

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

ROBERT R. OLESON,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER

05-C-33-C

A court trial in this case has been scheduled for June 19, 2006. This order will describe generally how the trial will be conducted and advise the parties what written materials they are to submit in advance of trial.

Opening Statements

Plaintiff will give an opening statement describing his claim. The opening statement is intended to give the court a brief overview of what the case is about and tell the court what evidence plaintiff will be putting before the court. This is not the time for plaintiff to give his testimony. That will come later.

After plaintiff makes his opening statement, defense counsel will be given an

opportunity to make a statement about defendant's case. If counsel wishes, he may delay the statement until the beginning of defendant's case.

Avoiding Dismissal of the Case

After opening statements, the evidentiary stage of the trial begins. Plaintiff will offer his evidence first, because he has the burden of proving his claim by a preponderance of the evidence. He must prove each element of his claim. The elements of plaintiff's claim are described below in the section titled "Elements of Plaintiff's Claim." If plaintiff does not put in enough evidence to prove his claim, the defendant may move the court for judgment as a matter of law against plaintiff, and the judge may dismiss the case before the defendant is asked to produce any opposing evidence.

Elements of Plaintiff's Claim

In order to survive a motion for judgment as a matter of law, plaintiff must present enough evidence to allow the judge to find that

- 1) the clothes dryer at the Federal Correctional Institution in Oxford, Wisconsin was improperly installed;
- 2) he suffered an electric shock while operating the clothes dryer;
- 3) as a result of the shock he suffers daily headaches, blurred vision in his left eye and

pain in his left arm.

Damages

If the court finds that plaintiff is entitled to a verdict in his favor, it may award as compensatory damages an amount that reasonably compensates plaintiff for the injuries or damages he suffered as a result of defendant's negligent act. In order to recover compensatory damages, plaintiff must introduce evidence of physical harm suffered as a result of defendant's actions. If plaintiff presents evidence of physical injury, he may then present evidence of any mental or emotional injuries he may have suffered as a result of defendant's action.

Evidence

All evidence offered at trial must meet the requirements of the Federal Rules of Evidence. For example, if a party wants to introduce evidence about the content of a document, such as, for example, an entry in a medical record, he should get a copy of the record and mark it as an exhibit. When he wants to show the court what is in the document, he should ask the court to admit the exhibit. He will then have to testify that the document is a true copy of the record he obtained from a hospital or the health services unit, or another medical facility. If plaintiff does not have first-hand knowledge that a document is an

authentic copy of the original, he will have to produce a witness who can testify from his or her own knowledge that the document is what it appears to be. A party may not offer affidavits as exhibits at trial because affidavits are hearsay. However, a party may use a witness's affidavit to try to show that the witness's trial testimony is not believable.

The Federal Rules of Evidence limit the testimony of witnesses. Witnesses may give testimony on any relevant matter about which they have personal knowledge. However, witnesses generally cannot give hearsay testimony, that is, the witness cannot testify about what someone else said out of court.

Preparing for Trial

In the magistrate judge's preliminary pretrial conference order of September 1, 2005, the parties were given a deadline to tell each other the names and addresses of their trial witnesses. A copy of this court's written Procedures for Calling Witnesses to Trial was attached to the order. I am attaching another copy to this order. Plaintiff should pay close attention to those procedures if he plans to have any witnesses appear at trial on his behalf. I will assume that plaintiff will testify about matters relevant to his claim. I conclude that his presence at trial is necessary. Therefore, I will issue a writ of habeas corpus ad testificandum to secure his appearance.

ORDER

IT IS ORDERED that the Clerk of Court issue a writ of habeas corpus ad testificandum for the attendance of plaintiff Robert R. Oleson at trial beginning on Monday, June 19, 2006.

FURTHER, IT IS ORDERED that

1. NOT LATER THAN June 9, 2006, the parties are to file and serve a proposed form of special verdict.

2. If either party wants to submit a trial brief in advance of trial, the party must serve a copy of the brief on the opposing party. The parties may file the brief with the court at any time before trial.

Entered this 5th day of May, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge