

**United States District Court, Northern District of Illinois**

<b>Name of Assigned Judge or Magistrate Judge</b>	Matthew F. Kennelly	<b>Sitting Judge if Other than Assigned Judge</b>	
<b>CASE NUMBER</b>	06 C 552	<b>DATE</b>	12/11/2009
<b>CASE TITLE</b>	Young, et al. vs. Cook County, et al.		

**DOCKET ENTRY TEXT**

The Court issues the following preliminary ruling regarding the pretrial procedures to be followed with regard to the damages trials. Counsel should be prepared to address these points (as well as any other pertinent issues) at the 12/14/09 status hearing.

■ [ For further details see text below.]

Docketing to mail notices.

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The Court has reviewed defendant’s “motion to clarify damages schedule / reset damages trial.” The Court has advanced hearing date on the motion to 12/14/09 at 9:30 a.m., the same date and time as the status hearing previously set.

The Court notes initially that the motion is based on an incorrect premise, namely that the damages trials the Court has set are “in order to ascertain the damages of the class.” Motion ¶ 1. The Court said nothing of the kind. The purpose of the damages trials is to decide the damages of the individual class members whose damages will be tried, to facilitate the entry of a final judgment on less than all claims under Rule 54(b). The Court also notes that its assumption was that these damages trials will involve only plaintiffs who are members of the classes and portions of classes in whose favor liability was determined via the summary judgment ruling. In other words, the Court assumed that damages trials would not involve members of the class in whose favor liability was determined via the recent jury trial, given to the pendency of the interlocutory appeal. The Court is open to reconsidering the latter point and will expect counsel to discuss it at the 12/14/09 hearing.

The Court will hear argument on the motion on 12/14/09 but offers the following preliminary determinations regarding the pretrial procedures to be followed with regard to the damages trials. Counsel should be prepared to address these points (as well as any other pertinent issues) at the 12/14/09 hearing.

- 1) The Court will set a short and certain date, preferably before the end of 2009, for plaintiffs’ counsel to identify the plaintiffs whose damages cases will be tried (hereafter referred to as “the damages plaintiffs”). The damages plaintiffs should include, absent unusual circumstances, all of the named members of the classes or portions of classes in whose favor liability was determined via the summary judgment ruling. If any members of those classes testified at the recent liability trial, they should also be included among the

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damages plaintiffs, absent unusual circumstances.

- 2) Within 7 days after their identification, the damages plaintiffs will be required to serve Rule 26(a)(1) disclosures relating to the damages trials.
- 3) Defendant wishes to, and is entitled to, serve written discovery requests on the damages plaintiffs. That said, there is no reason for defendant to delay preparation of those requests. The Court expects defendants to prepare those requests in advance of the identification of the damages plaintiffs and to serve them on plaintiffs' counsel 7 days prior to the date on which they are required to identify the damages plaintiffs, so that plaintiffs' counsel have the requests in hand. The Court will shorten to 7 days the time for the damages plaintiffs to answer the requests. In other words, answers will be due on the same date as the Rule 26(a)(1) disclosures. The damages plaintiffs will be required to serve any objections to the written discovery on the date for identification of the damages plaintiffs; counsel will be required to meet and confer regarding any objections within 2 business days thereafter; and the Court will rule on those objections within 1 business day thereafter, so as not to delay the service of timely answers to the discovery requests.
- 4) The Court will impose a strict deadline on both sides for the service of document subpoenas on non-parties relating to the damages trials. Counsel are expected to propose an appropriate deadline at the upcoming hearing. The Court will set, and will enforce, strict deadlines on compliance with those subpoenas and will expect the party that serves the subpoena to take diligent and prompt steps to obtain compliance.
- 5) The defendant's Rule 26(a)(1) disclosures will be due within 21 days after the plaintiffs' Rule 26(a)(1) disclosures.
- 6) The damages plaintiffs' disclosures pursuant to Fed. R. Civ. P. 26(a)(2)(A) & (B) will be due no later than 28 days after the Rule 26(a)(1) disclosures.
- 7) The damages plaintiffs will be required to appear for deposition on dates to be scheduled. The Court expects the parties to propose at the 12/14/09 hearing an appropriate deadline for completion of such depositions. The Court intends to exercise strict control over scheduling of deposition dates and will, given the limited issues to be tried, shorten the length of the depositions (the Court expects the parties to make proposals in this regard at the 12/14/09 hearing). The Court likewise intends to shorten the time limits on any other depositions taken by either side relating to the damages trials.
- 8) The Court will impose a sanction of dismissal on any plaintiff who unjustifiably fails to appear for deposition as directed. Because of the limited time available prior to trial, substitutions of plaintiffs will not be permitted absent unusual circumstances. For this reason, plaintiffs' counsel are advised to do their best to select plaintiffs who will comply with the discovery requirements that the Court is imposing.
- 9) The Court also expects the parties to propose at the 12/14/09 hearing an appropriate deadline for completion of any other fact depositions relating the damages trials.
- 10) The defendant's disclosures pursuant to Fed. R. Civ. P. 26(a)(2)(A) & (B) will be due no later than 21 days after the plaintiffs' disclosures pursuant to those Rules.
- 11) Depositions of experts, if any, must be completed by no later than 3/19/10, in other words, 10 days before the start of the damages trials.

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12) The Court will forego the usual requirements for a final pretrial order and will require the parties to provide only lists of witnesses and exhibits and objections to the same, as well as proposed jury instructions regarding the issues to be tried (preliminary and general instructions may be omitted). Any motions in limine will be due by 3/22/10, in other words, one week before the trial date. Motions in limine will be argued, to the extent necessary, on 3/26/10, the last business day prior to the start of trial.

13) The Court acknowledges that it may not have covered every possible point of pretrial procedure and expects the parties to be prepared to discuss these and any other pretrial issues at the hearing on 12/14/09.