IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ANTHONY GLOEDE, **Plaintiff,** **v.** **SKYLAR THOMAS MEINECKE,** **Defendant.**	**CASE NO.: LACL146209** **DEFENDANT'S MOTION IN LIMINE**

COMES NOW the defendant, Skylar Thomas Meinecke, by and through the undersigned counsel, and hereby makes the following Motion in Limine restricting the Plaintiff from introducing any oral or documentary evidence, or in any way suggesting to the jury, the following matters:

1. **Settlement Negotiations**: Evidence or testimony concerning offers of settlement, settlement discussions, or lack thereof have no relevance to the case before the Court. Iowa Rule of Evidence 5.408; Iowa R. Evid. 5.401 – 5.403.

2. **Liability Insurance**: Evidence or testimony that Defendants were covered or not covered by bodily injury liability insurance at the time of the incident giving rise to the above-captioned litigation. Admissibility of such evidence would be highly prejudicial, and the mere mention of bodily injury liability insurance would be inflammatory, contrary to law and would risk a mistrial in this action. In addition, evidence concerning this matter would have no relevance to the case before the court. Iowa Rule of Evidence 5.411.

3. **Billed Medical Costs**: Evidence of the billed medical costs is irrelevant unless they were actually paid, or a qualified expert witness testifies to the reasonableness of the charges. *Pexa v. Auto Owners Insurance Co.*, 686 N.W.2d 150 (Iowa 2004).

4. **Medical Opinions Through Lay Persons**: Medical opinions from treating

providers about Plaintiff's condition expressed to the Plaintiff, or another party, and attempted to be introduced as evidence at trial through Plaintiff's or a third-person's testimony. Such opinions would be speculative, hearsay, without foundation, irrelevant and unfairly prejudicial to Defendant. *See* Iowa R. Evid. 5.801, 5.802, 5.803(4).

5. **Undisclosed Evidence**: Any witnesses, information, documents, writings, or other tangible items requested through the discovery process, which went undisclosed, would be unfairly prejudicial to Defendant and should be precluded as evidence in trial. *Whitley v. C.R. Pharmacy Service, Inc.*, 816 N.W.2d 378, 386-90 (Iowa 2012).

6. **Golden Rule Argument**: Defendant requests an order requiring the Plaintiff, his witnesses, and counsel to refrain from asking the jurors, at any time during the trial, to put themselves in the position of Plaintiff in order to value the injuries and damages in this matter. Defendant further requests that Plaintiff, his witnesses and counsel be ordered to refrain from asking jurors about what they might be willing to accept as compensation for injuries and damages, or how it might affect the jurors or their families to suffer a fate similar to Plaintiff. Such "golden rule" arguments are prohibited in Iowa. *See Russell v. Chicago, Rock Island & Pacific R.R. Co.*, 86 N.W.2d 848 (Iowa 1957).

7. **Financial Information**: Any and all references to the financial conditions of the Defendant, including wealth, net worth, annual income, and other similar items, as this is irrelevant, would be unfairly prejudicial, and have no relevance. Iowa R. Evid. 5.402, 5.408.

8. **Any reference to, or evidence concerning punishing Defendant or "sending a message" to Defendant**: Plaintiff does not claim punitive damages. As such, any mention of punishing or sending a message to Defendant is not relevant and would be highly prejudicial. Iowa R. Evid. 5.402 – 5.403).

9. **Use of the term "victim" or other inflammatory or argumentative labels in referring to Plaintiff**: Utilization of the term "victim" or other argumentative labels in referring to Plaintiff is improper and unfairly prejudicial if occurring during *voir dire*, opening statements, or in the examination of witnesses. Plaintiff's counsel should be admonished not to refer to Plaintiff other than by his party designation or by his name.

10. **Future Medical Expenses:** Iowa Rules require that a party seeking damages provide "A computation of each category of damages claimed by the disclosing party, who must also make available for inspection and copying as under rule 1.512 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; provided, however, that this rule 1.500(1)(a)(3) does not require disclosure of the exact dollar amounts claimed for noneconomic damages." Iowa R. Civ. P. 1.500(1)(a)(3) (2020).

In his initial disclosures, as to past and future medical expenses, Plaintiff stated "Plaintiff will be seeking past and future medical expenses. Plaintiff is unable to determine the exact figure at this time, **but will supplement either by amended disclosure or by answers to Defendant's discovery requests** when the information becomes available. Future medical expenses are ongoing as he continues to treat for his injuries." (Ex. B, Plaintiff's initial disclosures) (emphasis added).

When the time came to answer Defendant's *Gordon v. Noel* Interrogatory, Plaintiff provided as to "Past, present, future medical expenses" the following answer of "Plaintiff will supplement." (Ex. C, Plaintiff's Interrogatory Answers). To date, Plaintiff has never supplemented a future medical expense claim through supplemental initial disclosures or supplemental discovery responses.

Chiropractor England's report states the following as to future care:

> 8. After Anthony reached maximum medical improvement, has there been or will there be any additional care or medications that may reasonably be required in the future as a result of the injuries sustained from the November 3, 2017 car crash? If so, describe the expected care, including the expected frequency, duration, and cost.
>
> -I continue to treat Anthony approximately once per month for maintenance/wellness care. These visits include ongoing wrist adjustments/manipulation and evaluation. Anthony currently pays $40 for these visits. I do not expect to see a change in our care plan for the foreseeable future.

This answer states Plaintiff receives "maintenance/wellness" care which "includes" treatment for the wrist, but by that statement the wrist treatment is not all that is done in these "maintenance/wellness" visits. Plaintiff has never identified what exactly he is claiming monetarily for his chiropractor appointments, past or future, what "foreseeable future" means in terms of time for which these monthly appointments will take place, and whether the full $40 or a portion of it will be claimed given these chiropractic visits only address in part the alleged accident injuries.

Simply put, Defendant has no idea what Plaintiff is claiming for future medical expenses. "Noncompliance with discovery requirements is often not tolerated." *Lawson v. Kurtzhals*, 792 N.W.2d 251, 258 (Iowa 2010) (internal citation omitted). In *Lawson*, a Plaintiff attempted to supplement answers to interrogatories regarding the damages question five days before trial. *Id.* at 254. The Court sanctioned the Plaintiff, refusing to allow evidence of the categories of damages not responded to in the damages interrogatory. *Id.* at 254. On appeal, the Supreme Court noted that "A party defending a claim is clearly entitled upon appropriate pretrial request to be informed of the amount of the claim." *Id* at 259 (citing *Gordon v. Noel*, 356 N.W.2d 559, 564 (Iowa 1984)). "This includes discovery of amounts claimed for separate elements of damages." *Id.* In affirming the exclusion of the categories of damages not provided in

discovery, the Supreme Court stated "The supplementation came days before trial and after one continuance. [Defendant] was ready for trial and should not be expected to do further discovery because of the late supplementation or endure another continuance at that late date." *Id*. at 260.

For these reasons, Defendant requests Plaintiff be precluded from entering evidence to support any claim for future medical expenses, as well as exclusion of a line for such damages on the verdict form.

11. **Future Loss of Full Mind and Body (loss of function)**:

Lack of Sufficient Expert Testimony

Plaintiff has provided no expert evidence that he will experience any loss of full mind and body into the future. Iowa law requires expert testimony to recover future loss of function. *Wilber v. Owens-Croming Fiberglass Corp.*, 476 N.W.2d 74, 77 (Iowa 1991). This expert testimony must show "with a reasonable degree of medical certainty" the plaintiff will suffer a loss of function as a result of the complained of act. *Holst v. Stapleton*, No. 17-1270, 2018 WL 5292091, at *3, 924 N.W.2d 875 (table) (Iowa Ct. App. Oct. 24, 2018).

In this case, as to any future damages, Plaintiff has provided only the report of Shad B. England, D.C. This report is attached as motion in limine exhibit A. Chiropractor England's report provides the following responses as to future losses:

6. Have there been or are there any restrictions or limitations placed on Anthony due to injuries sustained in the November 3, 2017? If so, describe them, including the actual or expected duration of the restrictions or limitations.

-No defined limitations. However, Anthony continues to experience occasional activity-dependent wrist soreness, which appears to be permanent.

9. Is Anthony now susceptible to further injury in the future as a result of injuries sustained from the November 3, 2017 car crash? If so, please explain.

-I don't believe Anthony is more susceptible to additional injury, but I do expect he will continue to experience periodic indefinite wrist discomfort relating to the accident.

(Ex. A, P. 6 & 9). Plaintiff's chiropractor provides limited opinion on future permanency, limiting the opinion to "activity-dependent wrist soreness" and "periodic indefinite wrist discomfort." Setting aside the serious causation and legitimacy of this opinion for future pain and suffering, such an opinion is *per se* not sufficient to establish future loss of full mind and body. While soreness and discomfort might be considered physical pain and suffering, simply having soreness or discomfort in no way provides an opinion or support for any loss of function or loss of use of the mind and body. In fact, Chiropractor England opines as to restrictions or limitations that there are "No defined limitations" and provides nothing further as to the inability of Plaintiff to use his body in a normal manner. Nothing in Chiropractor England's opinion provides for an inability to perform activities, or a limitation in activities. By law, this is not sufficient for future loss of mind and body.

No further opinion has been provided for future loss of full mind and body (loss of function). Soreness and discomfort is not sufficient, as a matter of law, to support future loss of full mind and body.

Failure to Disclose

Additionally, at no time has Plaintiff identified the claim for future loss of full mind and body. The closest Plaintiff has come is in response to Defendant's *Gordon v. Noel* interrogatory where after two pages of prolix jargon, Plaintiff states the following "However, after reviewing recent jury verdicts in the state of Iowa comparable to the facts of Plaintiff's case, Plaintiff's counsel believes Plaintiff losses for quality of life damages may exceed $250,000." (Ex. C).

This by no means identifies Plaintiff's actual claim for damages, nor does it specify what is being sought for future loss of full mind and body.

As *Lawson v. Kurtzhals* states, a defendant is "clearly entitled" upon an appropriate request to be informed of the amount of the claim. 792 N.W.2d at 259. An appropriate *Gordon v. Noel* interrogatory was provided. A defendant is also clearly entitled to discover the "amounts claimed for separate elements of damages." *Id*. at 260. Here, Plaintiff has not provided the claim for separate elements of damages for any category, and in an attempt to do an end run around *Gordon v. Noel*, provides that "Plaintiff's counsel believes Plaintiff losses for quality of life damage may exceed $250,000." (Ex. C.). One, "Plaintiff's counsel's belief" is not Plaintiff's claim for monetary damages. Two, Defendant cannot cross-examine Plaintiff's counsel on his beliefs unless he has decided to make himself a witness. Three, stating "quality of life damages" may exceed a particular number is not in line with the technical ruling or the spirit of *Gordon v. Noel* and *Lawson v. Kurtzhals*, which require an actual disclosure of the specific claim for each separate element of damages.

Accordingly, for the reasons stated above, Plaintiff should be precluded from offering evidence and having a verdict line for future loss of full mind and body (loss of function).

12. **Future Pain and Suffering.** Similar to future medical expenses and future loss of full mind and body, Plaintiff has not provided what his specific claim is for future physical and mental pain and suffering. For all the reasons stated in paragraphs 10 and 11, evidence and a verdict line for future pain and suffering should be excluded.

13. **Past Loss of Full Mind and Body.** In this litigation, Defendant has obtained the bills for care sought by Plaintiff, and from those bills going from the current date back to the date of the auto accident, can derive a past loss medical expense claim despite Plaintiff never having

specifically provided it. Additionally, if a jury were to find past medical expenses owed, having $0 for past pain and suffering would be an inconsistent verdict. *Cowan v. Flattery*, 461 N.W.2d 155, 160 (Iowa 1990). However, the rule is not the same for past loss of full mind and body (loss of function). Because Plaintiff has failed to specify his claim for past loss of full mind and body, for all the reasons stated in paragraphs 10 and 11, evidence and a verdict line for the same should be excluded.

WHEREFORE Defendant respectfully requests that the Court Grant the above paragraphs in the Motion in Limine and restrict Plaintiff from bringing evidence for the same.

Respectfully submitted,

CARMONEY LAW FIRM, PLLC

By: */s/ Bryant J. Hickie*

Bryant J. Hickie
Jack W. Leverenz
2400 N.W. 86th St., Ste. 25
Des Moines, IA 50322
Phone: (515) 277.6550
Fax: (515) 277.6561
bryant@carmoneylaw.com
jack@carmoneylaw.com
ATTORNEYS FOR DEFENDANT

Original filed, EDMS copies to:

Nathan Vos
Vos Law Firm, PLC
The Galleria
4090 Westown Parkway, Ste. 110
West Des Moines, IA 50266
nathan@voslawfirm.com

Jordan R. Hutchinson
Hutchinson Law Firm, PLC
The Galleria
4090 Westown Parkway, Ste. 102
West Des Moines, IA 50266
jordan@hutchlawdm.com
ATTORNEYS FOR PLAINTIFF