

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

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WAUKESHA COUNTY, WISCONSIN,

Plaintiff,

v.

NATIONWIDE LIFE INSURANCE  
COMPANY,

Defendant.

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ORDER

06-C-0656-C

A final pretrial conference was held in this case on October 25, 2007, before United States District Judge Barbara B. Crabb. Plaintiffs Waukesha County appeared by Gregory Everts, Andrew Norman and Freya Bowen. Defendant Nationwide Life Insurance Company appeared by Quintin Lindsmith and Natalie Furniss.

Counsel predicted that the case would take 4 days to try. They understand that trial days will begin at 9:00 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 with the exception of experts, all witnesses would be sequestered. Counsel are either familiar with the court's visual presentation system or will make

arrangements with the clerk for some instruction on the system.

No later than noon on the Friday before trial, 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; defendant's counsel shall have the same responsibility in advance of defendant's case. Also, no later than noon on the Friday before trial, counsel shall meet to agree on any exhibits that either side wishes to use in opening statements. Any disputes over the use of exhibits are to be raised with the court before the start of opening statements.

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 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. 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.

1. Plaintiff's motion to preclude defendant from presenting live witnesses during its case is DENIED.
2. Plaintiff's motion to preclude Francis Sabatini from proffering expert testimony at trial or in the alternative, to limit him to opinions disclosed in his report is DENIED;
3. Defendant's motion to preclude Elliot Dinkin from testifying is DENIED.
4. Plaintiff's motion to instruct the jury that it may draw an adverse inference from defendant's failure to make a prompter correction of Robert Longfellow's mistaken averment is DENIED at this time. If the evidence warrants, plaintiff may renew the motion in the instruction conference.

Entered this 26<sup>th</sup> day of October, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge

## Voir Dire Questions

1. Statement of the case. This is a civil action in which Waukesha County is suing Nationwide Life Insurance Company for money damages. From 1985 until 2006, Nationwide Life provided a deferred compensation plan for Waukesha County's employees. In 2005, the county undertook an evaluation of the Nationwide plan and one offered by another company known as ICMA and decided to contract with ICMA. When it informed Nationwide Life that it would be terminating its contract and wished to withdraw all of its employees' funds in a lump sum, it knew that it would have to pay a market value adjustment under the contract. The resulting adjustment was larger than the county had anticipated. It brought this suit on behalf of the plan participants, alleging that Nationwide Life had breached its contract with the county by the way in which it calculated the adjustment. Nationwide Life denies that it breached the contract and contend instead that it computed the adjustment in accordance with the contract.

Has any one of you ever heard of this case before today? How? When? When you heard about it, did you form any opinion concerning the case? Do you believe that your ability to serve impartially as a juror in this case has been affected by what you have heard about it?

2. The trial of this case will begin today and will last four days. Is there any one of you who would be unable to serve as a juror during this time?
3. Ask counsel to stand and tell the jury where they practice and with whom. Ask panel whether anyone knows counsel or their associates or partners.
4. Ask counsel to introduce the parties. Ask panel whether anyone knows any of the parties. (If any party is a corporation, have counsel identify the nature of the corporation's business, its major subsidiaries, or its parent corporation, and where it conducts business. Ask whether anyone on the panel is stockholder of corporation or has had business dealings with it.)
5. Question to each prospective juror.

Please stand up and tell us about yourself.

Name, age, and city or town of residence.

Marital status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse or domestic partner.

Any military service, including branch, rank and approximate date of discharge.

How far you went in school and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material.

Favorite types of television shows.

Whether you or your spouse has a retirement plan and if so, whether it is sponsored by your employer. What kind of plan is it? What kind of investments do you own through this plan? (stocks, bonds, certificates of deposit, etc.)

6. Question to panel regarding prior experience with court proceedings:
  - a. Have any of you ever been a party to a lawsuit? Describe circumstances.
  - b. Have any of you ever been a witness in a lawsuit?
  - c. How many of you have served previously on a jury?

- d. Of those of you who have sat on a jury, were you ever the foreperson on a jury? Describe your experience.
  - e. Do any of you know any of the other persons on the jury panel?
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- 7. Have any of you, your family members or close friends ever worked for Waukesha County? If so, what was the nature of your employment? Are any of you or your spouse or domestic partner participants in the Waukesha County Deferred Compensation Retirement Plan? If yes, ask whether they're familiar with 2006 change in administration of plan and whether they participated in any proceedings relative to change?
  - 8. Have any of you, your family members or close friends ever worked for any governmental entity? If so, what was the nature of your employment?
  - 9. Have any of you, your family members or close friends ever worked for Nationwide Life or any other Nationwide company? If so, what was the nature of your employment?
  - 10. Have any of you or your family members ever purchased any insurance or investment product from Nationwide? If so, what was the nature of the product? Do you still own it? If not, why and when did you sell it? When you owned it were you satisfied with the service provided by Nationwide?
  - 11. Have any of you, your family members or close friends ever worked in the insurance industry? With what company and in what capacity?
  - 12. Have any of you, your family members or close friends worked for a brokerage firm, bank or other company where your work involved investments? With what company and in what capacity? What type of investments did you work with?
  - 13. Do any of you have any post high school education in retirement planning or investments? Do any of you have any special training or experience in these areas?

14. Have any of you ever been involved in the administration or management of a retirement plan such as an employer-sponsored 401(k) plan? If so, what was the nature of your work?
15. Are any of you or your spouse or domestic partner participants in any employer-sponsored retirement plan? If yes,
  - a. Does your account includes funds withheld from your paycheck?
  - b. Does your employer match your contributions?
  - c. Do you have an opportunity to select the funds or investments to which you're directing your investment?
  - d. Does your choice of funds include one that guarantees a fixed rate of return for a certain period of time? If so, is there any limit on your ability to move funds out of such a fixed fund?
  - e. Are you satisfied with the way your account has been handled or your retirement fund administered?
16. Have any of you ever owned a fixed annuity or any other kind of investment that guarantees a specific rate of return? From what company did you buy it? Was your experience with the investment favorable or unfavorable? Did that fund or investment charge a fee if you withdrew your money? Did you accept this fee or penalty?
17. Are any of you currently invested in the stock market? Would you describe your level of financial risk as a stock owner as low, moderate or high?
18. Do any of you work with a retirement or investment planning specialist with respect to your personal finances or investments?
19. Have any of you ever lost money in an investment? Please describe.
20. Have you ever filed a complaint against any insurance company or against any

entity from which you purchased an investment?

21. Have any of you heard of the firm Dana Investments? How did you hear of it? Do you know anyone who's worked there?
22. Have any of you heard of the firm Cowden Associates Inc.? How did you hear of it? Do you know anyone who's worked there?
23. Have any of you heard of the firm Ernest & Young? How did you hear of it? Do you know anyone who's worked there?
24. Would any of you find it difficult to be impartial in a case in which the defendant is a large corporation and the participants in the plan are current and former employees of Waukesha County?
25. The following persons may be called as witnesses in this case or referred to by witnesses. Do any of you know
  - a. Peter Hans
  - b. Norman Cummings
  - c. Michael Stewart
  - d. Elliot Dinkin
  - e. James Bartoszewicz
  - f. James Alford
  - g. Joel Buck
  - h. Robert Longfellow
  - i. Michael McCann
  - j. Todd Staczar
  - k. Michael Studebaker
  - l. Frank Sabatini
26. Question to panel. At the end of the case I will give you instructions that will govern your deliberations. You are required to follow those instructions, even if you do not agree with them. Is there any one of you who would be unable or unwilling to follow the instructions?
27. Question to panel. Do any of you have opinions, whether positive or negative,



about people who go to court to obtain relief for wrongs they believe they have suffered?

28. Question to panel. Do you know of any reason whatsoever why you could not sit as a trial juror with absolute impartiality to all the parties in this case?

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SPECIAL VERDICT

06-C-0656-C

We, the jury, for our special verdict, do find as follows:

Question No. 1: Did defendant Nationwide Life Insurance Company breach its Group Fixed Fund Retirement Contract with plaintiff Waukesha County by assessing a market value adjustment that did not reasonably represent the net capital loss, if any, that defendant Nationwide would have suffered if it liquidated investments in order to cover the

lump sum withdrawal of assets by plaintiff Waukesha County?

ANSWER: \_\_\_\_\_  
(Yes or No)

\_\_\_\_\_  
Presiding Juror

Madison, Wisconsin  
Dated this \_\_\_\_\_ day of October, 2007.