

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

AARON L. ESPENSCHIED,
GARY IDLER and MICHAEL CLAY,

Plaintiffs,

FINAL PRETRIAL CONFERENCE
ORDER

09-cv-625-bbc

v.

DIRECTSAT USA, LLC
and UNITEK USA, LLC,

Defendants.

A final pretrial conference was held in this case on March 1, 2011, before United States District Judge Barbara B. Crabb. Plaintiffs appeared by Michael Modl and Heath Straka. Defendants appeared by Colin Dougherty, Gregory Voshell and Drew Cochrane.

Counsel predicted that the case would take 5-7 days to try. It will not be bifurcated. 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 to the voir dire questions in the form distributed to them at the conference, with two minor changes. 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 introductory instructions about how the trial will proceed and their responsibilities as jurors.

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 instruction on the system.

No later than noon on the Friday before trial, plaintiffs' counsel will advise defendants' counsel of the witnesses plaintiffs 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 defendants' 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 copies of documentary evidence to the court before the start of the first day of trial.

Plaintiffs' counsel agreed to call Mr. Yannantuono on the first day of trial, to accommodate his schedule. They will confer with defendants' counsel about the possibility of conducting Ms. Schockman's examination by telephone since she is unable to be present in person. (The court has videoconferencing equipment if counsel wish to use it; if so, they should give court personnel advance notice so that they can have the equipment ready.)

Counsel discussed the form of the verdict. A number of the questions are still in dispute. Defendants may have until noon on Monday, March 5, 2012 to submit briefs on the following questions (and on any other matters raised at the final pretrial conference that they contest):

(1) Which side bears the burden of proof on the question whether the parties had an agreement on piece-rate pay?

(2) Whether any or all of the states at issue (Wisconsin, Minnesota and Pennsylvania) require defendants to pay time and a half for overtime even for piecework and even if there is an agreement that piece-rate pay applied to both productive and non-productive work?

(3) Whether any or all states at issue allow plaintiffs to recover for "gap time"?

If plaintiffs have matters they wish to be heard on, they should submit briefs on those issues no later than noon on Monday. All responsive briefs by either side are to be filed by noon on Thursday, March 8. A hearing will be held on the remaining motions at 4:00 p.m.,

Friday, March 9, 2012. Defendants' counsel may participate by telephone.

Final decisions on the instructions and form of verdict will be made at the instruction conference once all the evidence is in.

Entered this 2d day of March, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge