

In the United States Court of Federal Claims

No. 01-56 C
(Filed: April 19, 2005)

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JOHN W. BULL, ET AL.,)
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 Plaintiffs,)
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v.)
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THE UNITED STATES,)
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 Defendant.)
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ORDER

Before the court is Defendant's Motion for Leave to Present Objections and to Counter-Designate Deposition Passages (If Plaintiffs' Motion is Granted) [hereinafter cited as Def.'s Depo. Obj.]. By Order dated April 19, 2005, the court granted plaintiffs' request to submit deposition testimony in lieu of live testimony for certain witnesses at trial and directed defendant to file counter-designations.

The court granted plaintiffs' motion to use at trial the deposition transcript testimony of the following non-test plaintiffs: (1) Ms. Stefany Currey, CEO in Detroit, Michigan; (2) Mr. Michael Dugan, CEO in Buffalo, New York; (3) Mr. Tommy Ramirez, CEO in Detroit, Michigan; (4) Mr. Michael Sklarsky, CEO in Miami, Florida; (5) Mr. Marvin Slocum, CEO in Chicago, Illinois; and (6) Mr. David Wentworth, CEO in El Paso, Texas. The court also granted plaintiffs' motion to use at trial the deposition transcript testimony of the following government witnesses: (1) Mr. Christopher Anaya, Primary Firearms Instructor in Detroit, Michigan; (2) Mr. George Anton, Canine Enforcement Officer (CEO) Supervisor in El Paso, Texas; (3) Mr. Roderick Blanchard, CEO Supervisor in Detroit Michigan; (4) Mr. John Kruczek, Borders Security Coordinator in Detroit, Michigan; (5) Mr. Armando Johnson, CEO Supervisor in Miami, Florida; (6) Mr. Frederick Luby, CEO Supervisor in El Paso, Texas; (7) Mr. John Rader, CEO Supervisor in Chicago, Illinois; (8) Mr. Dwight Raleigh, CEO Supervisor in Miami,

Florida; (9) Mr. Guillermo Rivas, Chief Inspector in El Paso, Texas; (10) Mr. Richard Rowley, CEO Supervisor in Detroit, Michigan; (11) Ms. Angela Smith, CEO Supervisor in Miami, Florida; and (12) Mr. Joseph Wood, CEO Supervisor in El Paso, Texas.

Consistent with the court's Order dated April 19, 2005 and further to defendant's request, the court also granted defendant's motion for leave to counter-designate deposition passages. The court now turns to address defendant's objections to the deposition excerpts designated by plaintiffs.

1. Defendant's General Objections to Deposition Testimony

Defendant objects to "all passages from the . . . depositions [of] Mr. Rivas [in] Presidio[,] Mr. Wentworth [in] Presidio[,] Mr. Rader [in] Chicago[,] Mr. Rowley [in] Detroit[,] Mr. Dugan [in] Buffalo[,] Mr. Slocum [in] Chicago[,] [and] Ms. Currey [.]” Def.'s Depo. Obj. at 3. Defendant argues that the testimony of these deponents "is not relevant to the matter being tried." Id.

The six test plaintiffs designated for trial in May 2005 are: (1) Mr. David Bailey whose port duty station is in Buffalo, New York; (2) Mr. Edward Kreuzel whose port duty station is in El Paso, Texas; (3) Mr. John Leuth whose port duty station is in Miami, Florida; (4) Ms. Claudia Monistrol whose port duty station is in Miami, Florida; (5) Mr. Jose Rivera whose port duty station is in Miami, Florida; and (6) Mr. Todd Stuble whose port duty station is in El Paso, Texas. See Plaintiffs' Designation of Representative Plaintiffs; Defendant's Identification of Trial Plaintiffs. Defendant argues that, because five of the six test plaintiffs worked during the period of their claims either in El Paso, Texas or in Miami, Florida, which are duty stations other than the duty stations of the deponents, the proposed deposition testimony is not relevant to the claims of the test plaintiffs. Def.'s Depo. Obj. at 3.

Contrary to defendant's assertions, however, non-test plaintiff David Wentworth is a CEO in El Paso, Texas. Because his testimony may make the existence of any fact that is of consequence to the determination of this action more or less probable than it would be without the evidence, see FRE 401, the court finds that his testimony is or may be relevant. The court OVERRULES defendant's objection with respect to the testimony of Mr. Wentworth. The court SUSTAINS defendant's objection that the testimony of non-test plaintiffs Stefany Currey, Michael Dugan, Tommy Ramirez, Michael Sklarsky, and Marvin Slocum is irrelevant to the claims of the trial plaintiffs Edward Kreuzel, John Leuth, Claudia Monistrol, Jose Rivera and Todd Stuble.

Defendant further argues that the testimony of the deponents is not relevant to the claim of the sixth test plaintiff, Mr. Bailey. Def.'s Depo. Obj. at 3. Although Mr. Bailey's claim is for the time he worked in Detroit, defendant contends that the testimony of the deponents Marvin Slocum and Tommy Ramirez is not relevant because the deponents worked in the ports of Chicago and Detroit "after Mr. Bailey transferred [from the Chicago and Detroit ports] to a new location." See id. Defendant adds that the testimony of Mr. Duggan, who currently works in Buffalo and is supervised by Mr. Bailey, is not relevant because "a subordinate's knowledge, if any, about his supervisor's alleged overtime activities does not influence whether the employer knew or should have known that the activities were taking place." Id. at 4. Nor is the testimony of Mr. Slocum relevant to Mr. Bailey's claim (even though both men worked in Chicago at the same time), defendant asserts, because "Mr. Bailey's assignment to Chicago pre-dates his claim for compensation." Id. Defendant contends that the testimony of Ms. Currey is not relevant to or, at best, is cumulative, of Mr. Bailey's testimony concerning his "individual claim." Id.

Because testimony by non-test plaintiffs Stefany Currey and Tommy Ramirez is or may be relevant to the claim of Mr. Bailey, see FRE 401, the court OVERRULES defendant's objection that the testimony of non-test plaintiffs Stefany Currey and Tommy Ramirez is irrelevant to the claims of David Bailey. The court SUSTAINS defendant's objection that the testimony of non-test plaintiffs Michael Dugan, Michael Sklarsky and Marvin Slocum is irrelevant to Mr. Bailey's claims. FRE 401, 402.

2. Defendant's Specific Objections to Deposition Testimony

Lee Titus (Tab 1 of Plaintiffs' Exhibit List filed March 15, 2005)

Ruling: MOOT. The court denied the use of Mr. Titus's deposition testimony by Order dated April 19, 2005.

Carl Newcombe (Tab 2 of Plaintiffs' Exhibit List filed March 15, 2005)

Ruling: MOOT. The court denied the use of Mr. Newcombe's deposition testimony by Order dated April 19, 2005.

Christopher Anaya (Tab 3 of Plaintiffs' Exhibit List filed March 15, 2005)

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
25:10-27:18	Mr. Anaya's opinions about the value of	beyond the scope of deposition; expert opinion

practicing

Ruling: OVERRULED. See Order of April 13, 2005 granting plaintiffs' motion to disclose Mr. Anaya as an expert witness.

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
42:22-44:14	Mr. Anaya's opinions about cleaning weapons	beyond the scope of deposition; expert opinion

Ruling: OVERRULED. See Order of April 13, 2005 granting plaintiffs' motion to disclose Mr. Anaya as an expert witness.

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
50:15-57:10	Mr. Anaya's opinions about cleaning weapons	beyond the scope of deposition; expert opinion

Ruling: OVERRULED. See Order of April 13, 2005 granting plaintiffs' motion to disclose Mr. Anaya as an expert witness.

John Kruczek (Tab 4 of Plaintiffs' Exhibit List filed March 15, 2005)

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
17:23-24:25	Ex. 96 (e-mail dated June 29, 2004) about installing washer/dryers	relevance - Mr. Bailey was no longer working in Detroit in 2004

Ruling: OVERRULED. Mr. Bailey's claim is for the time he worked in Detroit. Testimony addressing the change in the way towel processing was handled at Detroit port and when that change occurred is relevant.

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
25:4-28:8	implementing Jacksta directive	relevance - Mr. Bailey was no longer working in Detroit in 2004

Ruling: OVERRULED. Mr. Bailey's claim is for the time he worked in Detroit. Testimony addressing the change in the way towel processing was handled at Detroit port and when that change occurred is relevant.

Guillermo Rivas (Tab 5 of Plaintiffs' Exhibit List filed March 15, 2005)

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
33:1-33:22	Mr. Rivas' assessments of Mr. Perales and Mr. Johnson	relevance

Ruling: SUSTAINED. Because the credibility of non-test plaintiffs Elmer Johnson and Adrian Perales is not in dispute for purposes of this trial, the testimony is irrelevant and improper. See FRE 608(a)(2).

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
34:1-34:24	Mr. Rivas' assessments of Mr. Burke and Mr. Johnson	relevance

Ruling: SUSTAINED. Because the credibility of non-test plaintiffs Robert Burke and Elmer Johnson is not in dispute for purposes of this trial, the testimony is irrelevant and improper. See FRE 608(a)(2).

Armando Johnson (Tab 8 of Plaintiffs' Exhibit List filed March 15, 2005)

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
25:12-26:16	Mr. Johnson did not take pictures of training aids	relevance

Ruling: OVERRULED. Testimony regarding absence of formal requirement or informal expectation for CEOs to take pictures of training aids is or may be relevant. FRE 401.

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
41:4-41:16	Mr. Johnson's assessment of Mr. Smith	relevance - Mr. Smith is not a sample plaintiff

Ruling: SUSTAINED. Because the credibility of non-test plaintiff Darrel Smith is not in dispute for purposes of this trial, the testimony is irrelevant and improper. See FRE 608(a)(2).

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
59:2-59:22	Mr. Johnson's assessment	Plaintiffs may not introduce

of Ms. Monistrol's
honesty and assessment
of Mr. Sklarksy

evidence about Ms. Monistrol's
honesty. FRE 608(a)(2).
Mr. Sklarsky is not a sample
plaintiff. relevance.

Ruling: SUSTAINED. Until the credibility of plaintiff Claudia Monistrol is challenged, the testimony is inadmissible. FRE 608(a)(2). Because the credibility of non-test plaintiff Michael Sklarsky is not in dispute for purposes of this trial, testimony on the subject is irrelevant and improper. See id.

Frederick Luby (Tab 9 of Plaintiffs' Exhibit List filed March 15, 2005)

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
13:8-13:13	Mr. Luby's age, apparently a joke	relevance.

Ruling: SUSTAINED. See FRE 403 (allowing the exclusion of evidence to avoid "waste of time").

John Rader (Tab 10 of Plaintiffs' Exhibit List filed March 15, 2005)

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
40:7-40:23	Mr. Rader's assessment of Mr. Slocum's honesty	Plaintiffs may not introduce evidence about a plaintiff's honesty. FRE 608(a)(2).

Ruling: SUSTAINED. Because the credibility of non-test plaintiff Marvin Slocum is not in dispute for purposes of this trial, testimony on the subject is irrelevant and improper. FRE 608(a)(2).

Dwight Raleigh (Tab 11 of Plaintiffs' Exhibit List filed March 15, 2005)

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
75:20-76:10	Mr. Raleigh's assessment of Ms. Monistrol and	Plaintiffs may not introduce evidence about Ms. Monistrol's

Mr. Smith

honesty. FRE 608(a)(2).
relevance. Mr. Smith is not a
sample plaintiff.

Ruling: SUSTAINED. Until the credibility of plaintiff Claudia Monistrol is challenged, the testimony is inadmissible. FRE 608(a)(2). Because the credibility of non-test plaintiff Darrel Smith is not in dispute for purposes of this trial, testimony on the subject is irrelevant and improper. See id.

Richard Rowley (Tab 12 of Plaintiffs' Exhibit List filed March 15, 2005)

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
71:8-71:11	Mr. Rowley's assessment of Mr. Ramirez's honesty	Mr. Ramirez is not a sample plaintiff. Plaintiffs may not introduce evidence about a plaintiff's honesty. FRE 608(a)(2). relevance.

Ruling: SUSTAINED. Because the credibility of non-test plaintiff Tommy Ramirez is not in dispute for purposes of this trial, testimony on the subject is irrelevant and improper. FRE 608(a)(2).

Angela Smith (Tab 13 of Plaintiffs' Exhibit List filed March 15, 2005)

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
25:18-26:7	Ms. Smith's assessment of Ms. Monistrol's credibility. Ms. Smith's assessment of Mr. Smith's credibility.	Plaintiffs may not introduce evidence about a plaintiff's honesty. FRE 608(a)(2). relevance. Mr. Smith is not a sample plaintiff.

Ruling: SUSTAINED. Until the credibility of plaintiff Claudia Monistrol is challenged, the testimony is inadmissible. FRE 608(a)(2). Because the credibility of non-test plaintiff Darrel Smith is not in dispute for purposes of this trial, testimony on the subject is irrelevant and improper. See id.

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
29:16-30:19	Ms. Smith's assessment	Plaintiffs may not introduce

of other plaintiffs

evidence about a plaintiff's honesty. FRE 608(a)(2). relevance. They are not a sample plaintiffs.

Ruling: SUSTAINED. Because the credibility of non-test plaintiffs William Bellerose, Alan Borst, and Roy Garcia is not in dispute for purposes of this trial, testimony on this subject is irrelevant and improper. FRE 608(a)(2).

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
31:14-31:15	same	same

Ruling: SUSTAINED.

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
31:22-31:23	Ms. Smith's assessment of Mr. Rivera's honesty	Plaintiffs may not introduce evidence about a plaintiff's honesty. FRE 608(a)(2).

Ruling: SUSTAINED. Until the credibility of plaintiff Jose Rivera is challenged, the testimony is inadmissible. FRE 608(a)(2).

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
32:15-33:11	Ms. Smith's assessment of Ms. Stamey	Plaintiffs may not introduce evidence about a plaintiff's honesty. FRE 608(a)(2). relevance. Ms. Stamey is not a sample plaintiff.

Ruling: SUSTAINED. Because the credibility of non-test plaintiff Ellen Stamey is not in dispute for purposes of this trial, testimony on this subject is irrelevant and improper. FRE 608(a)(2).

Joseph Wood (Tab 14 of Plaintiffs' Exhibit List filed March 15, 2005)

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
26:23-26:25	Mr. Wood states that he built training aids at home.	Witness was confused as follow up questions showed.

Ruling: OVERRULED. Any confusion of the witness may be established by defendant's counter-designation.

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
43:21-44:4	More than five years ago, canine received overtime at time and a half.	Outside of period for which compensation is claimed. relevance.

Ruling: OVERRULED. Testimony regarding amount and rate of overtime compensation paid to CEOs is or may be relevant. FRE 401.

Stefany Currey (Tab 15 of Plaintiffs' Exhibit List filed March 15, 2005)

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
44:18-45:12	Ms. Currey describes what she heard about a meeting with the port director	hearsay

Ruling: RESERVED. The court will hear further argument on this objection at the pretrial conference, in particular, whether the hearsay is admissible as a party admission.

George Nadeau (Tab 17 of Plaintiffs' Exhibit List filed March 15, 2005)

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
14:16-15:12	Mr. Nadeau explains calculations in his declaration.	relevance

Ruling: RESERVED. The court will hear further argument on this objection at the pretrial conference, in particular, how the testimony concerning damages claimed by non-test plaintiff George Nadeau may be relevant.

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
61:19-61:25	Mr. Nadeau decreases the number of hours claimed in his declaration.	relevance

Ruling: RESERVED. The court will hear further argument on this objection at the pretrial conference, in particular, how the testimony concerning damages claimed by non-test plaintiff George Nadeau may be relevant.

Tommy Ramirez (Tab 18 of Plaintiffs' Exhibit List filed March 15, 2005)

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
4:14-4:16	part of introduction	relevance. Designation seems unintentional.

Ruling: SUSTAINED. Although testimony providing deponent's name is relevant, this designation reflects "a needless presentation of cumulative evidence" and thus, may be excluded. FRE 403.

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
10:6-11:2	why Mr. Ramirez joined the lawsuit	relevance

Ruling: OVERRULED. Testimony concerning basis for plaintiff's claim in this action is or may be relevant. FRE 401.

Michael Sklarsky (Tab19 of Plaintiffs' Exhibit List filed March 15, 2005)

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
30:3-32:20	people whom Mr. Sklarsky respects	relevance

Ruling: SUSTAINED. Opinion and reputation evidence of a person's character is not admissible for subjects other than the person's truthfulness. FRE 608(a).

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
42:17-49:25	calculating hours in his declaration	relevance

Ruling: RESERVED. The court will hear further argument on this objection at the pretrial conference, in particular, how testimony concerning damages claimed by non-test plaintiff Michael Sklarsky may be relevant.

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
134:24-138:12	objection presented by plaintiffs' counsel	no testimony is cited. relevance

Ruling: RESERVED. The court will hear further argument on this objection at the pretrial conference, in particular, how plaintiff's objection may be relevant.

John Wayman (Tab 21 of Plaintiffs' Exhibit List filed March 15, 2005)

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
38:7-38:14	receipts for buying materials	relevance

Ruling: OVERRULED. Testimony regarding expense associated with building training aids is or may be relevant. FRE 401.

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
[49]:16-[49]:22	Pentagon police carry a Glock 23	relevance. Customs uses a different weapon.

Ruling: SUSTAINED. Deponent states that he had no opportunity to examine a Glock 17.

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
52:18-52:24	accidental discharge of Glock 23	hearsay. Mr. Wayman did not observe this incident. <u>See</u> Tr. 56:6-56:8

Ruling: RESERVED. The court will hear further argument on this objection at the pretrial conference, in particular, whether the deponent received a report and if a written report was received, whether the report qualifies as a hearsay exception.

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
55:19-56:5	same	same

Ruling: RESERVED. The court will hear further argument on this objection at the pretrial conference, in particular, whether the deponent received a report and if a written report was received, whether the report qualifies as a hearsay exception.

David Wentworth (Tab 22 of Plaintiffs' Exhibit List filed March 15, 2005)

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
42:6-42:13	faulting CEOs for	relevance

claiming compensation

Ruling: SUSTAINED. Testimony that each CEO motivated by personal considerations in bringing FLSA claim is not relevant and thus not admissible. FRE 401 (defining as relevant evidence, evidence tending to make the existence of any fact that is of consequence to the determination of this action more or less probable than it would be without the evidence); FRE 402 (irrelevant evidence not admissible).

<u>Transcript Location</u>	<u>Topic</u>	<u>Objection</u>
86:19-91:2	efforts to obtain time and attendance reports	relevance. Customs produced all time and attendance reports.

Ruling: OVERRULED. Testimony regarding inability of CEOs to access or produce time and attendance records is or may be relevant. FRE 401.

IT IS SO ORDERED.

EMILY C. HEWITT
Judge