

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
SENIOR JUDGE WILEY Y. DANIEL**

Courtroom Deputy: Robert R. Keech
E.C.R./Reporter: Mary George

Date: February 11, 2016

Civil Action No: **13-cv-03446-WYD-KMT**

Counsel:

DANIEL L. PORTER,

Plaintiff,

Sander N. Karp
James F. Fosnaught
Gregory S. Russi

v.

**AMERICAN FAMILY MUTUAL
INSURANCE COMPANY,**

Defendant.

Debra K. Sutton
Ashley R. Larson

COURTROOM MINUTES

TRIAL TO JURY (DAY 4)

9:42 a.m. Court in Session - Jury enters

9:45 a.m. Defendant's witness **Cynthia Campman** sworn.

Direct examination by Defendant (Ms. Sutton).

EX ID: A-1, A-3, A-4, A-34, 32, A-10, A-11, A-12, A-13, A-14, A-15, A-16, 41, 61

Exhibit(s) A-1, 32, A-10, A-11, A-12, A-13, A-14, A-15 RECEIVED.

10:33 a.m. Jury excused

Discussion regarding objection by Plaintiff to redactions to Plaintiff's exhibit 61 -
OVERRULED.

ORDERED: Counsel shall provide redacted paper and electronic copies of Plaintiff's exhibit 61.

ORDERED: Plaintiff's Motion to Exclude Certain Testimony of Defense Expert Jacobson/Taylor, in the Alternative, Motion in Limine [ECF Doc. No. 78], filed August 11, 2015, is **DENIED AS MOOT**.

10:41 a.m. Court in Recess

11:00 a.m. Court in Session - Jury enters

11:02 a.m. Defendant's witness **Cynthia Campman** resumes.

Direct examination by Defendant continues (Ms. Sutton).

EX ID: A-1, A-24

Exhibit(s) 61 RECEIVED.

11:08 a.m. Bench conference regarding objection by Plaintiff to exhibit A-24 - **OVERRULED**.

11:10 a.m. Direct examination by Defendant continues (Ms. Sutton).

EX ID: A-24, 61

Exhibit(s) A-24 RECEIVED.

11:28 a.m. Cross examination by Plaintiff (Mr. Fosnaught).

EX ID: A-1

11:29 a.m. Jury excused

Discussion regarding objection by Defendant to exhibit A-1 - **SUSTAINED**.

ORDERED: Page 13 of exhibit A-1 shall be redacted to remove reference to policy limits.

11:38 a.m. Jury enters

Cross examination by Plaintiff continues (Mr. Fosnaught).

EX ID: A-1, A-23, A-34, 61, 28, A-23

Exhibit(s) A-23 RECEIVED.

12:04 p.m. Re-Direct examination by Defendant (Ms. Sutton).

EX ID: A-23

12:08 p.m. Re-Cross examination by Plaintiff (Mr. Fosnaught).

12:11 p.m. Court in Recess

12:25 p.m. Court in Session

12:27 p.m. Defendant's witness **Kyle John Jacobson** sworn.

Direct examination by Defendant (Ms. Sutton).

Witness tendered and accepted as an expert.

1:05 p.m. Court in Recess

2:32 p.m. Court in Session - Jury enters

Defendant's witness **Kyle John Jacobson** resumes.

2:33 p.m. Cross examination by Plaintiff (Mr. Karp).
EX ID: 55, 61, 43, 44, 34

3:20 p.m. Re-Direct examination by Defendant (Ms. Sutton).

3:24 p.m. Re-Cross examination by Plaintiff (Mr. Sander).

3:28 p.m. Plaintiff's witness **Gregory R. Giometti** sworn.

Direct examination by Defendant (Ms. Sutton).

4:00 p.m. Court in Recess

4:29 p.m. Court in Session - Jury enters

4:31 p.m. Cross examination by Plaintiff (Mr. Fosnaught).
EX ID: 43, A-34, deposition of Gregory Giometti (9/23/14) for purposes of impeachment

4:50 p.m. Jury excused

Discussion regarding objection by Defendant - **SUSTAINED.**

4:53 p.m. Jury enters

4:53 p.m. Cross examination by Plaintiff (Mr. Fosnaught).

4:58 p.m. Defendant rests.

Court's remarks regarding schedule for tomorrow.

5:01 p.m. Jury excused until Friday, February 12, 2016, at 9:00 a.m.

JURY INSTRUCTION CONFERENCE

Court's rulings on dispute jury instructions are:

#15 OBJECTION BY PLAINTIFF - COURT WILL MODIFY IN PART AND DEFER IN PART. NO OBJECTION.

#16 OBJECTION BY PLAINTIFF and DEFENDANT - OVERRULED.

#18 OBJECTION BY PLAINTIFF - COURT WILL MODIFY. NO OBJECTION.

#19 OBJECTION BY DEFENDANT - OVERRULED.

#22 OBJECTION BY PLAINTIFF - OVERRULED.

#26 OBJECTION BY PLAINTIFF and DEFENDANT - COURT WILL REMOVE. NO OBJECTION.

#27 OBJECTION BY PLAINTIFF - COURT WILL REMOVE. NO OBJECTION.

#33 OBJECTION BY PLAINTIFF and DEFENDANT - COURT WILL MODIFY. NO OBJECTION.

Plaintiff's Proposed Instruction No. 6 - REFUSED.

Defendant's Disputed Instruction E - REFUSED.

Defendant's Disputed Instruction J - REFUSED.

Verdict Form OBJECTION BY PLAINTIFF and DEFENDANT - COURT WILL MODIFY IN PART and DEFERRED IN PART.

Defendant's oral Rule 50 motion on Plaintiff's common law bad faith claim.

6:11 a.m. Argument by Defendant (Ms. Larson).

6:12 p.m. Argument by Plaintiff (Mr. Fosnaught).

ORDERED: Defendant's oral Rule 50 motion on Plaintiff's common law bad faith claim is **DENIED.**

Plaintiff's oral Rule 50 motion as to affirmative defense of failure to cooperate.

6:14 p.m. Argument by Plaintiff (Mr. Fosnaught).

6:15 a.m. Argument by Defendant (Ms. Larson).

ORDERED: Plaintiff's oral Rule 50 motion as to affirmative defense of failure to cooperate is **DENIED**.

ORDERED: Plaintiff's Motion to Strike Testimony of Defense Expert Giometti Or, in the Alternative, Motion in Limine [ECF Doc. No. 77], filed August 7, 2015, is **DENIED AS MOOT**.

6:19 p.m. Court in Recess - TRIAL CONTINUED.

TOTAL TIME: 6:08