

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

UNITED VACCINES, INC.,

Plaintiff,

v.

DIAMOND ANIMAL HEALTH, INC.
and HESKA CORPORATION,

Defendants.

ORDER

05-C-0604-C

A final pretrial conference was held in this case on October 5, 2006, before United States District Judge Barbara B. Crabb. Plaintiff United Vaccines, Inc. appeared by Thomas Withrow and Bruce Schultz. Defendants appeared by Kristin Graham Noel, Emily Feinstein and Andrew M. Norman.

Counsel predicted that the case would take 5 days to try. They understand that trial days will begin at 9:00 a.m. and will run until 5:30, with at least an hour for lunch, a short break in the morning and another in the afternoon.

Counsel agreed that the witnesses would be sequestered. They are familiar with the court's visual presentation system.

No later than noon on Friday, October 6, plaintiff's counsel will advise defendant's counsel of the witnesses plaintiff will be calling on Monday and the order in which they will be called. Counsel should give similar advice at the end of each trial day; defendants' counsel shall have the same responsibility in advance of defendant's case.

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 are to provide the court with exhibit lists and copies of documentary evidence before the start of the first day of trial.

Counsel agreed to the voir dire questions in the form distributed to them at the conference. I deleted one question that I believed was too vague to be useful and pared the list of witnesses expected to be called. 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 jury the introductory instructions on the way in which the trial will proceed and their responsibilities during the trial.

Counsel discussed the form of the verdict and the instructions on liability. Final decisions on the instructions and form of verdict will be made at the instruction conference

once all the evidence on liability is in.

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

Plaintiff's motions in limine

1. To exclude the testimony of persons not named as witnesses until four hours before the close of discovery: GRANTED in light of defendants' refusal to allow depositions of these persons.
2. To prohibit testimony of damages not disclosed until four hours before the close of discovery: a ruling is RESERVED until after the liability phase of trial.
3. To prohibit or limit evidence regarding plaintiff's relationship to Harlan Sprague Dawley: GRANTED in large part; however, the parties may identify Harlan Sprague Dawley as plaintiff's parent company.

Defendants' motions in limine

1. To strike plaintiff's Rule 26(a)(3) disclosures as so broad as to be violative of Federal Rules: DENIED, now that plaintiff has pruned its disclosures to identify the precise exhibits it will be introducing and the witnesses it will be calling.
2. To preclude plaintiff from seeking punitive damages: a ruling is reserved until after the liability phase of trial.
3. To preclude plaintiff from offering evidence about lost profits, loss of goodwill, etc.:

GRANTED as unopposed.

4. To limit plaintiff to information presented in Rule 30(b)(6) deposition of Robert Norberg: to be decided on topic by topic basis.

5. To exclude expert testimony and report of Edward Carroll: GRANTED to extent that Carroll expresses opinions about matters he has not investigated; DENIED as to matters that Carroll has observed and known about in the course of his job, such as defendants' failure to produce vaccines consistently with acceptable "release titer" and defendants' failure to meet USDA requirements.

6. To exclude expert report and testimony of Robert Norberg: GRANTED in part. The expert report will not be shown to the jury. Norberg may testify as a lay witness to efforts he made to obtain vaccines from companies other than defendants, to the extent that he can establish a foundation for his knowledge and does not testify about hearsay.

7. To bar admission of plaintiff's evidence regarding damages: a ruling is reserved until after the liability phase of trial.

8. To preclude plaintiff from presenting evidence or making references to defendants' alleged inducement: GRANTED.

9. To preclude plaintiff from presenting evidence on the number of doses contained in the December 28, 2004 shipment of C.bot.: DENIED but plaintiff's witnesses may not testify to their opinions about which test is the better one for determining the number of doses in

vaccine.

Entered this 6th day of October, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge