

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ABS GLOBAL, INC.,

Plaintiff/Counterclaim Defendant,

v.

INGURAN, LLC,

Defendant/Counterclaimant/Third-Party Plaintiff,

and

XY, LLC,

Intervening Defendant/Counterclaimant/Third-Party Plaintiff,

v.

GENUS PLC,

Third-Party Defendant.

ORDER

14-cv-503-wmc

Having reviewed ABS's corrected amended proponent deposition designations (dkt. #631), the court makes the following rulings as to witnesses André Barnabé, David Thorbahn and John Pasquesi. The approved designations may be presented to the jury unless the witness is available to testify in person. **ABS shall remove all objections and any other asides or discussions between counsel and/or with the court reporter, even where not noted by the court in its rulings.**

**Deposition of André Barnabé
(January 15, 2016)**

ABS/Genus Initial Designation	ST/XY Objection	ST/XY	ABS/ST Objection	ABS/Genus Counter-Counter Designation	Ruling
Page 6, line 25					
Page 7, line 1 to page 7, line 25					
Page 8, line 1 to page 8, line 25					
Page 9, line 1 to page 9, line 20					
Page 10, line 4 to page 10, line 25					
Page 11, line 1 to page 11, line 25					
Page 12, line 1 to page 12, line 25	FRE 801				Overruled as to 12:1-12:20; sustained as to 12:21-25.
Page 13, line 1 to page 13, line 25	FRE 801				Sustained as to 13:1-8; overruled as to 13:9-25.
Page 14, line 1 to page 14, line 25	FRE 801				Overruled
Page 15, line 1 to page 15, line 25	FRE 801				Overruled
Page 16, line 1 to page 16, line 25	FRE 801				Overruled
Page 17, line 1 to page 17, line 25					
Page 18, line 1 to page 18, line 19	FRE 801				Overruled as to 18:1-5; sustained as to 18:6-19.
Page 19, line 1 to page 19, line	FRE 801				Overruled

Deposition of André Barnabé (January 15, 2016)					
ABS/Genus Initial Designation	ST/XY Objection	ST/XY	ABS/ST Objection	ABS/Genus Counter-Counter Designation	Ruling
25					
Page 20, line 1 to page 20, line 11	FRE 801	20:25			Overruled
		21:1-25			
		22:1-25			
		23:1-25			
		24:1-24			
		25:13-25			

Deposition of André Barnabé (January 15, 2016)					
ABS/Genus Initial Designation	ST/XY Objection	ST/XY	ABS/ST Objection	ABS/Genus Counter-Counter Designation	Ruling
		26:1-25	The counter-designated testimony starting at 26:2 has nothing to do with the issues raised in the designated testimony. If ST/XY wanted to offer this testimony, they should have designated it for use in their case-in-chief, which they failed to do. The testimony cannot properly be presented to the jury in ABS's case.		Overruled
		27:1-25	Same objection.		Overruled
		28:1-25	For 28:1-3, same objection.		Overruled
		29:1-22			

**Deposition of David Thorbahn
(January 13, 2016)**

ABS/Genus Initial Designation	ST/XY Objection	ST/XY	ABS/ST Objection	ABS/Genus Counter- Counter Designation	Ruling
Page 5, line 16 to page 5, line 25					
Page 6, line 2 to page 6, line 25					
Page 7, line 2 to page 7, line 15		7:16-25			
Page 8, line 4 to page 8, line 25		8:2-3			
Page 9, line 2 to page 9, line 6					
Page 9, line 14					
Page 9, line 19 to page 9, line 25					
Page 10, line 2 to page 10, line 25					
Page 11, line 2 to page 11, line 9					
Page 11, line 17 to page 11, line 25					
Page 12, line 2 to page 12, line 25					
Page 13, line 2 to page 13, line 25					
Page 14, line 2					
Page 14, line 8 to page 14, line 25					
Page 15, line 2 to page 15, line 13					
Page 15, line 17 to page 15, line 25					
Page 16, line 2 to page 16, line 8					
Page 16, line 14 to page 16, line					

Deposition of David Thorbahn (January 13, 2016)					
ABS/Genus Initial Designation	ST/XY Objection	ST/XY	ABS/ST Objection	ABS/Genus Counter- Counter Designation	Ruling
25					
Page 17, line 2 to page 17, line 25					
Page 18, line 2 to page 18, line 7					
Page 18, line 10 to page 18, line 25					
Page 19, line 2					
Page 19, line 5 to page 19, line 18					
Page 19, line 20 to page 19, line 25					
Page 20, line 2 to page 20, line 25					
Page 21, line 2 to page 21, line 25					
Page 22, line 2 to page 22, line 25					
Page 23, line 2 to page 23, line 14					
Page 23, line 22 to page 23, line 25	FRE 704; FRE 403; FRE 701/702; FRE 602				Overruled
Page 24, line 2 to page 24, line 20	FRE 704; FRE 403; FRE 701/702; FRE 602	24:21-25			Overruled
Page 25, line 3 to page 25, line	FRE 704; FRE	25:2			Overruled

Deposition of David Thorbahn (January 13, 2016)					
ABS/Genus Initial Designation	ST/XY Objection	ST/XY	ABS/ST Objection	ABS/Genus Counter- Counter Designation	Ruling
6	403; FRE 701/702; FRE 602				
Page 25, line 15 to page 25, line 25	FRE 704; FRE 403; FRE 701/702; FRE 602	25:7-14			Overruled
Page 26, line 2 to page 26, line 4	FRE 704; FRE 403; FRE 701/702; FRE 602	26:5-10			Overruled
Page 26, line 11 to page 26, line 25	FRE 704; FRE 403; FRE 701/702; FRE 602				Overruled
Page 27, line 2 to page 27, line 5	FRE 704; FRE 403; FRE 701/702; FRE 602	27:6-25 28:2-25			Overruled
Page 29, line 5 to page 29, line 19	FRE 704; FRE 403; FRE 701/702; FRE 602	29:2-4			Overruled
Page 29, line 24 to page 29, line 25	FRE 704; FRE 403; FRE 701/702; FRE 602				Overruled
Page 30, line 2	FRE 704; FRE 403; FRE				Overruled

Deposition of David Thorbahn (January 13, 2016)					
ABS/Genus Initial Designation	ST/XY Objection	ST/XY	ABS/ST Objection	ABS/Genus Counter-Counter Designation	Ruling
	701/702; FRE 602				
Page 31, line 17 to page 31, line 25					
Page 32, line 2 to page 32, line 25	FRE 801/805				Sustained as to 32:8-22; otherwise overruled
Page 33, line 2, to page 33, line 3					
Page 33, line 6 to page 33, line 22		33:25			
Page 34, line 7 to page 34, line 8		34:2-6			
Page 34, line 14 to page 34, line 16					
Page 34, line 20 to page 34, line 25					
Page 35, line 2 to page 35, line 10		35:11-15			
Page 35, line 16 to page 35, line 25					
Page 36, line 2 to page 36, line 18		36:19-25 37:2-21	The counter-designated testimony should include the 37:23 answer to the designated question (at 37:17-21) and the	37:23-25	The counter-counter designation will be included.

**Deposition of David Thorbahn
(January 13, 2016)**

ABS/Genus Initial Designation	ST/XY Objection	ST/XY	ABS/ST Objection	ABS/Genus Counter-Counter Designation	Ruling
			37:24-25 question for the designated answer (at 38:2-7). Otherwise, the jury would hear Question A (but no answer) and Answer B (but no question) and think that Question A was answered by Question B.		
Page 38, line 17 to page 38, line 25		38:2-7			
Page 39, line 2 to page 39, line 25					
Page 40, line 2 to page 40, line 25	FRE 701/702; FRE 403				Overruled
Page 41, line 2 to page, 41, line 23	FRE 701/702; FRE 403				Overruled
Page 42, line 4 to page, 42, line 5					
Page 42, line 15, to page 42, line 18					
Page 43, line 7, to page 43, line 20					
Page 43, line 25					

Deposition of David Thorbahn (January 13, 2016)					
ABS/Genus Initial Designation	ST/XY Objection	ST/XY	ABS/ST Objection	ABS/Genus Counter- Counter Designation	Ruling
Page 44, line 2 to page 44, line 12					
Page 44, line 24 to page 44, line 25		44:16-23			
Page 45, line 2 to page 45, line 13					
Page 45, line 18 to page 45, line 25					
Page 46, line 2 to page 46, line 25					
Page 47, line 2 to page 47, line 24 ¹					See n.1
Page 48, line 5 to page, 48, line 25					
Page 49, line 2 to page 49, line 12					
Page 49, line 17 to page 49, line 25					
Page 50, line 2 to page 50, line 19		50:20-25			
Page 51, line 2 to page 51, line 25					
Page 52, line 2 to page 52, line 25					
Page 53, line 2 to page 53, line 25	FRE 611; leading;				Overruled

¹ ABS has also indicated that it will not include 47:16 starting at “We” through 47:18 ending at “quote” to avoid referencing a redacted sentence in an exhibit.

Deposition of David Thorbahn (January 13, 2016)					
ABS/Genus Initial Designation	ST/XY Objection	ST/XY	ABS/ST Objection	ABS/Genus Counter-Counter Designation	Ruling
	argumentative; compound question; misstates evidence; FRE 402/403				
Page 54, line 2	FRE 611; leading; argumentative; compound question; misstates evidence; FRE 402/403				Overruled
Page 54, line 5 to page 54, line 15					
		55:25			Counter-designations will be included.
		56:2-22			
		57:2-25			
		58:2-9 58:13-15			
		59:9-25			
		60:2-25			
		61:25			
		62:2-12			
		62:15-24			
		63:16 63:22-25			

Deposition of David Thorbahn (January 13, 2016)					
ABS/Genus Initial Designation	ST/XY Objection	ST/XY	ABS/ST Objection	ABS/Genus Counter-Counter Designation	Ruling
		64:2-13 64:21-25			
		65:2-22			
		66:1-2 66:10-16 66:19-25			
		67:2-25			
		68:2-24			
		69:19-25			
		70:2-20	The counter-designated testimony starting at 70:19 has nothing to do with the issue raised in the designated testimony. If ST/XY wanted to offer this testimony, they should have designated it for use in their case-in-chief, which they failed to do. The testimony cannot properly be presented to		

**Deposition of David Thorbahn
(January 13, 2016)**

ABS/Genus Initial Designation	ST/XY Objection	ST/XY	ABS/ST Objection	ABS/Genus Counter-Counter Designation	Ruling
			the jury in ABS's case.		
		72:18-25	Same.		
		73:2-25	Same.		
		74:2-25	Same.		
		75:2-25	Same.		
		76:2-26	Same.		
		77:2-25	Same.		
		78:2 78:5-10 78:13-25	Same.		
		79:2-22	Same.		
		80:7-25	Same.		
		81:2-25	Same.		
		82:2-25	Same.		
		83:2-16 83:22-25	Same.		
		84:2-25	Same.		
		85:2-25	For 85:2-17, same.		

		86:2-20	In fairness, under FRE 106, the jury should hear 86:21-87:4 as well as the counter-designated testimony.	86:21-87:4	Overruled; counter-counter designation will not be included.
		88:20-25			
		89:2-25			
		90:2-8 90:18-25			
		91:2-25			
		92:2-14			
		94:18-25	The counter-designated testimony has nothing to do with the issues raised in the designated testimony. If ST/XY wanted to offer this testimony, they should have designated it for use in their case-in-chief, which they failed to do. The testimony cannot properly be presented to		Overruled

			the jury in ABS's case.	
		95:2-11	Same.	
		98:19-25	Same.	
		99:2-25	Same.	
		100:2-7 100:15-25	Same.	
		101:2-10	Same.	
		102:6-25	Same.	
		103:2-17 103:20-25	Same.	
		104:2-11	Same.	

**Deposition of John M. Pasquesi
(November 18, 2015)**

ABS/Genus Initial Designation	ST/XY Objection	ST/XY	ABS/ST Objection	ABS/Genus Counter-Counter Designation	Ruling
Page 5, line 9 to page 5, line 25		4:4-9 4:17-5:8	The counter-designated statements of the videographer and the counter-designated identification of counsel are not evidence and should not be shown to the jury.		Sustained
Page 6, line 1 to page 6, line 25					
Page 7, line 1 to page 7, line 25					
Page 8, line 1 to page 8, line 25					
Page 9, line 1 to page 9, line 9					
Page 9, line 15					
Page 9, line 19 to page 9, line 25					
Page 10, line 1 to page 10, line 7					
Page 10, line 11 to page 10, line 15					
Page 10, line 20 to page 10, line 25		11:1			
Page 11, line 2 to page 11, line 9					
Page 11, line 11 to page 11, line 24					
Page 12, line 4 to page 12, line 14					
Page 12, line 21 to page 12, line 25					

Deposition of John M. Pasquesi (November 18, 2015)					
ABS/Genus Initial Designation	ST/XY Objection	ST/XY	ABS/ST Objection	ABS/Genus Counter-Counter Designation	Ruling
Page 13, line 1 to page 13, line 12		13:13-14:1			
Page 14, line 2 to page 14, line 3					
Page 14, line 8 to page 14, line 25					
Page 15, line 1 to page 15, line 25					
Page 16, line 1 to page 16, line 25					
Page 17, line 1		17:2-18			
Page 17, line 19 to page 17, line 25					
Page 18, line 1 to page 18, line 24					
Page 19, line 1, to page 19, line 18					
Page 20, line 4 to page 20, line 25					
Page 21, line 1 to page 21, line 25					
Page 22, line 1 to page 22, line 5					
Page 22, line 17 to page 22, line 24		22:25-24:10			
Page 24, line 11 to page 24, line 13					
Page 25, line 10 to page 25, line 20		25:21-26:3	FRE 402		Overruled
Page 26, line 4 to page 26, line 12					

Deposition of John M. Pasquesi (November 18, 2015)					
ABS/Genus Initial Designation	ST/XY Objection	ST/XY	ABS/ST Objection	ABS/Genus Counter-Counter Designation	Ruling
Page 26, line 17 to page 26, line 25					
Page 27, line 1 to page 27, line 13					
Page 28, line 1 to page 28, line 25					
Page 29, line 1 to page 29, line 25					
Page 30, line 1 to page 30, line 20		30:21-25			
Page 31, line 1 to page 31, line 25					
Page 32, line 1 to page 32, line 24					
Page 33, line 1 to page 33 line 20	FRE 402/403/602 (33:16-20)				Overruled
Page 34, line 12 to page 34, line 25					
Page 35, line 1 to page 35, line 4					
Page 35, line 13 to page 35, line 19	FRE 402/403/602				Sustained
Page 35, line 24	FRE 402/403/602				Sustained
Page 36, line 2 to page 36, line 25	FRE 402/403/602 (36:2-20)				Sustained as to 36:2-20
Page 37, line 1 to page 37, line 10		37:11-38:19			
Page 42, line 6 to page 42, line 20		42:21-43:3 43:12-44:19			
Page 45, line 12 to page 45, line		46:1-17			

**Deposition of John M. Pasquesi
(November 18, 2015)**

ABS/Genus Initial Designation	ST/XY Objection	ST/XY	ABS/ST Objection	ABS/Genus Counter-Counter Designation	Ruling
25					
Page 47, line 1 to page 47, line 6					
Page 47, line 23 to page 47, line 25	FRE 402/403/602				Overruled
Page 48, line 1	FRE 402/403/602				Overruled
Page 48, line 3 to page 48, line 17	FRE 402/403/602 (48:3-7)	48:18-22 49:10-51:1 58:18-59:7	In fairness, under FRE 106, the jury should hear 59:8-16 as well as the counter-designated testimony.	59:8-16	Overruled, except 58:18-25, 59:1-16 will not be included
Page 59, line 17 to page 59, line 20					
Page 59, line 23 to page 59, line 25					
Page 60, line 1 to page 60, line 25					
Page 61, line 24 to page 61, line 25		61:1-15 61:17-20			
Page 62, line 1 to page 62, line 5		62:6-63:12			
Page 64, line 2 to page 64, line 13		64:14-65:1			
Page 65, line 11 to page 65, line 25					
Page 66, line 1 to page 66, line 17		67:6-72:25	In fairness, under FRE 106, the jury should hear 73:3-10, 73:12-25, 74:2-75:3 and	73:3-10, 73:12-25, 74:2-75:3 and 75:21-76:19	Overruled, except 70:3-25, 71:1-25, 72:1-25,

Deposition of John M. Pasquesi (November 18, 2015)					
ABS/Genus Initial Designation	ST/XY Objection	ST/XY	ABS/ST Objection	ABS/Genus Counter-Counter Designation	Ruling
			75:21-76:19 as well as the counter-designated testimony.		73:3-10, 73:12-25, 74:2-25, 75:1-3, 75:21-25, 76:1-19 will not be included

Entered this 1st of August, 2016.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge