATE JUDGE

cc: Counsel of record