

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: February 25, 2022)

CASHMAN EQUIPMENT CORPORATION, :  
INC., :

*Plaintiff,* :

v. :

C.A. No. PB-2011-2488

CARDI CORPORATION, INC.; SAFECO :  
INSURANCE CO., INC.; RT GROUP, INC.; :  
JAMES RUSSELL; STEVEN OTTEN; CARDI :  
MATERIALS, LLC; SPECIALTY DIVING :  
SERVICES, INC.; HALEY & ALDRICH, INC. :

*Defendants,* :

v. :

WESTERN SURETY COMPANY; RHODE :  
ISLAND DEPARTMENT OF :  
TRANSPORTATION, :

*Third-Party Defendants.* :

**DECISION**

**TAFT-CARTER, J.** Before the Court for decision is Plaintiff Cashman Equipment Corporation, Inc.'s (Cashman) Motion to Modify this Court's Order of January 24, 2022. Defendants Cardi Corporation, Inc. (Cardi) and Safeco Insurance Company, Inc. (Safeco) have filed an Objection to Cashman's Motion. Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

**I**

**Facts and Travel**

This case concerns the replacement of the Sakonnet River Bridge, which spans the Sakonnet River between the Towns of Tiverton and Portsmouth, Rhode Island (Project). *See Cashman Equipment Corp., Inc. v. Cardi Corp., Inc.*, No. PB-2011-2488, 2021 WL 4398192, at

\*1 (R.I. Super. Sept. 20, 2021). Cashman, “a subcontractor on the Project, filed an action for breach of contract and related claims against the contractor, Cardi . . . and Safeco . . . in May 2011.” *Id.* Cardi responded by filing multiple counterclaims against Cashman, including a counterclaim for breach of contract. *Id.*

In October 2019, Cashman and Cardi proceeded to a non-jury trial on their “competing contract claims stemming from the provision of engineering plans for the marine cofferdams at Piers 4, 5, and 6” of the Project “and the deviation from those plans.”<sup>1</sup> *Id.* at \*20. The trial proceeded for forty-three days, through February 2020, and the evidence at trial included hundreds of exhibits and testimony from eighteen witnesses. *Id.* at \*1. Accordingly, in the interests of judicial economy, on February 5, 2020 this Court bifurcated the parties’ marine cofferdam claims and determined that the issue of damages would only be tried after the issue of liability was resolved. *Id.* Cashman and Cardi’s “Type F” concrete claims had previously been bifurcated from the marine cofferdam claims. *Id.* at \*1 n.3.

On September 20, 2021, this Court issued a decision on the liability phase of the marine cofferdam trial. *Id.* at \*1. In brief, the Subcontract Agreement (Subcontract) between Cashman and Cardi required Cashman to install the Project’s marine cofferdams. *Id.* at \*6. Cardi alleged that Cashman materially breached the Subcontract by deviating from the agreed-upon plans “in a way that affected the structural components of the cofferdam” and argued that Cashman’s deviations caused Cardi to incur damages in the form of repair costs and delays. *Id.* at \*21, 30. In turn, Cashman argued that Cardi committed the first material breach by providing Cashman with

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<sup>1</sup> “A marine cofferdam is a temporary, watertight enclosure built in the water for specialized construction.” *Cashman Equipment Corp., Inc. v. Cardi Corp., Inc.*, No. PB-2011-2488, 2021 WL 4398192, at \*2 (R.I. Super. Sept. 20, 2021) (citations omitted).

defective cofferdam plans, and that the defective plans were “the cause-in-fact and sole proximate cause of the need for repairs[.]” *Id.* at \*29, 31 (quoting Cashman’s Post-Trial Br. 260).

Due to the technically complex nature of the marine cofferdams, at trial both Cashman and Cardi employed expert witnesses to support their competing theories of causation. *See id.* at \*31-34. Cashman presented the expert testimony of William Konicki (Mr. Konicki), a principal at Simpson Gumpertz and Heger (SGH), who opined that the cofferdam plans were defective because they did not comply with the “applicable design codes” incorporated into the Project’s contract documents. *Id.* at \*12 n.19, 31. Cardi “view[ed] a defective design, as related to causation, in terms of failure or collapse of the cofferdam” and presented the expert opinion of George Tamaro (Mr. Tamaro) that “the as-designed cofferdams would not have failed.” *Id.* at \*1, 31, 34.

Ultimately, this Court found that Cashman materially breached the Subcontract “by constructing marine cofferdams that deviated from the plans furnished to it by Cardi and approved by” the Rhode Island Department of Transportation (RIDOT), that these deviations occurred without the required “approval or consent” of RIDOT, and that “Cashman’s unauthorized deviations . . . were the primary or substantial cause of Cardi’s damages associated with the repair of the cofferdams at Piers 4, 5, and 6.”<sup>2</sup> *Id.* at \*28, 34. The Court’s findings rested on “sufficient credible evidence” that Cashman’s “deviations necessitated repairs from an engineering standpoint” and that the “hanger bracket deviations compromised the structural integrity of the cofferdams.” *Id.* at \*34. “Even if the repairs also addressed purported design issues, a review of the trial evidence makes clear that the remedial work occurred due to Cashman’s material breach of the Subcontract in deviating from the plans.” *Id.*

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<sup>2</sup> The Court also noted the “causal connection between Cashman’s refusal to remove the cofferdam forms, as was prescribed under the Subcontract, . . . and Cardi’s costs relating to that removal[.]” *Cashman Equipment Corp., Inc.*, 2021 WL 4398192, at \*34 n.38 (citations omitted).

The Court also noted the existence of several issues that affected Mr. Konicki's credibility as an expert witness. Cashman had initially retained Mr. Konicki during the "peer review process" that began in October 2010 after Cardi learned of Cashman's alterations to the marine cofferdams' hanger brackets,<sup>3</sup> and the evidence of Cashman's influence on Mr. Konicki during the peer review process led this Court to conclude that "Mr. Konicki was aligned with Cashman and his testimony relating to the independence of his analysis is of little weight." *Id.* at \*12, 32. In addition, while SGH opined during the peer review process that "design issues rendered the cofferdam at risk of full or partial collapse[,]" the "bounded analysis" Mr. Konicki presented at trial "produced a different conclusion, based on a different standard—compliance with applicable codes." *Id.* at \*32.

On December 22, 2021, Cashman and Third-Party Defendant Western Surety Company (Western) filed a Motion to Continue the Damages Phase of the Cofferdam Trial to May 2022. (Cashman and Western's Mot. Continue Damages Phase Cofferdam Trial and Type F Liability and Damages Trial to May 2022 1.) In part, Cashman and Western argued that—given this Court's findings in the September 2021 decision that Cashman's engineering expert, Mr. Konicki, lacked credibility—Cashman should be afforded the opportunity to obtain a replacement for Mr. Konicki. *Id.* According to Cashman and Western, at the cofferdam damages trial, Cashman intended to provide "expert testimony on the issue of mitigation by and through a yet to be retained replacement witness for Mr. Konicki." *Id.* at 4. Cardi and Safeco objected to the Motion to Continue and argued that expert testimony on the issue of mitigation would be outside the scope of Mr. Konicki's prior expert disclosures. *See* Obj. Cardi and Safeco to Cashman and Western's Mot. Postpone Cofferdam Damages Trial and Add Previously Undisclosed Expert Test. 2.

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<sup>3</sup> An "essential component" of the cofferdams, the "function of a hanger bracket is to support a load placed on it while the concrete sets." *Cashman Equipment Corp., Inc.*, 2021 WL 4398192, at \*3 (citations omitted).

Pursuant to an April 22, 2021 status conference, at the time of Cashman and Western’s Motion to Continue, the cofferdam damages trial was scheduled to begin on January 24, 2022 and the Type F trial was scheduled for May 2, 2022. *See id.* at 8.

At a hearing held on January 4, 2022, this Court granted Cashman and Western’s Motion to Continue and directed the parties to be ready for trial on both the cofferdam damages issue and the Type F claims on May 2, 2022. (Hr’g Tr. 20:6-10, Jan. 4, 2022.) The Court found that considerations of equity and fairness weighed in favor of allowing Cashman to replace Mr. Konicki with another expert and that delaying the cofferdam damage trial from January to May 2022 would not prejudice Cardi. *Id.* at 19:4-11, 20:3-5. The Court also stated that, to avoid dealing in hypotheticals, potential limitations on the scope of the replacement witness’s testimony should be addressed through motions *in limine*. *Id.* at 20:18-20, 22:7-14. On January 24, 2022, this Court entered an Order scheduling the damages phase of the cofferdam trial and the Type F liability and damages issues for trial on May 2, 2022; the Order also set a February 28, 2022 deadline for Cashman “to serve its replacement expert disclosures for Cofferdam Damages and Type F Liability and Damages.” (Order, filed Jan. 24, 2022 (Taft-Carter, J.) 1.)

On February 4, 2022, Cashman filed the present Motion to Modify the Court’s Order of January 24, 2022 and asked the Court to “postpone Cashman’s expert disclosure deadline to May 31, 2022, and the damages phase of the Cofferdam Trial and Type F Trial to the Fall of 2022.” (Pl. Cashman’s Mot. Modify Order 4.) Cardi and Safeco filed an Objection on February 11, 2022. (Obj. Cardi and Safeco to Cashman’s Mot. Postpone Trial 1.) This Court conducted a remote hearing on Cashman’s Motion on February 16, 2022.

## II

### Standard of Review

“‘[T]he management of a trial calendar is among the most difficult of all judicial assignments. . . . Consequently the widest discretion must be given to calendar justices and trial justices in carrying out this enormously difficult function[.]’” *Mills v. State Sales, Inc.*, 824 A.2d 461, 469 (R.I. 2003) (quoting *Boucher v. Galvin*, 571 A.2d 35, 37 (R.I. 1990)). The Rhode Island Supreme Court “will not disturb a trial justice’s decision to grant or deny a request for a continuance absent an abuse of discretion.” *Id.* (citing *Boucher*, 571 A.2d at 37).

Under Rule 16 of the Superior Court Rules of Civil Procedure, a pretrial order “when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.” Super. R. Civ. P. 16; *cf.* Fed. R. Civ. P. 16(e) (“The court may modify the order issued after a final pretrial conference only to prevent manifest injustice.”). “[T]he standard for modifying a final pretrial order is as high as it is to ensure everyone involved has sufficient incentive to fulfill the order’s dual purposes of encouraging self-editing and providing reasonably fair disclosure to the court and opposing parties alike of their real trial intentions.” *United States ex rel. Concilio De Salud Integral De Loiza, Inc. v. J.C. Remodeling, Inc.*, 962 F.3d 34, 40 (1st Cir. 2020) (quoting *Monfore v. Phillips*, 778 F.3d 849, 851 (10th Cir. 2015)).

## III

### Analysis

In support of its Motion to Modify this Court’s Order, Cashman cites to Rule 16(b)(4) of the Federal Rules of Civil Procedure, which provides that “[a] schedule may be modified only for good cause and with the judge’s consent.” Pl. Cashman’s Mot. Modify Order 3; Fed. R. Civ. P. 16(b)(4). Arguing that the “good cause” standard focuses more on the diligence of the moving

party than any prejudice to the party opponent, Cashman presents an Affidavit from Michael A. Kelly, Esq., outlining Cashman's efforts to obtain a replacement for Mr. Konicki. Pl. Cashman's Mot. Modify Order 3 (citing *Steir v. Girl Scouts of the USA*, 383 F.3d 7, 12 (1st Cir. 2004)); *id.* at Ex. 3. The Affidavit indicates that Cashman had difficulty locating an unconflicted expert qualified to testify in the damages phase of the cofferdam trial as well as the Type F trial. *Id.* at Ex. 3 ¶¶ 2-17. Eventually, two candidates were located: one who requires six months to prepare, and one who requires three months. *Id.* at Ex. 3 ¶¶ 13, 17. Cashman has since confirmed that it intends to hire the expert who can prepare within three months. (Hr'g Tr. 16:4-6, Feb. 16, 2022.) Accordingly, Cashman represents that it cannot comply with the February 28, 2022 expert disclosure deadline despite its best efforts and asks the Court to extend the deadline to May 31, 2022 and postpone the scheduled trials to the fall of 2022. Pl. Cashman's Mot. Modify Order 4; *id.* at Ex. 3 ¶ 18. The Motion also states that Cashman intends to present expert evidence on Cardi's mitigation of damages at the upcoming trial. *Id.* at 4.

In their Objection, Cardi and Safeco argue that this Court's decision to grant Cashman and Western's Motion to Continue was not an invitation to reopen the expert disclosure process and ask that the trials proceed as scheduled. (Obj. Cardi and Safeco to Cashman's Mot. Postpone Trial 2.) Incorporating their Objection to the December 2021 Motion to Continue by reference, Cardi and Safeco argue that Cashman's prior expert disclosures for Mr. Konicki did not address the issue of mitigation and cite multiple cases holding that replacement experts should not be permitted to offer opinions outside the disclosures of the preceding expert. *Id.* at 1-3. Accordingly, Cardi and Safeco ask this Court to issue a ruling on the proper scope of the replacement expert's opinions. *Id.* at 3. Substantively, Cardi and Safeco argue that any engineering expert testimony Cashman could offer would be immaterial to the issues of mitigation and damages because, at the time that

the cofferdams were repaired, Cashman never objected to Cardi's proposed repairs or claimed that more cost-effective repairs were possible. *Id.* at 4-5. Cardi and Safeco also assert that Cashman failed to act in a timely fashion to obtain a replacement expert and conclude by arguing that the trials could still begin as scheduled even if this Court decides to grant Cashman relief by extending the expert disclosure deadline. *Id.* at 6-9.

At the February 16, 2022 hearing, Cashman confirmed that it seeks to expand the scope of its previous expert disclosures. (Hr'g Tr. 6:11-14, Feb. 16, 2022.) In support of that request, Cashman argues that this Court's September 2021 Decision "changed the complexion of this litigation completely" by "adopting the failure analysis" of Cardi's expert, Mr. Tamaro. *Id.* at 4:24-5:10, 8:5-17. According to Cashman, that decision raised the "new issue" of "what exact repairs were necessary . . . for the cofferdam not to fail or even to ensure the cofferdam didn't fail," which differs materially from Mr. Konicki's theory that "all of the repairs that were to be done by Cardi were required . . . because . . . they didn't comply with the contract specifications[.]" *Id.* at 8:15-9:5. Cashman also asserts that the purpose of the new opinions would be "to show that Cardi could have mitigated its damages" by foregoing certain unnecessary repairs; argues that requiring a new expert to adhere to Mr. Konicki's opinions would be prejudicial; and represents that Cashman intends to retain an expert who can prepare within three months and opine on both cofferdam damages and the Type F claims. *Id.* at 13:16-25, 14:17-19, 16:4-6.

In response, Cardi argues that the September 2021 Decision did not raise any new issues because Cashman raised mitigation as an affirmative defense in 2011 and the possibility that this Court would adopt Mr. Tamaro's opinions over Mr. Konicki's was apparent years before the cofferdam trial began. *Id.* at 19:3-13. Cardi also notes that the issue of damages was not bifurcated until after the cofferdam trial began; argues that cases routinely change during trial and that parties



need to be prepared; and contends that Cashman has already had a full and fair opportunity to develop expert evidence on mitigation but chose not to do so. *Id.* at 20:6-21:7.

Having already ruled that Cashman may obtain a new expert to replace Mr. Konicki, this Court will grant Cashman a reasonable amount of time to effectuate that ruling. *See* Hr’g Tr. 19:4-11, Jan. 4, 2022. Based on the Affidavit of Michael A. Kelly, Esq., this Court accepts that Cashman has made reasonable efforts to obtain a qualified and unconflicted replacement for Mr. Konicki. *See* Pl. Cashman’s Mot. Modify Order, Ex. 3. Given the complexity of the engineering issues involved and the current trial schedule, the Court also finds that three months is a reasonable amount of time to allow the replacement expert to prepare. However, the Court agrees with Cardì that—given the multiple delays that have already occurred in this case—the upcoming trial should otherwise proceed as scheduled to the greatest extent practicable.

Having so ruled, the Court will also reiterate that specific issues regarding the scope of Cashman’s replacement expert’s testimony should be addressed by motions *in limine* at the appropriate time, as this Court does not intend to answer hypothetical questions. *See* Hr’g Tr. 20:18-23, 22:9-14, Jan. 4, 2022. Nevertheless, the Court deems it appropriate to respond to the parties’ arguments by setting out a few ground rules.

“It is well established that the rule concerning damages is designed to place the injured party in as good a position as he would have been in had the contract been fully performed as promised.” *Rhode Island Turnpike & Bridge Authority v. Bethlehem Steel Corp.*, 119 R.I. 141, 166, 379 A.2d 344, 357 (1977) (citing 5 *Corbin on Contracts* § 992 (1964)). “In the construction law context, ‘an owner is entitled to have a structure built in keeping with contract specifications which govern the work, and . . . a departure from those specifications . . . will render the contractor liable for the necessary cost of bringing the structure into compliance with the specifications.’”

*Cashman Equipment Corp., Inc.*, 2021 WL 4398192, at \*20 (quoting *Havens Steel Co. v. Randolph Engineering Co.*, 613 F. Supp. 514, 528 (W.D. Mo. 1985), *aff'd*, 813 F.2d 186 (8th Cir. 1987)).

As a matter of contract law, it is also well established that

“a party claiming injury that is due to breach of contract . . . has a duty to exercise reasonable diligence and ordinary care in attempting to minimize its damages. *Bibby’s Refrigeration, Heating & Air Conditioning, Inc. v. Salisbury*, 603 A.2d 726, 729 (R.I. 1992). This rule prevents the injured party from sitting silent while the damages accumulate. *Id.* It is important to differentiate between the legal duty to mitigate and actual success in mitigation. The law commands reasonable efforts and ordinary care in the circumstances, *see Fleet National Bank v. Anchor Media Television, Inc.*, 45 F.3d 546, 561 (1st Cir. 1995), not Herculean exertion.” *Tomaino v. Concord Oil of Newport, Inc.*, 709 A.2d 1016, 1026 (R.I. 1998).

“Although the aggrieved party has the duty to mitigate, he or she does not incur liability for failing to do so[,]” but is “simply prohibited from recovering damages that he or she could reasonably have avoided.” *Bibby’s Refrigeration, Heating & Air Conditioning, Inc.*, 603 A.2d at 729 (citing 22 Am. Jur. 2d *Damages* § 501 (1988)). The breaching party bears the burden of proving that the injured party “could have avoided its damages through reasonable efforts” or “unreasonably allowed its damages to accumulate.” *Id.*

Under that standard, and because this case implicates highly technical engineering issues, testimony within the current scope of Mr. Konicki’s expert disclosures could potentially be germane to the question of whether Cardi exercised “reasonable efforts and ordinary care in the circumstances[.]” *Tomaino*, 709 A.2d at 1026; *see* Cashman and Western’s Mot. Continue Damages Phase Cofferdam Trial and Type F Liability and Damages Trial to May 2022, Ex. A at 1 (“Mr. Konicki expects to testify as to the design of the marine cofferdam system . . . both as designed and as built.”); *cf. Morra v. Harrop*, 791 A.2d 472, 477 (R.I. 2002) (“The purpose of expert testimony is to aid in the search for the truth. It need not be conclusive and has no special

status in the evidentiary framework of a trial.”). The application of the doctrine of mitigation to any particular situation will necessarily be fact specific. *See Tomaino*, 709 A.2d at 1027 (citations omitted) (“Whether the plaintiff failed reasonably to mitigate damages was a question, if warranted by the facts and properly pursued by the defendant, for the jury to decide.”). At this juncture, the Court will not issue a blanket exclusion on expert testimony relevant to whether Cardi fulfilled its legal duty to mitigate.

Conversely, and contrary to what Cashman argues, this Court’s September 2021 Decision on marine cofferdam liability did not raise new issues or materially change this case in any unforeseeable way. Given Cashman and Cardi’s competing breach of contract claims, it was clear as a matter of law long before trial began in October 2019 that, regardless of which party prevailed, the resulting damages award would be “designed to place the injured party in as good a position as [it] would have been in” had the parties’ Subcontract “been fully performed as promised.” *Rhode Island Turnpike & Bridge Authority*, 119 R.I. at 166, 379 A.2d at 357. Mitigation had also been on the table for years, having been raised by Cashman in 2011 as an affirmative defense to Cardi’s counterclaim for breach of contract. (Pl. Cashman’s Reply Countercl. Def. Cardi 19.) While the question of mitigation turns on the specific facts of each case, the applicable legal standard always remains that of “reasonable efforts and ordinary care in the circumstances[.]” *Tomaino*, 709 A.2d at 1026. Cashman and Cardi duly exchanged the expert disclosures of Mr. Konicki and Mr. Tamaro, and this Court, in sitting as the factfinder at trial, was “free to accept or to reject expert testimony in whole or in part or to accord it what probative value the [Court] deem[ed] appropriate.” *Morra*, 791 A.2d at 477.

Moreover, this Court did not bifurcate the cofferdam trial into separate liability and damages phases until February 5, 2020, well after trial began. *Cashman Equipment Corp., Inc.*,

2021 WL 4398192, at \*1; Trial Tr. 58:10-19, Feb. 5, 2020. Consequently, Cashman could and should have anticipated the need to prepare for the October 2019 cofferdam trial—at which the issue of damages was originally scheduled to be heard—by marshalling any and all evidence Cashman deemed relevant to the issue of Cardi’s duty to mitigate, including engineering expert testimony. This Court’s decision to permit Cashman to replace Mr. Konicki rested on considerations of equity and fairness and was intended to allow Cashman to present the substance of the expert testimony it had already prepared without the fear that doing so would be futile in light of this Court’s findings as to Mr. Konicki’s lack of credibility. Hr’g Tr. 19:4-11, Jan. 4, 2022; *see Cashman Equipment Corp., Inc.*, 2021 WL 4398192, at \*32 (“[I]t is clear to this Court that Mr. Konicki was aligned with Cashman and his testimony relating to the independence of his analysis is of little weight.”). Those same considerations of equity and fairness counsel against now giving Cashman free rein to reopen the scope of its expert testimony. *See Thibeault v. Square D Co.*, 960 F.2d 239, 246-47 (1st Cir. 1992) (citations omitted) (“[T]he introduction of new expert testimony on the eve of trial can be seriously prejudicial to the opposing party. . . . [I]t is beyond dispute that an eleventh-hour change in a party’s theory of the case can be equally harmful, perhaps more harmful, from the standpoint of his adversary.”).

Given Cashman’s ability to anticipate an adverse result on cofferdam liability and obtain in a timely fashion the expanded opinions it now seeks, Cashman has not established that such an expansion is necessary to prevent “manifest injustice.” Super. R. Civ. P. 16; *see United States ex rel. Concilio De Salud Integral De Loiza, Inc.*, 962 F.3d at 40-41 (citations omitted) (“[I]f the party seeking to modify had knowledge of the reason for modification prior to the pretrial conference, or if the modification would prejudice the opposing party, then it may not be allowed. . . . The [moving] party . . . bears the burden to prove the manifest injustice that would otherwise occur.”);

*cf. Mills*, 824 A.2d at 470 (finding no reversible error in trial justice’s refusal to grant a continuance after excluding plaintiff’s expert, as the exclusion “should not have been wholly *unexpected* by plaintiff”). Due to that “lack of diligence[,]” Cashman’s attempt to expand the scope of its expert disclosures fares no better under the “good cause” standard. *Miceli v. JetBlue Airways Corp.*, 914 F.3d 73, 86 (1st Cir. 2019) (citing *O’Connell v. Hyatt Hotels of Puerto Rico*, 357 F.3d 152, 155 (1st Cir. 2004)); *cf. Thibeault*, 960 F.2d at 245 (holding that, under Rule 26(e) of the Federal Rules of Civil Procedure, “preclusion” of untimely expert opinion evidence “can be imposed in response to a party’s subversion of the trial process, even if the responsible party was guilty of laxity rather than bad faith”).

Accordingly, to the extent that the opinions of Cashman’s replacement expert represent a “meaningful change” from Mr. Konicki’s expert disclosures, those opinions will be excluded. *Ferrara & DiMercurio v. St. Paul Mercury Insurance Co.*, 240 F.3d 1, 10 (1st Cir. 2001). Once again, however, the admissibility of specific opinions will be addressed through motions *in limine* so that the Court may determine whether those opinions are “adequately encompassed” by Cashman’s prior expert disclosures. *Poulis-Minott v. Smith*, 388 F.3d 354, 359 (1st Cir. 2004). If Cardi “find[s] new material is being covered, [it] can file the appropriate motions requesting exclusion as was done in *Poulis-Minott v. Smith*, where only information in late reports beyond the original scope of the timely reports was excluded.” *Morel v. Daimler-Chrysler Corp.*, 259 F.R.D. 17, 21 (D.P.R. 2009) (citing *Poulis-Minott*, 388 F.3d at 359).

## **IV**

### **Conclusion**

For the foregoing reasons, Cashman's Motion to Modify this Court's Order of January 24, 2022 is granted in part and denied in part. The deadline for Cashman's expert disclosures is extended to March 11, 2022. The matter is continued for trial calendar call on March 24, 2022, at which time a trial date will be scheduled to commence on or after June 13, 2022, with respect to both the cofferdam damage trial and the Type F concrete trial. Cashman's request to expand the scope of its expert disclosures is denied. Counsel shall submit the appropriate order for entry.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**CASE NO:** PB-2011-2488

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** February 25, 2022

**JUSTICE/MAGISTRATE:** Taft-Carter, J.

**ATTORNEYS:**

**For Plaintiff:** See attached

**For Defendant:** See attached

*Cashman Equipment Corporation, Inc.*

vs.

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vs.

*Western Surety Company, et al.*

**C.A. No. PB-2011-2488**

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