

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

Civil Action No. 11-cv-02369-PAB-KMT

LARRY SIPES,

Plaintiff,

v.

ALLSTATE INDEMNITY COMPANY, an Illinois corporation,

Defendant.

**ORDER REGARDING THE PARTIES' OBJECTIONS TO
DESIGNATIONS OF DEPOSITION TESTIMONY**

This matter comes before the court on defendant's Objections to Plaintiff's Initial Designations of Deposition Testimony of Lori Kidwell [Docket No. 190] and plaintiff's Objections to Defendant's Counter Designation of Deposition Testimony of Lori Kidwell [Docket No. 192].

The Court rules as follows on defendant's objections [Docket No. 190]:

Item #	Testimony	Objection	Ruling
1	29:21-30:11	Form; vague	Overruled.
2	44:9-45:4	Form; misleading; mischaracterizes applicable standards regarding Allstate's purported duty to "establish" that the fire was incendiary	Overruled.
3	45:16-47:16	Refers to an exhibit that is not on plaintiff's Exhibit List; lack of relevance	Overruled.

Item #	Testimony	Objection	Ruling
4	56:1-9	Form; calls for speculation	Overruled.
5	56:22-57:4	Form; calls for legal conclusion; vague	Overruled.
6	57:9-17	Form; assumes facts not in evidence; lack of foundation; lack of relevance	Overruled. Fed. R. Civ. P. 32(d)(3)(B)(ii).
7	63:9-64:7	Lack of foundation; lack of relevance; hearsay; improper impeachment	Overruled. As to 63:9-64:3, Fed. R. Civ. P. 32(d)(3)(B)(ii). As to 63:9-64:7 (and 64:9), the witness has foundation and the questions are relevant.
8	66:14-20	Form; mischaracterizes the evidence	Overruled.
9	70:14-22	Form; misleading; mischaracterizes applicable standards regarding Allstate's purported duty to "establish" that the fire was incendiary or caused by plaintiff	Overruled.
10	71:16-72:1	Form; calls for speculation; asked and answered	Objection is moot. Plaintiff has withdrawn the designation for 71:6-71:2.
11	74:19-24	No answer designated; question rephrased and withdrawn; vague	Objection is moot. Plaintiff has withdrawn the designation of this testimony.
12	75:20-78-20	Lack of foundation; assumes facts not in evidence as to Allstate's purported standards, mischaracterizes prior transcript	Overruled.

Item #	Testimony	Objection	Ruling
13	85:8-10	No question designated; vague	Overruled.
14	86:23-87:17	Form; vague	Overruled.
15	88:12-20	Form; vague	Overruled.
16	89:17-25	Asked; answered	Overruled.
17	101:9-18	Asked; answered	Overruled.
18	105:14-22	Inadmissible based on court order (polygraph evidence)	Sustained.
19	115:15-24	Question withdrawn; vague	Moot. Plaintiff withdraws the designation.
20	117:5-9	Form; vague; lack of relevance	Moot. Plaintiff withdraws the designation of 117:5-11.
21	117:15-118:22	Lack of foundation; calls for speculation; F.R.E. 403	Overruled as to 117:15-22. Sustained as to 117:23- 118:22; lack of foundation; speculation.
22	118:23-120:13	Lack of relevance; F.R.E. 403	Sustained.
23	122:24-123:9	Lack of relevance; F.R.E. 403 and 408	Sustained.

The Court rules as follows on plaintiff's objections [Docket No. 192]:

Item #	Testimony	Objection	Ruling
1	121:18-20	Leading; F.R.E. 611(c)	Overruled.

Item #	Testimony	Objection	Ruling
2	121:24-122:2	Leading, F.R.E. 611(c); opinion testimony that is not helpful, the jury can readily draw the necessary inferences and conclusions as to the reasonableness of Allstate's conduct without Ms. Kidwell's personal opinion, F.R.E. 701; the opinion is misleading as it is a self-serving statement by Ms. Kidwell concerning her conduct, F.R.E. 403	Overruled.

DATED October 30, 2013.

BY THE COURT:

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