

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

S&S SALES, INC.

PLAINTIFF

VS.

NO. 2:08-CV-00220 WRW

PANCHO'S MEXICAN FOODS, INC., et al.

DEFENDANTS

ORDER

1. Whether the AWG grocery stores witnesses and/or Patrick Siano are going to be able to testify at trial, or be deposed.

Defendant will not be permitted to call Ron Watkins, Dan Williams, Michael King, and Billy Roach at trial.

While I considered allowing them to testify, as to the matters in their affidavits only, this means there would be cross examination, and it is quite likely that Defendants' counsel would then argue that the cross opened up new areas for examination. I do not see this as a certainty, but a definite probability.

All in all, I am persuaded that they should be excluded.

Mr. Siano may testify at trial, but may not be deposed.

2. Whether the Court is going to allow Pancho's non-lawyer witnesses to present evidence that it sought the advice of counsel during the liability phase of the trial.

References to "advice of counsel" will not be permitted during the liability stage of the trial. My visceral reaction is that it should not be admitted,¹ and no specific authority has been cited by Defendants' to support admission. This issue is foreclosed during the first portion of the trial.

¹See Federal Rule of Evidence 401, 403, and 802.

3. Whether the Court is going to allow Lawyers from Martin Tate to be present in the Courtroom during the trial or exclude them under “the Rule.”

Any lawyers who may be witnesses at trial will be excluded under “the Rule.” Under the facts as I now see them, this means that Mr. Earl Houston and Mr. Tom Hutton will come under the Rule throughout trial. Ms. Wellford will not come under the Rule, if she will not be a witness at trial, but as mentioned elsewhere, as a lawyer for Martin Tate, she will not be permitted to participate at trial.

IT IS SO ORDERED this 19th day of March, 2010.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE