

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
HONORABLE MARCIA S. KRIEGER**

Courtroom Deputy: Patricia Glover  
Court Reporter: Paul Zuckerman

Date: April 8, 2009

Civil Action No. 07-cv-00290-MSK

Parties:

Counsel Appearing:

JOHNSTOWN FEED & SEED, INC., and  
RHONDA SPRENG,

Christopher Ingold

Plaintiffs,

v.

CONTINENTAL WESTERN INSURANCE COMPANY,

Brandon Hull  
Jason Rietz

Defendant.

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**COURTROOM MINUTES**

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HEARING: Final Pretrial Conference.

**4:16 p.m. Court in session.**

Parties are all present and counsel is present as listed above. Nicole Graziano, representative of defendant is present.

The Court addresses defendant's Motion in Limine (**Doc. #96**). Argument by Messrs. Ingold and Rietz.

**ORDER:** Defendant's Motion in Limine (**Doc. #96**) is **DENIED** to the extent defendant seeks exclusion based on collateral estoppel and **DENIED** as to the portion of motion raised under Rule 401 and 403, with leave to renew at the time of trial. Plaintiff will not mention the business plan in opening statement or in any presentation to the jury until it is to be offered, giving advance notice to the court and opposing counsel so that a timely objection can be made.

The Court addresses plaintiff's Motion to Seal (**Doc. #111**).

**ORDER:** Plaintiff's Motion to Seal (**Doc. #111**) is **DENIED**, but the documents will remain subject to the provision seal that was imposed at the time it was filed.

The Court addresses defendant's Motion in Limine To Exclude Testimony by Richard Laugesen (**Doc. #97**) Argument by counsel.

**ORDER:** Ruling is reserved on Doc. #97 until the time of trial. The plaintiffs will not make any mention of this evidence in opening statement and before evidence is proffered will disclose to both defendant and the Court its intent to proffer it in sufficient time that the issue addressed can be determined outside the presence of the jury.

The Court addresses Defendants' Motion in Limine Regarding Evidence of Costs of Repair, (**Doc. #101**). Argument by counsel. Counsel for defendant makes an oral dispositive motion under Rule 56.

**ORDER:** Defendant's Motion in Limine (**Doc. #101**) is **DENIED** as a Motion in Limine, but may be re-raised as a motion for judgment as a matter of law under Rule 50 at the close of the plaintiffs' evidence.

The Court addresses defendant's Motion in Limine to Exclude Evidence of the Verdict from Welder's Trial (**Doc. #102**). No argument.

**ORDER:** Defendant's Motion in Limine to Exclude Evidence of the Verdict from Welder's Trial (**Doc. #102**) is **DENIED without prejudice**, with leave to renew at trial. Plaintiffs are prohibited from making reference to the verdict in the welders' case during opening statement and shall give the Defendant and the Court advance notice before such evidence is proffered.

The Court addresses defendant's motion In Limine to Exclude Evidence from Ken Scurto, etc. (**Doc. #103**) No argument.

**ORDER:** Defendant's Motion in Limine to Exclude Evidence from Ken Scurto (**Doc. #103**) is **DENIED without prejudice**, subject to the same terms and conditions imposed by the Court with regard to similar motions.

The Court addresses Parties' Unopposed Motion to Bifurcate Case and Compel Arbitration With Regard to Declaratory Judgment claim (**Doc. #113**).

**ORDER:** The Parties' Unopposed Motion to Bifurcate Case and Compel Arbitration With Regard to Declaratory Judgment claim (**Doc. #113**) is **GRANTED**. The claim for declaration that benefits remain owing on the policy is severed from this action and the parties shall engage in arbitration of this claim pursuant to the terms of this policy.

The Court addresses anticipated motions to be filed by the parties.

The plaintiff withdraws the claim for willful wanton breach of contract that would allow for non-economic damages. The defendant has no objection.

**ORDER:** The plaintiffs claim for willful wanton breach of contract that would allow for non-economic damages is deemed **WITHDRAWN**. Plaintiffs will amend the Final Pretrial Order accordingly.

Defendant's representative is excused from the remainder of the hearing upon request. Counsel for defendant will provide her with a transcript of the remainder of the hearing for review.

Review of the proposed final pretrial order - matters addressed:

- Claims
- Defenses
- Stipulated Facts
- Witness List
- Exhibit List
- Trial length, technology training, evidentiary issues and any questions posed by counsel.

The Court advises counsel to reassess the amount of time necessary for trial in light of comments with regard to the witness and exhibit lists and proposed final pretrial order.

The parties have no objection to the jurors taking notes, the Court providing historical information to the jury during the peremptory challenge phase, or comment feedback forms being given to the jury at the conclusion of the trial.

**ORDER:** Pertinent to trial process: The parties will have 20 hours each side to use as they see fit to include opening statements, closing arguments, evidence presentation, argument, etc.. The time will be tracked on the chess clock by the Courtroom Deputy.

**ORDER:** Motions the parties anticipate filing will be filed by **April 20, 2009**.

**ORDER:** Revised final pretrial order, revised witness and exhibit lists to be filed by **June 8, 2009**.

**ORDER:** Proposed voir dire and proposed jury instructions will be filed by **June 8, 2009**.

**ORDER:** Trial is set for two weeks beginning **January 11, 2010 at 1:00 p.m.**, in Courtroom A901, 901 19<sup>th</sup> Street, Denver, CO.

**5:52 p.m. Court in recess.**  
**Total Time: 1 hour 36 minutes.**

**Hearing concluded.**