

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

DR. ARISTO VOJDANI and
IMMUNOSCIENCES LAB, INC.,
a California corporation,

Plaintiffs

FINAL PRETRIAL CONFERENCE
ORDER

10-cv-37-bbc

v.

PHARMASAN LABS, INC.,
a Wisconsin corporation, and
NEUROSCIENCE, INC.,
a Wisconsin corporation

Defendants

A final pretrial conference was held in this case on October 13, 2011, before United States District Judge Barbara B. Crabb. Plaintiffs appeared by Aaron Davis and Eric Chadwick. Defendants appeared by Henry Helgen and Amanda Cefalu.

Counsel predicted that the case would take two days to try if there is no need to try damages. 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. They were advised that the trial might not start until Wednesday, October 26, but that the jury

will be selected on Monday, October 24. They agreed that the magistrate judge could preside over jury selection.

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 introductory instructions on the way in which 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.

Because defendants bear the burden of proof on the questions on the new verdict form, they will be treated as the plaintiffs, in terms of going first with opening statements and in putting in their case in chief. Counsel agreed that they would do all their questioning of each witness when that witness is called, regardless which side called the particular witness.

Counsel discussed the form of the verdict and jury instructions. They agreed that proposed question no. 2 should be modified to read “50% of the actual revenue derived from monthly sales for testing using the LDA plates.” They also agreed that if the jurors answered question yes to question no. 2, no. 3 should read: “When did the modification take effect?” They agreed to meet and confer on revenue figures in the hope that they could agree on the damages to which plaintiffs would be entitled, depending on when the modification took effect and that it might not be necessary to have a damages phase or even to ask the jury whether plaintiffs has proven by a preponderance of the evidence that defendants failed to pay plaintiffs what they owed.

Final decisions on the instructions and form of verdict will be made at the instruction

conference once all the evidence is in.

The parties had only one contested motion in limine, which was plaintiffs' motion to bar defendants from relitigating the issue of defective plates. The motion is GRANTED; the only issue the jury needs to decide is whether the parties agreed to modify the contract to 50% of *actual* sales. If the jury finds that they did, then it is irrelevant *why* some sales were not made; the only relevant question is what the actual sales were. However, defendants can put in some evidence about defective plates and plates used for quality checks simply to show that why defendants would have wanted to modify the original agreement and why plaintiffs would have agreed to do so.

Defendants asked the court to exclude the testimony and report of Phillip S. Williams; plaintiffs do not object; defendants' motion is GRANTED.

Entered this 14th day of October, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge