

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RONALD W. COOKE,

Plaintiff,

vs.

COBB INTERNATIONAL, INC. D/B/A

ROTORWAY INTERNATIONAL,

Defendant.

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CIVIL ACTION NO. H-04-3921

ORDER

In an opinion entered April 3, 2006 (Dkt. 31), this court denied plaintiff's motion for summary judgment (Dkt. 22), and defendant's motion for summary judgment (Dkt. 24). Defendant has filed a motion for reconsideration and clarification (Dkt. 33), asserting that the court did not consider his cross-motion for summary judgment on negligence *per se* and that the court should reconsider its decision and grant defendant summary judgment based on plaintiff's failure to meet his burden of proof.¹

In response to plaintiff's motion for summary judgment, defendant filed a document titled "Defendant's Opposition to Plaintiff's Motion for Summary Judgment Regarding Liability" (Dkt. 26). That document was not titled "cross-motion" and was not docketed as such. Nonetheless, the court considered the substance of that motion in rendering its April

¹ Defendant also states that the parties agreed in January that this case would be tried to the bench. The amended scheduling order entered March 8, 2006 at the parties' request clearly stated that this case was set for a jury trial. No party objected that this was an error. In any event, the court has issued a second amended scheduling order setting the case for a bench trial on June 19, 2006.

3, 2006 decision.² To the extent clarification is necessary, the court denies defendant's cross-motion for summary judgment.

The court denies defendant's motion for reconsideration. This case turns on the mechanics of a helicopter engine, an area in which the court requires expert assistance. The court, as finder of fact in the bench trial, will weigh the credibility of the witnesses and determine the weight, if any, to be afforded expert opinions.³ It is therefore

ORDERED that defendant's motion for clarification and reconsideration (Dkt. 33) is granted in part and denied in part as stated above.

Signed at Houston, Texas on April 10, 2006.



Stephen Wm Smith
United States Magistrate Judge

² See Opinion on Summary Judgment, at 4-6.

³ While defendant argues that plaintiff's expert opinion is speculative and not supported by evidence, defendant did not file a motion to strike plaintiff's expert testimony.