

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Senior Judge Wiley Y. Daniel**

Civil Action No. 12-cv-00750-WYD-CBS

PHILIP W. WYERS, and,  
WYERS PRODUCTS GROUP, INC.,

Plaintiffs,

v.

GREENBERG TRAUIG, LLP;  
MARK L. HOGGE;  
LAURA M. KLAUS; and,  
ROBERT P. CHARROW,

Defendants.

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**ORDER**

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THIS MATTER is before the Court on: (1) the plaintiffs' Motion For Summary Judgment Regarding Admissibility Of Evidence Of Mediation Communications [ECF No. 79]; (2) the defendants' Motion To Exclude Expert Testimony Of Melinda M. Harper [ECF No. 121]; (3) the Final Pretrial Order [ECF No. 126]; and, (4) the parties' Joint Motion to Extend Briefing Deadlines [ECF No. 127].

**BACKGROUND**

On December 21, 2012, Philip W. Wyers and Wyers Products Group, Inc. ("the Plaintiffs"), filed an Amended Complaint [ECF No. 53] against Greenberg Traurig, LLP, Mark L. Hogge, Laura M. Klaus, and Robert P. Charrow ("the Defendants") alleging that the Defendants committed legal malpractice in connection with representing the Plaintiffs in an patent appeal before the United States Court of Appeals for the Federal

Circuit. The substance of the Plaintiffs' claim is that: (1) the Defendants failed to properly apprise the Plaintiffs of the governing law regarding the patent appeal; (2) the Defendants failed to accept an alleged lucrative settlement offer; (3) the Defendants filed an insufficient appellate brief on the Plaintiffs' behalf; and, (4) as a result of the above mentioned actions, the United States Court of Appeals for the Federal Circuit ruled against the Plaintiffs in the patent appeal.

## **ANALYSIS**

### **A. Final Pretrial Order [ECF No. 126]**

On November 29, 2013, Magistrate Judge Shaffer issued the Final Pretrial Order [ECF No. 126]. As such, this action is ripe for a trial setting. Accordingly, a five-day jury trial is set to commence on Monday, August 11, 2014, at 8:30 a.m. in Courtroom A-1002. Further, a Trial Preparation Conference is set for Tuesday, July 15, 2014, at 10:00 a.m. in Courtroom A-1002.

### **B. The Plaintiffs' Motion For Summary Judgment Regarding Admissibility Of Evidence Of Mediation Communications [ECF No. 79] And The Defendants' Motion To Exclude Expert Testimony Of Melinda M. Harper [ECF No. 121]**

In the Plaintiffs' Motion For Summary Judgment Regarding Admissibility Of Evidence Of Mediation Communications [ECF No. 79], the Plaintiffs request that I find the content of certain mediation communications which took place under a directive from the United States Court of Appeals for the Federal Circuit admissible. In the Defendants' Motion To Exclude Expert Testimony Of Melinda M. Harper [ECF No. 121], the Defendants request that I exclude Melinda M. Harper's testimony.

Both motions [ECF Nos. 79 & 121] request a ruling regarding the admissibility of evidence. Such a request is the substance of a *motion in limine*, not a motion for

summary judgment.<sup>1</sup> Pursuant to Rule III(C)(1) of my PRACTICE STANDARDS, *motions in limine* “may be filed not earlier than seventy-five (75) days and not later than thirty (30) days prior to the Trial Preparation Conference.” The Trial Preparation Conference is set for Tuesday, July 15, 2014. Both motions [ECF Nos. 79 & 121] were filed earlier than 75 days prior to the Trial Preparation Conference. Therefore, the motions [ECF Nos. 79 & 121] are premature and DENIED WITHOUT PREJUDICE.

### **C. The Parties’ Joint Motion To Extend Briefing Deadlines [ECF No. 127]**

The parties consent to extending the deadline for Plaintiffs’ response to the Defendants’ Motion To Exclude Expert Testimony Of Melinda Harper [ECF No. 121]. The request is MOOT because that motion [ECF No. 121] is denied without prejudice.

The parties further consent to extending the deadline for Plaintiffs’ response to the Defendants’ Motion For Summary Judgment [ECF No. 123] to Friday, December 20, 2013. That request is GRANTED.

### **CONCLUSION**

After careful consideration of the matters before this Court, it is

**ORDERED that a five-day jury trial is set to commence on Monday, August 11, 2014, at 8:30 a.m. in Courtroom A-1002. Further, a Trial Preparation Conference is set for Tuesday, July 15, 2014, at 10:00 a.m. in Courtroom A-1002.**

It is

FURTHER ORDERED that the Plaintiffs’ Motion For Summary Judgment Regarding Admissibility Of Evidence Of Mediation Communications [ECF No. 79] and the Defendants’ Motion To Exclude Expert Testimony Of Melinda M. Harper [ECF No.

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<sup>1</sup> Pursuant to Rule 56(a) of the FEDERAL RULES of CIVIL PROCEDURE, “[a] party may move for summary judgment, identifying each **claim or defense** – or part of each **claim or defense** – on which summary judgment is sought.” (emphasis added).

121] are **DENIED WITHOUT PREJUDICE**. This ruling does not foreclose any party from raising the issues in these motions [ECF Nos. 79 & 121] under the proper procedural device, at the proper time, in accordance with my **PRACTICE STANDARDS**.

It is

FURTHER ORDERED that the Parties' Joint Motion To Extend Briefing Deadlines is **DENIED IN PART** and **GRANTED IN PART**. The motion is **DENIED AS MOOT** to the extent the parties consent to extending the deadline for the Plaintiffs to respond to the Defendants' Motion To Exclude Expert Testimony Of Melinda Harper [ECF No. 121] because that motion is denied without prejudice. The motion is **GRANTED** to the extent the parties consent to extending the time for Plaintiffs to respond to the Defendants' Motion For Summary Judgment [ECF No. 123]. As such, the Plaintiffs' shall respond to the Defendants' Motion For Summary Judgment [ECF No. 123] **on or before Friday, December 20, 2013**.

Dated: December 9, 2013.

BY THE COURT:

/s/ Wiley Y. Daniel  
Wiley Y. Daniel  
Senior U. S. District Judge