

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

---

RIDDELL, INC.

Plaintiff,

FINAL PRETRIAL  
CONFERENCE ORDER

08-cv-711-bbc

v.

SCHUTT SPORTS, INC.,  
Defendant.

---

A final pretrial conference was held in this case on July 21, 2010, before United States District Judge Barbara B. Crabb. Plaintiff appeared by Michael Warnecke, Christopher Hanewicz and Gabrielle Bina. Defendant appeared by William Streff, Matthew Hertko, Robin McCue and Jeffrey McIntyre.

Counsel predicted that the case would take 7-8 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 will advise the court at the start of the trial whether they wish to have any witnesses sequestered. Counsel have made arrangements with the clerk for instruction on

the new evidence presentation 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 will work together on the preparation of jury binders.

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 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. 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. Cross-motions on the admissibility of evidence from archive.org, the "Wayback Machine" or the Internet Archive, dkts. #264 and 274. I am not persuaded that the evidence is relevant, so it is not necessary to decide any questions about the authenticity of the evidence.

2. Schutt's motion to preclude evidence related to measurements and photographs regarding the "jaw flap" limitation, dkt. #273. DENIED. Schutt's objections to this evidence are better characterized as going to the weight of the evidence and can be explored through cross-examination.

3. Schutt's motion to preclude testimony of lost profits based on value of entire helmet, dkt. #276. DENIED. It will be up to Riddell to prove that the patented features were what made the helmets more desirable. Schutt can try to challenge the damages case with evidence that increased sales were the product of other facts, such as which pro teams wore which helmets.

The parties raised the possibility of re-opening the issues of false advertising and willfulness, but those issues have been resolved in the summary judgment order.

Schutt asked for and was granted an opportunity to seek clarification of the definition of “jaw flap.” It may have until noon on July 23, 2010, in which to file a brief in support; Riddell may have until noon on July 27, 2010 in which to respond.

Entered this 21st day of July, 2010.

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