

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

-v-

6:09-CV-853

FIREMAN'S FUND INSURANCE COMPANY,

Defendant.

APPEARANCES:

SIDLEY AUSTIN LLP
Attorneys for Plaintiff
One South Dearborn Street
Chicago, IL 60603

WILLIAMS LOPATTO PLLC
Attorneys for Defendant
1707 L Street NW
Suite 550
Washington, DC 20036

DAVID N. HURD
United States District Judge

OF COUNSEL:

WILLIAM M. SNEED, ESQ.
THOMAS D. CUNNINGHAM, ESQ.

JOHN B. WILLIAMS, ESQ.
MARY A. LOPATTO, ESQ.

DECISION and ORDER

Plaintiff Utica Mutual Insurance Company and defendant Fireman's Fund Insurance Company have submitted the depositions of witnesses E. Barry Bradshaw and Gerald P. Konkel in advance of their use at trial in this matter. The parties have identified their designations, counter-designations, supplemental designations, and corresponding

objections to those depositions.¹ After reviewing the depositions and objections thereto, the following rulings are made with respect to all objections:

E. Barry Bradshaw

5/12/2014

| Plaintiff's Designations | Defendant's Objections |
|---|-------------------------------|
| 99:9-100:7 | Sustained |
| 103:17-104:17 | Overruled |
| 105:19-24 | Overruled |
| 106:3-107:12 | Overruled |
| 107:16-109:19 | Overruled |
| 110:6-13 | Overruled |
| 110:21-113:11 | Overruled |
| 113:15-117:17 | Overruled |
| | |
| Defendant's Counter-Designations | Plaintiff's Objections |
| 18:19-22 | Sustained |
| 24:22-25:21 | Sustained |
| 26:10-15 | Sustained |
| 40:19-25 | Sustained |
| 41:20-42:6 | Sustained |
| 85:20-86:10 | Sustained |
| 88:23-89:2 | Sustained |

¹ Those filings are docketed at ECF Nos. 377, 402, 410, and 417. To the extent any portion of the courtesy copies of the transcripts (with color coded designations, cross-designations, and objections) are inconsistent with the aforementioned court filings, the court filings have been treated as controlling for purposes of this decision.

| | |
|------------|-----------|
| 91:14-15 | Sustained |
| 92:13-93:4 | Overruled |
| 121:7-13 | Overruled |

E. Barry Bradshaw

6/12/2008

Defendant's initial response (ECF No. 402) to plaintiff's designations of Bradshaw's 6/12/2008 deposition included no specific objections or counter-designations, but rather a general objection to the use of this deposition under Federal Rule of Evidence 804 and an objection based on irrelevance. However, in a courtesy copy submitted to the Court on 11/28/17 in advance of the Bradshaw testimony being read into the record, defendant has lodged the following two specific objections:

| Plaintiff's Designations | Defendant's Objections |
|---------------------------------|-------------------------------|
| 24:19-25:7 | Overruled |
| 26:2-5 | Overruled |

Gerald P. Konkel

3/31/2014

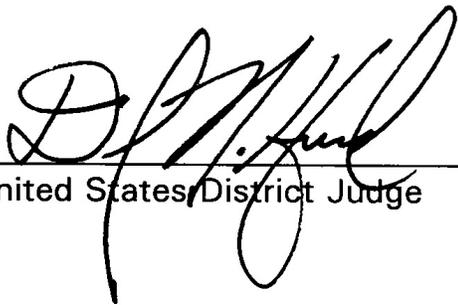
| Plaintiff's Designations | Defendant's Objections |
|---------------------------------|-------------------------------|
| 63:9-64:6 | Sustained |
| 71:14-16 | Sustained |
| 71:21-72:15 | Sustained |
| 72:20-73:2 | Sustained |

| | |
|---|-------------------------------|
| 95:3-97:22 | Sustained |
| 147:18-148:5 | Sustained |
| 149:7-150:1 | Sustained |
| 156:2-157:1 | Sustained |
| 158:7-18 | Sustained |
| 160:22-162:8 | Sustained |
| | |
| Defendant's Counter-Designations | Plaintiff's Objections |
| 20:13-18 | Overruled |
| 20:21-21:6 | Overruled |
| 73:2-5 | Sustained |
| 80:11-19 | Overruled |
| 83:13-16 | Overruled |
| 86:10-14, 18-22 | Overruled |
| 90:21-91:22 | Overruled |
| 93:20-94:6 | Overruled |
| 150:8-13 | Sustained |

The parties are directed to conform the deposition testimony in accordance with this decision. An updated courtesy copy for the Court is not needed.

Going forward, as the parties identify deposition testimony to be used the following day at trial, they are directed to confer and produce one courtesy copy for the Court which identifies (in the same color coded manner as was done with Bradshaw and Konkel) the parties' designations and all objections thereto.

IT IS SO ORDERED.



United States District Judge

Dated: November 28, 2017
Utica, New York.