

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JUDGE WILEY Y. DANIEL**

Courtroom Deputy: Robert R. Keech
E.C.R./Reporter: Therese Lindblom

Date: November 16, 2009

Civil Action No: **07-cv-00004-WYD-KLM**

Counsel:

STONE INTERNATIONAL MARKET, INC.,

Sander N. Karp
James F. Fosnaught

Plaintiff,

v.

CITY OF WHEAT RIDGE, COLORADO,

Steven J. Dawes
Sophia H. Tsai

Defendant.

COURTROOM MINUTES

TRIAL TO JURY (DAY 5)

8:41 a.m. Court in Session - Jury not present

Discussion regarding juror 100163028 requesting to be excused due to a death in the family.

Defendant's Motion to Limit Cross-Examination [doc. #302], filed November 16, 2009, is raised for argument.

8:42 a.m. Argument by Defendant (Ms. Tsai).

8:44 a.m. Jury enters

8:45 a.m. Juror 100163028 is excused.

8:46 a.m. Defendant's witness **Chad Root** sworn.

Direct examination by Defendant (Mr. Dawes).

EX ID: Joint Exhibit 41, A34, A35

Exhibit/s A34 RECEIVED.

9:01 a.m. Cross examination by Plaintiff (Mr.).

EX ID: 235, 201, 172

9:20 a.m. Defendant's witness **Justin Paugh** sworn.

Direct examination by Defendant (Ms. Tsai).

EX ID: Joint Exhibit 2

9:27 a.m. Cross examination by Plaintiff (Mr. Fosnaught).

9:34 a.m. Re-Direct examination by Defendant (Ms. Tsai).

9:36 a.m. Defendant's witness **Mark Steven Hester** sworn.

Direct examination by Defendant (Ms. Tsai).

9:40 a.m. Cross examination by Plaintiff (Mr. Fosnaught).

9:42 a.m. Defendant's witness **Tyler Josifek** sworn.

Direct examination by Defendant (Ms. Tsai).

EX ID: Joint Exhibit 2

9:55 a.m. Cross examination by Plaintiff (Mr. Fosnaught).

EX ID: Joint Exhibit 2, A64

10:07 a.m. Re-Direct examination by Defendant (Ms. Tsai).

EX ID: 2, A64

10:11 a.m. Defendant's witness **Ronald C. Sloan** sworn.

Direct examination by Defendant (Ms. Tsai).

EX ID: A70

Witness tendered and accepted as an expert.

10:40 a.m. Court in Recess

11:04 a.m. Court in Session - Jury enters

11:05 a.m. Defendant's witness **Ronald C. Sloan** resumes.
Cross examination by Plaintiff (Mr. Karp).
EX ID: A64, deposition of Justin Paugh (10/26/07) for purposes of refreshing recollection, Joint Exhibit 41

11:38 a.m. Defendant's witness **Tracy Wardell** sworn.
Direct examination by Defendant (Mr. Dawes).
EX ID: Joint Exhibit 8, Joint Exhibit 10

11:45 a.m. Cross examination by Plaintiff (Mr. Fosnaught).
EX ID: Joint Exhibit 10, Joint Exhibit 8, Joint Exhibit 21, A64, A63

11:54 a.m. Defendant's witness **Joe Cassa** sworn.
Direct examination by Defendant (Mr. Dawes).
EX ID: A54, A50

Exhibit/s A54, A50 RECEIVED.

12:12 p.m. Cross examination by Plaintiff (Mr. Fosnaught).
EX ID: A64, 201, 202

Exhibit/s 202 (p. 8 only) RECEIVED.

12:25 p.m. Re-Direct examination by Defendant (Mr. Dawes).

12:26 p.m. Defendant's witness **Daniel Brennan** sworn.
Direct examination by Defendant (Ms. Tsai).
EX ID: 164, 238, 164

Exhibit/s 238 RECEIVED.

12:49 p.m. Court in Recess

12:57 p.m. Court in Session - Jury enters
12:58 p.m. Defendant's witness **Daniel Brennan** resumes.
Direct examination by Defendant continues (Ms. Tsai).
EX ID: 36, 2

1:18 p.m. Cross examination by Plaintiff (Mr. Fosnaught).
EX ID: 2, 164, A48

Exhibit/s A48 RECEIVED.

1:33 p.m. Re-Direct examination by Defendant (Ms. Tsai).
EX ID: A48
1:33 p.m. Defendant rests
1:34 p.m. Plaintiff has no rebuttal evidence.
1:35 p.m. Jury excused

JURY INSTRUCTION CONFERENCE

#7 Objection by Defendant - OVERRULED.
#12 Objection by Defendant - COURT WILL MODIFY
#15 Objection by Defendant - COURT WILL REMOVE #15.
#18 Objection by Defendant - DEFERRED.

1:45 p.m. Discussion regarding time limits for closing arguments.

ORDERED: Closing arguments shall not exceed **thirty (30) per side.**

1:45 p.m. Court in Recess
3:05 p.m. Court in Session - Jury not present

JURY INSTRUCTION CONFERENCE

#18 Objection by Defendant - COURT WILL MODIFY - NO OBJECTION.
Plaintiff's oral motion for judgment as a matter of law.
3:14 p.m. Argument by Plaintiff (Mr. Karp).

ORDERED: Plaintiff's oral motion for judgment as a matter of law is **DENIED**.

Defendant's oral motion for judgment as a matter of law.

3:15 p.m. Argument by Defendant (Ms. Tsai).

ORDERED: Defendant's oral motion for judgment as a matter of law is **DENIED**.

#26 Objection by Plaintiff - COURT WILL MODIFY - NO OBJECTION.

Defendant's Special Interrogatory is REFUSED.

Verdict Form Objection by Defendant - OVERRULED.

ORDERED: Defendant's Motion to Limit Cross-Examination [doc. #302], filed November 16, 2009, is **DENIED AS MOOT**.

3:35 p.m. Jury enters

Court reads stipulated facts, jury instructions, and verdict form.

3:51 p.m. Bench conference regarding jury instruction 17.

3:52 p.m. Court continues reading jury instructions and verdict form.

4:09 p.m. No objection to jury instructions and verdict form as read by the Court.

4:11 p.m. Closing argument by Plaintiff (Mr. Karp).

4:37 p.m. Closing argument by Defendant (Mr. Dawes).

5:08 p.m. Rebuttal argument by Plaintiff (Mr. Karp).

5:11 p.m. CSO sworn

Court's remarks to jurors regarding protocol for jury deliberations.

5:13 p.m. Jury excused for the evening and shall commence deliberations on Tuesday, November 17, 2009, at 9:00 a.m.

Court's remarks to counsel regarding availability.

5:14 p.m. Court in Recess - HEARING CONTINUED

TOTAL TIME: 6:41