

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

JACQUE CUGGINO, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Case No. 4:15-CV-250-CEJ  
 )  
 )  
 NATIONWIDE INSURANCE COMPANY )  
 OF AMERICA, )  
 )  
 Defendant. )

**MEMORANDUM AND ORDER**

This matter is before the Court on plaintiff’s motion to compel defendant to produce one of defendant’s fact witnesses for a second deposition and to further compel him to respond to questions he previously refused to answer. Defendant has not responded to the motion, and the time allowed for doing so has expired.

On January 21, 2016, plaintiff took the deposition of Mark Unterscheutz, one of the defendant’s employees. During the deposition, counsel for the defendant objected to certain question and instructed the witness not to answer them. The asserted grounds for the objections were improper form of the question, lack of foundation, lack of relevance, and exceeding the scope of discovery.

The Federal Rules of Civil Procedure permits counsel to instruct a witness not to answer questions in a deposition “*only* when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion [to terminate or limit the examination] under Rule 30(d)(3).” Fed. R. Civ. P. 30(c)(2) (emphasis added). The Federal Rules further provide that an attorney who “impedes, delays, or frustrates the fair examination of the deponent” may be required to pay the

reasonable attorneys' fees and expenses incurred by the opposing party. Fed. R. Civ. P. 30(d)(2).

Here, the grounds asserted by defense counsel did not authorize her to instruct Unterscheutz not to answer the deposition questions. Therefore, the plaintiff will be permitted to take a second deposition of Unterscheutz, at the expense of the defendant.


Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion to compel [Doc. #34] is **granted**.

**IT IS FURTHER ORDERED** that witness Mark Unterscheutz shall appear for a second deposition at the offices of plaintiff's counsel within **thirty (30) days** of the date of this Order. Absent a valid privilege, Mark Unterscheutz shall answer all questions posed to him at the second deposition

**IT IS FURTHER ORDERED** that defendant shall bear the costs of the second deposition.

**IT IS FURTHER ORDERED** that the deadline for filing a verified motion for attorneys' fees, if any, is **March 15, 2016**.

  
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CAROL E. JACKSON  
UNITED STATES DISTRICT JUDGE

Dated this 24th day of February, 2016.