



# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
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TRANSAMERICA BUILDING  
COMPANY, INC.

Plaintiff/Counter Defendant

v.

OHIO SCHOOL FACILITIES  
COMMISSION, etc.

Defendant/Counter  
Plaintiff/Third-Party  
Plaintiff/Counter Defendant

v.

LEND LEASE (US) CONSTRUCTION,  
INC.

Third-Party Defendant/Counter  
Plaintiff/Fourth-Party Plaintiff

and

STEED HAMMOND PAUL INC., etc.

Third-Party  
Defendant/Fourth-Party Plaintiff

v.

BERARDI PARTNERS, INC., et al.

Fourth-Party Defendants

Case No. 2013-00349

Referee Samuel Wampler

ORDER OF THE REFEREE

FILED  
COURT OF CLAIMS  
OF OHIO  
2015 MAY 15 PM 1:29

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Case No. 2013-00349

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ORDER

On May 8, 2015, defendant Ohio School Facilities Commission ("OSFC") filed its Motion In Limine ("Motion") along with Exhibit A. On May 12, 2015, plaintiff TransAmerica Building Company, Inc. ("TA") filed its Memorandum in Opposition ("Opposition") to the Motion along with Exhibits A and B. Trial is currently set for *May 18, 2015*.

L.C.C.R. 4(C) provides in relevant part as follows:

If the motion requires the consideration of facts not appearing of record, the movant shall also serve and file copies of all the evidence which supports his motion.

OSFC attached a copy of the proposed exhibit it seeks to exclude at trial i.e. a color coded demonstrative exhibit setting forth certain discrete damages it contends will be claimed by TA at trial. However, attaching a copy of an exhibit without authentication by affidavit is not the submission of "evidence." Plaintiff TA also attached two exhibits to its Opposition, neither of which have been authenticated. Opposition to a motion has the same requirement for submission of evidence to support a consideration of facts not appearing of record. L.C.C.R. 4(C).

Traditionally, in limine motions are most valuable when a jury may potentially be prejudiced by hearing testimony that is likely to be inadmissible. As the Supreme Court of Ohio has observed:

Our inquiry commences with an examination of the purpose and effect of a motion in limine. A "motion in limine" is defined in Black's Law Dictionary (5 Ed. 1979) 914, as "[a] written motion which is usually made before or after the beginning of a jury trial for a protective order against prejudicial questions and statements \* \* \* to avoid injection into trial of matters which are irrelevant, inadmissible and prejudicial[,] and granting of [the] motion is not a ruling on evidence and, where properly drawn, granting of [the] motion cannot be error.

*State v. Grubb*, 28 Ohio St. 3d 199, 200-201 (1986).

Here, there is no jury nor is there a risk of prejudice arising from evidence that may or may not be admissible. Admissibility evidence will be determined at trial and if proffered

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ORDER

evidence is properly objected to and deemed inadmissible it will not be considered when deciding the case.

Accordingly, defendant OSFC's Motion is DENIED.

*for Gary Peterson*  
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SAMUEL WAMPLER  
Referee

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