

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

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ESTATE OF THE LATE DAYTONA J.  
BREWSTER, LORI A. BARTRAM,  
JASON A. BREWSTER and  
MONICA BARTRAM,

Plaintiffs,

v.

DOREL JUVENILE GROUP, INC.,

Defendant.

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ORDER

05-C-0005-C

What was intended to be the final pretrial conference in this case was held on November 3, 2005, before United States District Judge Barbara B. Crabb. Plaintiffs were present in person and by counsel, John Walsh and David Easton. Defendant was represented by Walter Greenough and Ian Pitz.

Counsel agreed to the proposed voir dire questions in the form distributed to them at the final pretrial conference. They were advised that the jury would consist of eight jurors and that counsel will each exercise three peremptory challenges against a qualified panel of fourteen. They understand that trial days begin at 9:00 a.m. and run until 5:30 p.m. with

an hour break for lunch and two 15-minute breaks, one in the morning and one in the afternoon. They did not want to have the witnesses sequestered.

With respect to motions in limine, plaintiffs' motion to exclude all evidence that the Beloit Police Department initially investigated the possibility that Daytona Brewster died of heat exhaustion is GRANTED. Defendant has no objection to the motion.

Defendant moved to exclude evidence of its recalls of certain child restraint products. That motion was GRANTED on the ground that defendant has not recalled any of the car seats that are at issue in this suit.

Defendant's motion to exclude evidence of other accidents involving child restraints is GRANTED unless plaintiffs can show that the accidents of which they wish to introduce evidence occurred under substantially similar circumstances. The consumer incident reports are inadmissible hearsay, except possibly to prove that defendant was aware of a defect in the car seat model plaintiffs were using.

Defendant's motion to exclude post-accident photographs of the deceased is GRANTED. No photographs are to be shown for the liability phase of the trial. Plaintiffs may introduce a small number of photographs during the damages phase, subject to the approval of the court.

Shortly before the hearing, plaintiffs moved for a motion striking defendant's answer as a sanction for its failure to provide answers to interrogatories, in compliance with the

magistrate judge's order of October 7, 2005. Discussion of this motion required continuing the hearing to November 4, 2005, at 9:00 a.m. After hearing extensive discussion of discovery problems, it became evident that it would be necessary to continue the trial in this case until January 30, 2006, the first date on which the parties would be prepared to go to trial. No later than November 10, 2005, defendant is to file and serve answers to the interrogatories that the magistrate judge ordered it to answer. This will include the model numbers and names of all three point and five point car restraint systems, all call logs including those produced in other litigation that are in defendant's possession and defendant's procedures for obtaining and storing customer reports.

Finally, we took up defendant's motion in limine to exclude the testimony of Frederick Elder. I granted that motion after finding that Professor Elder had undertaken no research in connection with his evaluation of the car seat, had reviewed no articles in the field and had done no investigation that required professional knowledge or qualifications. Most important, he was unable to link his theory of the false latch to the accident in this case.

Plaintiffs' counsel asked for a chance to show that Professor Elder could tie together his evaluation of the car seat with information that would support his report. Although I think it is unlikely that plaintiffs will be able to make this showing, I agreed to hold a hearing on December 13, 2005, at 1:30 p.m. at which plaintiffs would have an opportunity

to make this showing.

Although I am denying plaintiffs' motion to strike defendant's answer as a sanction for defendant's failure to provide answers to interrogatories as ordered, I will consider the imposition of lesser sanctions under Rule 37 depending on defendant's response to the interrogatories.

ORDER

IT IS ORDERED that plaintiffs' motion to strike defendant's answer is DENIED.

Entered this 9th day of November, 2005.

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