

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KEVIN McCABE,)	
)	
Plaintiff(s),)	
)	
vs.)	Case 2:08-CV-1232-PMP-GWF
)	
RAMPARTS, INC., d/b/a LUXOR))	
HOTEL AND CASINO, etc.)	MINUTES OF THE COURT
)	
<u>Defendant(s).</u>)	<u>DATED: July 9, 2012</u>

PRESENT: THE HONORABLE PHILIP M. PRO, U.S. DISTRICT JUDGE

DEPUTY CLERK: Donna Sherwood RECORDER: Joan Quiros, Henry Enriquez

COUNSEL FOR PLAINTIFF(S): David A. Tanner, Robert W. Cottle

COUNSEL FOR DEFENDANT(S): Esther P. Holm, Dustin E. Woods,
Jeffrey D. Olster

PROCEEDINGS: DAUBERT HEARING/HEARING ON PENDING MOTIONS IN LIMINE

9:05 a.m. Court convenes.

DAVID GRANT MORRILL, called on behalf of the Plaintiff, is sworn and examined Mr. Tanner and Ms. Holm and questioned by the Court, then is excused.

The Court hears the representations of Mr. Tanner as to opinions relating to signage and pool depth he would seek to elicit from Mr. Morrill at trial. Ms. Holm argues in opposition.

The Court finds as follows: The Court will not allow Mr. Morrill to testify regarding compliance, or lack of compliance, with the Nevada Administrative Code, as his testimony was that the signage complied. The Court will further not allow Mr. Morrill to testify as to what was reasonably visible to Plaintiff, McCabe, before he dove into the pool as that is a consideration a jury can better determine from evaluating all of the testimony and circumstantial evidence in the case and is not a subject of expert testimony under Rule 702. The remaining area of testimony concerning design of the pool the Court will take under advisement and after the Court reviews its notes and exhibits further, the Court will issue a written ruling to what extent the Court will allow Mr. Morrill to testify.

The Court hears the arguments of Mr. Olster and Mr. Tanner on Defendants' Motion in Limine 16 to Exclude Evidence That Luxor Violated any Statute or Regulation [240].

The Court **grants** Defendants' Motion in Limine 16 to Exclude Evidence that Luxor Violated any Statute or Regulation [240] because the granting of that motion effectively renders the second claim for relief in Plaintiff's Fourth Amended Complaint alleging negligence per se to be a claim upon which Plaintiff could not, under the circumstances of this case, be entitled to relief. The Court will dismiss Plaintiff's second claim for relief for negligence per se from the Fourth Amended Complaint, which leaves Plaintiff's first cause of relief.

The Court hears the arguments of Mr. Cottle, Ms. Holm and Mr. Olster on Plaintiff's Motion in Limine 13 to Exclude Evidence of Alcohol Consumption by Plaintiff [262].

The Court **grants** Plaintiff's Motion in Limine 13 to Exclude Evidence of Alcohol Consumption by Plaintiff [262] as follows: The Court will not allow Mr. Elliott to testify about what a woman to his left said about how many drinks McCabe had. The Court further **grants** Plaintiff's motion subject to reconsideration as to the AMR records upon identification of the witness who authored the report.

11:30 a.m. Court stands at recess.

1:05 p.m. Court reconvenes.

DAVID ALFRED THOMPSON, called on behalf of the Plaintiff, is sworn and examined by Mr. Cottle and Ms. Holm, then is excused.

The Court continues Mr. DeRosa to July 10th at 1:30 p.m.

2:54 p.m. Court stands at recess.

3:05 p.m. Court reconvenes.

MICHAEL ANGELO OOSTMAN, called on behalf of the Defendants, is sworn and examined by Ms. Holm and Mr. Cottle, then is excused.

The Court confers with counsel on the line-up of experts for tomorrow.

IT IS ORDERED the Daubert/Motion Hearing is continued to Tuesday, July 10, 2012, at 9:00 a.m.

5:00 p.m. Court adjourns.

LANCE S. WILSON, CLERK

By:

/S/

Donna Sherwood, Deputy Clerk