

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

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CHARLES E. HENNINGS,

Plaintiff,

v.

DAVE DITTER,

Defendant.

ORDER

06-C-353-C

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Trial is scheduled in this case for August 6, 2007. After defendant submitted his witness list, plaintiff moved to preclude four of those witnesses from testifying because defendant had not disclosed the witnesses during discovery.

In his response, defendant says that three of the witnesses in dispute, Robert Dunham, Linda Alsum-O'Donovan and Mardell Petras, are record custodians being called for the sole purpose of authenticating trial exhibits. Because plaintiff could not have been prejudiced by any failure of defendants to disclose witnesses who will not be testifying about the merits of the case, plaintiff's motion will be denied with respect to these three witnesses. I will note, however, that I consider it a waste of time and money to bring in a records custodian to authenticate trial exhibits. Unless plaintiff has a good reason to believe that the

exhibits in question are not what defendant says they are, he should tell defendant's counsel that he will stipulate to their authenticity, making it unnecessary to call the witnesses. As noted in the pretrial order, the same applies to defendant with respect to any of plaintiff's exhibits.

Defendant says he is calling the fourth witness, Peggy Doucette, as both a record custodian and as a fact witness. Defendant's only explanation for failing to disclose this witness sooner is that he believes plaintiff's discovery request for the names of potential witnesses was "vague, ambiguous and unintelligible." This objection is both dubious and irrelevant because plaintiff's discovery request simply mimicked a requirement imposed by Fed. R. Civ. P. 26(a)(1)(A): to disclose at the beginning of the case "the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information."

Defendant says that he was "justified in not attempting to anticipate all of his trial witnesses at such an early stage in the lawsuit," but this is no excuse either. Even if defendant was not aware at the beginning of the case that Doucette was a potential witness, defendant was required under Fed. R. Civ. P. 26(e) to supplement any previous discovery responses. Because defendant gives no reason why he failed to supplement his discovery materials with information regarding Doucette, I will grant plaintiff's motion with respect

to Doucette's testimony as a fact witness.

ORDER

IT IS ORDERED that plaintiff Charles Hennings's motion to preclude defendants' witnesses from testifying at trial is GRANTED with respect to any testimony by Peggy Doucette related to the merits of the case. It is DENIED with respect to testimony of Doucette, Robert Dunham, Linda Alsum-O'Donovan -and Mardell Petras as record custodians.

Entered this 17th day of July, 2007.

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