

COURT MINUTES OF COURT TRIAL

UNITED STATES

v.

CASE NO. 10-C-910

NCR CORPORATION ETAL

HON. WILLIAM C. GRIESBACH PRESIDING

DATE TRIAL BEGAN: December 3, 2012

DEPUTY CLERK: Dee McLeod Brock

COURT REPORTER: John Schindhelm

(Appearances listed for 12/3/12 only - Refer to transcript for daily appearances)

PLAINTIFF BY: Jeffrey Spector, Kristin Furrie, Randall Stone, Richard Murawski, Maya Abela, Sean Carman, Anna Cross, Sumona Majumdar, Danny Hambrick **for US Dept. Of Justice;** Cynthia Hirsch **of WI Dept of Justice**

DEFENDANTS BY: Evan Chesler, Darin McAtee, Jennifer Daniels, Yonatan Even, Omid Nasab, Vanessa Lavelly, Brittany Sukiennik **for NCR;** David Mandelbaum, Frank Citera, Caleb Holmes, Marc Davies, Adam Silverman **for PH Glatfelter;** Scott Hansen, Steve Bogart, Tom Gottshall. Jennifer Naeger, Steven McKinney **for US Paper Mills Corp;** Mary Rose Alexander, John Burgess, Patrick Ferguson, Karl Lytz **for Georgia Pacific;** Bill Mulligan, Kevin Lyons, Elizabeth Miles, Pamela Orin, Megan Potter **for Neenah-Menasha;** Ted Waskowski, Richard Yde, Paul Kent, Margaret Hoefler **for City of Appleton;** Anne Lynch, David Rabbino, Philip Hunsucker, Allison McAdam, Barbara Sloan, Ian Dwyer **for Menasha Corp;** Susan Lovern, Terry Nilles **for CBC Coating;** Arthur Vogel, Nancy Peterson, William Harbeck, David Strifling **for WTMI Co.**

<u>Date</u>	<u>Time Called</u>	<u>A.M. Break</u>	<u>Lunch Break</u>	<u>P.M. Break</u>	<u>Time Finished</u>	<u>Court Report</u>
Mon 12/3	9:04	10:29-10:44	12:25-1:25	3:00 - 3:18	4:45	John Schindhelm
Tues. 12/4	8:30	10:05-10:23	12:20-1:30	2:20 - 2:37	4:30	John Schindhelm
Wed 12/5	8:33	10:07-10:25	12:05-1:06		3:00	John Schindhelm
Thurs 12/6	NO TRIAL					
Fri 12/7	NO TRIAL					
Mon. 12/10	8:37	10:35-10:43	12:10-1:15	2:45 - 3:04	5:30	John Schindhelm
Tues. 12/11	8:34	10:20-10:35	12:20-1:25	2:55-3:15	5:30	John Schindhelm
Wed 12/12	8:31	10:02-10:19	12:00-12:59	2:36-2:55	6:00	John Schindhelm

Thurs 12/13	8:30	9:56-10:16	11:55-12:58	2:25-2:41	5:00	John Schindhelm
Fri 12/14	8:30	10:30-10:40	12:34-1:32	3:41-3:58	5:00	John Schindhelm
Mon 12/17	8:34	9:54-10:11	12:15-1:16	3:33-3:53	5:45	John Schindhelm
Tues 12/18	8:32	9:54-10:11	11:52-12:58	3:01-3:18	4:30	John Schindhelm
Wed 12/19	8:33	10:12-10:28	11:59-12:59		1:45	John Schindhelm

Monday, December 3

9:04 Court convenes & address issues. The parties move into evidence all the exhibits 1 thru 9,952 that were provided to the court that the Parties have stipulated to. Those exhibits with disputes will be handled as they are used. Court will receive these exhibits.

9:07 **Michelle Theresa Watters** to the stand by Attorney Spector.

9:53 Cross exam by Attorney Chesler

10:05 Cross exam by Attorney Holmes

10:10 **Wendy Carney** to stand by Attorney Furrie

10:29 Recess

10:44 Court resumes

10:45 Cross exam by Attorney McAtee

11:00 Cross exam by Attorney Hunsucker

11:09 Cross exam by Attorney Hansen

11:10 Redirect

11:12 **Jill Singer** to stand by Attorney Spector

12:25 Recess

1:24 Court resumes

1:25 Direct continues

3:00 Recess

3:17 Court resumes

3:18 Cross exam by Attorney Chesler

4:18 Redirect

4:45 Court Adjourned.

Tuesday, December 4, 2012

8:31 Court convenes

8:32 **Richard Fox** to stand by Attorney Stone

10:05 Recess

10:23 Court resumes

10:24 Direct continues

11:31 Cross exam by Attorney Chesler

12:20 Recess

1:30 Court resumes

1:31 Cross exam by Attorney Mandelbaum

2:05 Cross exam by Attorney Strifling

2:06 Redirect

2:20 Recess

2:37 Court resumes

2:38 **Jay Grosskopf** to stand by Attorney Spector

3:47 Cross exam by Attorney McAtee

3:58 Cross exam by Attorney Peterson

4:09 Redirect

4:10 Government has rested with case in chief.

4:11 NCR moves pursuant to Rule 52(c) for entry of Judgment government has failed to prove immediate relief. Glatfelter joins in the motion Government feels it has meet it's burden Court will take the motions under advisement.

4:30 Court Adjourned

Wednesday, December 5, 2012

8:33 Court convenes
8:34 **Jeffrey Lawson** to the stand by Attorney Nasab
Exhibit 5003 & 5004 O & R
9:00 Cross exam by Attorney Spector
9:12 Cross exam by Attorney Alexander
9:15 Cross exam by Attorney Peterson
9:22 Cross exam by Attorney Citera
9:27 **Susan Jacobs O'Connell** to stand by Attorney McAtee
Exhibits 4442-4443, 4448-4454, 4460-4462, 4465, 4471, 4482, 4485-4486,
4488, 4495-4540, 4565-4567, 4648-4650 offered - court will reserve ruling.
Exhibits 5011, 5012, 5014 & 5015 offered - court will reserve ruling.
9:53 Cross exam by Attorney Spector
9:59 Cross exam by Attorney Peterson
10:07 Recess
10:25 Court resumes
10:26 **John Connolly** to stand by Attorney McAtee
12:04 Recess
1:05 Court Resumes
1:06 Cross exam by Attorney Stone
1:45 Cross exam by Attorney Mandelbaum
2:08 Cross exam by Attorney Hansen
2:31 Cross exam by Attorney Hunsucker
2:32 Redirect.
3:00 Court Adjourned

Monday, December 10

8:37 Court convenes. Parties ask for a side bar.
8:42 **James Braithwaite** to stand by Attorney Even
9:12 Attorney Spector objects to lack of foundation. Attorney Even responds
Court advises parties that they can address this further in briefing
9:13 Direct continues
10:35 Recess
10:43 Court resumes
10:44 Cross exam by Attorney Spector
11:36 Cross exam by Attorney Hansen
12:10 Recess
1:15 Court resumes
1:16 Attorney Citera moves to strike Attorney Spector's cross examination dealing with Mr. Amendola's report. He is a consulting expert witness to the government but not on the witness list.
Court will hold motion under advisement.
1:27 Cross exam continues by Attorney Hansen
2:45 Recess
3:04 Court resumes
3:05 Cross exam continues by Attorney Hansen
3:22 Cross exam by Attorney Hunsucker
3:42 Cross exam by Attorney Harbeck
3:51 Cross exam by Attorney Mandelbaum
3:59 Cross exam by Attorney Alexander

- 4:03 Redirect
4:18 Attorney Mandelbaum moves to strike all testimony of James Braithwaite
Attorney Even response. Attorney Mandelbaum replys. Attorney Sepctor's response WTM 1 ,
CBC, US Paper & Georgia Pacific join in motion. Court wants parities go brief the issue & will take
motion under advisement.
4:27 **Philip Simon** to stand by Attorney Even
5:30 Court Adjourned

Tuesday, December 11

- 8:34 Court Convenes
8:35 **Philip Simon** returns to stand
8:36 Direct continues by Attorney Even
9:29 Cross exam by Attorney Stone
10:20 Recess
10:35 Cross exam continues by Attorney Stone
11:22 Cross exam by Attorney Mandelbaum
11:53 Cross exam by Attorney Alexander
11:56 Cross exam by Attorney Hunsucker
12:02 Cross exam by Attorney Bogart
12:05 Redirect
12:20 Recess
1:25 Court resumes
1:26 Attorney Mandelbaum moves to strike the testimony of Philip Simon with the same objections that
were raised before with striking the testimony of James Braithwaite . Attorney Even would like to
brief this also. Court will take the motion under advisement.
1:26 **Craig Jones** to the stand by Attorney Lavelly
2:55 Recess
3:15 Court resumes
3:16 Cross exam by Attorney Carman
5:30 Court Adjourned

Wednesday, December 12

- 8:31 Court convenes
8:32 **Craig Jones** returns to the stand
8:33 Cross exam by Attorney Citera
9:20 Cross exam by Attorney Vogel
9:31 Cross exam by Attorney Alexander
9:48 Redirect Attorney Lavelly
10:02 Recess
10:19 Resume
10:19 Attorney Stone moves to strike portions of Simon testimony. Attorney Even's response
Attorney Citera moves to strike testimony in its entirety. Attorney Even's response
Attorney Stone's reply. Court denies motion to strike at this point. Parties can renew
motion in briefing.
10:26 **William Moore** to stand by Attorney Nasab
10:35 Voir dire of expert by Attorney Hunsucker
10:37 Attorney Hunsucker objects to him being qualified as a expert for the
relevant time period discussed. Attorney Nasab responds. Court will
allow testimony
10:38 Direct continues

11:05 Cross exam by Attorney Hunsucker
11:25 **John C. Butler III** to stand by Attorney Chesler
11:42 Attorney Stone voir dire's witness.
11:43 Direct continues
11:53 Attorney Stone objects that the witness in not a legal expert. Court agrees testimony will be admissible on this basis
11:54 Direct continues
12:00 Recess
12:59 Court resumes
1:00 Direct continues
2:36 Recess
2:55 Court resumes
2:56 Cross exam by Attorney Stone
3:54 Cross exam by Attorney Hunsucker
4:12 Cross exam by Attorney Mandelbaum
4:49 Cross exam by Attorney Strifling
4:54 Cross exam by Attorney Alexander
4:59 Attorney Chesler indicates that NCR rests.
5:00 Attorney Mandelbaum move to make motion under Rule 52(c). Court will address motion tomorrow.
5:01 Motion to sequester witnesses. Court grants motion
5:02 **David Austin** to stand by Attorney Lynch
5:23 Cross exam by Attorney Abela
5:37 Cross exam by Attorney Even
5:54 Redirect by Attorney Lynch
6:00 Court Adjourned

Thursday, December 13

8:30 Court convenes
8:31 Attorney Mandelbaum makes same motion as to Mr. Butler for same reason and moves for partial judgment on partial finding under Rule 52(c) Court will take motion under advisement. Menasha, WTM 1 Co. US paper, CBC all join in motion
8:33 **Roger Ackerman** to stand by Attorney Lynch
8:50 Cross exam by Attorney Even
9:03 Attorney Lovern for CBC wants to join in Rule 52 motion made by Attorney Mandelbaum
9:04 **Victor Magar** to stand by Attorney Mandelbaum
9:10 Attorney Carman moves to exclude part of the testimony of witness. Voir dire of witness. Court qualifies witness to testify
9:11 Direct continues
9:56 Recess
10:16 Resume
10:17 Direct continues
11:26 Cross exam by Attorney McAtee
11:55 Recess
12:58 Resume
12:59 Cross exam by Attorney McAtee continues
1:36 Cross exam by Attorney Carman
2:08 Cross exam by Attorney Alexander

2:12 Cross exam by Attorney Mandelbaum
2:24 Re-cross exam by Attorney McAtee
2:25 Recess
2:41 Resume
2:42 **Michael Jury** to stand by Attorney Peterson
Exhibit 2144 O & R
3:33 Cross exam by Attorney Abela
3:47 Cross exam by Attorney Lavelly
3:55 Redirect by Attorney Peterson
3:59 **Robert Annear** to stand by Attorney Rabbino
5:00 Court Adjourned

Friday - December 14

8:30 Court convenes
8:31 **Robert Annear** returns to stand by Attorney Rabbino
9:04 Cross exam by Attorney Even
9:37 Attorney Even moves to strike the testimony with two issues which were undisclosed opinions. Attorney Rabbino responds. Attorney Even replies, Attorney Rabbino's response. Court will take motion under advisement
9:39 Cross continues
10:30 Recess
10:40 Resume
10:40 **Charles Klass** to stand by Attorney Harbeck
Exhibit 8875, 8871, 8872 O&R
12:34 Recess
1:32 Resume
1:33 Cross exam by Attorney Majumdar
1:36 Cross exam by Attorney Even
2:20 Redirect by Attorney Harbeck
2:23 **David Ruby** to stand by Attorney Rabbino
Exhibit 8320, 8321 O&R
3:41 Recess
3:58 Resume
3:59 Direct continues
4:10 Cross Exam by Attorney Nasab
5:00 Court Adjourned

Monday, December 17

8:34 Court convenes
8:35 Attorney Stone discusses housekeeping matters regarding exhibits & how to handle those in dispute. Attorney McAtee suggests they be handled in post trial briefs. Court agrees with disputed exhibits being handled in post trial briefs.
8:40 **Gary Kleinreichert** to stand by Attorney Citera
9:47 Cross exam by Attorney Jude
9:51 Cross exam by Attorney Abela
9:53 Redirect by Attorney Citera
9:54 Recess

10:11 Resume
10:11 Attorney Bogart offers Exhibit 8427. Attorney McAtee objects to its authenticity. Court indicates that it should be included in the exhibit list & the objection is preserved
10:16 **John Wolf** to stand by Attorney Alexander
11:47 Cross exam by Attorney Stone
12:15 Recess
1:16 Resume
1:17 Cross exam by Attorney McAtee
1:31 Cross exam by Attorney Citera
2:14 Cross exam by Attorney Vogel
2:20 Cross exam by Attorney Hunsucker
2:27 Redirect by Attorney Alexander
2:30 **David Merrill** to stand by Attorney Hansen
3:33 Recess
3:53 Resume
4:17 Cross exam by Attorney Stone
4:24 Cross exam by Attorney Even
5:15 Cross exam by Attorney Holmes
5:22 Cross exam by Attorney Rabbino
5:28 Redirect by Attorney Hansen
5:36 Court Adjourned.

Tuesday, December 18

8:32 Court convenes. Glatfelter has Rested, US Paper Rests, Georgia Pacific has Rested, Menasha has Rested, CBC Rests, WTM 1 Co. has Rested. Rebuttal begins.
8:34 **John Kern** to stand by Attorney Furrie
9:54 Recess
10:11 Resume
10:11 Cross exam by Attorney McAtee
10:45 Redirect by Attorney Furrie
10:45 **John Cameron** to stand by Attorney Spector
11:52 Recess
12:58 Resume
12:59 Cross exam by Attorney Even
1:00 Attorney Even move to strike the testimony of John Cameron Attorney Spector's response. Attorney Even's reply. Court will take under advisement
1:05 Cross exam by Attorney Even
1:18 Cross exam by Attorney Mandelbaum
2:10 Redirect by Attorney Spector
2:17 **Hector Bravo** to stand by Attorney Majumda
3:01 Recess
3:18 Resume
3:19 Cross exam by Attorney Lavelly
4:01 Government rebuttal concluded
4:30 Court Adjourned

Wednesday, December 19

- 8:33 Court convenes
Surrebuttal begins
- 8:34 Craig Jones to returns to stand by Attorney Lavelly
- 9:19 Attorney Carman objects to testimony. Attorney Lavelly responds, Attorney Alexander joins in objection. Court will take objection under advisement
- 9:24 Direct continues
- 9:38 Cross exam by Attorney Carman
- 10:12 Recess
- 10:28 Resume
- 10:28 Cross exam by Attorney Hunsucker
- 10:52 Cross exam by Attorney Alexander
- 11:04 Cross exam by Attorney Peterson
- 11:09 Redirect by Attorney Lavelly
- 11:14 John Connolly returns to stand by Attorney McAtee
- 11:43 Cross exam by Attorney Stone
- 11:59 Recess
- 12:59 Resume
- 1:00 **John Butler** returns to stand by Attorney Chesler
- 1:28 Cross exam by Attorney Stone
- 1:29 Cross exam by Attorney Mandelbaum
- 1:33 Cross exam by Attorney Alexander
- 1:35 Attorney Chesler addresses housekeeping matters as to Demonstrative exhibits. Court will address these later
- 1:36 Testimony is complete
- 1:37 Court Addresses exhibits - parties are to prepare DVD's with the exhibits in 10MB increments of all exhibits received and/or in dispute. Certification must accompany the DVD's with all the exhibits when filed with the Green Bay Office. Same procedure as followed the last time. Also include exhibits that are subject to rulings that the court needs to make. Parties are also to provide the court & court reporter with an external hard drive of these exhibits. Regarding the transcripts: Parties are to submit joint errata sheets for the trial transcripts. A separate sheet for each volume of transcript & they are to be emailed to the court reporter NOT e-filed on CM. Copies of these instructions will be handed out to you by the clerk.
The errata sheets are to be filed by January 15. Proposed findings & conclusions of law, post trial briefs are to be filed by the Plaintiffs, NCR & all other defendants by February 4. Responses to be filed by March 1st.
- Telephonic Hearing is scheduled for January 9th at 3:30 PM to discuss exhibits.**
- 1:46 Court is Adjourned.