

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-01687-REB-MEH

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff,

v.

BARBARA FISHER,
LORRIE VASQUEZ, Mother and next friend of Jeremy Vasquez (a/k/a Jeremy Vialpando),
JEREMY VASQUEZ (a/k/a Jeremy Vialpando),
STACY MOORE, Mother and next friend of Caleb Moore, and
CALEB MOORE, individually,

Defendants.

**ORDER ON DEFENDANTS' RENEWED MOTION FOR SANCTIONS
AND PLAINTIFF'S MOTION FOR PROTECTIVE ORDER**

Michael E. Hegarty, United States Magistrate Judge.

The parties have filed cross-motions relating to allegations of inappropriate deposition conduct, in the form of a Renewed Motion for Sanctions submitted by Defendants Vialpando and Moore [filed May 20, 2009; docket #116] and a Motion for Protective Order Re Continuing Deposition of Nadine Cain submitted by Plaintiff [filed June 1, 2009; docket #125]. These issues are not new to this case. I previously requested that the attorneys in this case “maintain open communication and not allow prior experiences and, perhaps, personal feelings to interfere with these legal proceedings.” (Docket #77 at 3.) That advice has been ignored. I know Mr. LeHoullier from experience prior to the bench. I know Mr. Levy through experience on the bench. I respect them both for their legal skills and personable character. I am not pleased that they have put me in the position of having to arbitrate an unseemly course of interaction at depositions.

Ralph Waldo Emerson stated that “men are respectable only as they respect.” I see merit in the legal arguments of both Mr. LeHoullier and Mr. Levy; thus, I see them both engaging in disfavored practices. What I do not see in the deposition transcripts is respect. Lawyers of their stature and attainment can and do respect their opponents every day, even while engaging in adversarial proceedings.

Mr. LeHoullier is asking some questions in deposition that appear to have no relevance to the issues in this case, such as the questions regarding Plaintiff’s general use of attorney Craig Cain (a deponent’s spouse), and such questions may have the effect of harassing or badgering the witness. This is making Mr. Levy very angry. Mr. Levy is going beyond the bounds of proper objections at a deposition and coaching the witness, and also is engaging in personal attacks on opposing counsel. This is offending Mr. LeHoullier. Is the Court supposed to sanction them both? In my opinion, the financial consequence would likely be a wash, so what would be accomplished? It has been my intent as a judicial officer to avoid sanctioning lawyers unless as a last resort. I will not break from that intent here. If, however, another motion of this type is filed in this case, the Court will hold an in-person hearing with clients present and will likely order the payment of attorney’s fees. I regret that significant attorney’s fees attributable to the attorneys’ deposition conduct have likely already been incurred by the actual parties in this case.

In the meantime, Ms. Cain’s deposition may continue for two hours. The parties are directed to split the cost of videotaping the deposition. The videographer must position the camera, if possible, to show participating attorneys and the witness. The parties shall provide a copy of the video to my Chambers within five days of the deposition. Further orders may enter at that time on the Court’s own initiative. Regarding the substance of the deposition, the witness may be asked

about her understanding, if any, concerning her company's interpretation or application of legal authority to insurance claims, but she may not be asked to describe the holding of, or her interpretation of, any court opinion.

Accordingly, as stated herein, the Court **DENIES** the Vialpando/Moore Defendants' Renewed Motion for Sanctions [filed May 20, 2009; docket #116] and the Plaintiff's Motion for Protective Order Re Continuing Deposition of Nadine Cain [filed June 1, 2009; docket #125].

Dated at Denver, Colorado, this 10th day of June, 2009.

BY THE COURT:

s/ Michael E. Hegarty
Michael E. Hegarty
United States Magistrate Judge