IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JUDGE PHILIP A. BRIMMER

COURTROOM MINUTES

Courtroom Deputy: Kathy Preuitt-Parks
Court Reporter: Janet Coppock

Date: April 3, 2009
Time: 5 hours and 54 minutes

CASE NO. 07-cv-00401-PAB-KLM

Parties	Counsel
KATHERINE GILES, and ZURICH AMERICAN INSURANCE COMPANY,	John Purvis Richard Rardin
Plaintiff (s),	
vs.	
THE INFLATABLE STORE, INC.,	Marilyn Doig Miles Dewhirst
Defendant (s).	

MOTION HEARING

9:07 a.m. **COURT IN SESSION**

APPEARANCES OF COUNSEL.

Joint Motion for Order Under Fed. R. Evid. 702 (Doc #77), filed 7/18/08.

Discussion regarding how the Court intends to proceed with this hearing.

9:10 a.m. Opening statements by Mr. Purvis.

9:13 a.m. Opening statements by Ms. Doig.

9:14 a.m. Direct examination of plaintiff's witness Dr. Jennifer Cole by Mr. Purvis.

10:16 a.m. Cross examination by Ms. Doig.

10:37 a.m. Redirect examination by Mr. Purvis.

Witness excused.

10:40 a.m. COURT IN RECESS

11:02 a.m. COURT IN SESSION

Ms. Doig requests witnesses be sequestered. No objection by Mr. Purvis.

ORDERED: Witnesses shall be sequestered.

Plaintiff's **exhibits A10 through A24 (inclusive)** identified, offered and ADMITTED.

11:03 a.m. Argument by Mr. Purvis as to the admissibility of Dr. Cole's opinions. Questions by the Court.

11:19 a.m. Argument by Ms. Doig. Questions by the Court.

11:28 a.m. Direct examination of plaintiff's witness Dr. Brian Greenwald by Mr. Purvis.

12:00 p.m. COURT IN RECESS

1:03 p.m. COURT IN SESSION

Direct examination by Mr. Purvis continues.

Plaintiff's **exhibits A1, A2 and A4 through A9 (inclusive)** identified, offered and ADMITTED.

1:07 p.m. Cross examination by Ms. Doig.

1:25 p.m. Questions to the witness by the Court.

1:29 p.m. Redirect examination by Mr. Purvis.

Witness excused.

1:31 p.m. Argument by Mr. Purvis as to the admissibility of Dr. Greenwald's opinions. Questions by the Court.

1:44 p.m. Argument by Ms. Doig.

1:50 p.m. Direct examination of plaintiff's witness Dr. Patrick Bishop by Mr. Purvis.

2:47 p.m. Cross examination by Mr. Dewhirst.

3:01 p.m. **COURT IN RECESS**

3:18 a.m. **COURT IN SESSION**

Cross examination by Mr. Dewhirst continues.

3:26 p.m. Redirect examination by Mr. Purvis.

Witness excused.

Plaintiff's exhibits A25 and A26 through A32 (inclusive) identified and offered. Objection by Mr. Dewhirst as to A32.

ORDERED: Plaintiff's **exhibits A25 and A26 through A31 (inclusive)** are ADMITTED.

Defendant's **exhibits A1 and A2** identified and offered.

ORDERED: Defendant's **exhibit A1** is ADMITTED.

3:32 p.m. Questions to the witness by the Court.

Witness excused.

3:44 p.m. Argument by Mr. Purvis as to the admissibility of Dr. Bishop's opinions. Questions by the Court.

3:46 p.m. Argument by Mr. Dewhirst.

3:56 p.m. COURT IN RECESS

4:11 p.m. COURT IN SESSION

Court states its findings and conclusions as follows:

ORDERED: Joint Motion for Order Under Fed. R. Evid. 702 (Doc #77), filed 7/18/08 is **GRANTED.**

Dr. Jennifer Cole

Opinion 1: Dr. Cole may express an opinion regarding whether or not the plaintiff would be able to pass the type of test she observed the plaintiff taking. Dr. Cole may not express an opinion as to whether or not the plaintiff would be able to pass other tests required to obtain either an ASA or FSA.

Opinion 2: Dr. Cole may opine using her methodology to conclude whether the plaintiff's capabilities in terms of test taking for the test Dr. Cole observed the plaintiff taking and assess whether or not, but for the incident, the plaintiff would have been able to pass the type of test Dr. Cole observed her taking.

Dr. Brian Greenwald

Opinions 1 and 2 will be excluded.

Dr. Patrick Bishop

Opinion 2: Dr. Bishop may express his opinion that a motorcycle helmet is not the appropriate type of helmet to use in the sumo wrestling activity.

Opinion 3: Dr. Bishop may not opine as to whether the modification of the helmet with the attachment of a foam rubber wig made the helmet less safe or more dangerous for sumo wrestling.

4:58 p.m. COURT IN RECESS

Total in court time: 354 minutes

Hearing concluded