

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

JEWEL TRUCKING INC.,

Plaintiff,

ORDER

10-cv-33-bbc

v.

FREIGHTLINER LLC,

Defendant.

A final pretrial conference was held in this case on November 12, 2010, before United States District Judge Barbara B. Crabb. Plaintiff appeared by Vincent Megna and Tim Aiken. Defendant appeared by Mitchell Moser.

Jury selection will take place on Monday, November 15, before the United States Magistrate Judge. Trial will begin on Wednesday, November 17. Trial counsel predicted that the case would take 3 days to try. They understand that trial days will begin at 9:00 and will run until 5:30, with at least an hour for lunch, a short break in the morning and another in the afternoon.

Counsel agreed that with the exception of experts, all witnesses would be sequestered.

Counsel are either familiar with the court's visual presentation system or will make arrangements with the clerk for instruction on the system.

No later than noon on Tuesday, November 16, 2010, plaintiff's counsel will advise defendant's counsel of the witnesses plaintiff will be calling on Wednesday 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 noon on November 16, counsel shall meet 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 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. 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 once all the evidence on liability is in.

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

Plaintiff's Motions

_____ 1. Exclude testimony of Mark Gretzinger. GRANTED as to any testimony in the nature of expert testimony; DENIED as to testimony about which Gretzinger has direct knowledge.

2. Exclude evidence that truck was driven at speeds over 65 mph. GRANT unless defendant demonstrates that inquiry will be limited to impeaching specific testimony that a witness gives at trial or that it supports a finding that the truck had adequate power.

3. Exclude evidence of plaintiff's driving record. GRANTED as unopposed.

4. Exclude statements by defendant that "all trucks are slow." GRANTED.

5. Exclude evidence that most truck drivers complain about low power. GRANTED unless defendant can show that this is not just a generalization that cannot be proved or refuted at trial.

6. Exclude evidence about statutory damages under Wisconsin's lemon law, fee arrangements and other lemon law suits. GRANTED as unopposed, although defendant may ask plaintiff's expert witness the number and type of cases on which he has worked on behalf of plaintiff.

7. Allow plaintiff to refer to Detroit Diesel and defendant as single entity. Plaintiff will use wording suggested by defendant.

8. Exclude witnesses. GRANTED as unopposed except as to experts.

9. Exclude evidence of other lawsuits involving plt or Randy Seeman. GRANTED as unopposed.

10. Exclude draft expert reports. GRANTED.

B. Defendant's Motions

1. Exclude evidence of "conditions or repairs to truck after first year of use. GRANTED as to "nonconformities" about which plaintiff did not complain in first year. DENIED as to evidence that nonconformity continued into second year, so long as plaintiff informed defendant about nonconformity within first year. DENIED as to damages plaintiff incurred after first year for nonconformities that plaintiff reported during first year.

2. Exclude expert testimony outside scope of expert report or deposition. GRANTED.

Entered this 15th day of November, 2010.

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