

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

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DENTON HOYT, JOSEPH B. ORTWERTH,  
CHARLES R. KREYE, COLE A. BIRKEL,  
CHAD DOYLE, KRISTINE DEISS, SEAN M. FUNK,  
PHILIP HALBERSON, JEFFREY ERNEST HINES,  
BRENT M. HOVE, LANCE HOVE, JAMES T. KOEHLER,  
KENNETH KILMER, DOUGLAS W. McCLUSKEY,  
JIM McCOY, GARY NELSON, GREGORY B. NELSON,  
CHRISTOPHER O'CONNELL, STEVEN M. RITCHIE,  
BRIAN J. WISKERCHEN and PHILIP WOODING,

ORDER

Plaintiffs,

3:07-cv-00386-bbc

v.

ELLSWORTH COOPERATIVE CREAMERY,

Defendant.

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A final pretrial conference was held in this case by telephone on February 8, 2008, before United States District Judge Barbara B. Crabb. Plaintiffs appeared by Nathan Eisenberg. Defendant appeared by Thomas Misfeldt.

Because the trial currently in progress has not been completed, counsel in this case

should anticipate the possibility that trial in this case may run from 1:00 to 5:30 p.m. each day. If this turns out to be the pattern for the week, counsel predict the trial will last 5-7 days.

Counsel agreed that with the exception of experts, it is not necessary for the witnesses to be sequestered. Counsel are either familiar with the court's visual presentation system or will make arrangements with the clerk for some instruction on the system.

Immediately after this pretrial conference, plaintiffs' counsel were to advise defendant's counsel of the witnesses plaintiffs will be calling on Monday and the order in which they will be called. Counsel should give similar advice at the end of each trial day; defendant's counsel shall have the same responsibility in advance of defendant's case. Also, no later than 4:30 p.m. counsel were to agree on any exhibits that either side wishes to use in opening statements. Any disputes over the use of exhibits are to be raised with the court before the start of opening statements.

Counsel should use the microphones at all times and address the bench with all objections. If counsel need to consult with one another, they should ask for permission to do so. Only the lawyer questioning a particular witness may raise objections to questions put to the witness by the opposing party and argue the objection at any bench conference.

Counsel are to provide the court with copies of documentary evidence before the start of the first day of trial.

Counsel agreed to the voir dire questions in the form distributed to them at the conference. The jury will consist of eight jurors to be selected from a qualified panel of fourteen. The parties agree that the magistrate judge can preside over jury selection with the selection beginning at 10:00 a.m. on Monday. Each side will exercise three peremptory challenges against the panel. Before counsel give their opening statements, the court will give the jury the introductory instructions on the way in which the trial will proceed and their responsibilities during the trial.

Counsel discussed the form of the verdict and the instructions on liability. Final decisions on the instructions and form of verdict will be made at the instruction conference to be held after all the evidence on liability has been presented.

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

1. Plaintiffs' motion to admit the original and supplemental expert reports of William B. Mayer is DENIED.
2. Plaintiffs' motion to bar trial testimony from witnesses not identified in defendant's Rule 26(a) initial disclosures is GRANTED. Defendant may call these witnesses for rebuttal only.
3. Defendant's motion to strike and preclude plaintiffs' expert's testimony and reports is DENIED as to the expert's testimony and GRANTED as to his reports.

4. Defendant's motion to preclude plaintiffs from testifying about specific instances of working without pay is DENIED.

Entered this 11th day of February, 2008.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge