

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

EASTMAN INDUSTRIES, d/b/a
INGERSOLL TRACTOR CO,

Plaintiff,

v.

NORLEN INCORPORATED, d/b/a
NORLEN MANUFACTURING, INC.,

Defendant.

ORDER

07-cv-275-bbc

A final pretrial conference was held in this case on April 30, 2008, before United States District Judge Barbara B. Crabb. Plaintiff Eastman Industries by Valerie Bailey-Rihn and Jamie Hochhausen. Defendant Norlen Incorporation appeared by Kevin E. Wolf. Also present was David Henrich.

Counsel predicted that the case would take 2-3 days to try. They understand that a criminal case will go forward on Monday, May 5 and they agreed that the magistrate judge could preside over the jury selection in this case, to start immediately after the jury is selected in the criminal case. They will advise the clerk of court promptly if they decide to

consent to the magistrate judge for trial as well. If they do not consent, the trial in this case will begin at 2:00 p.m. on Wednesday, May 7. In either case, 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 sequestration of the witnesses is not necessary. 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 last business day before trial, plaintiff's counsel will advise defendant's counsel of the witnesses plaintiff will be calling on the first day of trial 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 last business day 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. They had no objections. Final decisions on the instructions and form of verdict will be made at the instruction conference once all the evidence is in.

Defendant raised a question about plaintiff's exhibits 50 and 51, which plaintiff's counsel had not been provided defendant until the last day or two. Ms. Bailey-Rihn represented to defendant that the exhibits did not include any new parts or tooling for which plaintiff is seeking compensation but merely put the articles in order to make questioning more efficient. Mr. Wolf will review the exhibits; he may renew his objections at the start of trial if he thinks the exhibits are improper in any respect.

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

1. Plaintiff's motion to exclude evidence regarding defendant's belief and opinion regarding the quantity and value of the scrapped tooling

This motion is denied to the extent that defendant's witnesses testify about the reasons for their opinions about the value of the property had to plaintiff before it was destroyed.

2. Defendant's motion to exclude any evidence regarding damages derived from quotes produced by Minnesota Tool & Die Works

This motion is denied as to witness Mark or Keith Sherer's testimony about the price they quoted for replacement of the dies and as to Emile Cardali's expert testimony. Plaintiffs cannot ask Mark or Keith Sherer any questions that would call for an expert opinion.

3. Plaintiff's supplemental motion in limine

Plaintiff moved to preclude defendant from using the deposition of Gordon Griepentrog. If the parties consent to trial by the magistrate judge, the issue will be moot, because Griepentrog can testify out of order on the 5th. If they do not consent, they will have to arrange for a supplemental deposition of Griepentrog before he has surgery on May 6.

Entered this 30th day of April, 2008.

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