

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 PLAINTIFFS' OBJECTIONS TO
DEFENDANT'S COUNTER DESIGNATION OF
VIDEO DEPOSITION TESTIMONY OF DR. STEVEN MURK**

This matter comes before the court on plaintiffs' Objections [Docket No. 145] to Defendant's Counter Designation of Video Deposition Testimony of Dr. Steven Murk [Docket No. 138].

The Court rules as follows:

Item #	Testimony of Dr. Steven Murk	Objection	Ruling
44(a)	p.30, l.13-19	Irrelevant, F.R.E. 401-402	Sustained as to foundation under Rule 702 and relevance as to the statement "As you may know, part of the economic redevelopment for downtown in the Springs has been to put a lot of bars downtown." Otherwise, overruled.

Item #	Testimony of Dr. Steven Murk	Objection	Ruling
45.	p.32, l.6-p.33, l.15	Beyond the scope of direct examination, F.R.E. 611(b); all grounds stated in Plaintiffs' Motion <i>in Limine</i> [Docket No. 115], incorporated herein by reference, including F.R.E. 702; hearsay, F.R.E. 801, et seq.; misleading and prejudicial effect substantially outweighs probative value, F.R.E. 403	Sustained on relevance grounds. The witness does not indicate whether he was aware of information regarding Ms. Giles' alcohol consumption at a time relevant to any diagnosis he made or whether he used it for any purpose in treating her.
46.	p.33, l.16-p.34, l.16	Beyond the scope of direct examination, F.R.E. 611(b); all grounds stated in Plaintiffs' Motion <i>in Limine</i> [Docket No. 115], incorporated herein by reference, including F.R.E. 702; hearsay, F.R.E. 801, et seq.; misleading and prejudicial effect substantially outweighs probative value, F.R.E. 403; irrelevant, F.R.E. 401-402	As to p.33, l.16-p.34,l.3, overruled. As to p.34, ll.4-10, sustained as to speculation and lack of foundation under Rule 702. As to p.34, ll.11-18, sustained as to relevance under Rule 402 and undue prejudice under Rule 403.
47.	p.34, l.23-p.35, l.10	Beyond the scope of direct examination, F.R.E. 611(b); all grounds stated in Plaintiffs' Motion <i>in Limine</i> [Docket No. 115], incorporated herein by reference, including F.R.E. 702; hearsay, F.R.E. 801, et seq.; misleading and prejudicial effect substantially outweighs probative value, F.R.E. 403; irrelevant, F.R.E. 401-402	Overruled as to the statement, "no one ever described her as inebriated." Otherwise, sustained given that the question incorporates a BAC that the witness does not indicate he was aware of during times relevant to his treatment of Ms. Giles.

Item #	Testimony of Dr. Steven Murk	Objection	Ruling
48.	p.35, l.18-p.36, l.13	Beyond the scope of direct examination, F.R.E. 611(b); all grounds stated in Plaintiffs' Motion <i>in Limine</i> [Docket No. 115], incorporated herein by reference, including F.R.E. 702; hearsay, F.R.E. 801, et seq.; misleading and prejudicial effect substantially outweighs probative value, F.R.E. 403; irrelevant, F.R.E. 401-402	Sustained as to relevance and lack of foundation except for the statement "I simply said that she became combative."
49.	p.38, l.20-p.39, l.6	Beyond the scope of direct examination, F.R.E. 611(b)	Overruled.

DATED April 29, 2009.

BY THE COURT:

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