

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JUDGE RAYMOND P. MOORE**

Courtroom Deputy: Nick Richards
Court Reporter: Tammy Hoffschildt

Date: January 23, 2014

CASE NO. 12-cv-01490-RM-CBS

Parties

Counsel

KARL T. ANDERSON, solely in his capacity
as Chapter 7 Trustee for the bankruptcy
estate of Robert Leone Davies and Amber
Tracey Davies,

John Dress Gehlhausen
David MacDonald Sargent

Plaintiff,

v.

SEVEN FALLS COMPANY, a Delaware
corporation, dba
THE NEW SEVEN FALLS COMPANY, dba
THE COTTAGE COMPANY, dba
SEVEN FALLE PIPELINE &
RESERVOIR,

Alan D. Avery
Zachary S. Westerfield

Defendant.

COURTROOM MINUTES

TRIAL PREPARATION CONFERENCE

COURT IN SESSION: 1:01 p.m.

Court calls case. Appearances of counsel.

Preliminary remarks by the Court.

Mr. Gehlhausen makes statement regarding Plaintiff's position.

Mr. Avery makes statement regarding Defendant's position.

ORDERED: Counsel shall be present at 8:30 a.m. on the morning of February 18, 2014 to discuss any preliminary matters prior to jury selection.

ORDERED: Each side shall be allowed 45 minutes for opening statements.

Remarks by the Court regarding stipulations and jury instructions.

ORDERED: The Order of Sequestration will **NOT** be in place during trial.

ORDERED: Defendant shall submit a final exhibit list on or before Monday, January 27, 2014.

ORDERED: Plaintiff shall submit a stipulated set of jury instructions. Each party shall then file separate non-stipulated sets of jury instructions. Both sets of proposed jury instructions shall be due on or before Friday, January 31, 2014.

Questions to the Court by Mr. Gehlhausen.

Discussion regarding highlighted exhibits.

Questions to the Court by Mr. Avery.

Discussion regarding Defendant's Motion for Summary Judgment - Judicial Estoppel - Pursuant to Fed.R.Civ.P 56 [Doc. No. 70, filed April 30, 2013].

1:45 p.m. Statement by Mr. Westerfield regarding Motion for Summary Judgment [70].

1:50 p.m. Statement by Mr. Gehlhausen regarding Motion for Summary Judgment [70].

Findings of the Court.

ORDERED: Defendant's Motion for Summary Judgment [70] is **GRANTED IN PART AND DENIED IN PART** as set forth on the record. A written order shall follow this ruling.

Discussion regarding Plaintiff's Motions in *Limine* [Doc. No. 128, filed January 16, 2014].

ORDERED: Plaintiff's Motions in *Limine* [128] is **GRANTED IN PART AND DENIED IN PART** as stated on the record. The motion is **GRANTED IN PART** in terms of references to bankruptcy matters as explained on the record. The remaining portions of the motion are **DENIED WITHOUT PREJUDICE**.

ORDERED: Parties shall submit briefing regarding Defendant's proposal as discussed on the record on or before the close of business on January 31, 2014.

Discussion regarding Defendant's Motion in Limine to Preclude Testimony by Plaintiff's Expert Witnesses Which Exceeds the Scope of Their Endorsement or Constitutes Impermissible Rebuttal Expert Testimony [Doc. No.129, filed January 16, 2014], Defendant's Motion in Limine to Exclude Reading Into Evidence Testimony From Documents Containing Medical Information [Doc. No. 130, filed January 16, 2014], and Defendant's Motion in Limine to Preclude Reference to Amber Davies as "Amber" [Doc. No. 131, filed January 16, 2014].

ORDERED: Defendant's Motion in Limine to Preclude Testimony [129] is **DENIED WITHOUT PREJUDICE** as stated on the record.

ORDERED: Defendant's Motion in Limine to Exclude Reading [130] is **DENIED WITHOUT PREJUDICE** as stated on the record.

ORDERED: Defendant's Motion in Limine to Preclude Reference to Amber Davies as "Amber" [131] is **DENIED** as stated on the record.

Discussion regarding Plaintiff's Objections to Magistrate Judge's July 18, 2013 Order Denying Plaintiff's Motion to Permit Disclosure of Plaintiff's Rebuttal Expert [Doc. No. 108, filed August 1, 2013], Motion to Preclude Defendant, Its Counsel, and/or Defendant's Expert Witnesses From Mentioning, or Referring to the State of Colorado Workers' Compensation Regulation's Diagnostic Criteria for Complex Regional Pain Syndrome [Doc. No. 109, filed November 22, 2013], and Motion to Preclude Speculative Expert Testimony as to the Cause of Amber Davies' Complex Regional Pain Syndrome [Doc. No. 110, filed November 22, 2013].

ORDERED: Plaintiff's Objections to Magistrate Judge's July 18, 2013 Order [108] is **OVERRULED**. The Court finds nothing in the Order Regarding Motion to Permit Disclosure of Plaintiff's Rebuttal Expert [Doc. No. 106, filed July 18, 2013] to be clearly erroneous or contrary to law. The Court therefore adopts the order and findings of Magistrate Judge Craig B. Shaffer.

ORDERED: Motion to Preclude Defendant [109] is **DENIED WITHOUT PREJUDICE** as stated on the record.

ORDERED: Motion to Preclude Speculative Expert Testimony [110] is **DENIED WITHOUT PREJUDICE** as stated on the record.

Discussion regarding Defendant's Motion to File Motions for Summary Judgment in Excess of 20 Pages [Doc. No. 68, filed April 30, 2013] and Defendant's Motion for Partial Summary Judgment on Plaintiff's Claim for Exemplary Damages [Doc. No. 69, filed April 30, 2013].

ORDERED: Defendant's Motion to File Motions for Summary Judgment in Excess of 20 Pages [68] is **MOOT**.

ORDERED: Defendant's Motion for Partial Summary Judgment [69] is **DENIED** as stated on the record.

COURT IN RECESS: 2:42 p.m.

Total in court time: 01:41

Hearing concluded