

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

HANSEN-RICE, INC., ) Case No. CV-04-101-S-BLW  
                          )  
                          )  
Plaintiff,          ) **MEMORANDUM DECISION**  
                          ) **AND ORDER**  
                          )  
v.                    )  
                          )  
CELOTEX CORPORATION, )  
                          )  
                          )  
Defendant.          ) \_\_\_\_\_  
                          )

**INTRODUCTION**

The Court has before it a motion to bifurcate trial. The Court heard oral argument on August 11, 2006, and took the motion under advisement. For the reasons expressed below, the Court will grant the motion in part. The first phase of the trial will resolve defect issues; the second phase will resolve contract/warranty liability and damage issues along with punitive damage liability issues; and the third phase will resolve punitive damage amount issues. The Court's reasoning is expressed in more detail below.

**ANALYSIS**

As this Court has previously held, plaintiff Hansen-Rice has the burden of showing that the insulation made by defendant Celotex was defective and that

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Celotex was the cause of that defect. Those are threshold issues in the case, and their resolution could render unnecessary further proceedings on other issues. Rule 42(b) “confers broad discretion upon the district court to bifurcate a trial, thereby deferring costly and possibly unnecessary proceedings pending resolution of potentially dispositive preliminary issues.” *Zivkovic v. Southern California Edison Co.*, 302 F.3d 1080, 1088 (9th Cir. 2002).

Here, if the jury finds no defect – or finds that Celotex did not cause the defect – there is no need to proceed further. Accordingly, the Court will use its broad discretion under Rule 42(b) to try first the defect issues.

If the jury finds a defect, and finds that Celotex caused the defect, the same jury will then hear the second phase of the trial. This will consist of all liability issues, including whether Celotex is liable for punitive damages.

Celotex seeks to separate the punitive damage liability issue from other liability issues, but they are too intertwined to accommodate such a separation. This second phase of the trial will also include evidence relating to damages on the breach of contract/warranty claims. However, it will not include evidence concerning the amount of punitive damages. That issue will be tried in the third phase of the case, if the jury finds Celotex liable for punitive damages in the second phase. The three phases will be tried to the same jury, sequentially.

**ORDER**

In accordance with the Memorandum Decision set forth above,

NOW THEREFORE IT IS HEREBY ORDERED, that the motion to

bifurcate (Docket No. 106) is GRANTED IN PART AND DENIED IN PART as set forth above.

**DATED: August 22, 2006**



B. Lynn Winmill

B. LYNN WINMILL  
Chief Judge  
United States District Court