

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

Civil Action No. 12-cv-01683-PAB-MJW

GREGORY TOY,

Plaintiff,

v.

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

Defendant.

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

This matter comes before the Court on Plaintiff's Objections to Defendant American Family Mutual Insurance Company's Counter Designations [Docket No. 182-1 at 3-4] and American Family's Objections and Counter Designations [Docket No. 171 at 8-12] as to Bruce Proctor.

The Court rules as follows on plaintiff's objections:

Item #	Testimony	Plaintiff's Objections	Ruling
1	7:18 – 8:2	No objection	
2.	13:23 – 14:24	F.R.E. 602; testimony calls for speculation; not required by Fed. R. Civ. P. 32(a)(6)	Sustained. Rule 32(a)(6).
3.	53:23 – 54:5	Answer is nonresponsive; F.R.E. 403; not required by Fed. R. Civ. P. 32(a)(6)	Sustained. Rule 32(a)(6).

4.	63:15 – 63:19	F.R.E. 403; 404(b) and will “open the door” to Defendant’s other acts contradicting claimed “history of paying claims and having excellent claims service,” including numerous lawsuits alleging bad faith; not required by Fed. R. Civ. P. 32(a)(6)	As to 63:15-63:17 (through “settlements”), overruled. As to 63:17(beginning with “You know”), sustained. Rule 32(a)(6).
5.	66:21 – 66:23	No objection	
6.	76:20 – 77:2	Answer is nonresponsive; F.R.E. 403; not required by Fed. R. Civ. P. 32(a)(6)	Sustained. Rule 32(a)(6).
7.	82:12 – 82:17	No objection	
8.	85:17 – 86:23	Not required by Fed. R. Civ. P. 32(a)(6)	Overruled.
9.	96:21 – 97:15	Answer is nonresponsive; F.R.E. 403; not required by Fed. R. Civ. P. 32(a)(6)	Overruled.
10.	106:9 – 106:14	No objection	
11.	111:1 – 111:6	No objection	
12.	112:1 – 112:13	No objection	
13.	115:2 – 116:8	F.R.E. 403; not required by Fed. R. Civ. P. 32(a)(6)	Overruled.
14.	141:20 –	No objection	
15.	142:21 – 143:2	No objection	
16.	151:2 – 151:12	F.R.E. 403; not required by Fed. R. Civ. P. 32(a)(6)	Overruled.
17.	163:15 – 163:21	F.R.E. 403; not required by Fed. R. Civ. P. 32(a)(6); if this portion of the deposition is presented, Plaintiff counter-designates 163:22 – 164:15.	Sustained
18.	170:10 – 171:2	F.R.E. 403; not required by Fed. R. Civ. P. 32(a)(6)	Overruled.

The Court rules as follows on defendant’s objections:

Testimony	Defendant’s Objections	Ruling
16:4 – 17:6	Leading, mischaracterizes the evidence	Overruled. Also, objections waived.
21:11-22:22	Leading, calls for speculation	Overruled. Also, objections waived.

23:2 – 24:9	Leading, misleading, misstates the law, improperly instructs the jury on the law, does not specify relevant timeframe	Overruled. Also, form objections waived.
24:8 – 24:11	Leading, misleading, misstates the law, improperly instructs the jury on the law, does not specify relevant timeframe	Overruled.
24:17 – 25:14	Leading, misleading, misstates the law, improperly instructs the jury on the law, does not specify relevant timeframe	Overruled. Also, form objections waived.
26:1 – 28:7	Leading, misleading, misstates the law, improperly instructs the jury on the law, does not specify relevant timeframe	Overruled. Also, form objections waived.
28:5 – 28:15	Leading, calls for speculation	Overruled.
28:16 – 28:20	Leading, calls for speculation	Overruled.
33:22 – 34:12	Relevance, “fairness” is not the relevant legal standard	As to 33:22-34:04, overruled. As to 34:05-34:12, sustained. Vague.
46:20 – 47:7	Relevance	Overruled.
48:5 – 49:15	Relevance, the question contains hearsay	Overruled.
49:19 – 50:22	Relevance, lack of foundation, the question contains hearsay	Overruled.
61:24 – 62:9	Relevance, calls for speculation	Overruled.
62:11 – 62:17	Relevance	Overruled.
63:1 – 63:14	Relevance, outside the scope of the notice, does not specify the relevant timeframe	Overruled.
63:22-64:23	Relevance	Overruled.
67:5-8	Leading, misstates previous testimony	Overruled. Also, form objection waived.
68:2 – 68:19	Relevance, the question contains hearsay	Overruled.

70:12 – 72:1	Leading	Overruled. Also, form objection waived.
73:14 – 75:12	Relevance, the question contains hearsay	Overruled.
81:15-83	Relevance, does not specify the relevant timeframe	Overruled.
79:7-16	Assumes facts not in evidence, leading	Overruled. Also, form objection waived.
84:18 – 85:5	Relevance, not limited to the relevant timeframe	Overruled.
87:11 – 92:6	Relevance, not limited to the relevant timeframe	Overruled.
95:23 – 96:5	The question contains hearsay	Overruled.
97:16 – 99:2	The question contains hearsay, leading	Overruled. Also, form objection waived.
99:3 – 101:2	The question contains hearsay	Overruled.
101:3 – 102:21	Leading, assumes facts not in evidence, the question contains hearsay, calls for speculation	Overruled. Also, form objections waived.
102:23 – 104:2	Leading, calls for speculation	Overruled. Objections waived.
109:4 – 110:25	Leading, the question contains hearsay	Overruled.
113:5 – 113:17	The question contains hearsay, misleading in that only part of the statement is read	Overruled.
114:3 -6	The question contains hearsay, leading	Overruled. Also, form objection waived.
114:7-10	Calls for speculation	Sustained.
116:12 – 125:14	Leading, the question contains hearsay, calls for speculation, calls for a legal conclusion, assumes facts not in evidence, calls for a legal conclusion	Overruled. Also, form objections waived.

128:9 -131:1	Leading, calls for speculation	Overruled. Also, form objections waived.
131:12 – 136:11	Leading, asked and answered, relevance, argumentative	Overruled, except as to 132:20-22, which is sustained as irrelevant. Also, form objections waived.
137:18 – 137:25	Leading, mischaracterizes the evidence, assumes facts not in evidence, asked and answered	Overruled.
138:16 – 141:19	Calls for a legal conclusion, lack of foundation, harassing, asked and answered	Overruled. Also, form objections waived.
144:5 – 145:5	Argumentative, relevance (Mr. Toy did not purchase the policy), assumes facts not in evidence	Overruled, except as to 144:12-144:19, which is sustained as irrelevant and misleading.
145:8 – 147:7	Leading, the question contains hearsay	Overruled.
147:18 – 148:5	Leading, calls for speculation, mischaracterizes the evidence (Mr. Toy was represented by a licensed attorney)	Overruled.
148:6 – 194:4 [sic]	Calls for speculation, calls for a legal conclusion, relevance	Overruled.
149:14 - 150:12	Leading, calls for speculations, calls for a legal conclusion, relevance	Overruled.
150:13 – 151:1	Leading, calls for speculation, calls for a legal conclusion, relevance	Overruled.
151:13-152:8	Leading, calls for speculation, calls for a legal conclusion, relevance	Overruled.

153:15 – 154:9	Leading, the question contains hearsay	Overruled.
157:2 – 157:22	Leading, the question contains hearsay	Overruled.
160:8 -24	Calls for speculation, misstates the evidence, Mr. Toy was represented by an attorney who was corresponding with American Family	Overruled.
160:25 – 161:5	Calls for speculation	Overruled.
161:9 – 163:7	Calls for speculation, leading, asked and answered, assumes facts not in evidence, the question contains hearsay	Overruled. Also, form objections waived.
166:5-166:8	The question is a violation of the Court's previous orders, relevance	Overruled.
167:2-19	The question is a violation of the Court's previous orders, relevance, calls for speculation	Overruled.
172:14 – 174:4	Leading	Overruled. Objection waived.
174:10 – 175:13	Calls for a legal conclusion, relevance, leading	Overruled.
176:8-25	Misstates evidence, it was not Mr. Toy's policy, asked and answered	Overruled.
177:2-21	Calls for a legal conclusion, relevance	Overruled.
180:20 – 12	Leading	Designation is incomplete and nonsensical. Overruled.
181:22 -182:8	Leading, assumes facts not in evidence,	Overruled.

DATED February 14, 2014.

BY THE COURT:

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