

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

Schwob Energy Services, LLC v. Matrix PDM Engineering, Inc.

Case No. 22-00084-JWB · No. 22-00084-JWB · Decided January 12, 2026

SUMMARY

The United States District Court for the Northern District of Oklahoma addresses cross-motions for partial summary judgment and motions to strike expert testimony in a breach-of-contract dispute arising from a construction subcontract. The court interprets the subcontract’s termination-for-convenience provision, holds that Schwob may recover reasonable qualifying costs subject to contractual releases and factual reasonableness limits, and declines to find that Matrix waived its counterclaims for defective performance. The court denies the motions to strike the identified expert testimony and related briefing.

CASE DETAILS

COURT	United States District Court for the Northern District of Oklahoma
WRITING FOR THE COURT	John W. Broomes
JURISDICTION	United States District Court for the Northern District of Oklahoma
DECIDED	January 12, 2026
DOCKET	22-00084-JWB
DISPOSITION	other
PROCEDURAL POSTURE	The parties filed cross-motions for partial summary judgment in a diversity breach-of-contract action, and the parties also filed motions to strike expert testimony and a motion to strike part of a reply brief.
STANDARD OF REVIEW	Summary judgment is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law; the court views evidence and reasonable inferences in the light most favorable to the nonmoving party. Contract interpretation is a question of law when the contract is unambiguous. For expert testimony, the court must determine whether the witness is qualified and whether the opinion is relevant and reliable under Federal Rule of Evidence 702 and Daubert. Exclusion for an inadequate disclosure under Rule 26 is subject to the substantial-justification or harmlessness analysis under Rule 37(c).

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the subcontract's termination-for-convenience clause entitled Schwob to recover reasonable costs of work performed and materials furnished, rather than only prorated milestone amounts under the Rules of Credit.
2. Whether Schwob's signed milestone releases barred recovery of costs for labor, materials, or work included in progress-payment requests through November 14, 2021.
3. Whether Matrix waived its counterclaim for defective work and other alleged breaches by terminating Schwob for convenience rather than for default.
4. Whether the challenged expert testimony should be excluded under Federal Rules of Civil Procedure 26 and 37 and Federal Rule of Evidence 702.
5. Whether Schwob's CEO could testify as a lay witness regarding costs incurred in performing the subcontract.

HOLDINGS

1. The unambiguous termination-for-convenience clause entitles Schwob to recover reasonable costs of work performed and materials furnished before termination, plus reasonable demobilization costs, subject to the subcontract's limitations on overhead and profit; the clause does not limit recovery to milestone values under the Rules of Credit.
2. Schwob's signed releases bar it from seeking payment for labor, materials, or work included in progress-payment requests through November 14, 2021, but costs not included in those progress payments, including potentially change orders, may remain recoverable.
3. Matrix did not waive its counterclaim by terminating Schwob for convenience rather than default.
4. Schwob's motion to strike Richard DuCarme's testimony was denied because his report disclosed the underlying materials on which he relied, the undisclosed spreadsheets were summaries of those materials, and any disclosure deficiency was harmless.
5. Michael Patena was a non-retained expert because of his factual connection to the underlying contractual dispute, and Matrix was not required to provide a retained-expert report merely because Patena changed employment.
6. Harlan Smith may testify as a lay witness about costs Schwob incurred in performing the subcontract, subject to objections if his testimony exceeds personal knowledge and enters the realm of specialized

expert opinion.

KEY QUOTATIONS

“That, subject to reasonableness, is what Schwob is to be paid.” (Section III.A.i)

“As a result, because it signed releases, Schwob may not seek costs on the project that were billed up to its last release on November 14, 2021.” (Section III.A.ii)

“Accordingly, Matrix has not waived its counterclaim.” (Section III.B)

“Mr. Smith will be permitted to testify on this subject as a lay witness because his testimony will likely be limited to “basic arithmetic, personal experience, and no outside expert reports.”” (Section III.C.iii)

FACTUAL BACKGROUND

Schwob and Matrix entered into a subcontract on October 1, 2020, under which Matrix would issue purchase orders to Schwob for work on a gas compressor station project. The purchase order provided for a fixed-price payment of \$6,670,624, plus change orders, with payment allocated among project milestones. Matrix terminated Schwob for convenience on January 19, 2022, when Schwob estimated the project was 51% complete and Matrix estimated it was 43% complete. Schwob submitted a final invoice for \$5,833,910.65, which Matrix refused to pay, while Matrix asserted that Schwob's work was defective and that Schwob had breached the subcontract.

PROCEDURAL HISTORY

Schwob initiated the action on February 22, 2022, asserting that Matrix breached a subcontract arising from construction of a gas compressor station. Matrix asserted a breach-of-contract counterclaim. The court resolved the cross-motions for partial summary judgment in part and denied them in part, denied all motions to strike expert testimony, and denied as moot Matrix's motion to strike part of Schwob's reply brief.

DISPOSITION

other

CASES CITED

- Haynes v. Level 3 Commc'ns, 456 F.3d 1215, 1219 (10th Cir. 2006)
- LifeWise Master Funding v. Telebank, 374 F.3d 917, 927, 929 (10th Cir. 2004)
- Schulenberg v. BNSF Ry. Co., 911 F.3d 1276, 1282-83 (10th Cir. 2018)
- United States v. Nacchio, 555 F.3d 1234, 1241 (10th Cir. 2009) (en banc)
- Gen. Elec. Co. v. Joiner, 522 U.S. 136, 146 (1997)
- Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 596 (1993)
- In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Practices & Antitrust Litig., No. 17-MD-2785-DDC-TJJ, 2020 WL 1164869, at *3 (D. Kan. Mar. 10, 2020)
- Bill Barrett Corp. v. YMC Royalty Co., LP, 918 F.3d 760, 770 (10th Cir. 2019)

- Morgan v. State Farm Mutual Auto. Insur. Co., 488 P.3d 743, 748 (Okla. 2021)
- Pub. Serv. Co. of Oklahoma v. Burlington Northern R. Co., 53 F.3d 1090, 1097 (10th Cir. 1995)
- Ferrell Construction Co. v. Russell Creek Coal Co., 645 P.2d 1005, 1007 (Okla. 1982)
- Tufaro v. Oklahoma ex rel. Board of Regents of Univ. of Oklahoma., 107 F.4th 1121, 1132 (10th Cir. 2024)
- Walker v. Builddirect.com Techs. Inc., 349 P.3d 549, 554 (Okla. 2015)
- Whitehorse v. Johnson, 156 P.3d 41, 47 (Okla. 2007)
- Bonner v. Oklahoma Rock Corp., 863 P.2d 1176, 1183 (Okla. 1993)
- Tidal Oil Co. v. Roelfs, 187 P. 486, 487 (Okla. 1920)
- St. Louis-San Francisco Ry Co. v. Bengal Lumber Co., 292 P. 52, 53 (Okla. 1930)
- James v. Beckwith, 805 P.2d 117, 119 (Okla. Civ. App. 1990)
- Fuel Automation Station, L.L.C. v. Energera Inc., 119 F.4th 1214, 1229 n.15 (10th Cir. 2024)
- Hicks v. Mid-Kansas Oil & Gas Co., 76 P.2d 269, 271 (Okla. 1938)
- Chandler v. State ex rel. Dep't of Pub. Safety, 419 P.3d 298, 310 (Okla. Civ. App. 2017)
- Faulkenberry v. Kansas City Southern Ry. Co., 602 P.2d 203, 207 (Okla. 1979)
- Perry v. Safeco Ins. Co. of Am., No. 18-CV-539, 2020 WL 1166087, at *4 (N.D. Okla. Mar. 10, 2020)
- Jacobsen v. Deseret Book Co., 287 F.3d 936, 952-53 (10th Cir. 2002)
- Woodworker's Supply, Inc. v. Principal Mut. Life Ins. Co., 170 F.3d 985, 993 (10th Cir. 1999)
- Downey v. Bob's Discount Furniture Holdings, Inc., 633 F.3d 1, 7 (1st Cir. 2011)
- Randolph v. Collectramatic, Inc., 590 F.2d 844, 846 (10th Cir. 1979)
- James River Ins. Co. v. Rapid Funding L.L.C., 658 F.3d 1207, 1214 (10th Cir. 2011)
- Ryan Dev. Co., L.C. v. Indiana Lumbermens Mut. Ins. Co., 711 F.3d 1165, 1170 (10th Cir. 2013)