

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-00328-PAB-MJW

JACK D. HARRISON, an Individual, and
NAOMA HARRISON, an Individual,

Plaintiff(s),

v.

AMERICAN FAMILY MUTUAL INSURANCE COMPANY, a Wisconsin Corporation,

Defendant(s).

MINUTE ORDER

Entered by Magistrate Judge Michael J. Watanabe

It is hereby **ORDERED** that Plaintiffs' Motion to Allow Expert Novotny to Withdraw and Re-Designate Valuation Expert (docket no. 67) is **DENIED** for the following reasons. Each party shall pay their own attorney fees and costs for this motion.

In the subject motion (docket no. 67), plaintiffs seek an Order from this court allowing plaintiffs to re-designate a **rebuttal valuation expert** for William Novotny due to Mr. Novotny's medical condition.

Here, the court finds that the Final Pretrial Order (docket no. 61) was approved and made an Order of Court on February 4, 2015. Defendant American Family has withdrawn its disclosures of Enservio witnesses as non-retained experts and does not intend to offer Enservio witnesses to provide expert testimony on any subject at trial, including value of Plaintiff's claimed losses. See bottom paragraph on page 5 in Response (docket no. 77). See also Defendant's expert witness section of the Final Pretrial Order (docket no. 61) in paragraph 6.b. Defendant i & ii on page 10. Rebuttal experts are those intended solely to contradict or rebut evidence on the same subject identified by another party under Fed. R. Civ. P. 26(a)(2)(B) or (C). Individuals designated only as rebuttal experts cannot testify in a plaintiffs' case-in-chief and are not to be allowed to testify unless and until the experts they were designated to rebut testified at trial. Lindner v. Meadow Gold Dairies, Inc., 249 F.R.D. 625, 636 (D. Hawaii 2008) (cited by E.E.O.C. v. JBS USA, LLC, 2014 WL 2922625, at *8 (D. Colo. June 27, 2014)). Accordingly, Plaintiffs' Motion to Allow Expert Novotny to Withdraw and Re-Designate Valuation Expert (docket no. 67) is **MOOT** and therefore should be **DENIED**.

Date: March 11, 2015