

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

JOHN PAUL ROYER)	
)	
Plaintiff,)	No. LACL145884
)	
Vs.)	PLAINTIFF'S MOTION
)	IN LIMINE
JARED PAUL MUMFORD)	
)	
Defendant.)	
)	
)	

COMES NOW Plaintiff John Royer, by and through his attorney, Jon Garner, and pursuant to Iowa Rule of Evidence 5.104 hereby moves the court in limine to exclude the following evidence and order the Defendants, their counsel, and witnesses to refrain from making any reference to the following evidence in the presence of any juror. Plaintiff further moves the Court to order Defendant's attorney to advise his clients and his clients' witnesses of the court's limitations on evidence and testimony. The Plaintiff so moves on the grounds that if the matters enumerated below are mentioned, the Plaintiff would not receive a fair trial and an admonition to the jury would not cure the prejudice that would result. These matters include:

1. Exclusion of Any Offer of Evidence, Testimony, or Argument Regarding Plaintiff's Wages, Income or Financial Condition.

Plaintiff is not claiming lost wages as part of his damages in this case. As a result, any reference to Plaintiffs wages, income or financial condition would not be relevant to any issue in this case. *See* Iowa R. Evid. 5.401 & 5.402. During the deposition of the Plaintiff John Royer, testimony was adduced regarding the Plaintiff's income and the sources from which he derives same. Additionally, Defendant has submitted four proposed exhibits consisting of Plaintiff's 2016 through 2019 tax returns. Any offer, reference or mention of said testimony and or

Plaintiff's tax returns, is not relevant and any potential offer of evidence regarding Plaintiff's income or financial condition would only serve to confuse the jury when lost wages are not claimed as part of Plaintiff's damage claims herein. If the Court somehow found references to Plaintiff's income or financial condition relevant, the evidence, testimony, and argument should be excluded as any probative value would be substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, cumulative, and a waste of judicial time and resources. Iowa R. Evid. 5.403.

2. Exclusion of Any Offer of Evidence, Testimony, or Argument on Comparative Fault.

Any claim or evidence of comparative fault against the Plaintiff, John Royer, should be excluded at trial. *See* Iowa Code § 668.1. Although the Defendant plead comparative fault as an affirmative defense in this matter, no evidence of same will be presented at trial. Instead, the evidence will show that the Defendant Jared Mumford was issued a citation for failure to respond to a steady red light in violation of Iowa Code § 321.287(2)(a), which he ultimately plead guilty to on or about November 8, 2017, thereby establishing his negligence per se as a matter of law. In contrast, the Plaintiff was obeying the traffic laws of Iowa at the time of the crash, was wearing his seat belt, and was not issued a citation for his involvement in same. As such, there is no evidence that the Plaintiff's actions in any way contributed to the collision or his resulting injuries. As such, any effort to insert concepts of comparative fault against the Plaintiff in this case would be irrelevant, highly prejudicial and would could mislead the jury regarding the law applicable in this case. *See* Iowa R. Evid. 4.01, 4.02 and 4.03.

3. Exclusion of Any Offer of Evidence, Testimony, or Argument on the Plaintiff's Failure to Mitigate.

Any claim or evidence of the Plaintiff's alleged failure to mitigate damages should be excluded. First, although Defendant plead failure to mitigate as an affirmative defense, in order to prevail on such an affirmative defense, the Defendants must show: (1) proof by substantial evidence there was something that the Plaintiff could do to mitigate his loss; (2) proof that the Plaintiff acted unreasonably in failing to undertake the mitigating activity; and (3) proof of a causal connection between the Plaintiff's failure to mitigate and his damages. *Greenwood v. Mitchell*, 621 N.W.2d 200, 206 (Iowa 2001) (emphasis added). Moreover, in determining whether a party has failed to mitigate damages, the Defendant has the burden of demonstrating that the failure to mitigate was unreasonable under the circumstances. *Tanberg v. Ackerman*, 473 N.W.2d 193, 195-96 (Iowa 1991).

This case involves a motor vehicle accident in which the Defendant ran a red light and struck the Plaintiff's vehicle, which was lawfully proceeding through the intersection at issue. There is no evidence that the Plaintiff could have foreseen the Defendant's breach of his duty of care or that a collision was imminent. With respect to his medical treatment, the Plaintiff has no obligation to follow the advice of his physicians in order to minimize the damages, but must instead simply use ordinary care in determining whether to follow such advice. *Kirk v. Union Pac. R. R.*, 514 N.W.2d 734, 737 (Iowa App. 1994). The Defendant will not present evidence that the Plaintiff failed exercise ordinary care in following the orders of his treatment providers. In fact, Defendant has only listed one such treatment provider as a possible witness at trial. Because the Defendants cannot show the Plaintiff could have undertaken an act to mitigate his loss, that the Plaintiff was unreasonable in not undertaking an act to mitigate his loss, or that a causal connection exists between the Plaintiff's failure to mitigate and the damages alleged, the

Defendants should be precluded from arguing the affirmative defense of failure to mitigate damages at trial.

4. **Exclusion of Any Offer of Evidence, Testimony, or Argument Regarding Any Alleged Pre-Existing Condition of the Plaintiff.**

The Plaintiff anticipates the Defendant will seek to introduce this evidence at trial in order to imply to the jury that the Plaintiffs' damages for which he is seeking compensation in this action are not entirely a result of the collision on October 10, 2017. The Plaintiff is seeking compensation for back and neck injuries and pain, and his symptoms resulting from said injuries/pain, which he sustained as a result of the above referenced collision. If the Defendant seeks to raise any argument that a condition in the Plaintiff's back or neck existed prior to the collision of October 10, 2017, he is required to present medical evidence to support the contention. Without appropriate, authoritative medical testimony, it would be inappropriately speculative for the jury to construe a present condition as having been directly related to a previous condition.

If the Defendant intends to allege that a given medical condition represents an aggravation of a preexisting condition, he is required to present credible medical evidence to demonstrate that an aggravation occurred, which includes evidence that a preexisting condition in fact existed and that there was a degree of aggravation from that state. *See Sleeth v. Louvar*, 659 N.W.2d 2010 (Iowa 2003).

Lastly, Defendant has listed no witnesses who were treatment providers for Plaintiff prior to the accident, and as such, should not be allowed to offer any testimony or evidence regarding the medical treatment he received prior to the accident or the reasons for said treatment. Allowing any such evidence to be presented to the jury without any supporting testimony from the involved treatment providers would unfairly prejudice the Plaintiff and likely confuse and/or mislead the jury regarding the issues presented for adjudication at trial. Iowa R. Evid. 5.401, 5.402, and 5.403.

5. Exclusion of Any Offer of Evidence, Testimony, or Argument Regarding the Effect of a Judgment Against the Defendant.

The Defendant should be prohibited from presenting any testimony, evidence, or argument relating to the possible adverse effect that a Plaintiff's verdict may have on the Defendant in this case. Evidence or argument of this nature is improper and inadmissible because (1) it is not relevant to any issue to be decided in this case; and (2) the probative value of any such evidence is substantially outweighed by the risk of unfair prejudice, confusing the issues, and misleading the jury. Iowa R. Evid. 5.401, 5.402 and 5.403.

6. Exclusion of Any Offer of Evidence, Testimony, or Argument Regarding the Wealth or Poverty of the Parties.

The Defendant should be prohibited from presenting any testimony, evidence, or argument relating to the financial conditions of the parties, including, wealth, poverty, net worth, annual income, and other similar items. This information is irrelevant and would be unfairly prejudicial. Iowa R. Evid. 5.401, 5.402, and 5.403.

7. Exclusion of Any Offer of Evidence, Testimony, or Argument Regarding Settlement Negotiations.

The Defendant should be prohibited from presenting any testimony, evidence, or argument relating to offers of settlement and/or settlement negotiations/discussions. Iowa R. Evid. 5.408.

8. Exclusion of Any Offer of Evidence, Testimony, or Argument Regarding Medical Opinions Through Lay Persons.

The Defendant should be prohibited from presenting any testimony, evidence, or argument relating to medical opinions from any treating provider about Plaintiff's condition, either before or after the accident, expressed to any third-party and attempted to be introduced at trial through any such third party's testimony. Any such opinions would be speculative, hearsay, without foundation, irrelevant and unfairly prejudicial to Plaintiff. *See* Iowa R. Evid. 5.801, 5.802, and

5.803(4).

9. Exclusion of Any Offer of Evident, Testimony or Argument Regarding the “Golden Rule.”

The Court should advise Defendant as to a requirement that precludes any arguments that reference the Golden Rule. The Defendant, his witnesses and legal counsel should be instructed not to request the jury, at any time during the trial, to consider placing itself in the position of the Defendant or make statements concerning how the case might affect the jurors, their families or anyone else they may know. Any such arguments or statements would be unfairly prejudicial to the Plaintiff and not probative of the issues in this case. Iowa R. Evid. 5.401, 5.402 and 5.403; *see Russell v. Chicago, Rock Island & Pacific R.R. Co.*, 86 N.W.2d 848 (Iowa 1957).

10. Exclusion of Any Offer of Evidence, Testimony or Argument Regarding Iowa Administrative Code §645—202 or Any Alleged Unethical or Improper Conduct Related and/or Governed by Same.

It is anticipated that Defendant will attempt to introduce evidence, testimony and/or argument alleging that Plaintiff’s significant other (Melissa Wrabek, MSPT), who is also one of his treatment providers, has committed an offense punishable by the Board of Physical and Occupational Therapy. Plaintiff has only become aware of the possibility that Defendant may attempt to offer such evidence due to the addition of a proposed jury instruction attempting to summarize 645 I.A.C. 202 and the submission of a proposed exhibit setting forth the provisions of 645 I.A.C. 202.

Plaintiff is not aware of any complaint or investigation related to the care and treatment he has been provided by Ms. Wrabek. To the extent Defendant is aware of any such complaint or investigation, it has not been disclosed to Plaintiff, nor has any information or documentation been provided by Defendant via his initial disclosures or pre-trial disclosures/filings. *See* Iowa R. Civ. P. 1.517(3). Moreover, even if a complaint had been made or an investigation begun, there is an

entire investigatory and contested case procedure that must be followed before any finding of misconduct and/or discipline can be established. *See* 645 I.A.C. 11 and 645 I.A.C. 9. Defendant has not listed any witness, expert or otherwise, who can testify to the investigatory and/or contested case procedures followed when a violation is alleged to have occurred, or more importantly, what qualifies as a violation of 645 I.A.C. 202. At a minimum, expert testimony establishing what constitutes an actionable violation under 645 I.A.C. 202 is necessary before any such evidence regarding an alleged violation could be submitted to jury. Lastly, it is unclear what relevance any alleged violation by Ms. Wrabek would have on the issues to be submitted to jury. However, what is abundantly clear, is the prejudicial impact any evidence or argument regarding an alleged violation would have on Plaintiff's case. Iowa R. Evid. 5.401, 5.402, and 5.403.

Allowing Defendant to raise unsubstantiated claims against one of Plaintiff's primary treatment providers and significant other would be speculative, hearsay, without foundation, irrelevant and unfairly prejudicial to Plaintiff. *See* Iowa R. Evid. 5.401, 5.402, 5.403, and 5.801, 5.802.

11. Exclusion of Any Offer of Evidence, Testimony or Argument Regarding Plaintiff's Prior Divorces and the Facts and Circumstances Underlying Same.

It is anticipated that Defendant will attempt to introduce evidence, testimony and/or argument related to Plaintiff's divorce from Nicole Wagner. Plaintiff was married to Ms. Wagner at the time of the underlying accident, and as such, Plaintiff concedes that she may provide information and/or testimony that is relevant in this matter. However, to the extent Defendant seeks to elicit testimony and/or information from Ms. Wagner regarding her divorce from Plaintiff or any of the facts and circumstances surrounding same, any such evidence is irrelevant and would be highly prejudicial to Plaintiff. Iowa R. Evid. 5.401, 5.402, 5.403.

Respectfully submitted by:

/s/ Jon Garner
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