

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge William J. Martínez

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Courtroom Deputy: Deborah Hansen  
Court Reporter: Kara Spitler

Date: July 11, 2011

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Civil Case No. 09-cv-02681-WJM-MEH

Counsel:

DAWNMARIE FIECHTNER,  
  
Plaintiff,

Marc Levy  
Matthew Hall  
Franklin Azar  
Barry Dunn

v.

AMERICAN FAMILY MUTUAL INSURANCE  
COMPANY,

Suzanne Lambdin  
Martha Ferris

Defendant.

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COURTROOM MINUTES

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MOTION HEARING

10:00 a.m Court in Session

Appearances

Court's comments

This matter is before the Court on:

Doc No. 155 - Plaintiff DawnMarie Fiechtner's Motion to Strike And/Or Motion in Limine Re: Reference to or Use of the Unlawfull obtained Statement of Plaintiff

Doc No. 237 - Plaintiff's Motion to Strike and/or Motion in Limine Re: Defendant's Comparative Negligence Defense

Doc No. 238 - Plaintiff's Motion in Limine Re: Introduction of After-Acquired Evidence

Doc No. 240 - Defendant's Motion in Limine Re: Plaintiff's Allegations of Bad Faith Post-Litigation Conduct

Doc No. 241 - Defendant's Motion to Strike And/Or Motion in Limine Re: Plaintiff's Use of Evidence From Other Claims And/Or Litigation Involving American Family

Doc No. 277 - Plaintiff's Motion for Leave to Amend Complaint to Add Specific Allegations Regarding Defendant's Post-Litigation Conduct

Argument is taken on Plaintiff DawnMarie Fiechtner's Motion to Strike And/Or Motion in Limine Re: Reference to or Use of the Unlawfull obtained Statement of Plaintiff (Doc No. 155)

10:03 Argument by Mr. Levy

**ORDERED: Mr. Levy's request to tender two new exhibits to append the Motion, Doc No. 155, is DENIED.**

10:10 Argument by Ms. Lambdin

Court's findings entered in the record.

**ORDERED: Plaintiff DawnMarie Fiechtner's Motion to Strike And/Or Motion in Limine Re: Reference to or Use of the Unlawfull obtained Statement of Plaintiff (Doc No. 155) is GRANTED IN PART AND DENIED IN PART. Defendant will not be permitted to introduce the Statement itself into evidence. However, the Court will not exclude any evidence that relied on or otherwise considered Plaintiff's January 10, 2008 statement.**

Argument is taken on Plaintiff's Motion to Strike and/or Motion in Limine Re: Defendant's Comparative Negligence Defense (Doc No. 237)

10:18 Argument by Mr. Levy

10:25 Argument by Ms. Lambdin

Court's findings entered on the record.

**ORDERED: Plaintiff's Motion to Strike and/or Motion in Limine Re: Defendant's Comparative Negligence Defense (Doc No. 237) is DENIED.**

Argument is taken on Plaintiff's Motion in Limine Re: Introduction of After-Acquired Evidence (Doc No. 238)

10:31 Argument by Mr. Levy

10:38 Argument by Ms. Lambdin

Court's findings entered on the record.

**ORDERED: Plaintiff's Motion in Limine Re: Introduction of After-Acquired Evidence (Doc No. 238) is DENIED.**

Argument is taken on Defendant's Motion in Limine Re: Plaintiff's Allegations of Bad Faith Post-Litigation Conduct (Doc No. 240)

10:47 Argument by Ms. Lambdin

10:52 Argument by Mr. Levy

11:01 Argument by Ms. Lambdin

Court's findings entered on the record.

**ORDERED: Defendant's Motion in Limine Re: Plaintiff's Allegations of Bad Faith Post-Litigation Conduct (Doc No. 240) shall be considered in two parts.**

**With regard to attorney post-litigation conduct, the motion is taken UNDER ADVISEMENT. Counsel will be advised if the Court believes supplemental briefing on this issue will be helpful.**

**The motion insofar as it relates to non-attorney post-litigation conduct with respect to American Family and its employees' conduct since this litigation has begun, RULING IS RESERVED.**

**Before Plaintiff is permitted to introduce evidence of Defendant's post-litigation conduct, she will be required to show how such acts related to prelitigation conduct and how the proposed evidence is more probative than prejudicial.**

No argument is taken on Plaintiff's Motion for Leave to Amend Complaint to Add Specific Allegations Regarding Defendant's Post-Litigation Conduct (Doc no. 277).

**ORDERED: Plaintiff's Motion for Leave to Amend Complaint to Add Specific Allegations Regarding Defendant's Post-Litigation Conduct (Doc No. 277) is DENIED AS MOOT. Plaintiff included her claim for post-litigation conduct in the Final Pretrial Order, which supersedes**

**the pleadings in this case. As such, the operative pleading which will govern this trial already contains a claim for post-litigation conduct and there is no need to formally amend Plaintiff's Complaint.**

Argument is taken on Defendant's Motion to Strike And/Or Motion in Limine Re: Plaintiff's Use of Evidence From Other Claims And/Or Litigation Involving American Family (Doc No. 241)

11:10 Argument by Ms. Lambdin

11:15 Argument by Mr. Levy

Court's findings entered on the record.

**ORDERED: Defendant's Motion to Strike And/Or Motion in Limine Re: Plaintiff's Use of Evidence From Other Claims And/Or Litigation Involving American Family (Doc No. 241), RULING IS RESERVED.**

Ms. Lambdin's comments

Mr. Levy's comments

Court's comments

**ORDERED: On or before August 31, 2011, the Plaintiff will file a pleading which identifies those individuals from the nine proposed witnesses who have asserted claims against Defendant in other actions and are listed in the Pretrial Order, whom Mr. Levy believes meet the nexus requirement set forth in the Court's oral ruling with respect to being able to testify at trial in this case as to conduct by the Defendant in other cases.**

**The Court will only allow testimony from these witnesses about practices or policies that were used in handling Plaintiff's claims and that form the basis for Plaintiff's bad faith claim. Plaintiff should not anticipate calling any of these witnesses without the express permission of the Court. Prior to their testimony, Plaintiff will be required to make a proffer as to what their testimony will be and why it is more probative than prejudicial.**

Mr. Levy requests leave to file more briefing with respect to the *Brekke* case.

Ms. Lambdin opposes the request

**ORDERED: Mr. Levy's request for leave to file one more briefing with respect to the *Brekke* case is denied.**

11:33 a.m. Court in Recess  
Hearing concluded  
Time: 1/33