

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

SOUTHWIRE COMPANY, ASARCO INC.,
n/k/a ASARCO LLC, KENNECOTT UTAH
COPPER CORP., LEVITON MANUFACTURING
CO., INC., AMERICAN INSULATED WIRE
CORPORATION, ESSEX ELECTRIC, INC., n/k/a
EXEON INC., MUELLER COPPER TUBE CO.,
INC., MUELLER COPPER TUBE PRODUCTS,
INC., SUPERIOR TELECOM, INC., n/k/a
SUPERIOR ESSEX INC., CERRO FLOW
PRODUCTS, INC., CERRO METAL PRODUCTS
COMPANY, CERRO WIRE & CABLE CO., INC.,
COMTRAN CORPORATION, THE KERITE
COMPANY, ROCKBESTOS-SURPRENANT
CABLE CORP. and OWL WIRE AND CABLE INC.,

MDL Docket No. 1303

FINAL PRETRIAL
CONFERENCE ORDER

Plaintiffs,

v.

J.P. MORGAN CHASE & CO., as successor to
J.P. MORGAN & CO., INC., and MORGAN
GUARANTY TRUST COMPANY OF NEW
YORK,

02-C-707-C, 03-C-314-C,
03-C-316-C, 03-C-317-C,
03-C-318-C, 03-C-368-C
06-C-169-C

Defendants.

A final pretrial conference was held in this case on May 24, 2007, before United States District Judge Barbara B. Crabb. Plaintiffs appeared by Dan Hildebrand, David

Newman, David Weinstein, Mark Hansen, Rebecca Beynan, Aaron Panner, Jeffrey Istvan and Matthew Duncan. Defendants appeared by David Toscano, Andrew Polland, Michael Van Sicklen, Michael Leffel, Amelia Starr and James Windels. Counsel for both sides have been working on agreed voir dire questions and asked for leave to file them with the court on May 25, 2007. The request was granted.

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 jurors the introductory instructions on the way in which the trial will proceed and their responsibilities during the trial. Counsel agreed that the witnesses would be sequestered.

Plaintiffs' counsel has advised defendants' counsel of the witness plaintiff will be calling on Tuesday live or by videotape. Counsel should give similar advice at the end of each trial day; defendants' counsel shall have the same responsibility in advance of defendants' case. Counsel will meet with the court at 3:00 on May 25 to discuss trial exhibits and demonstratives to be used in opening statements. It has been agreed, however, that plaintiffs may use the following exhibits during opening statement: newspaper articles from 1993, Keith Murphy's promotion form for 1994, news accounts of Credit Lyonnais Rouse's public apology in 1993, Murphy's severance agreement and any other trial exhibits not objected to by defendants. Counsel will meet with the court on Tuesday morning at

8:00 a.m. to take up the exhibits to be used during the examination of Michael Riess and deposition designations and counter-designations. The designations and counter-designations are to be filed with the court no later than 5:00 on May 25.

The court reporter will not report the video deposition testimony.

Counsel have not been able to agree on the contents of jury notebooks, other than photographs of the witnesses. Therefore, the notebooks will contain only the photos.

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 received the tentative form of the verdict and the instructions on liability and damages. Final decisions on the instructions and form of verdict will be made at the instruction conference once the evidence on liability has been presented.

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

1. Plaintiffs' motion to preclude evidence or argument regarding the inaction of governmental or non-governmental regulatory agencies is GRANTED on the condition that plaintiffs make no reference to any investigation.
2. Plaintiffs' motion to preclude disclosure to the jury that damages will be trebled is GRANTED.

3. Plaintiffs' motion to preclude reference to the "pass along" of damages or to any alleged "benefits" to plaintiffs from alleged manipulation is unopposed and is GRANTED on the condition that plaintiffs make no reference to harms caused to others downstream or to actual losses they believe they have incurred.

4. Plaintiffs' motion to preclude defendants' witnesses from testifying live during defendants' case if the witnesses are not produced during plaintiffs' case in chief is GRANTED. If defendants want to use this opportunity for direct examination of these witnesses, they may.

5. Plaintiffs' motion to preclude defendants from presenting deposition testimony of witnesses under defendants' control unless the witnesses are made available for live cross-examination is DENIED.

6. Plaintiffs' motion to preclude any reference to the fact or amount of prior settlements in related litigation or to the absence of co-conspirators is GRANTED. The ruling shall relate to non-monetary settlements as well, such as those with banking regulators and the CFTC.

7. Plaintiffs' motion to preclude any reference to defendants' culpability relative to other conspirators is GRANTED; this order does not in any way bar defendants from showing that they have *no* culpability because they never joined the conspiracy.

8. Plaintiffs' motion to exclude evidence or argument of the passage of time is GRANTED. However, the parties may refer to the dates on which relevant events took place.

9. Plaintiffs' motion to exclude evidence or argument regarding plaintiffs' purchase of copper

from Sumitomo Corporation is GRANTED. Buying product from a company is wholly different from working with the same company on financial matters such as loans and investments.

10. Plaintiffs' motion to preclude the testimony of Ernest Patrikis is GRANTED in part. Patrikis will not be allowed to render any opinions about defendants' specific dealings with Sumitomo and whether those dealings were illegal but he will be allowed to testify about basic banking practices.

11. Plaintiffs' motion in limine to preclude the testimony of Gregor Leinsdorf and an unnamed document custodian is DENIED .

12. Defendants' motion in limine to preclude plaintiffs from introducing evidence and argument regarding violations of "safe banking practices" is GRANTED in part. To the extent that plaintiffs have admissible evidence that defendants acted outside normal banking practices in their transactions with Sumitomo, such evidence would suggest that defendants knew or should have known that something unlawful was happening. However, the Federal Reserve regulatory report that plaintiffs want to introduce is inadmissible.

13. Defendants' motion in limine to exclude CFTC documents is GRANTED.

14. Defendants' motion in limine to exclude evidence relating to settlements between defendants and third parties is unopposed and GRANTED. Plaintiffs suggest that they may want to use evidence of the prior settlements in cross examining certain witnesses. They

must obtain a ruling in advance from the court, outside the jury's presence, before asking such a question. They should know that it is unlikely that I will allow such questions.

15. Defendants' motion in limine to exclude evidence relating to Keith Murphy's personal life and for a curative instruction with respect to any redaction is GRANTED.

16. Defendants' motion in limine to exclude newspaper articles published after the alleged conspiracy ended and to provide a limiting instruction with respect to any articles admitted into evidence is GRANTED. The jury will be instructed that they are to consider the articles only for whatever notice they would have given defendants of the possibility of market manipulation by Sumitomo and not as evidence that there was such manipulation in fact.

17. Defendants' motion in limine to exclude evidence and argument concerning pass through of any alleged overcharge and evidence that plaintiffs suffered actual loss is unopposed and GRANTED.

18. Defendants' motion in limine to exclude previously taken depositions and bank examiner notes is GRANTED in part and DENIED in part. The deposition testimony of defendants' employees is admissible. The bank examiner notes are not admissible.

19. Defendants' motion in limine to exclude statements of Credit Lyonnais Rouse is DENIED.

20. Defendants' motion in limine to exclude argument that defendants "stonewalled" LME is DENIED. Plaintiffs are entitled to develop their argument that defendants were not

prohibited from revealing information about activity on exchange.

21. Defendants' motion in limine to exclude the testimony of Anthony Saunders is DENIED. Saunders may testify under same restrictions as Patrikis.

Entered this 25th day of May, 2007.

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