

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JULIE MAZURKIEWICZ,)
)
 Plaintiff,)
)
 vs.)
)
 COUNTRY MUTUAL INS. CO,)
 et al.,)
)
 Defendants.)

Case No. 4:11CV2089 RWS

MEMORANDUM AND ORDER

This matter is before me on a review of the parties’ initial pretrial compliance. Much to my surprise, defendant Safeco has listed attorney Gerard T. Noce to testify (presumably as an expert witness, since it also designates his curriculum vitae as an exhibit). This is not a legal malpractice case, so there appears to be no reason why I would permit an attorney to testify as an expert in this case since it is my job to instruct the jury on the law. Moreover, defendant Safeco never informed the Court of its intention to call Mr. Noce as an expert witness during the hearing on its motion to limit Dr. Berry’s testimony despite being asked about its witnesses (and specifically, its expert witnesses) for purposes of setting a trial date. Even more confusing is defendant Country Mutual’s designation of plaintiff’s counsel Jerry Klein and **its own** attorney David

Butsch as potential witnesses. The Court knows of absolutely no reason why the attorneys litigating this case would be potential witnesses, and if for some reason they are witnesses and testify, then each has potential conflict and ethical issues that must be resolved well before trial. In any event, this is not the type of issue to be raised for the first time on the eve of trial. Given these issues, I am very concerned that the parties have misrepresented the anticipated length of trial. Finally, I again encourage the parties to continue good faith settlement discussions as I continue to believe that the cost of trying this case will exceed any reasonable settlement of the matter.

Accordingly,

IT IS HEREBY ORDERED that defendant Safeco shall file a memorandum by 9:00 a.m. on December 23, 2013, setting out Gerard T. Noce's anticipated testimony and the basis for offering this testimony to the jury.

IT IS FURTHER ORDERED that defendant Country Mutual **shall file a memorandum by 9:00 a.m. on December 23, 2013, setting forth its good faith basis for designating Mr. Klein and Mr. Butsch as potential witnesses, their anticipated potential testimony, and its basis for offering their potential testimony to the jury.**

A handwritten signature in black ink, appearing to read "Rodney W. Sippel", written over a horizontal line.

RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 20th day of December, 2013.