

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, JUDGE

Civil Case No. 04-cv-01961-LTB-CBS

SANFORD LEE HERTZ,

Plaintiff and Counterclaim Defendant,

v.

LUZENAC AMERICA, INC., a Delaware Corporation,

Defendant and Counterclaim Plaintiff.

ORDER

As set forth on the record during the September 16, 2011 trial preparation conference hearing, it is HEREBY ORDERED as follows:

1. The Second Trial Preparation Conference set for Friday, October 14, 2011 at 10:00 am, is VACATED, and a Motions Hearing and Further Trial Preparation Conference is re-set for **October 21, 2011 at 10:00 am**. In anticipation of that hearing, the parties shall file on or before **October 17, 2011**, the following:

- A. Revised and updated exhibit lists, following an exhibit conference by counsel, indicating any new stipulations as to admissibility and authenticity, as well as a listing of which proposed trial exhibits originating from non-party IMI Fabi remain designated as “Highly Confidential” or “Confidential” Materials as discussed *infra*;
- B. Hardcopies of the designated portions of the proposed deposition testimony for trial, after the parties have resolved the insubstantial/immaterial objections, with Hertz’s designation marked in blue highlighter, Luzenac’s designation marked with green highlighter, and objections underlined in red with the objecting party indicating, in the margin, the basis for this objection; and
- C. Each party’s proposed *voir dire* questions for the court.

2. In addition, at the hearing set on October 21, 2011 at 10:00 am., I will take argument from the parties on the following pre-trial motions filed by Luzenac: (1) Motion *In Limine* to Exclude Evidence of a July 31, 2003 E-mail from Claude Stenneler to Corrado Fabi [Doc # 506]; (2) Motion *In Limine* to Exclude Evidence of the Premature Birth and Death of Plaintiff's Twin Infants [Doc # 507]; and (3) Motion *In Limine* to Exclude Evidence Of and Reference To Hertz's First Lawsuit [Doc #509]. Hertz is ordered to file with the court responses to these motions **on or before October 3, 2011.**

3. Following arguments from counsel, including counsel for IMI Fabi, a non-party, I AMEND the Stipulated Protective Order [**Doc #100**] that governs this matter, as follows:

- A. In preparation for trial, exhibits and depositions previously designated as "Highly Confidential Materials" or "Confidential Materials" by Luzenac may now be disclosed to Mr. Hertz; and
- B. Both parties' counsel shall meet with counsel for non-party IMI Fabi and provide copies of all proposed trial exhibits, as well as any deposition testimony to be used at trial, that were either provided in discovery by IMI Fabi, or originated with IMI Fabi (and provided by Mr. Hertz), designated as Highly Confidential or Confidential Materials. Counsel for IMI Fabi will then review the documents to determine which of those may be unsealed for trial. A list of the proposed trial exhibits that originated from IMI Fabi that continue to be designated as Highly Confidential or Confidential Materials shall be provided to the court as discussed *supra*.

Dated: September 16 , 2011 in Denver, Colorado.

BY THE COURT:

 s/Lewis T. Babcock
LEWIS T. BABCOCK, JUDGE