

IN THE IOWA DISTRICT COURT FOR FAYETTE COUNTY

CONNIE JEAN KRIENER, as Executor)	
of the MARVIN LUKE KRIENER)	CASE NO. LACV054326
ESTATE and CONNIE JEAN)	
KRIENER, Individually,)	
)	
Plaintiffs,)	DEFENDANTS' MOTION IN LIMINE
)	
vs.)	
)	
URBAN KRIENER AND PATRICIA)	
KRIENER,)	
)	
Defendants.)	
_____)	

COUNT I

The Defendants state:

1. Defendants have liability insurance coverage for the claims being asserted against them in this case.

2. The existence and amount of insurance coverage is irrelevant and immaterial, and the fact that Defendants have insurance coverage is not admissible. See Rule 5.4011 of the Iowa Rules of Evidence and the case of Laguna v. Prouty, 300 N.W.2d 98 (Iowa 1981).

3. An objection at the time of trial will not sufficiently cure the matter because the jury will not understand the nature of the objection and will construe the objection as an attempt by the Defendants to hide material matters.

4. Defendants will be prejudiced by reference to this issue in the presence of the jury.

WHEREFORE the Defendants move the court to enter an order in limine directing the Plaintiffs, their attorneys and witnesses, not to refer, directly or indirectly, in the presence of the jury, to the existence of liability insurance coverage in favor of the Defendants.

COUNT II

1. On November 17, 2015, a Request for Admissions was served on Plaintiffs. A copy is attached.
2. Plaintiffs never responded.
3. By operation of law, the matters contained in the admissions stand admitted for the purposes of this action as a result of the lack of response.
4. The practical effect of this is that it is an established fact that Marvin Kriener was killed instantly, and therefore there is no viable claim for pain and suffering from the time of injury to time of death; loss of full mind and body from time of injury to time of death; or medical expenses.
5. In her deposition Connie Kriener conceded that she was the first one into the ditch, and that her husband was unresponsive by the time she got there. She detected no vitals, heard no noises from her husband, and saw no signs of life.
6. Because of the Request for Admissions the Plaintiffs should be precluded from trying to introduce any evidence at trial to contradict the facts established in the Request for Admissions.

7. An objection at the time of trial will not sufficiently cure the matter because the jury will not understand the nature of the objection and will construe the objection as an attempt by the Defendants to hide material matters.

8. Defendants will be prejudiced by reference to this matter in the presence of the jury.

WHEREFORE the Defendants move the Court in limine to enter an Order directing the Plaintiffs, their attorneys and witnesses, not to refer, directly or indirectly, in the presence of the jury, to any evidence or suggestion that Marvin Kriener suffered any conscious pain and suffering from the time of injury to time of death; suffered loss of full mind and body from time of injury to time of death; or suffered medical expense as a result of the accident.

COUNT III

1. On November 17, 2015 the Defendants propounded some Interrogatories to Plaintiffs.

2. Among other things, Plaintiffs were asked to identify what damages they were claiming.

3. Two set of Interrogatories were propounded to the Plaintiffs on November 17, 2015. One set went to Connie Kriener, Individually, and the other set went to Connie Kriener as Executor of the Estate.

4. The set propounded to Connie Kriener, Individually, was never answered.

5. The set propounded to Connie Kriener, as Executor of the Estate of Marvin Kriener, was eventually answered, subject to an Order to Compel, on May 12, 2016.

6. In both sets of Interrogatories the Plaintiffs were asked to state the amount of money damages claimed. See the attached copy of Interrogatory No. 15 propounded to Connie Kriener, Individually, back on November 17, 2015, which was never answered; and the attached copy of Interrogatory No. 18, propounded to Connie Kriener, as Executor of the Estate of Marvin Kriener, also on November 17, 2015.

7. The Interrogatories propounded to Connie Kriener as Executor were eventually answered on May 12, 2016, but she declined to state the amount of money damages claimed, indicating she would supplement that answer when discovery was completed. See her attached Answer to Interrogatory No. 18. That answer has never been supplemented.

8. A failure to identify damages claimed pursuant to the Rules of Civil Procedure and Iowa case law precludes Plaintiff from making a claim for damages for those items for which an amount was not specified. See Wade v. Grunden, Number 06-1948 (Iowa Ct. App., December 12, 2007) (2007 Lexis 1291).

9. An objection at the time of trial will not sufficiently cure the matter because the jury will not understand the nature of the objection and will construe the objection as an attempt by the Defendants to hide material matters.

10. Defendants will be prejudiced by reference to this matter in the presence of

the jury.

WHEREFORE the Defendants move the Court in limine to enter an Order in limine prohibiting evidence on any damage items for which the Plaintiffs have not identified the amount of money damages claimed.

COUNT IV

The Defendants state:

1. Plaintiff, Connie Kriener, was deposed September 2, 2016.
2. In the course of that deposition she was asked why she had sued Defendant Patricia Kriener. She testified that she sued Patricia in case Urban had put the tractor in Patricia's name, which he has not done. She went on to make a mildly disparaging comment about Urban "because we've dealt with the implement business and we know what he can do sometimes..." She went on to explain the disparaging comment by complaining about the way Urban handled the implement partnership with his brother decades ago. She admitted that that had nothing at all to do with the present lawsuit. See Connie Kriener deposition transcript of September 2, 2016, from page 60, line 17 through page 61 line 9, attached.
3. The disparaging comments about Urban, and the way he worked with his brother in the implement business decades ago, are irrelevant and immaterial to any issue in the case.
4. Any potential relevance is outweighed by prejudicial impact.

5. An objection at the time of trial will not sufficiently cure the matter because the jury will not understand the nature of the objection and will construe the objection as an attempt by the Defendants to hide material matters.

6. Defendants will be prejudiced by reference to this issue in the presence of the jury.

WHEREFORE the Defendants move the Court in limine to enter an Order directing the Plaintiffs, their attorneys and witnesses, not to refer, directly or indirectly, in the presence of the jury, in a disparaging manner to the way Urban Kriener conducted the implement business with his brother, Marvin Kriener, decades ago.

/s/ David L. Riley

David L. Riley AT0006610

For

McCOY, RILEY & SHEA, P.L.C.

327 East 4th St., Suite 300

P.O. Box 960

Waterloo, IA 50704-0960

Telephone # (319) 234-4631

Fax # (319) 234-8346

Email: driley@mrs-lawfirm.com

ATTORNEYS FOR DEFENDANTS

Copy EDMS to:

Kevin E. Schoeberl
Story & Schoeberl Law Firm
126 North Elm Street
P.O. Box 89
Cresco, IA 52136

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by:

☐ U.S. Mail, prepaid
☐ Facsimile
☐ Hand delivery
☒ EDMS

to each of the attorneys of record herein and any pro se parties at their respective addresses as disclosed in the pleadings as prescribed in Rule 1.442 on the 29th day of September, 2016.

/s/ Emily Zeets