

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

WILLIAM WHITFORD, ROGER ANCLAM,)
EMILY BUNTING, MARY LYNNE DONOHUE,)
HELEN HARRIS, WAYNE JENSEN,)
WENDY SUE JOHNSON, JANET MITCHELL,)
ALLISON SEATON, JAMES SEATON,)
JEROME WALLACE, and DONALD WINTER,)

No. 15-cv-421-bbc

Plaintiffs,)

v.)

BEVERLY R. GILL, JULIE M. GLANCEY,)
ANN S. JACOBS, STEVE KING,)
DON MILLIS, and MARK L. THOMSEN,)

Defendants.)

**PLAINTIFFS’ MOTION FOR CLARIFICATION OF THE COURT’S RULING
ON THE ADMISSIBILITY OF CERTAIN TRIAL EXHIBITS**

Plaintiffs William Whitford, et al., through their undersigned counsel, respectfully move the Court to clarify whether certain trial exhibits offered by the Plaintiffs at trial and in Plaintiffs’ Motion to Admit Certain Trial Exhibits (Dkt. #151), the admissibility of which the Court did not expressly address in its November 21, 2016 Opinion and Order (Dkt. #166), have been received in evidence. Although Defendants have either conceded that the Court admitted in evidence during trial the exhibits identified in this motion, or do not oppose admission of the exhibits in question, Plaintiffs seek a definitive ruling from the Court on the admission of the trial exhibits identified in this Motion. In support of their Motion, Plaintiffs state as follows:

1. Through their Motion to Admit Certain Trial Exhibits (Dkt. #151), Plaintiffs sought to tie up any discrepancies or loose ends regarding the admission of exhibits during trial so that the record for any post-trial briefing and appeal is as clear and complete as possible,

leaving little or no ambiguity for speculation by the parties before this or any other Court.

Although Plaintiffs' counsel have carefully read the Court's rulings in its November 21 Opinion and Order addressing the admission of trial exhibits, it appears that the Court's Opinion and Order did not expressly rule on the admission of all trial exhibits identified in Plaintiffs' Motion to Admit Certain Trial Exhibits. Consequently, Plaintiffs now respectfully seek further clarification of the status of certain trial exhibits to clarify and complete the trial record.

2. From Plaintiffs' review, the Court's Opinion and Order addressed Plaintiffs' Motion to Admit Certain Trial Exhibits in two places. **First**, on page 77, footnote 262, the Court stated:

After trial, the plaintiffs brought to our attention some discrepancies between our list of trial exhibits, *see* R.146, and the rulings that we had made during the course of trial. *See* R.151 (Motion to Admit Certain Trial Exhibits). For clarification, the following exhibits were admitted during trial: Tr. Ex. 122, *see* R. 150 at 291; Tr. Ex. 125, *see* R. 150 at 291; Tr. Ex. 486, *see* R.148 at 199; Tr. Ex. 487, *see* R.149 at 24; Tr. Ex. 488, *see* R.159 at 293; Tr. Exs. 492–495, *see* R. 149 at 293; and Tr. Ex. 581, *see* R.150 at 255.

(Dkt. #166 at 77 n.262.)

3. **Second**, on page 116 of the Court's Opinion and Order, the Court stated:

For the reasons set forth in this opinion, the motions set forth in our docket numbers 151 (with respect to the admission of exhibits 98-100, 102, 118-119, 131, 141, 148, 150-52, 333, 391, 394, 405-406, 408, 414-415, 417, and 498) and 154 are DENIED. The motions set forth in our docket numbers 152 and 158 are GRANTED.

(Dkt. #166 at 116.)

4. Although the Court's Opinion and Order expressly ruled on the admission of **some** of the exhibits identified in Plaintiffs' Motion to Admit Certain Trial Exhibits, the Court's Opinion and Order did not expressly rule on **all** of the trial exhibits that Plaintiffs asked to be

admitted in that Motion. Specifically, the trial exhibits that Plaintiffs sought to admit through their Motion, but that the Court did not expressly address in its Opinion and Order, include exhibits 147, 325, 329, 346-352, 354-356, 357, 470, 475-481, and 485. (*See* Dkt. #151 at 3-5.)

5. For the Court's convenience, Plaintiffs incorporate by reference in this Motion the following paragraphs describing the discrepancies for each of the trial exhibits identified above, originally presented in Plaintiffs' Motion to Admit Certain Trial Exhibits. Plaintiffs further note that in responding to Plaintiffs' Motion to Admit Certain Trial Exhibits, Defendants either conceded that the Court admitted the exhibit in question, or did not object to the admission of the exhibit in question (Dkt. #159). Accordingly, the admission of each of the following exhibits should not be contested at this point.

- **Exhibit 147.** *See* Tr. (I) 3:3, 7:15, 8:13 (listing Exhibit 147 as one offered by stipulation and admitted by the Court); *but see* Dkt. #146 (not listing Exhibit 147 as offered or admitted). (Dkt. #151 at 3.) In their response to Plaintiffs' motion, Defendants stated that they "do not object to admitting this exhibit, as the parties stipulated." (*See* Dkt. #159 at 2.)
- **Exhibit 325.** *See* Tr. (III) 276:2-10; 278:2-3 (moving Exhibit 325 into evidence without objection, received by the Court); *but see* Dkt. #146 (not listing Exhibit 325 as offered or admitted). (Dkt. #151 at 3.) In their response to Plaintiffs' motion, Defendants stated that they "do not object to admitting Exhibit 325-B, which is the exhibit actually used with Professor Jackman at trial. (Dkt. 149:191). There was no Exhibit 325." (Dkt. #159 at 4.)
- **Exhibit 329.** *See* Tr. (III) 276:2-12; 278:2-3 (moving Exhibit 329 into evidence without objection, received by the Court); *but see* Dkt. #146 (listing Exhibit 329 as offered but not admitted). (Dkt. #151 at 3.) In their response to Plaintiffs' motion, Defendants stated that they "do not object to the admission of th[is] exhibit[]." (Dkt. #159 at 4.)
- **Exhibits 346-352.** *See* Tr. (I) 3:4, 7:17, 8:13 (listing Exhibits 346-352 as offered by stipulation and admitted by the Court); *but see* Dkt. #146 (not listing Exhibits 346-

352 as offered or admitted). (Dkt. #151 at 4.) In their response to Plaintiffs' motion, Defendants stated that they "do not object to the admission of these exhibits." (Dkt. #159 at 4.)

- **Exhibits 354-356.** *See* Tr. (I) 3:4, 7:17, 8:13 (listing Exhibits 354-356 as offered by stipulation and admitted by the Court); *but see* Dkt. #146 (not listing Exhibits 354-356 as offered or admitted). (Dkt. #151 at 4.) In their response to Plaintiffs' motion, Defendants stated that they "do not object to the admission of these exhibits." (Dkt. #159 at 4.)
- **Exhibit 357.** *See* Tr. (II) 117:10-24 (moving Exhibit 357 into evidence, admitted by the Court); *but see* Dkt. #146 (not listing Exhibit 357 as offered or admitted). (Dkt. #151 at 4.) In their response to Plaintiffs' motion, Defendants conceded that the Court admitted exhibit 357 "for the limited purpose of '[t]he effect on the leadership.'" (Dkt. 148:123)." (Dkt. #159 at 4.)
- **Exhibit 470.** *See* Tr. (II) 36:3-10 (moving Exhibit 470 into evidence, admitted by the Court); *but see* Dkt. #146 (not listing Exhibit 470 as offered or admitted). (Dkt. #151 at 4.) In their response to Plaintiffs' motion, Defendants conceded that the Court admitted exhibit 470 at trial. (Dkt. #159 at 5.)
- **Exhibit 475-481.** *See* Tr. (II) 1:16-2:2 (moving Exhibits 475-481 into evidence, admitted by the Court); *but see* Dkt. #146 (not listing Exhibits 476-481 as offered or admitted).¹ (Dkt. #151 at 4-5.) In their response to Plaintiffs' motion, Defendants conceded that the Court admitted exhibits 475-481 at trial. (Dkt. #159 at 5.)
- **Exhibit 485.** *See* Tr. (I) 88:15-89:1 (moving Exhibit 485 into evidence, admitted by the Court); *but see* Dkt. #146 (not listing Exhibit 485 as offered or admitted). (Dkt. #151 at 5.) In their response to Plaintiffs' motion, Defendants conceded that the Court admitted exhibit 485 "for a limited purpose—to the extent it reflects 'stipulated data.'" (Dkt. #159 at 6.)

¹ Trial exhibits 476, 477, and 478 were cited in the Court's Opinion and Order, and so appear to have been admitted in evidence. (*See* Dkt. #166 at 11 n.39, 105 n.369 (Tr. Ex. 476); 12 n.44, 66 n.196, 106 n.372 (Tr. Exs. 477 and 478)). Nevertheless, to avoid ambiguity, Plaintiffs respectfully ask the Court to rule expressly on the admission of those three exhibits, as well as exhibits 475, 479, 480, and 481.

WHEREFORE, for the reasons stated above, Plaintiffs William Whitford, et al., respectfully request that the Court clarify whether trial exhibits 147, 325, 329, 346-352, 354-356, 357, 470, 475-481 and 485 have been admitted in evidence.

Dated this 9th day of December, 2016.

Respectfully submitted,

/s/ Douglas. M. Poland

Douglas M. Poland
State Bar No. 1055189
RATHJE WOODWARD, LLC
10 East Doty Street, Suite 507
Madison, WI 53703
Phone: (608) 960-7430
Fax: (608) 960-7460
dpoland@rathjewoodward.com

Annabelle E. Harless (*pro hac vice*)
CAMPAIGN LEGAL CENTER
1411 K Street NW, Suite 1400
Washington, DC 20005
(312) 561-5508
aharless@campaignlegalcenter.org

Attorneys for Plaintiffs, William Whitford, et al.