

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

JAMES McKEOWN,

Plaintiff,

v.

SEARS ROEBUCK & CO.
and TRANS UNION LLC,

Defendants.

FINAL PRETRIAL ORDER

03-C-0528-C

A final pretrial conference was held in this case on November 10, 2004, before United States District Judge Barbara B. Crabb. Plaintiff appeared by Thomas Lyons; defendant Sears Roebuck was represented by John Patrick Petrullo; defendant Trans Union was represented by Robert J. Schuckit, Guerino John Cento and Christopher T. Lane.

Counsel approved the proposed voir dire questions with a number of changes. Counsel will confer and re-write the statement of the case and submit it to the court on November 12. The court will incorporate the other changes into a revised document for the magistrate judge's use at jury selection.

Counsel agreed to selection of the jury by the magistrate judge. The jury will consist

of 8 persons, drawn from a qualified panel of 15, with plaintiff having three peremptories and defendants having four that they may exercise in tandem or divide between them equally. They will not exercise their peremptories until a panel of 15 has been qualified and then they will do so by striking names on a sheet of paper so that the prospective jurors will not know which party has struck them. Counsel are aware that jury selection in this case will take place only after two criminal juries have been drawn, unless one or both of the criminal cases settle.

The evidentiary phase of the trial in this case will start at 9:00 am on Wednesday, November 17. Trial will run from 9 to 12:45 and from 2:00 to 5:30, with a fifteen minute recess in the morning and a ten minute recess in the afternoon. Counsel are to have sufficient witnesses on hand to fill each trial day. They may question witnesses from counsel table or from the lectern.

Counsel have arranged for instruction on the court's electronic equipment on Monday, November 15. They should use the equipment as much as possible and provide documents to witnesses only when necessary to allow the witness to see all parts of the document at once.

The trial will be bifurcated; counsel are not to refer to the issue of damages until the jury has returned its verdict on liability. The damages phase of the trial will begin immediately after the return of the liability verdict, unless the verdict is not returned until

after working hours.

At the end of each trial day, counsel calling witnesses the next day is to advise his opponent of the witnesses he will be calling and the order in which they will be called.

The following rulings were made on defendants' motions in limine.

1. Plaintiff may testify about stress he has experienced; he may not testify that the stress has exacerbated any pre-existing medical condition he has.
2. Plaintiff may testify that he experienced additional stress because he knew that his wife was worried about the stress; he may not testify that he and his wife are one entity.
3. Plaintiff may testify that he experienced stress and frustration because he was unable to finance property in St. Cloud; he may not testify that he lost any money.
4. Plaintiff may elicit information about defendants' financial conditions only insofar as the information relates to their ability to install reasonable mechanisms to protect against inaccuracies. Otherwise, such information is to be reserved for the damages phase of the trial.
5. Plaintiff does not intend to elicit any evidence that counsel have represented Trans Union in other cases; this matter is moot.
6. Plaintiff may not introduce any evidence or ask any questions relating to other cases involving Trans Union or Sears unless he convinces me in advance outside the presence of the jury that the other case or cases involve precisely the problem raised in this case and that

the evidence is otherwise relevant and not a waste of time.

7. Plaintiff has advised the court that he will not be calling any witnesses to testify about defendants' reasonableness or motives; therefore, Trans Union's motion to preclude such evidence is moot.

8. Plaintiff may not elicit testimony from an agent of CSC to the effect that Sears has lots of problems reporting credit or anything to that effect. Such testimony would be inadmissible hearsay.

9. Plaintiff will be allowed to testify that his stress and frustration caused him delays in publishing a new edition of his book.

10. Plaintiff does not plan to testify about damages that I have ruled are inadmissible or to call Evan Hendricks as a damages witness; therefore, Sears's last two motions in limine are moot.

The parties have draft copies of a proposed verdict. They will have an opportunity to dismiss the verdict and the accompanying instructions before closing arguments.

Entered this 12th day of November, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge