

**IN THE DISTRICT COURT FOR THE NINTH JUDICIAL DISTRICT
STATE OF WYOMING, COUNTY OF FREMONT
DOCKET NO. 2019-CV-0042429**

NORTHERN ARAPAHO TRIBE, a federally-)
Recognized Indian Tribe,)
)
And)
)
THE WIND RIVER HOTEL & CASINO, an)
Enterprise wholly owned by and an arm of the)
Northern Arapaho Tribe,)
)
Plaintiffs,)
)
vs.)
)
BALDWIN, CROCKER & RUDD, P.C. and)
KELLY RUDD)
)
Defendants.)

ORDER ON PRETRIAL CONFERENCE

THIS MATTER CAME BEFORE THE COURT for pretrial conference on June 28, 2022, with counsel Lucas Buckley and JoAnna DeWald, appearing for Plaintiff, Scott Ortiz and Zara Mason appearing for Defendants, and having heard from the parties on various pre-trial matters, including motions relating to the presentation of evidence enters the following order pursuant to Rule 16 W.R.C.P. and the parties are to act accordingly.

Trial process

1. Trial to the Court will take place Trial to the 12-person jury will take place at the Fremont County Courthouse located at 450 North 2nd Street, Lander, Wyoming 82520, commencing on **July18, 2022, at 9:00 A.M.** Five (5) trial days have been reserved.
2. The trial will be subject to time management such that the total time available, absent breaks, will be equally allocated between the parties.
3. The daily schedule will include morning and afternoon breaks of fifteen (15) minutes each and seventy-five (75) to ninety (90) minutes for lunch, depending on the pace of the trial. Court will begin at 9:00 A.M. each day.

4. Parties will have four (4) peremptory challenges, with the final, fourth, challenge to be exercised against one of the last four jurors seated. Preemptory challenges will be exercised in Chambers.
5. Parties will familiarize themselves with the Microsoft HUB and other Courtroom equipment.

Witnesses

1. The parties anticipate that only Mark Howell, if called, would be called virtually and they agree. If it develops that other witnesses might need to appear virtually the Court would allow any witness to do so upon agreement of counsel without formal orders being entered. Without agreement counsel must seek that relief from the Court. Counsel will contact Ms. Erickson in chambers at aerickson@courts.state.wy.us or 307-633-4291 to get the required information and be responsible for sharing that information with the witness.
2. Defendants express their intention, if witnesses Galbraith and Harper of the law firm KTS cannot be subpoenaed, to offer portions of those witnesses' depositions as evidence in the Defendants' case. The relevance of such an offer, by deposition or through testimony in person, is contested and cannot be completely resolved pretrial particularly where events at trial, including the possibility of the collateral use during cross examination of other witnesses may change the evidentiary landscape. If those witnesses or their depositions are to be used by the Defense in their case in chief, an offer is to be made outside the presence of the jury. Neither individual is listed as a witness in the parties' pretrial memoranda, other than the Defendants' *pro forma* "reservation" to call any person identified in discovery. There is no foundational objection to these depositions.
3. Counsel may rely on one another's will-call witnesses and the parties themselves being present or available at trial without duplicate subpoena or fees. Costs for any witness held over in this fashion would be the responsibility of the party benefiting.

Exhibits

1. Plaintiffs' exhibits will be marked numerically with no subparts. Defendants' exhibits will be marked alphabetically and while the Court intended to prevent subparts from being utilized by either party, a review of Defendants' Pretrial Memoranda satisfies the Court that their chosen numbering system will suffice, and they need not change for purposes of trial.
2. The parties are to provide a list describing the exhibits for the Courts use, which should include provisions for noting offer, acceptance, or rejection. Of course, any stipulations may also appear on the exhibit list, and it will be maintained in the record following trial.
3. There will be one notebook of exhibits from each party for the use of a testifying witness, if necessary, but counsel will display exhibits electronically such that the Court can control the exhibition of them to the appropriate monitors.

Agreements or Stipulations

No formal stipulations have been reached but the Court encourages the parties to continue work towards agreement on exhibits, foundational matters or factual stipulations. If a formal stipulation is to become a part of the presentation to the jury counsel should be prepared to present it in writing for the record.

Motions

1. **Defendants Motion to Strike or Limit the Testimony of Plaintiffs' Expert Daniel Costello.** No hearing was requested, but argument was taken on this and other motions. A review of the materials before the Court, including the pleadings of both parties in this regard, and the previously submitted materials of Daniel Costello lead to the conclusion that the requirements of W.R.E. 702 and the principles of *Daubert* adopted in *Buntin v. Jamieson*, 984 P.2d 467 (Wyo.1999) have been addressed here and this witness may testify as an expert in accordance with his designation. Defendants' arguments, powerful as they may be, go to the weight, not the admissibility of this witnesses' testimony or opinions.

2. **Defendant's *Motion in Limine* to preclude certain evidence more than two years prior to the filing of the complaint.** Having heard argument at the conference the Court received and has now considered the Plaintiffs' written response. There is no statute of limitations, either for malpractice or fraud that applies here, and as such no limitation of evidence that could be imposed on that basis. The references to the Rules of Professional conduct which might be made, or testimony about a standard of conduct are not offensive to the rules of evidence that apply to a conversion claim. One can violate duties and responsibilities and be subject to professional discipline based on facts which might *also* substantiate a civil wrong, contract violation, or even a crime. That is the offered justification here and it defeats the *In Limine* request.
3. ***Motion in Limine- Defamation claims-*** Counsel are aware of the Court's concerns that Federal litigation, factually but not legally related to these proceedings should not distract the jury. However, the motives of Plaintiffs' witnesses and the context in which this litigation arose are relevant. The Court must largely await the Plaintiffs' case in chief, and the Defendants' attempt at impeachment of witness to determine whether information about the defamation case can be admitted. But will, at this point order Defendants not to inquire as to settlement or any specific orders entered by the Federal Court or refer to that matter as vindication, etc. They will, unless the Court is convinced otherwise at trial, be limited to examination of witnesses as to the allegations that lead to change of counsel from BCR to KTS, the source of witnesses' knowledge, and matters that provide context to the motives of the Plaintiff in bringing this litigation. Beyond that, the federal courts rulings, or this Courts Rule 11 sanction itself are not to be brought to the attention of the jury without a further offer and argument.
4. ***Motion in Limine- Reasonableness of Fees -*** There will be no order entered limiting testimony about the reasonableness of fees. It is sophistry to allege charges and timekeeping were unreasonable and not allow evidence on all aspects of the overbilling claim. In fact, without evidence of this kind Plaintiffs' claim of "total

overbilled” could not be sustained in any event.

5. **Motion *in Limine*-Past non-payment of bills-** This motion is denied as the prejudice such evidence might create is outweighed entirely by its direct relevance to amounts allegedly overbilled, or unaccounted for.
6. **Motion *in Limine*- reference to “Big City Lawyers”** – Fair cross examination, as least based on what is in the record before the Court here, will certainly include where lawyers, specifically KTS and expert Costello practice. That alone might not go to credibility, but it would certainly be appropriate to note the context in which they practice, and its application to Costello’s expert opinions, and perhaps to a KTS witness’s motives if they testify. While the Court will caution counsel against the gratuitous use of that information in argument, there will be no *In Limine* order in this regard.
7. **Motion *In Limine*- Discussion with Mark Gifford** – Ruling will be reserved for trial on this matter. It appears possible that BCR will not be defending itself in this regard given the Summary Judgment ruling and should such a sensitive matter arise at trial it is at trial it must be resolved.
8. **Motion *In Limine*- Rule 11 Order-** No mention will be made of this Court’s ruling. It is unnecessary and prejudicial to the Plaintiffs to inform a jury the Court has already sided with the Defendants. If at trial a witness, perhaps Mr. Spoonhunter, denies he had no personal knowledge when he signed a previous affidavit the Court might reconsider. That seems unlikely given the Court was informed he has admitted that under oath at a deposition. Counsel can otherwise explore each of the issues fully enough without such mention. Noteworthy as to Defendants’ argument is that it is not the case that the pleadings have been amended here. The Rule 11 sanction went to the injunction for return of funds held, asserted to be a million dollars. A separate cause of action for the conversion of what was clearly an unknown amount, but above the \$50,000 jurisdictional threshold has always been and continues to be a claim subject to proof at trial. Though evidence developed during litigation, specifically in expert Costello’s work, that much greater amount

has been converted is not an amendment. While the timing of this development is a fair subject for cross examination, it would be improper to allow counsel to refer to amendments of allegations as they suggest in argument.

DATED this 8 day of July 2022.



HON. THOMAS CAMPBELL
First Judicial District Court Judge

cc: Lucas Buckley
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I hereby certify that I distributed a true and correct copy of the foregoing this ____ day of _____ 2022 as indicated. [M-mail; B-box in Clerk's Office, H-hand delivery; F-facsimile transmission.]

Deputy Clerk