THIRD DIVISION
March 6, 2019

No. 1-17-2678

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SURESTAFF, INC, an Illinois corporation and SOURCE ONE STAFFING, INC., an Illinois corporation, Plaintiffs, (Source One Staffing, Inc., Plaintiff-Appellant) v. UNITED STATES FIDELITY AND GUARANTY COMPANY, a Maryland corporation, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County 14 L 8711 Honorable Raymond W. Mitchell, Judge Presiding

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Affirmed. Trial court judgment that plaintiff failed to prove breach of contract was not against manifest weight of evidence. Court did not abuse discretion by excluding certain exhibits. Appellant forfeited any contention of error on Insurance Code claim.

¶ 2 After a bench trial, the circuit court found that Source One Staffing, Inc. (Source One) failed to prove its claims against its worker's compensation insurance provider, United States Fidelity and Guaranty Company (USF&G). On appeal, Source One argues that the court's findings are against the manifest weight of the evidence primarily because USF&G did not

introduce any evidence in its defense. Source One also complains that the circuit court improperly excluded certain exhibits. Finally, it claims the court erred by finding no violation of Illinois Insurance Code. For the following reasons, we affirm.

¶ 3 BACKGROUND[1]

¶ 4 Source One is a staffing agency that places temporary workers at light industrial companies such as plastic companies, distribution companies, machine shops, and the like. Source One maintains worker's compensation insurance for the temporary employees it places.

¶ 5 These worker's compensation insurance policies expire annually. Each year, Source One must obtain a new policy with a new "estimated premium." This estimate is calculated based on economic information provided by Source One to the insurer, typically through its broker, Jeff Tuisl (Tuisl). Most pertinent to this appeal, the estimates are heavily influenced by payroll class codes. Class codes are standard throughout the worker's compensation insurance industry and are described in the Scopes Manual, a document released by the National Council on Compensation Insurance (NCCI).

¶ 6 There are hundreds of distinct codes that broadly group employees based on their job functions. A clerical worker, for example, would have a different code than a machinist. These codes are used to give an approximation of the risk of injury to a certain group of employees. Unsurprisingly, the higher the risk associated with a code, the higher the premium to cover those employees. So in our example, the machinist's code would carry a higher premium than the clerical worker's code. The companies' premium base is an amalgamation of the class codes assigned to each of its employees.

[1] This case involves two plaintiffs who made substantially identical claims against USF&G. Of the two, only Source One appeals the court's judgment. So we describe the case only as it relates to Source One.

¶ 7 This base premium is then adjusted by an "experience modifier" (referred to as a "mod" by the witnesses). The mod considers the historical data of the employer. It compares expected risk/payout versus actual risk/payout. If the company's history indicates that their actual risk is less than expected, then the mod will lower their premium, and vice-versa.

¶ 8 After all these calculations, the insured receives an "estimated" premium at the beginning of the policy year. The "actual" premium due is not calculated until *after* the policy expires. At the end of the policy year, the insurer audits the policy to determine whether the information provided by the insured was accurate. If the information was not correct, the insurer modifies the premium—either up or down—and notifies the insured of any change. That takes us to what happened in this case.

¶ 9 Beginning in the policy year December 2006 to December 2007, Source One changed insurers and obtained its worker's compensation insurance from USF&G. As he had done for many years, Scott Reedy (Reedy), president and owner of Source One, collected the information necessary to obtain an estimated premium for the policy. The estimate for the 2006-2007 policy was $469,999. Before the audit of the 2006-2007 policy, USF&G quoted Source One $409,846 for the next policy year, December 2007-2008.

¶ 10 The insurance policies at issue provide that:

> "All premium for this policy will be determined by our [USF&G's] manuals of rules, rates, rating plans and classifications.
>
> ***
>
> The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends using the actual, not

> the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy.
>
> ***
>
> [The] classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposes are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy."

¶ 11 After the 2006-2007 policy expired, and the 2007-2008 policy went into effect, USF&G audited the 2006-2007 policy. In January 2008, USF&G informed Source One that it was changing a number of class codes. These changes resulted in the premium being adjusted from the $469,999 estimate to $493,144. Due to the significant increase, Reedy contacted Tusil and representatives at USF&G. Reedy took the position that USF&G's code changes were improper. USF&G disagreed and did not modify its premium adjustment.

¶ 12 The premium adjustment soured the parties' relationship, and Source One cancelled the 2007-2008 policy early because of the "code changes that were done on a previous audit." As it did with the prior policy, USF&G audited Source One's 2007-2008 policy and made similar class code changes, again increasing the premium owed for the prorated year.

¶ 13 Source One filed suit, claiming that USF&G improperly changed class codes during the audit. In Source One's opinion, USF&G changed proper class codes to "higher rated" codes, resulting in higher premiums. Source One also claimed a violation of Section 143.17a of the Illinois Insurance Code (215 ILCS 5/143.17a (West 2016)). Specifically, Source One asserted that USF&G violated Section 143.17a by failing to give notice of material changes prior to renewal by increasing premiums and changing class codes.

¶ 14 The case proceeded to a bench trial. At trial, USF&G did not present any witnesses of its own. Source One relied on the testimony of Reedy, Tuisl, and Larry Domalick (Domalick).[2]

¶ 15 Scott Reedy

¶ 16 Reedy is the only person at Source One involved in obtaining worker's compensation insurance. He explained that obtaining an accurate estimate is essential, because they use the cost of insurance when pricing their staffing services. He prepares for annual premium quotes by sending Tusil the previous payroll class codes, tax returns, quarterly 941 reports, and a description of any expected significant change in its business or class codes.

¶ 17 Most of Source One's employees, while employed by the company, actually work at the customers' business locations. When assigning codes to new customers, Reedy sits down with them so they can describe the job the temporary employees will be doing. Reedy also does an initial walk-through with the client to verify for himself the information provided. Likewise, with existing clients, Reedy tries to make regular site visits to verify the work being performed. Reedy needs to verify the actual work to avoid "restricted basis" jobs. These are jobs that are overly dangerous and avoided because of their impact on the insurance premiums.

¶ 18 Reedy compiles the information from these site visits along with other research, such as information from the company's website, to get a full picture of the job the temporary employees will perform. He then uses the NCCI Scopes Manual to narrow down the correct employee class codes. Reedy claimed familiarity with the NCCI Scopes Manual and was qualified as an expert on code classifications. But he conceded that he was not an expert on the Scopes Manual and did

[2] We focus on the testimony of these three witnesses not because they were the only ones to testify, but because Source One bases its arguments on their testimony.

not have any of the formal certifications for insurance auditing. After determining the appropriate codes, he provides the information to Tuisl for confirmation.

¶ 19 When Reedy renews insurance policies, he typically uses the same code as he did for the previous year, unless the customer's business has changed or Tuisl advises a change. This was true when he procured insurance from USF&G. In obtaining the 2006-2007 policy, he used substantially the same class codes as he had for the prior insurer's policy, because his customer base "would have been similar."

¶ 20 When USF&G contacted Reedy about the audit, he cooperated and provided everything the auditor requested. Because the codes were accepted by the prior insurer without change, he did not expect the significant code changes made by USF&G. He questioned the changes and compared their codes with his internal documents. He also made site visits to verify what work was being performed.

¶ 21 Reedy explained some of the codes he believed were incorrect. For example:

- Aspen Marking Services was changed from 8800 (direct mailing) to 8018 (warehousing). Reedy was adamant that they are a direct mailing company because he visited the site at least once a month.
- The audit also changed Cha Industries from 8046 to 8380. Reedy could not remember what his code, 8046, was but explained that 8380 is for "automobile car washing, drivers" and that Cha Industries does not "do that type of business." He never explained what Cha Industries does.
- Reedy coded Fire Clean LLC as 9014 (janitorial work). The audit changed it to 5610, a "debris removal and construction code." According to Reedy, Fire Clean performed "cleanup after floods and fires and things of that nature."

¶ 22 Reedy also checked with Tuisl; they both believed that USF&G's code changes were improper. He tried to challenge the audit results, but USF&G refused to change the codes. USF&G enforced the premium adjustments by confiscating his return premiums, which would have been refunded otherwise. According to Reedy, USF&G's code changes cost him approximately $165,000.00 over the two policy years.

¶ 23 On cross-examination, Reedy acknowledged that the "actual" premiums are determined by USF&G's code classifications at the end of the policy period. He admitted that the initial quotes were only estimates, and that it was USF&G who determined the actual premium. While Reedy claimed he had notes and documents reflecting the information he used to determine the proper class codes, he did not have them for trial, and none were admitted into evidence. Reedy also agreed that he "[didn]'t have sufficient information to say why the codes of USF&G are incorrect [as] that's information they would have."

¶ 24 Jeff Tuisl

¶ 25 Tuisl is a licensed insurance broker who procured the USF&G policies for Source One. He holds one of the educational designations for the insurance business. During his course work, he doesn't remember taking any courses specific to worker's compensation code auditing. When assisting Source One, he collected information from Reedy and forwarded it to the policy manager, Artex, who then presumably forwarded it to USF&G. According to Tuisl, Source One was very cooperative with procuring the insurance and provided "really anything I required in order to put the policy in place." While doing his initial review of the codes, he couldn't specifically remember confirming with the Scopes Manual, but he knows it is a resource he regularly uses.

¶ 26 Tuisl also explained the importance of using correct codes. The codes affect the mod, because the mod is based on expected versus actual loss. If you use a lower risk code, it will show an abnormally high loss. This leads to a higher mod, even if your losses are what they should be. Because of this, the mod is a decent indicator of whether a company uses the right codes. Based on his review of what Source One provided, he believed Source One's codes were correct.

¶ 27 Once Source One got the audit results, Tuisl met with Reedy to review the changes. Even considering the audit results, he still believed that Source One's code choices were right, and USF&G's were wrong. He double-checked himself by examining Source One's codes and the audit codes against the Scopes Manual. He never consulted USF&G's rules manual and never called the customers to discuss what the class code for the temporary employees should be. He consulted the customers' websites but did not remember which ones.

¶ 28 Like Reedy, he gave a few examples of USF&G's incorrect codes:

- For Cha Industries, USF&G changed the code from 8046 (auto parts distributor) to 8380 (auto repair). According to Tuisl, "they're clearly an auto distributor."
- GRO Horticultural was changed from 0005 (growing trees) to 0042 (landscaping). Tuisl explained GRO does not do "anything similar to landscaping in the least bit. They grow trees."
- The easiest one, according to him, was Travel Lodge. USF&G changed the code from 8810 (clerical) to 9052 (hotel code). While Travel is a hotel, Tuisl explained the Scopes Manual clearly states that 8810 should be used for clerical workers at a hotel, even though other hotel employees fall under the more general hotel code.

¶ 29 Each of USF&G's changes were to a higher-rated code, which caused the premiums to go up. USF&G never explained why the codes where "changed." Despite the language of the insurance contract, Tuisl insisted that USF&G "changed" the codes, and he did not agree that the premiums were only set by USF&G after the policy ended. While he couldn't cite anything in the contract that prohibited USF&G from changing every code, he didn't believe that would ever really happen.

¶ 30 Larry Domalick

¶ 31 Domalick audited Source One's insurance policies. Domalick does not hold any of the educational designations applicable to insurance auditing, but he has worked as an insurance premium auditor for 39 years. While auditing Source One's classifications, he used the NCCI Riskworkstation, which is a web program that the NCCI hosts to help select proper codes. The workstation allows him to research Source One and the companies where Source One's employees worked. Based on his audit, "[c]hanges to class codes were made as needed depending on the coding at NCCI." Although he changed codes, he could not remember specifics.

¶ 32 USF&G did not produce any witnesses or evidence of its own. Throughout the trial, the court took a number of evidentiary objections under advisement.

¶ 33 Court's Judgment

¶ 34 The court issued written findings of fact and entered judgment in favor of USF&G. The court noted that "[m]uch of the evidence at trial consisted of testimony from principals of Plaintiffs who testified about how they assigned classifications codes and payroll amounts ("remuneration") that gave rise to the *estimated* premium under their respective policies." The court found that Source One's allegation that USF&G " 'reclassified' or 'changed' code

classifications" was a "a misreading of the insurance contract at issue [because] *** the code classifications are determined at the end of the policy period after an audit." To succeed on its claim, the court determined that Source One had to "prov[e] that defendant failed to 'assign proper classifications.' "

¶ 35 The court determined that "[t]he alleged breach [was] unproven." The court commented that Source One provided "no documents offered into evidence reflecting site visits to clients, payroll information for individual temporary employees, or review of the Scopes Manual classifications." The court found the evidence presented to be nothing "other than generic testimony from the principals of Plaintiffs. Against this backdrop, there is no basis to find that [USF&G] failed to assign proper code classifications following the final audits."

¶ 36 As for Source One's previous audits, the court felt that "[w]hat another insurer did under a different policy is of marginal probative value, and is unpersuasive here." On the breach of contract, the court concluded, "Without an established factual basis (here the underlying documentary evidence related to site inspections, an analysis of the client's business, review of the *Scopes Manual*, and consultations with their insurance broker), the opinion testimony offered by Plaintiffs as to code classifications amount to unsubstantiated speculation."

¶ 37 As to the Section 143.17a claim, the court found that "Source One One's principal admitted that there was not a 30% increase in premium related to the renewed policy. No evidence was offered to establish what the annual premium would have been for the renewed policy had it not been cancelled, and the premium actually paid under the renewed policy was less than the prior policy. There was no proof of a violation of the Insurance Code."

¶ 38 In reaching its decision, the trial court sustained objections to Source One's exhibits 1, 2, and 16 because they "are not business records because they were prepared for litigation and are

not proper summary exhibits because the underlying documentation was not produced." The court sustained objections to audits of prior policies "because those audits are irrelevant to the policies in questions here."

¶ 39 Source One timely appealed the order entering judgment in USF&G's favor.

¶ 40 ANALYSIS

¶ 41 I. Breach-of-Contract Claim

¶ 42 We review the court's judgment to determine if it was against the manifest weight of the evidence. *Battaglia v. 736 N. Clark Corp.*, 2015 IL App (1st) 142437, ¶ 23. A judgment is against the manifest weight of the evidence only if the opposite conclusion is readily apparent or when findings appear to be unreasonable, arbitrary, or not based on the evidence. *Id*. It is not enough to show that the record could support the contrary decision; "rather, if the record contains any evidence to support the trial court's judgment, the judgment should be affirmed." *Department of Transportation ex. rel. People v. 151 Interstate Road Corporation*, 209 Ill. 2d 471, 488 (2004).

¶ 43 Source One primarily argues that, because USF&G did not introduce any of its own evidence, there is no basis for the finding that it did not meet its burden of proof. Source One takes issue with the fact that, in its eyes, "the trial court gave no weight to the testimony of Source One's witnesses who unequivocally testified that the classification codes in the [USF&G] policies were correct." But it's the trial court's province, first and foremost, to determine what weight to give the evidence presented to it. *Bullet Express, Inc. v. New Way Logistics, Inc.*, 2016 IL App (1st) 160651, ¶ 60. And that remains true even if that evidence is not contradicted by evidence put forth by the opposing party. Thus, " '[e]ven where plaintiff's testimony in a bench trial [is] uncontradicted the trial court [is] not required to give credence to or accept that

testimony as establishing any fact in issue.' " *Motorola Solutions, Inc. v. Zurich Insurance Company*, 2015 IL App (1st) 131529, ¶ 118 (quoting *Gonet v. Chicago & North Western Transportation Co.*, 195 Ill. App. 3d 766 at 776 (1990)).

¶ 44 The trial court's principal criticism was that Source One offered very little in terms of specifically supporting the non-binding estimated code classifications it assigned to its temporary workers, much less challenging the binding code classifications that USF&G chose. The court noted that the typical evidence it would expect to hear from a plaintiff in Source One's shoes would include payroll records, tax reports, and general ledgers. Source One offered no such evidence. And the testimony that attempted to justify Source One's estimated code classifications—that Source One relied on Scopes Manual classifications, site visits, safety walk-throughs, other visits to the jobsites where the temporary workers were assigned, payroll records, and tax reports—was not specific to the 33 individual code classifications at issue but, instead, was generalized testimony about how Source One came up with its code classifications. Most notably to the court, Source One offered no documentary evidence to support any of its generic witness testimony.

¶ 45 The record supports that finding. Source One presented no evidence about what work was actually performed by even a single employee at a company where the classification codes were challenged. Source One's witnesses did not go through each of the 33 code classifications at issue and explain why its estimated classification was correct, much less why USF&G's classification was wrong. In the absence of any specific documentary or testimonial evidence concerning these specific code classifications, the trial court's finding was not against the manifest weight of the evidence.

¶ 46 We also agree with the trial court that Source One's historical accuracy in estimating classifications with other insurers under other policies was of marginal relevance, at best. Although there were minimal (if any) changes from these prior policies, ultimately this case came down to how USF&G coded *these* policies, using *its* "manual of rules, rates, rating plans and classifications." We cannot say that the trial court erred in assigning little weight to this evidence.

¶ 47 We uphold the trial court's finding that Source One failed to prove a breach of contract.

¶ 48 II. Evidentiary Rulings

¶ 49 We review the court's decision to exclude an exhibit for an abuse of discretion. *In re Estate of Burren*, 2013 IL App (1st) 120996, ¶ 31. The court abuses its discretion when its decision is so arbitrary or unreasonable that "no reasonable person would take the view [it] adopted." *Peeples v. Village of Johnsburg*, 403 Ill. App. 3d 333, 339 (2010). Source One takes issue with the exclusion of four exhibits. We will discuss them in groups below.

¶ 50 A. Summary Exhibits

¶ 51 The court excluded evidence of Source One's damages-calculation summary and a code-classification summary. Initially, we see no reason to review the admissibility of the damages-calculation summary, as we have already upheld the trial court's determination that no breach of contract was proven. Without proof of a breach, any issue as to damages is moot, irrelevant. See *McDonnell v. McPartlin*, 192 Ill. 2d 505, 531 (2000) (alleged trial errors regarding damages will not be considered on appeal when trier of fact decided issue on liability); *Frulla v. Hyatt Corp.*, 2018 IL App (1st) 172329, ¶ 22 (same).

¶ 52 The trial court excluded Exhibit 16, the code-classification summary, finding that it did not qualify as a business record because it was "prepared for litigation," and that it was not admissible as a summary exhibit "because the underlying documentation was not produced."

¶ 53 First, we uphold the trial court's determination that Exhibit 16 was inadmissible. As a threshold matter, we question whether this exhibit could be even be deemed a "summary exhibit" in the first place. Our rules of evidence allow a summary exhibit when "the contents of voluminous writing, records, or photographs *** cannot conveniently be examined in court." Ill. R. Evid. 1006 (eff. January 1, 2011). It is used to summarize documents or records, instead of putting the factfinder through the inconvenient and unnecessary task of poring over countless documents like invoices or medical bills. See, *e.g.*, *F.L. Walz, Inc. v. Hobart Corp.*, 224 Ill. App. 3d 727, 732 (1992) (allowing chart of 9,000 invoices, as exhibit "only simplified and clarified what the invoices would show if the jurors took the time and had the ability to chart the details.").

¶ 54 As noted by federal courts with regard to the comparable Federal Rule of Evidence 1006, summary exhibits " 'must fairly represent and be from *underlying documentary proof* which is too voluminous for convenient in-court examination, and they must be accurate and nonprejudicial.' " (Emphasis added.) *U.S. v. Bray*, 139 F. 3d 1104, 1111 (6th Cir. 1998) (quoting *Gomez v. Great Lakes Steel Division, National Steel Corp.*, 803 F.3d 250, 257-58 (6th Cir. 1986)).

¶ 55 And the Illinois rule requires that the underlying documentation be made available to the opposing party to confirm that the summary is, in fact, accurate. Ill. R. Evid. 1006 (eff. January 1, 2011); *In re Estate of Burren*, 2013 IL App (1st) 120996, ¶ 32 (purpose of production requirement is "to give the opposing the opportunity to verify the reliability and accuracy of the

summary prior to trial." (internal quotation marks omitted). When used properly, then, a summary exhibit can lay out, in succinct fashion, information that would otherwise be gleaned only by reviewing a sizeable number of like documents. And the opposing side is protected from prejudice, because it has the opportunity to review the underlying documents in advance and object to any inaccuracies in the summary. It promotes efficient, streamlined litigation without any prejudice to the opposing party.

¶ 56 But Exhibit 16 was not a summary of a voluminous number of like documents. It did not summarize a number of invoices or records or even the Scopes Manual classifications. It was a summary of Source One's *argument* as to why each of USF&G's 33 chosen code classifications was incorrect. And that argument varied from classification to classification. Much of that argument consisted of anecdotal information—for example, noting that one company employing Source One's temporary workers "is a warehouse for overseas locations" and is "not a foundry;" in another, noting that its employees "worked in the nursery caring for the trees and bushes." Other times, the exhibit quoted from the NCCI code classification. Sometimes it cited to a company's website.

¶ 57 Exhibit 16, in sum, was a summary of Source One's *argument*, not a summary of documents. The information contained within it might be helpful to advance Source One's overall position, and some documents played a role in some of the individual arguments about each of the 33 code classifications, but Exhibit 16 was not amenable to a summary exhibit under Rule 1006.

¶ 58 And even if it were otherwise, we would uphold the trial court's stated reason for excluding Exhibit 16—that "the underlying documentation was not produced." In its opening brief, Source One takes issue with that finding, arguing that "[t]here is no evidence in the record

that documents *** used to prepare [the code-classification summary] were not produced or were not made available for inspection by Source One." The problem with that argument is that Source One is the appellant, who carries the burden of providing this court with an adequate record to demonstrate the trial court's error. *People v. Brummett,* 279 Ill. App. 3d 421, 426 (1996). If there is no evidence in the record speaking one way or the other to whether Source One produced these documents or made them available to USF&G, we have no basis to find the trial court's ruling in error—that is, the absence of record evidence requires us to *affirm* the trial court's ruling, not reverse it. *Id.*; see *Foutch v. O'Bryant,* 99 Ill.2d 389, 392 (1984) (in absence of sufficient record on appeal to demonstrate trial error, reviewing court presumes that facts and law support trial court's ruling).

¶ 59 We would further note that, after USF&G insisted in its response brief that Source One never produced or made available the underlying documents, Source One said *nothing* of this issue in its reply brief, focusing only on the business-records issue as to the code-classification summary. So we have no basis to overturn the trial court's finding that Exhibit 16 was not admissible as a summary exhibit.

¶ 60 Nor do we find an abuse of discretion in the trial court's determination that the code-classification summary was inadmissible as a business record. Business records made in the ordinary course of business are admissible as evidence, an exception to the hearsay rule. See Ill. S. Ct. R. 236(a) (eff. Aug. 1, 1992); Ill. R Evid. 803(6) (eff. Apr. 26, 2012). But "records made with a view towards possible litigation do not qualify as 'made in the ordinary course of business' [citation]." *Kimble v. Earle M. Jorgenson Co.*, 358 Ill. App. 3d 400, 415 (2005). That's because "business records made in anticipation of litigation do not possess the same

trustworthiness of other records prepared in the ordinary course of business." *City of Chicago v. Old Colony Partners, L.P.*, 364 Ill. App. 3d 806, 819 (2006).

¶ 61 On appeal, Source One argues that this summary "was not prepared for litigation purposes as the trial court suggests." Instead of *litigation*, Source One argues that "Tuisl testified that he used that document to approach the auditors to explain why their code classifications were improper."

¶ 62 But the court could have reasonably concluded that this summary was made "with a view towards possible litigation." *Kimble* 358 Ill. App. 3d at 415. Given that this entire case revolved around Source One's claim that USF&G's audit codes were wrong, it is not hard to imagine how a document that explains the crux of Source One's evidentiary burden was made with a view toward a potential lawsuit.

¶ 63 Source One is correct that "a record made in response to a singular occurrence or event does not *require* the conclusion that it was *not* made in the regular course of business [citation omitted]." (Emphasis added.) *Id.* But neither does it require a conclusion that it was. Here, the trial court determined that this document was not generated in the ordinary course of business and thus did not qualify as a business record. We will upset that determination only if "no reasonable person would take the view" the trial court took. *Peeples*, 403 Ill. App. 3d at 339. A reasonable person easily could have adopted the trial court's view.

¶ 64 B. Prior Audits

¶ 65 The trial court also excluded two prior audits, exhibits 21 and 22, as "irrelevant to the policies in question here." Exhibit 21 is the audit results of Source One's 2004-2005 policy issued by Alea North America Ins. Co. (Alea). Exhibit 22 is the audit results of the 2005-2006 policy, also issued by Alea.

¶ 66 Relevant evidence is that which tends to make the existence of a "fact of consequence to the determination of the action" more or less probable. Ill. R. Evid. 401 (eff. Jan. 1, 2011). What is and is not relevant is traditionally left to the trial court's discretion, and its determination will not be disturbed absent an abuse of that discretion. *Schneiderman v. Kahalnik*, 200 Ill. App. 3d 629, 635-36 (1990).

¶ 67 As the trial court noted, the ultimate question here was USF&G's failure to assign proper classifications under USF&G's "manuals of rules, rates, rating plans and classifications." Thus, the court was well within its discretion to conclude that "[w]hat another insurer did under a different policy [was] of marginal probative value, and [was] unpersuasive here." USF&G and Alea are different companies who used different auditors and issued different policies. We find no error in the trial court's exclusion of this evidence.

¶ 68 And in any event, the trial court was the trier of fact. It's not as if the trial court prevented a jury from considering this evidence. Even had the trial court allowed these exhibits into evidence, it is abundantly clear that it did not find them persuasive, and we have already expressed our agreement with that position. So even if we agreed with Source One that the exclusion of these exhibits was erroneous, their exclusion could not possibly have affected the trial's outcome. We would thus have no grounds to find reversible error, in any event. See *Wade v. City of Chicago*, 364 Ill. App. 3d 774, 780 (2006) ("When there is an error in an evidentiary ruling in a civil trial, a reviewing court should not reverse the trial court's decision unless the error was substantially prejudicial and affected the outcome of the trial.").

¶ 69 III. Section 143.17a of Insurance Code

¶ 70 Source One also challenges the court's findings on its Section 143.17a claim. Its entire argument in the opening brief consists of a lengthy recitation of section 143.17a, followed by a single sentence of argument. First, the block quote of the Insurance Code provision:

> A company intending to renew any policy of insurance [defined by the code], **with an increase in premium of 30% or more or with changes in deductibles or coverage that materially alter the policy must mail or deliver to the named insured written notice of such increase or change in deductible or coverage at least 60 days prior to the renewal or anniversary date.** (Emphasis in original.)

¶ 71 Then Source One writes that, "[i]n violation of 215 ILCS 5/143.17a, USF&G changed code classifications on the second policy, DX-12, well beyond 60 days *prior to* its issuance."

¶ 72 This bolded text and the above-quoted sentence is Source One's entire argument on this point in its opening brief. No citations to the record, no case law, no reasoning—just a conclusion. When a party fails to adequately develop an argument on appeal with proper citation to authority and legal reasoning, it is forfeited for appellate review. *Young v. Alden Gardens of Waterford, LLC*, 2015 IL App (1st) 131887, ¶ 54; Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (points raised without appropriate argument are forfeited).

¶ 73 The fact that Source One elaborated on its position—somewhat—in the reply brief changes nothing. We will not consider arguments raised for the first time in a reply brief. *In re Charles W.*, 2014 IL App (1st) 131281, ¶ 54. Fair play requires that arguments be raised adequately in the opening brief, so that the appellee—who only files one brief—may adequately respond, and so we have a sufficiently-developed argument on which to rule.

¶ 74 Nor is it even clear to us that the argument raised in the reply brief is the same one made at the trial level. It is not our job to try to make sense of this, absent a sufficiently-developed argument. "The appellate court is 'not a depository in which the burden of argument and research may be dumped.' " *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 18 (quoting *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 80).

¶ 75 In light of this forfeiture, we affirm the trial court's ruling on the Insurance Code claim.

¶ 76 CONCLUSION

¶ 77 We affirm the circuit court's judgment in all respects.

¶ 78 Affirmed.