

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

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HY CITE ENTERPRISES, LLC,

Plaintiff,

v.

STEVEN POLLACK, TRISTATE R.P., INC.  
and SELECTIVE DESIGNS OF NEW YORK, INC.,

Defendants.  
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ORDER

12-cv-73-bbc

This case for breach of contract has been rescheduled for trial on August 26, 2013.

This order will address various points about the structure of the trial.

First, because the counterclaims are all that remain of the case, I will reverse the usual order for presentation of evidence by allowing defendants to go first. In addition, when addressing the jury, I will refer to Steven Pollack as the plaintiff and Hy Cite Enterprises, LLC, as the defendant to avoid confusion.

Second, it is not clear why defendants Tristate R.P., Inc. and Selective Designs of New York, Inc. remain parties. Hy Cite amended its complaint to include those defendants allegedly because Pollack had added those companies to his arbitration demand. However, issues about the arbitration have been resolved by stipulation. Further, the counterclaims do not mention Tristate or Selective Designs and neither side has made any references to those companies in their proposed jury instructions or special verdict form. Accordingly, I

will give the parties an opportunity to show cause why Tristate and Selective Designs should not be dismissed from the case.

Third, I have provided the parties a draft of the special verdict form, using the parties' drafts as a starting point. Because both sides have included proposed verdict questions about liability and damages on one form, I have assumed that neither side wants the trial to be bifurcated. I omitted one of the issues included in Pollack's proposed draft, which is whether Hy Cite breached its duty of good faith "by treating him differently from similarly situated distributors with respect to the benefits he earned." Dkt. #56 at 2. In its current form, this question is too vague to allow the jury to answer it. If Pollack wants this issue included in the verdict form, he will have to explain more specifically how he believes he was treated differently. If the parties disagree with any aspect of the court's draft of the verdict form, they may file an objection, along with a proposed amended draft.

Fourth, I have not provided a draft of the jury instructions because it remains unclear which instructions are needed. The parties submitted many pattern instructions, but in most cases they failed to explain why they included a particular instruction. For example, the parties proposed an instruction about the elements of contract formation but it is not clear whether there is any dispute about the existence of a contract between the parties. Accordingly, the parties should submit new drafts of the instructions in which they include language in each instruction that explains how the instruction relates to a particular special verdict question or questions so that the jury knows how each instruction is relevant to the disputes it must resolve. The parties may use the court's draft of the special verdict form as

a reference point or, if they are planning on submitting an amended draft of the verdict form, they may use their amended drafts for that purpose. If the parties are unable to explain how an instruction is relevant to one or more questions on the verdict, that instruction should be omitted from the amended drafts.

Fifth, a review of the parties' trial submissions raises questions about the *factual* issues that remain in dispute. Many of the disputes seem to be about contract interpretation, which is generally an issue for the court rather than a jury. The parties should prepare a trial memorandum for the court in which they explain (1) what the parties are disputing about each counterclaim Pollack is asserting; (2) which issues they believe should be decided by the court and which should be decided by the jury and why; and (3) for each issue to be decided by the court, how the parties plan on presenting that issue to the court.

#### ORDER

IT IS ORDERED that the parties may have until August 12, 2013, to do the following:

- show cause why defendants Tristate R.P., Inc. and Selective Designs of New York, Inc. should not be dismissed from the case;
- file any objections to the court's proposed verdict form, along with an amended form;
- file an amended draft of the jury instructions as discussed in this order; and

- file a trial memorandum that addresses the issues discussed in this order.

Entered this 17th day of July, 2013.

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

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

-----  
STEVEN POLLACK,

Plaintiff,

v.

HY CITE ENTERPRISES, LLC,

Defendant.

SPECIAL VERDICT

12-cv-73-bbc

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We, the jury, for our special verdict, do find as follows:

Question No. 1: Did defendant Hy Cite Enterprises, LLC breach the 1987 distribution agreement by stopping override payments to plaintiff Steven Pollack on October 3, 2011?

Answer \_\_\_\_\_

(Yes or No)

If your answer to Question No. 1. was “yes,” answer Question No. 2. If your answer to Question No. 1 was “no,” do not answer Question No. 2 and proceed to Question No. 3.

Question No. 2: What amount of money, if any, will fairly and reasonably compensate plaintiff Pollack for defendant Hy Cite’s failure to make override payments?

\$ \_\_\_\_\_

Answer Question No. 3.

Question No. 3: Did defendant Hy Cite terminate its distribution agreement with plaintiff Pollack in order to avoid making override payments to plaintiff?

Answer \_\_\_\_\_

(Yes or No)

If your answer to Question No. 3 was “yes,” answer Question No. 4. If your answer to Question No. 3 was “no,” do not answer Question No. 4 and proceed to Question No. 6.

Question No. 4: Did defendant Hy Cite violate the duty of good faith and fair dealing in the 1987 distribution agreement by terminating the agreement to avoid making override payments to plaintiff Pollack?

Answer \_\_\_\_\_

(Yes or No)

If your answer to Question No. 4 was “yes,” answer Question No. 5. If your answer to Question No. 4 was “no,” do not answer Question No. 5 and proceed to

Question No. 6.

Question No. 5: What amount of money, if any, will fairly and reasonably compensate plaintiff Pollack for defendant Hy Cite's breach of its duty of good faith and fair dealing?

\$ \_\_\_\_\_

Answer Question No. 6.

Question No. 6: Did defendant Hy Cite breach the 1987 distribution agreement by failing to pay plaintiff Pollack any of the following:

a. 1% override bonus on the purchases of Joel Figuero? \_\_\_\_\_

(Yes or No)

b. 1/2% override bonus on the purchases of Lucas Baez? \_\_\_\_\_

(Yes or No)

c. 1/2% override bonus on the purchases of Justo Figuero? \_\_\_\_\_

(Yes or No)

If your answer to any part of Question No. 6 was "yes," answer Question No. 7. If your answer to each part of Question No. 6 was "no," do not answer Question No. 7 and

proceed to Question No. 8.

Question No. 7: What amount of money, if any, will fairly and reasonably compensate plaintiff Pollack for defendant Hy Cite's failure to pay the override bonus or bonuses identified in Question No. 6?

\$ \_\_\_\_\_

Answer Question No. 8.

Question No. 8: Did defendant Hy Cite breach the 1987 distribution agreement by failing to give plaintiff Pollack 60 days' written notice before terminating the agreement?

Answer \_\_\_\_\_

(Yes or No)

If your answer to Question No. 8 was "yes," answer Question No. 9. If your answer to Question No. 8 was "no," do not answer Question No. 9 and proceed to Question No. 10.

Question No. 9: What amount of money, if any, will fairly and reasonably compensate plaintiff Pollack for defendant Hy Cite's failure to provide 60 days' written notice before terminating the agreement?

Answer \_\_\_\_\_

(Yes or No)

Question No. 10: Did defendant Hy Cite breach the 1987 distribution agreement by deducting \$5,000 from plaintiff Pollack's September 2011 bonus check?

Answer \_\_\_\_\_

(Yes or No)

\_\_\_\_\_  
Presiding Juror

Madison, Wisconsin

Dated this \_\_\_\_\_ day of August, 2013.