

**UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF
COLORADO**

By Judge Philip A. Brimmer

Civil Action 09-cv-1542-PAB-CBS

In re: CENTRIX FINANCIAL, LLC, et al.,

CENTRIX FINANCIAL LIQUIDATING

TRUST, and
JEFFREY A. WEINMAN in his capacity
as Trustee for the Centrix Financial
Liquidating Trust,

Plaintiffs,

v.

NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURGH, PA, and AIG
DOMESTIC CLAIMS, INC.,

Defendants.

**ORDER REGARDING DEFENDANTS' OBJECTIONS TO PLAINTIFFS'
COUNTER DEPOSITION DESIGNATIONS FOR TRIAL AS TO GEORGE
BLUME, BRONCE BREAZEALE, FRED DAIRMAN, AND CARL GRANT**

This matter comes before the Court on Defendants' Objections to Plaintiffs' Counter Deposition Designations for Trial [Docket No. 161]. The Court has reviewed the objections and rules as follows as to the depositions of George Blume, Bronce Breazeale, Fred Dairman, and Carl Grant:

DEPOSITION OF GEORGE BLUME - 4-16-2012

Item #	Testimony	Objection	Ruling
	60:24 to 62:21	Rule 602: Foundation, Lacks Personal Knowledge; Rule 401: Relevance	Sustained - foundation
	64:13-20	Rule 402: Relevance; Rule 403: Prejudice; Rule 602: Lacks Personal Knowledge	Sustained – foundation
	64:21 to 66:2	Rule 402: Relevance; Rule 403: Prejudice	Sustained – foundation
	68:19-23	Rule 602: Lacks Personal Knowledge	Sustained – foundation
	81:10 to 82:22	Rule 402: Relevance; Rule 403: Prejudice; Rule 602: Lacks Personal Knowledge	Sustained – foundation
	89:15 to 91:17	Rule 602: Foundation, Lacks Personal Knowledge; Rule 402: Relevance	Overruled
	110:10-19	Rule 402: Relevance; Rule 403: Prejudice	Sustained - foundation
	137:23 to 139:2	Rule 402: Relevance; Rule 403: Prejudice, Confusion	Overruled
	141:7-10	Rule 602: Speculation, Lacks Personal Knowledge	Sustained
	141:17 to 144:22	Rule 602: Foundation, Lacks Personal Knowledge; Rule 402: Relevance; Rule 403: Prejudice, Confusion	141:17-143:5 - Sustained; 143:7-144:22- Overruled
	149:1 to 151:4	Rule 602: Foundation, Lacks Personal Knowledge; Rule 402: Relevance; Rule 403: Prejudice, Confusion	149:1-150:25 – Overruled; 151:1-151:4 – Sustained. Assumes facts not in evidence.
	157:12 to 161:12	Rule 402: Relevance; Rule 602: Foundation, Lacks Personal Knowledge; Rule 403: Prejudice, Confusion	Overruled

	161:18 to 162:9	Rule 402: Relevance; Rule 403: Prejudice, Confusion	Overruled
	162:22 to 165:8	Rule 106: Completeness (need to add 165:9-19)	Sustained

DEPOSITION OF BRONCE BREAZEALE - 1-10-2012

Item #	Testimony	Objection	Ruling
	All Designations	<p>Rule 602: Lacks Personal Knowledge, Speculation; Rule 402: Relevance; Rule 403: Prejudice</p> <p>As a general matter, Mr. Breazeale was the supervisor for Carl Grant, the AIG employee who handled the underlying fidelity bond claim. Evidence of claims handling is irrelevant to the question of coverage.</p> <p>In addition, Mr. Breazeale lacks personal knowledge of the claim or how it was handled. See, e.g., the following excerpts from Mr. Breazeale's deposition</p> <p>57:9-20 and 72:19-24 -- Mr. Breazeale testified that he had little or no recollection of the Centrix fidelity bond claim.</p> <p>76:5-12 -- Mr. Breazeale testified that he had no recollection of seeing the proof of loss.</p> <p>121:10-14 -- Mr. Breazeale testified that he does not recall any actions that he took to investigate the claim.</p>	As a general objection to all of his testimony, overruled.
	21:4 to 23:2	Rule 402: Relevance; Rule 403: Prejudice, Confusion (because the questions relate to completely different types of policies and a different job that Mr. Breazeale began in April of 2009)	Sustained
	34:11 to 35:15	Rule 402: Relevance (the witness' settlement authority has no bearing on the question of coverage in this case); Rule 403: Prejudice; Rule 408: Settlement Evidence Irrelevant	Sustained

40:17-22	Rule 106: Completeness (need to add the complete answer, which includes 40:16)	Sustained
56:5-8	Rule 402: Relevance; Rule 403: Prejudice, Confusion (the question is vague and unclear); Rule 106: Completeness (Plaintiffs did not include the answer at 56:11, which is required if the objection is not sustained)	Sustained as to 56:5-56:20
56:22 to 57:2	Rule 402: Relevance; Rule 403: Prejudice, Confusion; Rule 602: Foundation (assumes facts not in evidence); Rule 106: Completeness (Plaintiffs have omitted the answer at 57:5-6 which be required in any event)	Sustained
60:5-19	Rule 602: Foundation (assumes facts not in evidence); Rule 402: Relevance; Rule 403: Prejudice, Confusion	Sustained – foundation
69:5-18	Rule 106: Completeness (omitted the first three lines of the question, need to add 69:1-4)	Overruled, but sustained as to foundation
74:5 to 75:14	Rule 402: Relevance; Rule 403: Prejudice, Confusion (these questions and answers bear no relationship to the coverage question at issue in this case)	Sustained
77:18 to 78:22	Rule 402: Relevance (when an electronic filing system went into place bears no relationship to the coverage dispute at issue in this case); Rule 403: Prejudice, Confusion	Sustained
79:8 to 80:6	Rule 402: Relevance (when an electronic filing system went into place bears no relationship to the coverage dispute at issue in this case); Rule 403: Prejudice, Confusion	Sustained

85:10-17	Rule 402: Relevance; Rule 403: Prejudice, Confusion (the witness answers the question right after the break and this exchange will needlessly confuse the jury)	Sustained
86:2-9	Rule 402: Relevance; Rule 403: Prejudice, Confusion (because the question is rephrased immediately after so this exchange is unnecessarily confusing)	Overruled
87:22 to 89:13	Rule 402: Relevance; Rule 403: Prejudice, Confusion (asking a witness about properly redacted documents is unnecessarily confusing and prejudicial)	Sustained
99:13-25	Rule 402: Relevance; Rule 403: Prejudice (evidence pertaining to any reserve that was set is irrelevant and certainly more prejudicial and prone to jury confusion)	Sustained
103:15 to 104:24	Rule 402: Relevance; Rule 403: Prejudice (questions regarding reserves that were set are irrelevant and prejudicial)	Sustained
106:9-11	Rule 402: Relevance; Rule 403: Prejudice (questions regarding reserves that were set are irrelevant and prejudicial)	Sustained
108:19 to 110:9	Rule 402: Relevance; Rule 403: Prejudice, Confusion (information and questions regarding settlement authority is wholly unrelated to the question of coverage in this case); Rule 408: Settlement Authority	Sustained
115:23 to 117:9	Rule 402: Relevance; Rule 403: Prejudice (the jury will be confused by references to proper redactions and the question pertaining to reserve information)	Sustained
121:20 to 122:11	Rule 602: Foundation, Lacks Personal Knowledge (assumes facts not in evidence); Rule 611(a): Misstates Prior Testimony	Sustained

	127:2-20	Rule 402: Relevance; Rule 403: Prejudice, Confusion (the question is vague and unclear and form objection is preserved)	Sustained
	129:7 to 131:7	Rule 402: Relevance; Rule 403: Prejudice, Confusion; Rule 408: Settlement, Reserve Authority (information has no bearing on coverage for the claim)	Sustained
	133:20 to 134:22	Rule 602: Foundation; Rule 402: Relevance; Rule 403: Prejudice, Confusion	Sustained
	134:23 to 136:20	Rule 602: Foundation; Rule 402: Relevance; Rule 403: Prejudice, Confusion	Overruled
	140:7-23	Rule 402: Relevance; Rule 403: Prejudice, Confusion (questioning regarding reserves and redactions is unrelated to the coverage question before the jury)	Sustained
	141:9 to 143:4	Rule 602: Foundation (witness cannot identify the document and has never seen it before); Rule 402: Relevance; Rule 403: Prejudice	Overruled
	143:5-18	Rule 602: Foundation	Sustained
	144:21 to 145:7	Rule 602: Foundation (calls for speculation)	Sustained

DEPOSITION OF FRED DAIRMAN - 1-11-2012

Item #	Testimony	Objection	Ruling
	All Designations	Rule 402: Relevance; Rule 403: Prejudice, Confusion; Rule 602: Foundation, Lacks Personal Knowledge (on page 46:11-14, Mr. Dairman testified that he did not have any responsibility for issuing coverage opinions or deciding on a coverage position)	Generally, as to this witness's answers, overruled.

	44:5-25	Rule 402: Relevance; Rule 403: Prejudice	Sustained
	45:22 to 47:4	Rule 106: Completeness (need to add 46:15-20; 47:5-9; 49:18-25; 50:1-2)	Overruled
	51:9-13	Rule 106: Completeness (need to add 52:16-18; 52:23 to 53:13)	Overruled
	57:22 to 59:22	Rule 106: Completeness (need to add 57:17-21)	Overruled
	60:8 to 61:15	Rule 402: Relevance; Rule 403: Prejudice; Rule 602: Foundation, Lacks Personal Knowledge	Sustained
	61:25 to 62:14	Rule 402: Relevance; Rule 403: Prejudice, Confusion	Sustained
	66:21 to 69:3	Rule 403: Relevance; Rule 602: Foundation, Lacks Personal Knowledge	Overruled
	73:3 to 75:2	Rule 602: Foundation; Rule 402: Relevance	Sustained
	84:24 to 89:8	Rule 602: Foundation; Rule 402: Relevance; Rule 403: Prejudice, Confusion	Overruled
	Generally for completeness	Rule 106: Completeness (need to add 93:2-6 to clarify that witness did not have any other documents that were not produced)	Overruled

DEPOSITION OF CARL GRANT - 1-5-2012

Item #	Testimony	Objection	Ruling
	53:14 to 54:21	Rule 1002: Best Evidence	Overruled
	55:5 to 10	Rule 1002: Best Evidence	Overruled
	56:4-13	Rule 611: Vague (confusing)	Overruled
	67:7 to 69:10	Rule 611: Vague (asked and answered)	Overruled

	73:24 to 74:7	Rule 602: Lacks Personal Knowledge, Speculation	Overruled
	75:9 to 76:22	Rule 402: Relevance (any claim under D&O policy is not subject of the lawsuit); Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion	Sustained – relevance
	101:18 to 109:25	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury)	Sustained – relevance
	122:7-11	Rule 1002: Best Evidence	Overruled
	139:3-6	Rule 1002: Best Evidence	Overruled
	141:20 to 145:8	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury); Rule 802: Hearsay (testimony premised on hearsay statements)	Sustained
	145:25 to 149:19	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury); Rule 602: Lacks Personal Knowledge,	Sustained – relevance
	175:2-7	Rule 1002” Best Evidence	Overruled
	180:4-9	Rule 701: Improper Lay Witness Opinion; Rule 602: Speculation	Sustained
	183:13-19	Rule 611: Completeness (requires addition of 182:19 to 183:6)	Sustained
	187:10 to 188:8	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury);	Sustained
	189:12-18	Rule 802: Hearsay (testimony premised on hearsay within hearsay)	Overruled
	190:8-13	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury)	Sustained
	193:5-14	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury)	Sustained

	193:19 to 194:2	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury)	Sustained
	197:3 to 198:4	Rule 701: Improper Lay Witness Opinion; Rule 602: Lacks Personal Knowledge, Speculation; Rule 611: Vague	Overruled
	201:9-19	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury)	Sustained
	208:3-20	Rule 602: Lacks Personal Knowledge, Speculation; Rule 802: Hearsay (testimony premised on hearsay)	Sustained
	209:12-13	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury)	Sustained
	213:5-9	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury)	Sustained
	214:8-19	Rule 1002: Best Evidence	Overruled
	217:11-13	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury)	Sustained
	219:13-16	Rule 602: Lacks Personal Knowledge, Speculation; Rule 611: Vague	Sustained
	219:17-19	Rule 402: Relevance); Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury)	Sustained
	220:21-25	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury)	Sustained
	227:16-19	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury)	Sustained
	237:6-17	Rule 602: Speculation	Sustained

	239:19 to 240:3	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury)	Sustained
	247:7 to 248:4	Rule 602: Speculation, Lacks Personal Knowledge	Sustained
	248:5-13	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury); Rule 602: Speculation, Lacks Personal Knowledge	Sustained
	248:22 to 249:15	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury); Rule 602: Speculation, Lacks Personal Knowledge	Overruled
	256:2-9	Rule 602: Speculation, Lacks Personal Knowledge	Sustained
	256:10 to 258:10	Rule 602: Speculation, Lacks Personal Knowledge	Sustained

DEPOSITION OF CARL GRANT - 6-22-2012			
Item #	Testimony	Objection	Ruling
	All testimony from C. Grant's 6/22/2012 deposition	<p>Virtually the entirety of the designated testimony for Mr. Grant's 6/22/2012 relates to reserves or the setting of reserves for the fidelity bond claim.</p> <p>See, e.g., the following deposition excerpts: 311:23 to 319:17; 329:23-25; 332:24 to 335:15 to 339:1; 341:20 to 344:8; 346:15 to 350:2; 351:21 to 352:17; 357:6 to 367:10; 372:10 to 375:3; 379:2 to 382:20; 383:18 to 384:2; 385:14 to 386:2; 388:22 to 393:3; 393:11-18; 394:3-6; 396:1-3; 403:23 to 406:17-20</p> <p>Such testimony is irrelevant and not at trial, if there is no bad faith claim. See</p>	Generally, overruled

		<p><i>Sunahara v. State Farm Mut. Auto. Ins. Co.</i>, 280 P.3d 649 (Colo. 2012) (holding that reserves and settlement authority figures are irrelevant to a jury's determination of liability and damages and, thus, not reasonably calculated to lead to the discovery of evidence); <i>Silva v. Basin W. Inc.</i>, 47 P.3d 1193 (Colo. 2002) (same in context of third-party action).</p> <p>As such the entirety of the designated should be stricken as irrelevant under Rule and prejudicial under Rule 403.</p>	
	310:23 to 314:11;	Rule 402: Relevance (irrelevant testimony related to reserves); Rule 403: Prejudice (any marginal probative value of reserves testimony substantially outweighed by danger of unfair prejudice)	Sustained
	315:1 to 319:19;	Rule 402: Relevance (irrelevant testimony related to reserves); Rule 403: Prejudice (any marginal probative value of reserves testimony substantially outweighed by danger of unfair prejudice)	Sustained
	319:20 to 339:18	Rule 402: Relevance (irrelevant testimony about executive claims summary, which is only filled out when a reserve is set); Rule 403: Prejudice (any marginal probative value of reserves testimony substantially outweighed by danger of unfair prejudice)	Sustained
	311:15-22	Rule 602: Speculation; Lacks Personal Knowledge	Sustained
	321:17 to 323:19	Rule 402: Relevance (irrelevant whether or not Defendant has a reinsurance policy); Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury)	Sustained
	335:7-10	Rule 602: Lacks Personal Knowledge (if question relates to you as in AIG)	Sustained

	337:20 to 339:1	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury)	Sustained
	342:6-10	Rule 602; Speculation; Lacks Personal Knowledge	Sustained
	343:3-6	Rule 602; Speculation; Lacks Personal Knowledge	Sustained
	343:19 to 344:4	Rule 602; Speculation; Lacks Personal Knowledge	Sustained
	354:7 to 355:6	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury)	Sustained
	357:17-23	Rule 602: Speculation	Sustained
	372:14 to 373:24	Rule 602: Speculation	Sustained
	385:19 to 386:8	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury)	Sustained
	389:16-23	Rule 402: Relevance; Rule 403: Prejudice (any marginal probative value substantially outweighed by danger of unfair prejudice in confusion to jury)	Sustained

DEPOSITION OF CARL GRANT - RULE 30(b)(6) - 8-3-2012			
Item #	Testimony	Objection	Ruling
	14:8-12	Rule 611: Completeness (mischaracterizes prior testimony)	Overruled
	28:21-25	Rule 611: Completeness (requires 29:1-16)	Overruled
	38:20-23	Rule 611: Completeness (requires 38:24 to 39:2)	Overruled
	54:15-17	Rule 602: Lacks Personal Knowledge, Speculation	Sustained

DATED June 8, 2015.

BY THE COURT:

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