

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

JOHN R. TALMAGE

Plaintiff,

FINAL PRETRIAL
CONFERENCE ORDER

03-C-658-C

v.

CHARLES B. HARRIS, DOAR, DRILL
& SKOW, S.C. and CNA INSURANCE
COMPANY,

Defendants.

A final pretrial conference was held in this case on March 10, 2005, before United States District Judge Barbara B. Crabb. Plaintiff appeared by Harry Van Camp and Susan George. Defendants appeared by Terry Johnson.

Counsel approved the proposed voir dire questions in the form distributed to them at the conference. They had some comments to make on the proposed verdict form. Those comments will be taken up at greater length after the close of evidence. Counsel agreed that the case should not be bifurcated for trial because the damages portion is a very small part

of the entire case and closely related to the liability claims.

Counsel are aware that trial days will begin at 9:00 a.m. and last until 5:30 p.m. with a break for lunch of an hour. They are to check with the clerk's office on Friday, March 25, 2005, to determine whether there will be any jury selections that will precede the selection for this trial.

No later than Friday, March 25, 2005, at the close of business, plaintiff's counsel is to advise defendants' counsel of the witnesses he will be calling on Monday and the order in which he will be calling them. Counsel have the same responsibility at the end of each trial day depending on whose case is being tried at that time.

Counsel asked for sequestration of all witnesses other than parties and expert witnesses. That request was GRANTED.

Counsel expect the trial to last three to four days. There will be eight jurors selected from a qualified panel of fourteen, with each side exercising three peremptory challenges.

Plaintiff had made objections to certain deposition excerpts. The problem is moot because defendants intend to call the persons as live witnesses at trial. Plaintiff's objection to certain exhibits that relate to appraisals or valuations of property is DENIED. These exhibits are to come in only for the state of mind the parties to the state court trial. Plaintiff is to propose a limiting instruction to be given to the jury at the time these exhibits come into evidence.

The final matter was defendants' request to preclude plaintiff from claiming a net fire loss expense of \$141,036.00. The request was GRANTED after considerable discussion. I concluded that the only way in which plaintiff would be entitled to recoup the difference between his alleged proof of loss and the amount he accepted in settlement from United Fire & Casualty Company would be to prove at trial that if he had not accepted the settlement offer, he could have persuaded a jury to award him \$513,000.00. Plaintiff is not prepared to make that case and he has no expert testimony that defendant Harris's advice to take the \$430,000.00 offered in the settlement was negligent legal representation.

Entered this 11th day of March, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge