

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MBI ACQUISITION PARTNERS, L.P., a
Delaware Limited Partnership,

Plaintiff,

v.

THE CHRONICLE PUBLISHING COMPANY,
a Nevada corporation, and RICHARD SUOMALA,
a Minnesota resident,

Defendants.

ORDER

01-C-0177-C

A final pretrial conference was held in this case on September 26, 2002, before United States District Judge Barbara B. Crabb. Plaintiff appeared by David Gustman, Jeffrey Cross and Leland Hutchinson. Defendants were represented by Kathleen Roach, Rene Pengra, John Mulhern, Brady Williamson and Chad Pekron.

Jury selection and trial will take place on Monday, October 7, 2002, at 9:00 a.m. Counsel have approved the voir dire questions. Each side will exercise three peremptory challenges against a qualified panel of 14 prospective jurors, leaving a panel of eight.

All witnesses will be sequestered, with the exception of experts, one corporate

representative for each party and Mr. Suomala. Counsel for defendants will advise plaintiff's counsel promptly of defendants' corporate representative. No later than 5:00 p.m. on Friday, October 4, plaintiff's counsel will advise defendants' counsel of the names of the witnesses plaintiff intends to call on Monday, October 7. Counsel shall follow the same procedure at the end of each trial day, that is, advising opposing counsel of the witnesses they will be calling the next day.

Note: Counsel are responsible for arranging for enough witnesses to fill each day of trial. The court will not adjourn early just because one side runs out of witnesses before the end of the day.

Before discussing the parties' motions in limine, defendants raised an objection to the materials plaintiff had agreed to turn over at the motion hearing held on September 20, 2002. Although the order directed plaintiff to turn over information about the number of and rate of returns in 1999 and other years, plaintiff produced information limited to the number and rate of returns *processed* in the critical years. Plaintiff agreed to meet with defendants' counsel and identify the exact rate and numbers of returns it is alleging for the years in question.

Plaintiff filed 17 motions in limine. As to the first, that defendants be precluded from denying that defendant Suomala was defendant Chronicle's agent, I reserved a ruling and will take the matter up at the hearing scheduled for 2:30 pm, Wednesday, October 2, 2002.

At the same time, I will decide plaintiff's second, sixth, seventh, ninth, eleventh and fourteenth motions in limine. The parties are to submit briefs on these motions no later than 5:00 pm, Monday, September 30, 2002.

Plaintiff's third motion in limine is granted. Defendants do not intend to claim that the written representations and warranties and other provisions in the stock purchase agreement have a meaning other than as expressed by their plain language.

Plaintiff's fourth motion in limine is denied. Defendants may introduce the terms of the stock purchase agreement to the jury.

Plaintiff's fifth motion in limine is denied, if defendants can convince me outside the presence of the jury that Straden ever said explicitly that he did not rely on anything outside the stock purchase agreement. If so, they may question Straden about his statements.

If plaintiff is arguing in its sixth motion in limine nothing more than that defendant Chronicle's representations and warranties as of the date of the closing are statements plaintiff can rely upon for federal securities law purposes, I do not understand defendants to take any issue with this proposition. If plaintiff means something else, it should explain its position before the trial gets underway.

Plaintiff's eighth motion in limine is granted. Defendants will not be allowed to argue that plaintiff waived its federal securities laws claims.

Plaintiff's thirteenth motion in limine is granted to the extent plaintiffs are seeking

to bar defendants from arguing that plaintiff agreed not to hold defendant Chronicle responsible for the oral statements of its agents. Defendant Chronicle will be permitted to argue to the jury that it provided adequate supervision of defendant Suomala to entitle it to claim a good faith defense.

Plaintiff's fifteenth motion in limine is denied. Defendants may impeach Straden by asking him about the initial answers he gave to defendants' first set of interrogatories. They may not mention that he was sanctioned for his incorrect verification of his answers; therefore, plaintiff's sixteenth motion in limine is granted.

Plaintiff's seventeenth motion in limine is denied in part. Defendants may introduce evidence of the rates and value of returns in 2000; they may question Carl Fazio about the method he used for determining a reserve account and whether it was the same one that Suomala had used.

Finally, the parties took up defendants' motion to strike the expert testimony of Ralph Ells on the ground that it lacked the intellectual rigor or independent examination of the facts any other expert would apply in undertaking a similar evaluation. After hearing argument, I denied the motion. It is a close question but I resolve it in favor of plaintiff. Ells used known methods of valuing the company: an EBITDA multiple analysis and discounted cash flow calculation. I have some questions about the effort he put into ascertaining the accuracy and completeness of the facts upon which he relied but defendants

are free to cross examine him on his effort. Ells has the background and qualifications to make the kinds of judgments he provides in his expert report. He applied reliable and valid methods; whether his results are convincing is a matter for the jury to decide.

Entered this 2nd day of October, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge