

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

MD ELTON R. KERR,

Plaintiff,

:

Case No. 3:07-cv-297

-vs-

:

Magistrate Judge Michael R. Merz

MD WILLIAM W. HURD, et al.,

Defendants.

NOTICE REGARDING TRIAL DATE

This case is set for trial to a jury commencing November 16, 2009. The Court has set a jury trial in *Wells Fargo v. LaSalle National Bank*, 3:07-cv-449, a case involving commercial mortgage securitization, for the two full weeks commencing November 2, 2009. That case was re-set from August because it was not prepared for trial at that time. The two week setting of the *Wells Fargo* case is, of course, based on counsels' estimates of the amount of time needed to try the case; in this Court's experience, underestimation of the time needed to try a case is much more frequent than overestimation. Thus it appears not unlikely that the *Wells Fargo* trial will spill over into the time set for the trial of this case. In addition, of course, the Court has not yet been able to adjudicate the pending summary judgment motions in this case.

The Court therefore wishes to offer the parties in this case an option:

1. The Court is willing to leave the case set for November 16th with the understanding that we will start this trial as soon as the other is finished, or
2. The Court is willing to continue this trial for a short time so as to give the parties a definite starting date.

Counsel are requested to confer with each other and with their clients and advise Judicial Assistant Kelly Kopf of their preferences. If the parties are unable to reach agreement, the Court reserves the right to act *sua sponte*.

September 29, 2009.

s/ **Michael R. Merz**
United States Magistrate Judge