

LINK:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-1339-GAF (SPx)	Date	April 3, 2014
Title	Trustees of the Southern Calif. Pie Trades Health and Welfare Trust Fund, et al. v. C.H. Stone Plumbing Co., Inc., et al.		

Present: The Honorable	GARY ALLEN FEES		
Renee Fisher	None	Deputy Clerk	N/A
Attorneys Present for Plaintiffs:	None	Attorneys Present for Defendants:	None
None	Court Reporter / Recorder	None	Tape No.

Proceedings: PRE-TRIAL CONFERENCE ORDER

In connection with the Pretrial Conference, the court makes the orders opposite the boxes checked below. ***The orders contained in this minute order prevail in the event of conflict with the signed Pretrial Conference Order.***

The Pretrial Conference Order is signed and filed this date
 as modified.

Non jury trial is set for April 29, 2014, at 8:30 A.M.

The trial is limited in accord with the order on the last page of this minute order.

Counsel note this court's standard orders (contained in the post-status conference order) regarding preparation and submission of jury instructions. Failure timely to serve and file jury instructions (and form of special verdict if required below) will be deemed a waiver of jury trial by the party so failing.

The matter will be submitted to the jury on a form of special verdict. The parties are to attempt to agree on a form of special verdict and are to submit the agreed form, or each party's proposed form in the event of non-agreement, with the jury instructions.

The direct testimony of parties and witnesses reasonably available to the parties is to be submitted in declaration form, subject to cross-examination. Declarations are to be delivered to

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opposing counsel and the court on the day before the witness may testify. Court will receive non-objectionable portions of declarations in evidence as direct testimony.

Motions in limine will be heard at 8:30 AM on the morning of trial unless otherwise directed by the court. Motions in limine must deal with evidentiary matters and are not to be disguised motions for summary judgment. Such motions shall be filed and served (with 3 days extra notice if mailed) two weeks before trial, with any opposition due one week before trial.

The court notes that the parties have failed to submit a summary of what settlement procedure has been followed, as required by the court's standard post-status conference order. The parties are directed to conduct a settlement conference with Magistrate Judge _____ and report to this court in writing by _____, what has been done to comply with this order (do not state offers and demands).

A joint exhibit list has not been filed. The parties are directed to file such by _____.

The number of objections to exhibits appears excessive. The parties are directed to confer in accordance with the prior order issued by this Court.

The following bifurcation is ordered:

The second bifurcated part of the trial, if necessary, will follow immediately after the first part before the same jury.

The second bifurcated part of the trial, if necessary, will be scheduled after completion of the first part and will be before a different jury, the court finding that the questions to be presented in the second part of the trial are sufficiently independent of those in the first part of the trial to permit a separate jury.

All discovery is complete. The discovery cut-off has passed. The court will not interfere with any agreements the parties may have regarding further discovery, but will not enforce such agreements.

Plaintiff/Defendant _____ has failed to file a witness list. The

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court orders:

Said party shall not call any witnesses not on the witness lists of other parties.

Said party shall file and serve his/her/its witness list on or before _____ . Failure timely to file such a witness list precludes said party from calling any witnesses not listed on another witness list. This order is without prejudice to the objection of any party who claims to be prejudiced by the late filing of the witness list.

Other:

A. Issues to Be Tried

With respect to the issues identified in Section 8 of the Proposed Pre-trial Conference Order, the Court notes the following.

1. The status of the unpaid contributions. The Court has determined that Trustees v. Temecula Mechanical, Inc., 438 F.Supp.2d 1156, 1165 (C.D. Cal. 2006) correctly states the law with respect to plan assets and the Court will following its reasoning in this case. The Court recognizes that, as a district court decision, the case is not controlling. However, the Court finds its reasoning persuasive and, in the absence of controlling Ninth Circuit authority, will apply the decision to the facts in this case.

2. Dean's status as a fiduciary. The Court has no doubt that, at all relevant times, Dean stood in a fiduciary relationship to plan beneficiaries and plan assets.

B. Time Allocation

The parties will be given a total of 3 hours each to conduct witness examination. All witness examination will be conducted on April 29, 2014.

IT IS SO ORDERED.