

UNITED STATES DISTRICT COURT
MEMORANDUM

FILED
AUG 01 2007
[Signature]
CLERK

Date: July 31, 2007
To: Counsel
From: Judge Kornmann
Re: Verizon v. Kolbeck, et al., CIV 04-3014

This case is set for trial and will be tried as scheduled on August 15.

I am in the midst of another trial to the court but have gotten through the filings with regard to the motion in limine. I intend to grant that motion as soon as I have enough time to draft an opinion. I wanted to give counsel a "heads-up" ASAP.

I am no "fan" of confidentially agreements. I routinely refuse to sign an Order requiring the same. The public is entitled to know what is going on in the federal courts.

More importantly, no expert witness (or any other witness) can enter into a confidentially agreement that trumps the Federal Rules of Civil Procedure and the Federal Rules of Evidence. The intervenors acted at their peril in employing Mr. Thompson, knowing that he would not be able to comply with what is required of any expert witness in federal court.

The filing of a motion to compel is not required to force parties to comply with obligations under Fed.R.Civ.P. 26(a). In addition, a motion to compel the intervenors to produce something not in their possession and not available to them would be a futile gesture.

I also do not believe that the opinions of Mr. Thompson provide a proper "fit" as required by Daubert. His opinions are speculative at best. The question is, in part: what is required by the Act in question and not what Mr. Thompson perceives as problems.

Has the Public Utilities Commission promulgated rules to implement the provisions of the Act? If so, I want to see those ASAP and I ask the defendants to provide those to me.

Thank you for your attention to these matters.

[Signature: Charles B. Kornmann]
CHARLES B. KORNMANN
UNITED STATES DISTRICT JUDGE
United States Courthouse
102 Fourth Avenue SE, Suite 408
Aberdeen, SD 57401

cc: Clerk's file
Susan Margolies and Brad Bunker