STATE OF NORTH CAROLINA

MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
15 CVS 14745 (Master File)

CRESCENT UNIVERSITY CITY VENTURE, LLC,

Plaintiff,

v.

AP ATLANTIC, INC. d/b/a ADOLFSON & PETERSON CONSTRUCTION,

Defendant,

v.

MADISON CONSTRUCTION GROUP, INC.; TRUSSWAY MANUFACTURING, INC.; T. A. KAISER HEATING & AIR, INC.; SEARS CONTRACT, INC.; MACEDO CONTRACTING CO.; WHALEYS DRYWALL, LLC; STALLINGS DRYWALL, LLC; MAYNOR PI, INC.; MATUTE DRYWALL, INC.; INTERIOR DISTRIBUTORS, A DIVISION OF ALLIED BUILDING PRODUCTS, CORP.; MANUEL BUILDING CONTRACTORS, LLC; EAGLES FRAMING COMPANY, INC.; DIAZ CARPENTRY, INC.; SOCORRO CASTILLE MONTLE; and GUERRERO CONSTRUCTION PRO, INC.

Third-Party Defendants.

ORDER ON BCR 10.9 SUMMARY, MOTION TO STAY CASE MANAGEMENT DEADLINES AND FOR CASE MANAGEMENT CONFERENCE, MOTION TO STRIKE EXPERT DESIGNATION, AND MOTION TO STRIKE EXPERT REPORT AND VIDEOS

MADISON CONSTRUCTION GROUP, INC., Third-Party Plaintiff, v. MANUEL BUILDING CONTRACTORS, LLC, Fourth-Party Defendant.	
CRESCENT UNIVERSITY CITY VENTURE, LLC, Plaintiff, v. ADOLFSON & PETERSON, INC., Defendant.	16 CVS 14844 (Related Case)
CRESCENT UNIVERSITY CITY VENTURE, LLC, Plaintiff, v. TRUSSWAY MANUFACTURING, INC.; and TRUSSWAY MANUFACTURING, LLC, Defendants.	18 CVS 1642 (Related Case)

1. **THIS MATTER** is before the Court upon (i) Defendant and Third-Party Defendant Trussway Manufacturing, LLC's ("Trussway") February 27, 2019 Business Court Rule ("BCR") 10.9 Summary; (ii) Trussway's Motion to Stay Case

Management Deadlines and for Case Management Conference (the "Motion to Stay"); (iii) Plaintiff Crescent University City Venture, LLC's ("Crescent") Motion to Strike Expert Designation (the "Motion to Strike Designations"); and (iv) Crescent's Motion to Strike Trussway Manufacturing, LLC f/k/a Trussway Manufacturing, Inc.'s Expert Report and Videos (the "Motion to Strike Report and Videos") (together, with the other motions and BCR 10.9 Summary, the "Pending Motions and Summary") in the above-captioned case.

2. On February 12, 2018, Crescent filed a complaint containing a single negligence claim against Trussway and began the Mecklenburg County action bearing the filing number 18 CVS 1642 (the "Trussway Action"). The Trussway action shares common issues of law and fact with the previously consolidated Mecklenburg County actions pending before this Court and bearing the filing numbers 15 CVS 14745 (the "Lead Action") and 16 CVS 14844 (the "Crescent Action"). *Crescent Univ. City Venture, LLC v. Trussway Mfg., Inc.*, 2018 NCBC LEXIS 74, at *12–13 (N.C. Super. Ct. July 16, 2018).

3. On July 16, 2018, upon Crescent's motion, this Court consolidated the Trussway Action with the Lead Action and the Crescent Action (collectively, the "Consolidated Action"). Although discovery in the Lead and Crescent Actions had closed, the Court concluded that consolidation would save the parties undue expense, promote judicial economy, and lessen the risk of Trussway, and potentially other parties, suffering inconsistent verdicts at trial. *Id.* The Court's decision to consolidate was also based upon Trussway's concession that consolidation was the

least prejudicial option available to the Court from Trussway's perspective. *Id.* at *13. As part of its order consolidating the cases, the Court ordered that the Trussway Action would be subject to the Court's September 20, 2016 Case Management Order (the "Case Management Order"), and all subsequent amendments to the Case Management Order, entered in the Lead Action. *Id.* at *15.

4. On August 29, 2018, in an order and opinion concerning further discovery in the Consolidated Action, the Court also concluded that although the Trussway, Lead, and Crescent actions were consolidated, the Trussway action was a distinct suit and the North Carolina Rules of Civil Procedure provided the parties to that suit with discovery rights. *Crescent Univ. City Venture, LLC v. AP Atl., Inc.*, 2018 NCBC LEXIS 92, at *9 (N.C. Super. Ct. Aug. 29, 2018). Consequently, the Court ordered that Crescent would have through and including August 31, 2018 to serve (i) supplemental discovery responses related to damages it sought from Trussway and (ii) supplemental expert reports regarding its negligence claim against Trussway. *Id.* at *10. The Court further ordered the parties to the Consolidated Action to meet, confer, and file a status report by September 7, 2018 regarding further discovery deadlines needed in the Trussway Action. *Id.* The Court made clear that all discovery allowed as to the Trussway Action would be subject to the Court's discretionary powers under Rule 42(a) and Rule 26 and that the Court would use those discretionary powers to resolve the discovery in the Trussway Action in a timely, efficient, and cost-effective manner. *Id.* at *9.[1]

[1] The Court's August 29, 2018 decision also made clear that discovery in the Lead and Crescent Actions was closed and that any discovery conducted regarding the Trussway Action

5. Following the filing of the parties' September 7, 2018 joint report and a September 19, 2018 hearing on the matters discussed therein, the Court entered an order concluding that good cause existed to amend the Case Management Order for the limited purpose of facilitating discovery on Crescent's negligence claim in the Trussway Action (the "September 2018 Order). The September 2018 Order contained several pertinent provisions.

6. First, based upon the written and oral representations of counsel, the Court noted that it appeared highly likely that some, if not all, parties to the Consolidated Action anticipated filing supplemental expert reports in response to Crescent's service of its August 31, 2018 expert report. (Am. Order Amending Case Management Order ¶ 5 [hereinafter "Order Am. CMO"], ECF No. 497.) The Court therefore set out the following schedule to accommodate the forthcoming responsive reports:

a. All parties were allowed through and including November 19, 2018 to conduct depositions of Crescent's experts with respect to Crescent's August 31, 2018 report. (Order Am. CMO ¶ 6(b).)

b. Trussway was allowed through and including December 19, 2018 to serve supplemental expert reports responding to Crescent's August 31, 2018 report. (Order Am. CMO ¶ 6(c).)

c. All other parties to the Consolidated Action were allowed through and including February 4, 2019 to serve supplemental export reports

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would not be part of the record in the Lead and Crescent Actions for purposes of the summary judgment motions pending before the Court in those actions. *Crescent Univ. City Venture, LLC*, 2018 NCBC LEXIS 92, at *10.

responding to Crescent or Trussway's supplemental reports. (Order Am. CMO ¶ 6(d).)

d. All parties would be allowed through March 6, 2019 to serve supplemental expert reports responsive to any expert report critical of that party's conduct that was submitted in relation to the February 4, 2019 deadline. (Order Am. CMO ¶ 6(e).)

e. All parties to the Consolidated Action would be allowed through and including April 22, 2019 to conduct depositions of any other party's experts with respect to all supplemental expert reports except for Crescent's August 31, 2018 report. (Order Am. CMO ¶ 6(f).)

7. Second, the Court provided that the parties to the Consolidated Action would have through and including February 19, 2019 to complete any additional discovery relating to Crescent's August 31, 2018 supplemental discovery responses concerning damages. (Order Am. CMO ¶ 6(g).)

8. Third, the Court ordered the parties to "meet and confer as soon as possible about any additional fact discovery made necessary by Crescent's negligence claim in the Trussway Action . . . and promptly raise any dispute concerning the propriety and scope of any such discovery to the Court, after all reasonable efforts at resolution [had] been exhausted, through" BCR 10.9. (Order Am. CMO ¶ 6(j).)

9. Finally, the Court concluded by emphasizing that it expected "the parties to give priority to this matter and comply with the deadlines set forth in [the September

2018 Order]" and noted that it would "not consider extending these deadlines absent compelling good cause." (Order Am. CMO ¶ 6(k).)

10. Trussway now, through its Motion to Stay and BCR 10.9 Summary, asks the Court to stay the case management deadlines remaining in this action and convene a status conference to resolve disputes over the scope of permissible discovery. In support of these requests, Trussway details a dispute regarding the scope of fact discovery between itself, Crescent, and Defendants AP Atlantic Inc. and Adolfson & Peterson, Inc. (together, the "AP Parties"). Trussway also contends that its efforts to conduct discovery in accordance with the September 2018 Order have been frustrated by Crescent's filing of the Motion to Strike Designations and Motion to Strike Report and Videos.

11. Crescent opposes Trussway's Motion to Stay by arguing that Trussway has not demonstrated the compelling good cause required to achieve an alteration of case management deadlines. In responding to Trussway's BCR 10.9 Summary, Crescent contends that is has appropriately responded to Trussway's interrogatories and requests for production served on November 20, 2018 (the "Discovery Requests"). Crescent also argues that the Court should grant its Motion to Strike Designations and Motion to Strike Report and Videos due to Trussway's failure to comply with the Case Management Order's limitations on expert witnesses and the case management deadlines concerning expert discovery.

12. The Court held a hearing on the Pending Motions and Summary on March 19, 2019, at which all parties appearing in the Consolidated Action were represented by counsel.

13. After reviewing the briefs and other written statements in support of and in opposition to the Pending Motions and Summary and hearing the arguments of counsel at the March 19, 2019 hearing, the Court denies Trussway's Motion to Stay, denies in part and grants in part the relief requested in Trussway's BCR 10.9 Summary, and grants Crescent's Motion to Strike Designations and Motion to Strike Report and Videos.

14. The manner in which Trussway proceeded with discovery in this case failed to comply with the Court's orders in several ways.

15. To begin with, although Trussway clearly believed that additional fact discovery was necessary in the Trussway Action, Trussway did not meet and confer with any other party regarding the scope of fact discovery nor submit any dispute to the Court through BCR 10.9 until approximately five months after the Court's September 2018 Order requiring the parties to "meet and confer as soon as possible" and after the February 19, 2019 deadline for limited fact discovery in the September 2018 Order had passed. (Order Am. CMO ¶ 6(j).)

16. Instead, Trussway engaged in written discovery from October 2018 through January 2019. Despite receiving informal objections from the AP Parties regarding the scope of its discovery as early as October 2018, and despite taking issue with the sufficiency of productions it received in late October 2018 in response to a subpoena

served on Crescent's expert engineering firm, Trussway did not attempt to meet and confer with opposing counsel pursuant to BCR 10.9 until February 12, 2019, did not raise any issue with the Court concerning additional fact discovery in the Trussway Action until February 19, 2019, and did not submit a BCR 10.9 Summary to the Court until February 27, 2019, eight days after fact discovery had closed.

17. When asked at the March 19, 2019 hearing why Trussway failed to promptly raise anticipated disputes concerning the propriety and scope of fact discovery, counsel for Trussway gave unsatisfactory answers that fell far short of compelling good cause. Trussway has also failed to provide satisfactory answers for why, as deadlines for expert discovery and further fact discovery on Crescent's damages loomed and then passed, Trussway did not alert the Court to the parties' burgeoning disputes over Trussway's requested discovery nor even inform the Court that Trussway believed further fact discovery was necessary and that new deadlines would be required in relation to that discovery. Had Trussway treated this matter as a priority—as it was ordered to—Trussway would likely have been able to request some relief short of a complete stay of case management deadlines. Trussway did not do so, and the relief it now seeks carries a significant risk of delaying the remaining discovery process.

18. In light of Trussway's failure to show compelling good cause and to comply with the Court's September 2018 Order, the Court will deny Trussway's Motion to Stay and deny the relief requested by Trussway's BCR 10.9 Summary, with the exception that Crescent and the AP Parties will be required to fully respond to

Trussway's Discovery Requests consistent with and confirming their representations at the March 19, 2019 hearing concerning whether they possess non-privileged documents responsive to those Requests that have not been previously produced. *See* BCR 10.4(a) ("Each party is responsible for ensuring that it can complete discovery within the time period in the Case Management Order. . . . Absent extraordinary cause, a motion that seeks to extend the discovery period or to take discovery beyond the limits of the Case Management Order must be made before the discovery deadline."); BCR 10.4(d) ("If the parties agree to conduct discovery after the discovery deadlines, but the parties do not seek an order that allows the discovery, then the Court will not entertain a motion to compel or a motion for sanctions in connection with that discovery."); *see also* N.C. R. Civ. P. 42(a) ("When actions involving a common question of law or fact are pending in one division of the court, the judge may . . . order all the actions consolidated; and he may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."); *Bohn v. Black*, 2018 NCBC LEXIS 50, at *10 (N.C. Super. Ct. May 16, 2018) (denying request to reopen fact discovery and explaining that parties have a right to expect that case management deadlines will be honored).

19. Next, Trussway's expert disclosures made on December 19, 2018 are not compatible with the Case Management Order governing the Consolidated Action.

20. On December 19, 2018, Trussway served all parties with its supplemental expert reports as required under the September 2018 Order. In addition to these reports, however, Trussway also designated a total of fourteen witnesses which it

represented might offer expert testimony under North Carolina Rules of Evidence 702, 703, and 705. Three of these experts were retained by Trussway and provided the written reports Trussway served. The remainder were labeled as "Trussway Lay Experts Not Providing Reports" or "Non-Trussway Lay Experts Not Providing Reports." In response, Crescent filed its Motion to Strike Designations, arguing that Trussway's designations violated the Case Management Order's three-expert limit and requesting that the Court strike the additional experts designated by Trussway.

21. In responding to Crescent's Motion to Strike Designations, Trussway argued in briefing that there was no limit to the number of permitted experts in the Trussway Action and that the majority of its fourteen expert witnesses were fact/expert hybrid witnesses, for which the Case Management Order likewise provided no limit. At the March 19, 2019 hearing, counsel for Trussway attempted to clarify Trussway's position, stating that Trussway's designations included certain individuals Trussway did not intend to call but thought other parties may wish to examine. Counsel for Trussway also asserted that Trussway had not previously raised any issue concerning fact/expert hybrid witnesses because Trussway did not believe its designation of these witnesses would be contested. The Court finds these arguments and explanations lacking.

22. The Court's orders in this case could not have been clearer. In consolidating the Trussway Action with the Lead and Crescent Actions, the Court ordered that the Trussway Action would be subject to the Case Management Order entered in the Lead Action and all subsequent amendments to that order. *Crescent Univ. City*

Venture, LLC, 2018 NCBC LEXIS 74, at *15. The Case Management Order expressly states that "[e]ach party shall be permitted to designate, if necessary, up to three (3) expert witnesses, without prejudice to any party's right to show for good cause that a fourth expert witness is needed." (Case Management Order 23, ECF No. 94.) The September 2018 Order stated that, except for the provisions therein, "the Case Management Order entered by this Court on September 20, 2016 [would] not be affected by the entry of [the September 2018 Order]." (Order Am. CMO ¶ 6(l).) Indeed, in the briefing and argument leading to the entry of the September 2018 Order, no party requested that the Court expand the number of expert witnesses a party could call at trial, and all briefing and argument was focused on supplemental expert reports, which the Court, and apparently all parties except Trussway, understood would be prepared by experts identified within the Case Management Order's three-expert limit.

23. In the face of these clear directives, Trussway's arguments that "the CMO applicable to the Trussway Action has no *three*-expert limit" and that the Case Management Order distinguishes between retained experts, for which there is a limit, and nonretained experts, for which no limit exists, (Trussway Mfg., LLC's Resp. Opp'n Crescent Univ. City Venture, LLC's Mot. Strike Expert Designation 3, ECF No. 507), are nonsensical and unsupported. Trussway's apparent confusion over the expert limitations in the Trussway Action, and its failure to seek court clarification prior to Crescent's motion, is particularly bewildering considering that an identical dispute arose in November 2017 in the Lead and Crescent Actions when Trussway

attempted to designate six expert witnesses, including four lay witnesses that Trussway forecast would offer expert opinions, and Crescent objected on grounds identical to those here. (*See generally* Crescent Univ. City Venture, LLC's Mot. Strike Expert Designation, ECF No. 288; Trussway Mfg., LLC's Resp. Crescent Univ. City Venture, LLC's Mot. Strike Expert Designation, ECF No. 445.) After making the exact same argument it makes now, Trussway, in apparent recognition of the strength of Crescent's position, de-designated three of its four hybrid witnesses and proceeded forward with three designated experts, as permitted under the Case Management Order. (Trussway Mfg., LLC's Suppl. Resp. Crescent Univ. City Venture, LLC's Mot. Strike Expert Designation 2–3, ECF No. 448.) Given this history, regardless of Trussway's current confidence in its position on witness limits, Trussway certainly should have been aware that Crescent would object to Trussway's December 19, 2018 designations. Trussway's surprise at Crescent's Motion to Strike Designations is thus unwarranted, and Trussway has failed to offer any persuasive explanation for its failure to timely seek the Court's guidance concerning the expert witness limits under the Case Management Order in light of its apparent uncertainty.

24. For these reasons, and consistent with the Case Management Order and the Court's oral ruling at the March 19, 2019 hearing, Trussway (and all other parties to these proceedings) shall be allowed, as necessary, to present no more than three witnesses at trial offering expert testimony under North Carolina Rules of Evidence 702, 703, and 705.

25. Lastly, Trussway failed to fully comply with the additional deadlines for expert discovery set out in the September 2018 Order.

26. In accordance with the September 2018 Order's deadlines, Trussway served its supplemental expert reports on December 19, 2018. These reports included a report by Mr. Kirk Grundahl ("Mr. Grundahl"), one of Trussway's retained experts. Mr. Grundahl's deposition was noticed for February 11, 2019.

27. The day before Mr. Grundahl's deposition, Trussway served on Crescent a second report prepared by Mr. Grundahl (the "New Grundahl Report"). This report detailed the results of truss load tests conducted by Mr. Grundahl between January 25, 2019 and February 8, 2019. The next morning, shortly before Mr. Grundahl's deposition was scheduled to begin, Trussway produced flash drives containing approximately fourteen hours of videos documenting Mr. Grundahl's truss load tests (the "Videos," and with the New Grundahl Report, the "New Grundahl Report and Videos"). Crescent moved the Court to strike the New Grundahl Report and Videos under North Carolina Rule of Civil Procedure 37 that same day, requesting that the Court exclude from trial the Videos and any opinions based upon the New Grundahl Report.

28. In response to Crescent's motion, Trussway argues that the New Grundahl Report is not a "new" expert report because it contains no further expert opinions. Instead, Trussway asserts the Report and Videos simply memorialize tests and data that support Mr. Grundahl's previously disclosed opinions. As a result, Trussway contends that the late disclosure of the New Grundahl Report and Videos does not

violate its December 19, 2018 deadline for supplemental expert reports. In the alternative, Trussway requests an amendment to the case management deadlines to allow for its service of the New Grundahl Report and Videos.

29. The Court is not persuaded by Trussway's arguments. Despite Trussway's protests that the New Grundahl Report should not be considered a new report, Trussway concedes that the contents of the New Grundahl Report and Videos were produced after the December 19, 2018 deadline, and further admits that the contents of the Report and Videos are meant to support Mr. Grundahl's opinions and rebut the opinions of Crescent's experts. Indeed, Trussway characterizes the facts contained in the Report and Videos as "critical facts" and "key evidence" in its case. (Trussway Mfg., LLC's Resp. Opp'n Crescent Univ. City Venture, LLC's Mot. Strike Expert Report and Videos 15 [hereinafter "Trussway Resp. Mot. Strike Report and Videos"], ECF No. 534.) Trussway's assertion that it did not have to provide this information by the deadline for its supplemental expert reports and was instead free to disclose it on the eve and morning of Mr. Grundahl's deposition finds no support in the Case Management Order, the amendments to the Case Management Order, the Business Court Rules, or the North Carolina Rules of Civil Procedure. (Order Am. CMO ¶ 6(c) (permitting Trussway "through and including December 19, 2018 to serve supplemental expert reports")); *see also* N.C. R. Civ. P. 26(b)(4)(a)(2) (stating that an expert report "must contain . . . the facts or data considered by the witness in forming" his or her opinions). The New Grundahl Report and Videos are clearly expert discovery materials and were produced after the deadline by which Trussway was

required to produce such materials. This last-minute production deprived Crescent of a meaningful opportunity to depose Mr. Grundahl on the contents of the New Grundahl Report and Videos.

30. The Court will not alter the case management deadlines to afford Trussway its requested relief. The only justifications Trussway has provided for not producing the New Grundahl Report and Videos by the December 19, 2018 deadline imposed by the Court are that "competing schedules and [an] intervening holiday" prevented Mr. Grundahl from reviewing the transcript from the depositions of Crescent's experts until after December 19, 2018 and that performing the documented tests was a complicated, time-consuming, and intricate process. Neither set of reasons excuses Trussway from complying with court-ordered deadlines or explains Trussway's failure to seek a timely extension of those deadlines in light of Mr. Grundahl's schedule and contemplated work. The Court thus concludes, in the exercise of its discretion, that Trussway has not shown compelling good cause to extend the current case management deadlines to allow for the production of the New Grundahl Report and Videos.

31. For these reasons, the Court will exercise its discretion to grant Crescent's Motion to Strike Report and Videos, strike the New Grundahl Report and Videos, and exclude testimony based on the contents of the New Grundahl Report and Videos, as well as the Videos themselves, from trial. *See* N.C. R. Civ. P. 37(b)(2)(b) ("If a party . . . fails to obey an order to provide . . . discovery . . . [the judge] may make . . . [a]n order . . . prohibiting the party from introducing designated matters in

evidence."); *Williams v. United Cmty. Bank*, 218 N.C. App. 361, 372–73, 724 S.E.2d 543, 551–52 (2012) (affirming trial court's decision under Rule 37 to strike expert report that was untimely under case management order); *In re Pedestrian Walkway Failure*, 173 N.C. App. 254, 264–65, 618 S.E.2d 796, 803–04 (2005) (affirming trial court's enforcement of case management deadlines and exclusion of expert due to late disclosures); *Bohn*, 2018 NCBC LEXIS 50, at *10.

32. After considering its ability to also order Trussway to pay Crescent's reasonable expenses under Rule 37(b)(2), the Court finds awarding such expenses in the circumstances here would be unjust. Crescent did not request an award of its expenses, the discussion between the Court and the parties at the March 19, 2019 hearing did not raise the issue of such expenses, and, with the New Grundahl Report and Videos struck, Trussway's failure to comply with the Court's orders has been adequately remedied.

33. The Court understands that Trussway finds itself in a difficult position defending against Crescent's new negligence claim in the Trussway Action. That position does not, however, make Trussway's compliance with court-imposed deadlines optional. BCR 4.2(b) ("A Court order is required . . . if a party seeks to modify any discovery-related deadline that has been established by a Court order."). In the event any party believes that the Court's orders or the application of deadlines are unclear, that party should seek clarification from the Court promptly in a manner that complies with Rule 3.5 of the North Carolina Rules of Professional Conduct.

34. Unless the Court provides relief for good cause shown, every party in every lawsuit (consolidated or not) before this Court is expected to comply with the Court's orders, including all court-ordered case management deadlines. *See Bohn*, 2018 NCBC LEXIS 50, at *10. That is particularly so in this case, where (i) the Court and the parties exerted significant time and effort developing the discovery deadlines set by the September 2018 Order, (ii) the Court ordered the parties "to meet and confer as soon as possible" after the entry of the September 2018 Order about the propriety and scope of additional fact discovery, (iii) the Court specifically admonished the parties that it expected them to give "priority to this matter and comply with the deadlines set forth in [the September 2018 Order]," (iv) the Court expressly declared that it would "not consider extending these deadlines absent compelling good cause," and (v) the Court clearly stated that the provisions of the Case Management Order would not be affected, and thus remained in place, except to the extent they were altered by the September 2018 Order. Proceeding in the manner Trussway has here is contrary to the Court's orders and applicable Rules, is unfair to the other parties, does not garner the Court's sympathy, and will not provide a path to relief.

35. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** as follows:

a. Trussway's Motion to Stay is **DENIED**.

b. The relief requested by Trussway's BCR 10.9 Summary is **DENIED** except that Crescent and the AP Parties will be required to fully respond to Trussway's Discovery Requests consistent with and confirming their

representations at the March 19, 2019 hearing concerning whether they possess non-privileged documents responsive to those Requests that have not been previously produced. After compliance with this subparagraph, Crescent and the AP Parties will have no further obligations with respect to Trussway's Discovery Requests.

c. Crescent's Motion to Strike Designations is **GRANTED** as follows:

    i. Trussway shall be allowed to call Mr. Grundahl, Bradford Bright, and Al DeBonis as expert witnesses at trial, subject to properly made objections.

    ii. Trussway will not be allowed to elicit expert witness testimony pursuant to North Carolina Rules of Evidence 702, 703 and 705 from any other witness.

    iii. The Court will address properly made objections to lay opinion testimony at the appropriate time before or at trial.

d. Crescent's Motion to Strike Report and Videos is **GRANTED** as follows:

    i. The New Grundahl Report and Videos are struck from the record.

    ii. Testimony based upon the contents of the New Grundahl Report shall be excluded from trial.

    iii. The Videos, and testimony based upon the contents of the Videos, shall be excluded from trial.

SO ORDERED, this the 22nd day of March, 2019.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge