

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 07-cv-00401-PAB-KLM

KATHERINE GILES and
ZURICH AMERICAN INSURANCE COMPANY,

Plaintiffs,

v.

THE INFLATABLE STORE, INC.,

Defendant.

**ORDER REGARDING DEFENDANT'S OBJECTIONS TO
PLAINTIFFS' DESIGNATIONS OF DEPOSITION TESTIMONY**

This matter comes before the court on defendant The Inflatable Store, Inc.'s Objections to Plaintiffs' Designation of Deposition Testimony [Docket No. 113].

The Court rules as follows:

Item #	Testimony	Objection	Ruling
1	Newman, Dr. James – 16:9-20:6	Dr. Newman lacks the knowledge, skill, experience, training or education to express this opinion. Dr. Newman's opinion is not the product of reliable principles and methods and is based upon insufficient facts and data. Witness not properly disclosed, F.R.E. 702-703.	Ruling reserved.

Item #	Testimony	Objection	Ruling
2	Newman, Dr. James – 20:7-22:10	Dr. Newman lacks the knowledge, skill, experience, training or education to express this opinion. Dr. Newman's opinion is not the product of reliable principles and methods and is based upon insufficient facts and data. Witness not properly disclosed, F.R.E. 702-703.	Ruling reserved.
3	Newman, Dr. James – 22:11-23:13	Dr. Newman lacks the knowledge, skill, experience, training or education to express this opinion. Dr. Newman's opinion is not the product of reliable principles and methods and is based upon insufficient facts and data. Witness not properly disclosed, F.R.E. 702-703.	Ruling reserved.
4	Newman, Dr. James – 27:17-29:7	Dr. Newman lacks the knowledge, skill, experience, training or education to express this opinion. Dr. Newman's opinion is not the product of reliable principles and methods and is based upon insufficient facts and data. Witness not properly disclosed, F.R.E. 702-703.	Ruling reserved.
5	Newman, Dr. James – 29:8-34:21	Dr. Newman lacks the knowledge, skill, experience, training or education to express this opinion. Dr. Newman's opinion is not the product of reliable principles and methods and is based upon insufficient facts and data. Witness not properly disclosed, F.R.E. 702-703.	Ruling reserved.
6	Newman, Dr. James – 35:9-40:7	Dr. Newman lacks the knowledge, skill, experience, training or education to express this opinion. Dr. Newman's opinion is not the product of reliable principles and methods and is based upon insufficient facts and data. Witness not properly disclosed, F.R.E. 702-703.	Ruling reserved.

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7	Newman, Dr. James – 41:16-42:9	Dr. Newman lacks the knowledge, skill, experience, training or education to express this opinion. Dr. Newman's opinion is not the product of reliable principles and methods and is based upon insufficient facts and data. Witness not properly disclosed, F.R.E. 702-703.	Ruling reserved.
8	Newman, Dr. James – 42:20-43:11	Dr. Newman lacks the knowledge, skill, experience, training or education to express this opinion. Dr. Newman's opinion is not the product of reliable principles and methods and is based upon insufficient facts and data. Witness not properly disclosed, F.R.E. 702-703.	Ruling reserved.
9	Lam, Dr. Tack – 7:5-12:2	Exhibit 48 is Dr. Lam's report. Refers to his report. Opinions are compound to his deposition and/or live testimony and should be precluded.	Ruling reserved.
10	Lam, Dr. Tack – 36:6-25	Exhibit 48 is Dr. Lam's report. Refers to his report. Opinions are compound to his deposition and/or live testimony and should be precluded.	Ruling reserved.
11	Lam, Dr. Tack – 38:6-11	Exhibit 48 is Dr. Lam's report. Refers to his report. Opinions are compound to his deposition and/or live testimony and should be precluded.	Ruling reserved.
12	Lam, Dr. Tack – 4:5-23	Irrelevant, F.R.E. 401-402	Ruling reserved.
13	Lam, Dr. Tack – 10:2-11:2	Irrelevant, F.R.E. 401-402	Ruling reserved.
14	Lam, Dr. Tack – 14:8-15:3	Irrelevant, F.R.E. 401-402	Ruling reserved.
15	Lam, Dr. Tack – 47:4-48:24	Irrelevant, F.R.E. 401-402	Ruling reserved.

Item #	Testimony	Objection	Ruling
16	Lam, Dr. Tack – 54:14-18	Irrelevant, F.R.E. 401-402	Ruling reserved.
17	Lam, Dr. Tack – 61:19-62:11	Irrelevant, F.R.E. 401-402	Ruling reserved.
18	Lam, Dr. Tack – 63:22-64:9	Irrelevant, F.R.E. 401-402; Prejudicial effect outweighs any probative value, F.R.E. 403	Ruling reserved.
19	Lam, Dr. Tack – 71:4-12	Irrelevant, F.R.E. 401-402; Prejudicial effect outweighs any probative value, F.R.E. 403	Ruling reserved.
20	Lam, Dr. Tack – 75:1-76:12	Irrelevant, F.R.E. 401-402	Ruling reserved.
21	Lam, Dr. Tack – 88:9-90:3	Irrelevant, F.R.E. 401-402	Ruling reserved.
22	Lam, Dr. Tack – 90:22-92:22	Irrelevant, F.R.E. 401-402; lack of personal knowledge F.R.E. 602	Ruling reserved.
23	Lam, Dr. Tack – 93:12-19	Irrelevant, F.R.E. 401-402	Ruling reserved.
24	Lam, Dr. Tack – 94:17-95:3	Irrelevant, F.R.E. 401-402; lack of personal knowledge F.R.E. 602	Ruling reserved.
25	Lam, Dr. Tack – 95:15-20	Lack of personal knowledge F.R.E. 602	Ruling reserved.
26	Lam, Dr. Tack – 147:18-148:1	Lack of personal knowledge F.R.E. 602	Ruling reserved.
27	Lam, Dr. Tack – 158:3-10	Irrelevant, F.R.E. 401-402; lack of personal knowledge F.R.E. 602	Ruling reserved.
28	Lam, Dr. Tack – 161:15-162:8	Lack of personal knowledge F.R.E. 602	Ruling reserved.
29	Lam, Dr. Tack – 171:5-12	Irrelevant, F.R.E. 401-402; Prejudicial effect outweighs any probative value, F.R.E. 403	Ruling reserved.
30	Lam, Dr. Tack – 191:4-10	Lack of personal knowledge F.R.E. 602	Ruling reserved.

Item #	Testimony	Objection	Ruling
31	Anastasia, Mark – 12:18-13:23	Irrelevant, F.R.E. 401-402	Ruling reserved.
32	Anastasia, Mark – 22:3-22	Irrelevant, F.R.E. 401-402	Ruling reserved.
33	Anastasia, Mark – 29:9-19	Irrelevant, F.R.E. 401-402	Ruling reserved.
34	Anastasia, Mark – 30:4-33:5	Irrelevant, F.R.E. 401-402	Ruling reserved.
35	Anastasia, Mark – 118:24-119:25	Vague; overbroad, lack of foundation and no definition of “design” given.	Ruling reserved.
36	Anastasia, Mark – 127:25-128:8	Irrelevant, F.R.E. 401-402	Ruling reserved.
37	Anastasia, Mark – 129:1-7	Irrelevant, F.R.E. 401-402; lack of personal knowledge F.R.E. 602	Ruling reserved.
38	Anastasia, Mark – 131:20-134:2	Irrelevant, F.R.E. 401-402	Ruling reserved.
39	Anastasia, Mark – 147:12-22	Irrelevant, F.R.E. 401-402; lack of personal knowledge and F.R.E. 602; inadmissible lay opinion, F.R.E. 701	Ruling reserved.
40	Anastasia, Mark – 157:19-158:3	Irrelevant, F.R.E. 401-402; lack of personal knowledge and F.R.E. 602; inadmissible lay opinion, F.R.E. 701	Ruling reserved.
41	Anastasia, Mark – 200:5-13	Irrelevant, F.R.E. 401-402	Ruling reserved.
42	Anastasia, Mark – 201:20-203:2	Irrelevant, F.R.E. 401-402	Ruling reserved.
43	Anastasia, Mark – 209:19-210:16	Vague; overbroad, lack of foundation – no definition of “testing” given.	Ruling reserved.
44	Anastasia, Mark – 215:12-216:5	Irrelevant, F.R.E. 401-402; Lack of personal knowledge, F.R.E. 602; inadmissible lay opinion, F.R.E. 701	Ruling reserved.
45	Anastasia, Mark – 221:23-222:11	Lack of personal knowledge, F.R.E. 602	Ruling reserved.

Item #	Testimony	Objection	Ruling
46	Douglas French – 11:8-15	Irrelevant, F.R.E. 401-402	Overruled
47	Douglas French – 16:15-24	Irrelevant, F.R.E. 401-402	Overruled
48	Douglas French – 70:17-72:20	Irrelevant, F.R.E. 401-402	Overruled
49	Douglas French – 73:8-12	Irrelevant, F.R.E. 401-402	Overruled
	Clark, Matthew P. – 69:23-70:6	Irrelevant, F.R.E. 401-402	Sustained
50	Lash, Steven – 7:22-8:15	Hearsay, F.R.E. 801, Irrelevant, F.R.E. 401-402	Overruled
51	Lash, Steven – 9:3-10:4	Hearsay, F.R.E. 801, Irrelevant, F.R.E. 401-402	Overruled
52	Lash, Steven – 10:25-12:8	Irrelevant, F.R.E. 401-402	Overruled
53	Lash, Steven – 36:17-41:4	Hearsay, F.R.E. 801	Sustained as to 36:17-22, 37:5-38, 25, 40:13-41:4. Otherwise overruled.
54	Lash, Steven – 60:20-62:13	Hearsay, F.R.E. 801, Inadmissible lay opinion, F.R.E. 701	Sustained as to 61:19-62:13. Otherwise overruled.
55	Lash, Steven – 114:25-116:18	Speculation, F.R.E. 602	Overruled

Item #	Testimony	Objection	Ruling
56	Keller, Samuel J. – 21:15-22:11	Hearsay, F.R.E. 801	Sustained as to 21:15-21 and 22:9-11. Otherwise overruled.
57	Keller, Samuel J. – 62:10-22	Lack of personal knowledge, F.R.E. 602, Inadmissible lay opinion, F.R.E. 701	Overruled

DATED April 15, 2009.

BY THE COURT:

s/Philip A. Brimmer
 PHILIP A. BRIMMER
 United States District Judge