

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, JUDGE

Civil Case No. 10-cv-01482-LTB-KLM (Consolidated w/11-cv-02321-RPM-MJW)

ONYX PROPERTIES LLC, a Colorado Limited Liability Company;
EMERALD PROPERTIES, LLC, a Colorado Limited Liability Company;
PAUL NAFTEL, an individual;
SHAUNA NAFTEL, an individual; and
The Estate of LOCAL SERVICE CORPORATION by and through its
Chapter 11 Bankruptcy Trustee, SIMON E. RODRIGUEZ,

Plaintiffs,

vs.

BOARD OF COUNTY COMMISSIONERS OF ELBERT COUNTY,

Defendant

ORDER

This matter is before me on a Motion Requesting Admission of Kenneth Wolf's Trial Testimony From The First Trial of *Rohrbach I*, filed by Plaintiffs Onyx Properties LLC, Emerald Properties LLC, Paul and Shauna Naftel, and the Estate of Local Service Corporation. [**Doc #162**] In this motion Plaintiffs seek an order allowing the use of testimony given by Mr. Kenneth Wolf because he is unavailable as a witness pursuant to Fed.R.Evid. 804(b)(1). Specifically, Plaintiffs seek admission of Mr. Wolf's testimony in the initial trial in *Board of County Commissioner v. Rohrbach*, 226 P.3d 1184 (Colo. App. 2009), on the basis that he now lives beyond the jurisdictional limitations of this court and that he was unwilling to testify in October of 2014 during the remanded trial in that case.

Defendant, the Board of County Commissioners of Elbert County (the “BOCC”) responds that because the trial in this matter is now to the court, as opposed to a jury, it does not oppose using portions (but not all) of Mr. Wolf’s testimony from the trial in *Rohrbach I*. [Doc #172] Although the BOCC does not dispute the admission of the testimony in lieu of Mr. Wolf’s live testimony under Fed.R.Evid. 804(b)(1), as a general rule, it contends that a portion of his testimony given in *Rohrbach I* has no relevance to Plaintiffs’ claims in this case. As such, the BOCC argues that Mr. Wolf’s testimony from the first trial should be designated (and objected to if necessary) pursuant to normal pre-trial procedure.

ACCORDINGLY, I GRANT Plaintiff’s Motion Requesting Admission of Kenneth Wolf’s Trial Testimony in *Rohrbach I* [Doc #162] subject to my ruling on the admissibility of any contested testimony. As such, the parties are ORDERED to confer on the matter, and then file with chambers one hard copy of the transcript of Mr. Wolf’s testimony with Plaintiffs’ designations highlighted in blue, Defendant’s designations highlighted in yellow, and any objections underlined in red, on or before the hearing on **March 16, 2015, at 9:00 A.M.**

Dated: February 10, 2015 in Denver, Colorado.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, JUDGE