

1996 WL 745584
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United States District Court, D. Kansas.

Saul ZAPATA, et al., Plaintiffs,
v.
IBP, INC., Defendant.

Civil Action No. 93-2366-EEO.
|
Dec. 27, 1996.

Attorneys and Law Firms

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Jack L. Whitacre, Spencer, Fane, Britt & Browne, Kansas City, MO, Russell P. Wright, IBP, Inc., Dakota City, NE, J. Nick Badgerow, Michaela M. Warden, Jeannie M. DeVeney, Spencer, Fane, Britt & Browne, Overland Park, KS, for Defendant.

MEMORANDUM AND ORDER

RUSHFELT, United States Magistrate Judge.

*1 The court has before it a Motion For Leave of Court and To Compel Plaintiffs' Depositions (doc. 387). Pursuant to Fed. R. Civ. P. 30(a)(2)(b) and 37, defendant thereby seeks leave to again depose all plaintiffs in this action. It also asks that plaintiffs be required to produce reports of their expert witnesses before the depositions. Plaintiffs oppose the motion. They acknowledge that defendant may need some additional discovery, particularly on the issue of damages, in view of the passing of time since they were deposed in this case. They suggest such discovery could be obtained by means other than depositions. They particularly object to additional, unrestricted depositions of plaintiffs about their testimony

when deposed earlier.

This case began as a prospect for class certification. The Scheduling Order of December 14, 1993, provided that discovery until April 1, 1994, would be limited to issues relating to class and certification. It deferred discovery upon the merits of the case until the determination of these issues. On December 27, 1994, the Court entered a revised Scheduling Order. It authorized discovery to proceed both as to class issues and as to the merits of the case. Defendant deposed all plaintiffs except Juan Rucker while the restriction against merits discovery was in force.

That defendant has deposed plaintiffs for only the limited purpose of addressing issues of class and certification should not preclude it from deposing them upon subject matter it could not adequately cover with the restriction in force. For this reason the Court will allow defendant again to depose the plaintiffs, except for Juan Rucker. The Court will restrict the depositions, however, to address only the issues of damages, any new claims of plaintiffs, defenses to such new claims, and any other relevant subject matter not adequately pursued at their earlier depositions. Defendant may not, however, direct questions to a plaintiff which merely repeat those propounded at an earlier deposition.

The Court knows of no need to order the submission of reports of experts before the depositions of the plaintiffs. Defendant has shown no rationale for such a directive. It has not identified the nature of whatever expert testimony it anticipates. Nor has it explained why it must have the reports, before it can depose plaintiffs. The earlier orders have set the schedule for exchange of reports of any expert witnesses. The Court assumes the parties abide by those deadlines.

For the foregoing reasons the court sustains in part and overrules in part the Motion For Leave of Court and To Compel Plaintiffs' Depositions (doc. 387), as herein set forth.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp., 1996 WL 745584