

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch**

Date: February 11, 2009
Courtroom Deputy: J. Chris Smith
FTR Technician: Kathy Terasaki

Civil Action No. 02-cv-01559-RPM-BNB

LEPRINO FOODS COMPANY,

Plaintiff,

v.

Michael A. Pope
John C. Nemeth
William C. Brittan
Michael W. Weaver

FACTORY MUTUAL INSURANCE COMPANY,

Defendant.

Russell E. Yates
Matthew S. Mersfelder
Scott P. Baker

COURTROOM MINUTES

Trial to Jury Day Three

9:00 a.m. Court in session.

Plaintiff and defendant's client representatives James Leprino, Richard Russeth and Kevin Brekka present.

Jurors present.

9:01 a.m. Argument by Mr. Pope regarding Court's previous ruling on plaintiff's motion in limine to exclude evidence of litigation involving Gress [190].

Court states plaintiff permitted to ask witness whether there was litigation between Leprino and Gress.

Plaintiff's Exhibits 28 and 22 offered, (as part of plaintiff's offer of proof by Mr. Pope), and denied.

Defendant's Argument by Mr. Mersfelder regarding proposed jury instruction 6 and request to change a word in the proposed verdict form.

Defendant's proposed instruction 6 is rejected and request to change verdict form to use the word "all" is denied.

Jurors present.

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Court's statement to jurors regarding the health condition of the excused juror.

9:09 a.m. Defendant's witness, Glenn Gress, sworn.

Direct examination of Mr. Gress by Mr. Baker.

Defendant's Exhibits C-1 and G identified, offered and received.

Reference to Defendant's demonstrative exhibit diagram of Gress Warehouse.

Defendant's Exhibit D-1 1 identified, offered and **plaintiff's objection sustained.**

Reference to Plaintiff's Exhibit 23 (photographs 5, 12 and 8).

Reference to defendant's demonstrative exhibit G-1.

Court instructs jurors

Jurors excused.

10:21 a.m. Court in recess.

10:36 a.m. Court in session.

Jurors present.

10:39 a.m. Cross examination of Mr. Gress by Mr. Pope.

Reference to Plaintiff's Exhibit 23 (photographs 12 and 8).

10:58 a.m. Redirect examination of Mr. Gress by Mr. Baker.

11:04 a.m. Recross examination of Mr. Gress by Mr. Pope.

11:07 a.m. Defendant's witness, Mark Young, sworn.

Direct examination of Dr. Young by Mr. Yates.

11:52 a.m. Cross examination of Dr. Young by Mr. Brittan.

Plaintiff's Exhibit 24-1 identified, offered and defendant's objection (further foundation required).

Remaining Photographs of Plaintiff's Exhibit 23 received.

Plaintiff's Exhibits 24-2 and 24-3 identified, offered and received.

Reference to Plaintiff's Exhibit 30.

12:31 p.m. Redirect examination of Mr. Young by Mr. Yates.

Defendant rests.

Mr. Pope states no rebuttal evidence.

Evidence closed.

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Court instructs jurors.
Jurors excused.

Plaintiff's renewed Rule 50 Motion by Mr. Pope.

ORDERED: Plaintiff's renewed Rule 50 Motion is denied.

Defendant's Rule 50 Motion by Mr. Yates.

ORDERED: Defendant's written Rule 50 Motion is denied.

Discussion regarding scheduling.

12:38 p.m. Court in recess.
2:00 p.m. Court in session.

Jurors present.

2:02 p.m. Plaintiff's closing argument by Mr. Pope.

2:16 p.m. Defendant's closing argument by Mr. Yates.

2:50 p.m. Plaintiff's rebuttal argument by Mr. Pope.

2:57 p.m. Court reads jury instructions to jurors.

Court Security Officer sworn.

Court instructs jurors.

Jurors excused to begin deliberations.

Counsel state there are no new objections to the jury instructions.

Court states all previous objections to the jury instructions are renewed and incorporated herein as part of the record.

3:20 p.m. Court in recess.
4:56 p.m. Court in session.

Court states it will bring the jurors back into the courtroom to recess deliberations for the night.

Jurors present.

Court instructs jurors.

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Jurors excused until 9:00 a.m. February 12, 2009.

5:06 p.m. Court in recess.

Clerk's Note: Clerk's Record of Plaintiff's and Defendant's Exhibits, Indexes of Plaintiff's and Defendant's Received Exhibits, Plaintiff's Exhibits 22 and 28 as part of its "Offer of Proof" and defendant's refused instruction 6 are attached.

Trial continued. Total time: 5 hrs. 8 min.