

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2008-1585

WAYNE-DALTON CORP.,

Plaintiff-Appellant,

v.

AMARR COMPANY,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Ohio in
case no. 5:06-CV-01768, Judge Sara Lioi.

ON MOTION

Before PROST, Circuit Judge.

ORDER

Wayne-Dalton Corp. moves the court to waive Fed. R. App. P. 32(a)(7)(B) and accept a principal brief containing 17,095 words or, in the alternative, allow Wayne-Dalton to file a replacement brief. Amarr Company consents to the motion to waive Rule 32(a)(7)(B) but objects to the motion to file a replacement brief.

Wayne-Dalton states that in preparing its brief and certificate of compliance it inadvertently failed to include footnotes in the word count. Wayne-Dalton states that Amarr pointed out in its brief that Wayne-Dalton's brief failed to comply with the word count and that as a result Wayne-Dalton voluntarily limited its reply brief to 3,960 words.

The court determines that Wayne-Dalton has not shown good cause for exceeding the word count in its principal brief. Thus, Wayne-Dalton is directed to file a replacement principal brief containing no more than 14,000 words. Wayne-Dalton's

replacement brief must be substantially similar to the original principal brief filed, other than changes necessary to comply with Rule 32(a)(7)(B), and may not contain new arguments or citations. Because Amarr referred to Wayne-Dalton's overlong brief in its brief, Amarr must also file a replacement brief. Amarr's brief must be substantially similar to its original brief other than omitting references to Wayne-Dalton's overlong brief and correcting citations to Wayne-Dalton's original brief.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion to waive Rule 32(a)(7)(B) is denied.
- (2) The alternative motion for leave to file a replacement brief is granted.

Wayne-Dalton is directed to file a replacement brief within 14 days of the date of filing of this order. Amarr is directed to file a replacement brief within seven calendar days of the date of service of Wayne-Dalton's replacement brief.

FOR THE COURT

JAN 30 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

JAN 30 2009

JAN HORBALY
CLERK

cc: Ray L. Weber, Esq.
John F. Morrow, Jr., Esq.

s17