

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

BRIAN OEDEKOVEN,	)	
	)	No. CVCV170280
	)	
Plaintiff,	)	
	)	DEFENDANT FORD MOTOR
v.	)	COMPANY'S MOTION IN
	)	LIMINE
FORD MOTOR COMPANY,	)	
	)	
Defendant.	)	

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COMES NOW the Defendant and by and through their undersigned counsel, for its Motion in Limine, states:

1. **Settlement Negotiations.** There should be no mention of settlement negotiations at trial. Iowa R. Evid. 5.408.

2. **Expert Testimony-Non Designated Experts.** Plaintiff's Expert Witness Designation was due on or before July 5, 2016. His rebuttal expert designation was due on or before November 2, 2016. Plaintiff identified three experts throughout the course of this litigation but has only provided a signed statement from one, Robert Yockey. Further, plaintiff specifically advised that proposed expert Mark Theis is not an expert and, if called, would be called only as a fact witness. (See Email dated 12/2/16 attached as Exhibit A). Plaintiff should not be allowed to present expert testimony from witnesses not properly designated in accordance with the Court's Trial Scheduling Order. See Iowa R. Civ. P. 1.508(3) ("If the identity of an expert witness and the information described in rule 1.508(1)(a)(1) to (3) are not disclosed or supplemented in compliance with this rule, the court in its discretion may exclude or limit the testimony of such expert, or make such orders in regard to the nondisclosure as are just."). Any expert testimony offered by purported expert witnesses not designated in compliance with Iowa

R. Civ. P. 1.500(2) and 1.508(1) should be excluded. See Iowa R. Civ. P. 1.500(2), 1.508; Iowa R. Evid. 5.403.

3. **Expert Testimony From Plaintiff.** Plaintiff makes a living as a mechanic. However, he was not disclosed as an expert during discovery of this matter and further should be barred from offering expert opinions as he testified that he did not diagnose the cause of any alleged nonconformity, as such he is not qualified as an expert and his testimony should be limited to alleged factual observations – not opinion testimony.

An expert's testimony is only admissible if it "rests on a reliable foundation and is relevant." *Kumho Tire Co. v. Carmichael*, 526 U.S. 1937 (1999). The Iowa Supreme Court has always drawn a clear line when it comes to expert opinions. Iowa Rule of Evidence 702 governs admissibility of expert testimony:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

A threshold requirement for the admissibility of expert testimony is that the testimony must aid the trier of fact to resolve a disputed issue. *Williams v. Hedican*, 561 N.W.2d 817, 822–23 (Iowa 1997). If such testimony is to aid the trier of fact, it must be reliable. *Id.* at 823. If the testimony is not reliable, it certainly cannot aid the trier of fact. *Id.* The amount of foundation necessary to establish reliability depends on the complexity of the evidence and the likely impact of the evidence on the trier of fact. *Id.* In applying these requirements, Iowa courts follow a liberal rule of admissibility. *Id.* at 822; *Olson v. Nieman's, Ltd.*, 579 N.W.2d 299, 306 (Iowa 1998)

In excluding experts, the Iowa Supreme Court has emphasized various factors, including:

- Experts' lack of factual foundation. See, e.g., *Tiemeyer v. McIntosh*, 176 N.W.2d 819 (Iowa 1970);
- Experts' lack of competence or qualification to address the specific questions propounded. See, e.g., *Henkel v. Heri*, 274 N.W.2d 317 (Iowa 1979);
- Experts' speculation and conjecture. See e.g., *Ganrud v. Smith*, 206 N.W.2d 311 (Iowa 1973); *City of Olin v. Bd. of Trustees*, 567 N.W.2d 237 (Iowa App. 1997); and
- Experts' lack of a logical basis of reliability, resulting in expert testimony which does not aid or assist the jury. *Trachta v. Iowa State Highway Commission*, 86 N.W.2d 849 (Iowa 1958); *Hardwood v. Bubnitz*, 119 N.W.2d 886 (Iowa 1963); *Olson v. Nieman's Ltd.*, 579 N.W.2d 299 (Iowa 1998), rehearing denied.
- Experts' testimony related only to legal standards or ultimate issues. *Kooyman v. Farm Bureau Mutual Ins. Co.*, 315 N.W.2d 30, 37 (Iowa 1982); see also James A. Adams & Joseph P. Weeg, *Iowa Practice: Evidence* § 5.704.2, at 580 (2004) [hereinafter "Adams & Weeg"].

The plaintiff testified during his deposition that he has no education beyond high school and has not obtained any certificates with regard to working on motor vehicles. The majority of his experience is working on small engines. (Plaintiff Depo p. 6-14). He does not have an ASE certification, nor a Ford certification. (Plaintiff Depo. p. 6, 18). Plaintiff further testified that he has not done anything to the vehicle personally and instead let Sioux City Ford perform any inspections. (Plaintiff Depo. p. 35). He has not personally taken any vibration measurements. He has also done nothing to diagnose the cause of any of his complaints, outside of putting a camera on the drivetrain. Plaintiff testified that he no longer has a copy of any video recorded from the GoPro camera he utilized. (Plaintiff Depo. p. 35, 55-56). Any expert opinions offered

by the plaintiff would lack competence, would require speculation and conjecture, and would not aid or assist the trier of fact. Plaintiff's testimony, therefore, should be limited to factual observations, not undisclosed opinions.

4. **Testimony or Evidence from Undisclosed Witnesses.** Plaintiffs should not be permitted to call any witnesses who were not fully disclosed to Defendant in discovery. To allow such evidence would generate material prejudice to Defendant, who would not have been permitted an opportunity to investigate, depose, or otherwise formulate positions regarding the testimony of such witnesses. "The purpose of the [discovery] rule is to avoid surprise and to permit the issues to become both defined and refined before trial. This allows litigants to prepare for the actual matters they will ultimately confront." *White v. Citizens National Bank of Boone*, 262 N.W.2d 812, 816 (Iowa 1978). "Discovery should expedite the disposition of litigation by educating the parties in advance of trial of the real value of their claims and defenses." *Barks v. White*, 365 N.W.2d 640, 643 (Iowa App.1985). Trial courts have the inherent power to enforce Iowa's discovery rules and impose appropriate sanctions, including the exclusion of surprise witnesses. See *White*, 262 N.W.2d at 816. Thus, any witnesses not previously disclosed should be excluded.

GREFE & SIDNEY, P.L.C.,

/s/ Laura N. Martino

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**ATTORNEY FOR DEFENDANT  
FORD MOTOR COMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that on January 24, 2017, I electronically filed the foregoing with the Clerk of Court using the Iowa Courts E-file system which will send notification of such filing to the following:

R Scott Rhinehart  
2000 Leach Ave  
Sioux City, IA 51106

/s/ Laura N. Martino