

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

GARY BRINKMAN and
CAROL BRINKMAN,

FINAL PRETRIAL
CONFERENCE ORDER

Plaintiffs,

04-C-0001-C

v.

INTERNATIONAL TRUCK and
ENGINE CORPORATION,

Defendant.

A final pretrial conference was held in this case on February 17, 2005, before United States District Judge Barbara B. Crabb. Plaintiffs appeared by Jennifer Gerrish-Lampe, Dwight James, Steven Buggs and Timothy Schumann. Defendant appeared by Webster Hart and Stephanie Finn.

Trial in this case is scheduled for the week beginning Monday, February 28. Jury selection will begin promptly at 9:00 a.m., unless Judge Shabaz has a prior jury selection, in which case it will begin at about 10:30 a.m. Counsel should check with the clerk's office at

the end of the day Friday, February 25, to find out whether Judge Shabaz has any jury trials still scheduled for February 28.

No later than noon on February 25, plaintiffs' counsel is to advise defendant's counsel of the witnesses plaintiffs will be calling on Monday, February 28 and the order in which they will be called. They have the same obligation at the end of the first trial day; the obligations shifts to defendant once it starts its case. The parties should make sure that they have sufficient witnesses to fill each trial day, which will run from 9:00 to 5:30. Sequestration is not necessary.

The parties anticipate that the trial will take up to seven days. Eight jurors will be selected from a qualified panel of 14. Each side will exercise three peremptory strikes.

The parties approved the proposed voir dire questions in the form distributed to them at the conference. They had some comments on the proposed form of verdict and the instructions, but reserved extensive discussion for the instruction conference at the close of the liability phase of trial.

Shortly before the pretrial conference, plaintiff filed a motion to strike exhibits and witnesses that had been disclosed after the deadline for disclosure. The motion was granted with respect to witnesses Albee, Reding, Hudson, Maahs, Butler, Yoose, Sherman and the emergency room doctor. It was denied as to witnesses O'Neil and Weber, who may each testify briefly in the damages phase of trial about plaintiff's activities since he was injured.

Wolf Koch is limited in his testimony to the opinions that he disclosed on time. Plaintiffs may not introduce any deposition transcripts or exhibits that they did not disclose before the disclosure deadline ran.

The following rulings were made on the parties' motions in limine:

1. Plaintiffs' motion to strike portions of the testimony of defendant's expert witnesses Thomas Nelson and William Field is DENIED. Both men have extensive experience and education in the areas about which they will be testifying.
2. Defendant's motion to prohibit plaintiffs from submitting evidence of the fuel cap exchange developed by defendant in 1980 is DENIED but plaintiffs are limited in the extent and nature of the evidence they may produce. I identified the parameters of the admissible evidence and asked counsel to try to reach a stipulation about the evidence that may be introduced to save time and extensive arguments about admissibility.
3. Defendant's motion to prohibit evidence that defendant had not adequately disclosed its fuel geysering problem to the Federal Trade Commission is GRANTED.
4. Defendant's motions to prohibit evidence of litigation or accidents involving tractor models other than the 674 model and references to tractors with different kinds of venting systems are covered by the ruling set out in paragraph 2, above.
5. Defendant's motion to prohibit evidence of plaintiffs' family situation and finances is GRANTED as it relates to the liability phase of trial.

6. Defendant's motion to prohibit plaintiffs and their lay witnesses from referring to medical diagnoses for alleged injuries during the liability phase of trial is GRANTED.
7. Defendant's motion to bar any reference to Field's or Nelson's participation as expert witnesses in other cases in which defendant was party is DENIED. Plaintiffs may ask both experts whether they have testified before and whether they have done so on behalf of defendant but they are not to go into detail about testimony in other litigation.
8. Defendant's motion to exclude references to other tractor designs created after the date on which the tractor at issue was manufactured is DENIED insofar as such evidence is relevant to plaintiffs' claim of negligent failure to warn.
9. Defendant's motion to bar plaintiffs' experts from offering opinions on defendant's duty or responsibility to the consumer is GRANTED; it is the jury's job to decide whether defendant met its duty under the standard set out by the court.
10. Defendant's motion to bar any reference to any claimed negligent failure to warn is DENIED.
11. Defendant's motion to bar any reference to defendant's need to recall tractors or its failure to retrofit its tank design is GRANTED, except as it relates to the double tang cap.
12. Defendant's motion to bar any reference to opinions the court has ordered inadmissible

pursuant to Daubert is GRANTED.

Entered this 18th day of February, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge