

II. STANDARD OF REVIEW.

Trial Courts have broad discretion when ruling on motions in limine; they are reviewed under an abuse of discretion standard. *Puckett v. Verska*, 144 Idaho 161, 167, 158 P.3d 937, 943 (2007). Importantly, where a trial court has unqualifiedly ruled on the admissibility of evidence in response to a motion in limine prior to trial, no further objection is necessary at trial and the issue is preserved for appellate review. *State v. Hester*, 114 Idaho 688, 700, 760 P.2d 27, 39 (1988); *Evans v. State*, 135 Idaho 422, 429, 18 P.3d. 227, 234 (Ct. App. 2001). However, where a trial judge elects to hear the foundation for evidence instead of definitively ruling on a motion in limine, the counsel opposing the evidence must object as the evidence is presented. *Kirk v. Ford Motor Co.*, 141 Idaho 697, 701, 116 P.3d 27, 31 (2005); *Hester*, 114 Idaho at 699.

III. ANALYSIS

The Court will use the same headings used by State Farm in its Defendant's First Motions in Limine.

A. No Mention of Liability Insurance or Benefits Plaintiff Previously Received.

The Court finds that the amount recovered by Millsap from the tortfeasor's insurance carrier (\$300,000.00) and the amount of medical payment benefits Millsap received from State Farm (\$25,000.00) will not be presented to the jury in any form as that information is not relevant and may be unfairly prejudicial, potentially to either Millsap or State Farm. The fact that the torfeasor's insurance company paid its policy limits is relevant and will be allowed to be presented to the jury. The fact that State Farm paid any medical payment benefits is not relevant and may be unfairly prejudicial. State Farm's Motion in Limine on this issue is granted in part and denied in part. State Farm has submitted a jury instruction (Defendant's Requested Instruction No. 1) which

accurately provides the information which will be allowed. That instruction reads:

On November 21, 2010, Mr. Millsap was involved in a car accident. He was travelling westbound on West Riverview Drive. He was driving a 1993 Honda Accord when he was struck by the driver of a 1999 GMC Yukon. Mr. Millsap was not at-fault for the accident.

Mr. Millsap pursued a negligence claim against the at-fault driver for which he received compensation from the driver's insurance carrier under his bodily injury liability insurance coverage. Mr. Millsap is claiming that the driver of the GMC Yukon was underinsured. As a result, Mr. Millsap is seeking damages through his underinsured motorist policy with State Farm.

The Court has read the cases cited and provided by the parties on this issue. The Court finds *Dill v. Montana Thirteenth Judicial District Court*, 979 P.2d 188 (Mont. 1999) and *Nichols v. Geico Gen. Ins. Co.*, 2015 Mont. Dist. LEXIS 8, (1st Dist. Mont. Feb. 20, 2015) (which relied on *Dill*), to be instructive and persuasive on this issue. Those cases would support giving Defendant's Requested Instruction No. 1. The Court finds State Farms arguments articulated at Defendant's Reply Memorandum in Support of First Motions in Limine, pp. 2-8, to be more persuasive than those arguments made by Millsap. The Court specifically finds *Leuchtenmacher v. Farm Bureau Mut. Ins. Co.*, 461 N.W.2d 291 (Iowa 1990) to be distinguishable by *Waits v. United Fire & Cas. Co.*, 572 N.W.2d 565 (Iowa 1997), and *Pexa v. Auto Owners Ins. Co.*, 686 N.W.2d 150 (Iowa 2004).

B. Excluding Testimony and/or Evidence Regarding Plaintiff's Underinsured Motorist Coverage Limits.

The amount of Millsap's underinsured motorists limits (apparently \$100,000.00) will not be presented to the jury as that fact is not relevant and would be unfairly prejudicial. State Farm's Motion in Limine on this issue is granted.

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C. Excluding Testimony and/or Evidence Regarding Plaintiff's Bad Faith Claim or State Farm's Handling of Plaintiff's Underinsured Motorist Claim.

Millsap agrees this issue should be granted. State Farm's Motion in Limine on this issue is granted.

D. Preclusion of Causation Testimony by Plaintiff.

The Court already ruled on this issue in its October 21, 2015, Memorandum Decision and Order on Plaintiff's Motions in Limine, p. 13. As of October 14, 2015, the Court lacked sufficient detailed evidence in order to make any ruling, and the Court has no additional evidence at this time. State Farm's Motion in Limine on this issue is denied at this time, and the issue is reserved for ruling at trial.

E. Preclusion of Other Lay Witness Testimony Regarding Causation.

The Court already ruled on this issue in its October 21, 2015, Memorandum Decision and Order on Plaintiff's Motions in Limine, p. 13. As of October 14, 2015, the Court lacked sufficient detailed evidence in order to make any ruling, and the Court has no additional evidence at this time. State Farm's Motion in Limine on this issue is denied at this time, and the issue is reserved for ruling at trial.

F. Opinions of Mary Jo White, D.C.; Greg Bauer, CRNA; Rod Strom, PT; and Katharine Holmes, PT, Should be Limited Since They Are Not Medical Doctors.

At oral argument on October 27, 2015, counsel for Millsap indicated Bauer would not be called, and that no opinions have been disclosed by Strom or Holmes. To that extent, State Farm's Motion in Limine on this issue is granted. At oral argument on October 27, 2015, the Court stated it lacked any evidence from which to make a determination as to whether a chiropractor could qualify as an expert and give opinion testimony as to causation, prognosis, need for surgery, and whether she will be allowed to comment on other medical doctor's opinions. Since that time, Millsap has filed two

additional disclosures regarding Mary Jo White, D.C., which pertain to her qualifications. Given that the trial begins November 2, 2015, timeliness of that disclosure is an issue, as are her credentials. Both issues will be taken up at trial.

G. Limiting Opinion Testimony From Plaintiff's Treating Providers to the Opinions Contained in Their Medical Records.

State Farm claims Millsap has not identified any independent medical experts, but will instead rely on his treating providers to testify on his behalf. Defendant's Memorandum in Support of First Motions in Limine, p. 7. Accordingly, State Farm claims those opinions must be limited to those set out in their medical records or opinions previously disclosed, under I.R.C.P. 26(b)(4)(A). The Court agrees, but any prior disclosure also includes deposition testimony. The Court finds the State Farm's Motion in Limine on this issue is granted.

H. All Evidence and Testimony Regarding Plaintiff's Alleged Need for Future Medical Treatment Should be Excluded.

State Farm claims Millsap has alleged he is entitled to future medical expenses for one chiropractic treatment and one massage per month which would amount to \$19,800.00 over the next 15 years, and one evaluation per year which would amount to \$4,050.00 over the next 15 years. Defendant's Memorandum in Support of First Motions in Limine, p. 8. However, State Farm claims "Plaintiff has never identified or disclosed an expert witness that will opine as to the amount of any alleged future medical expenses." *Id.* The Court finds the issue of the need and amount of future medical treatment requires expert testimony, not the testimony of Millsap regarding what he thinks he will need and what he thinks it will cost. If Millsap has not disclosed expert opinion testimony on this subject, then the Court will grant State Farm's Motion in Limine on this issue at trial. From the materials presented by State Farm, it would appear Millsap has disclosed no such opinion in discovery responses or in expert

witness disclosure. Affidavit of Randall L. Schmitz in Support of Defendant's First Motions in Limine, Exhibit B and Exhibit C. However, no party has provided the Court with letters from doctors that were referenced in discovery. If Millsap discloses expert opinion testimony on this issue just prior to trial, a timeliness issue will be presented.

I. Limit Evidence and Testimony of Plaintiff's Medical Damages Except to the Extent Calculated Using the Contractual Amount.

This issue was discussed in detail in this Court's October 21, 2015, Memorandum Decision and Order on Plaintiff's Motions in Limine, pp. 2-13. Accordingly, State Farm's Motion in Limine on this issue is denied.

J. Plaintiff Should Not be Allowed to Use Portions of Depositions in Opening Without First Providing Opposing Counsel with Notice and an Opportunity to Object.

State Farm's Motion in Limine on this issue is granted.

IV. ORDER.

IT IS HEREBY ORDERED defendant State Farm's First Motions in Limine are granted in part and denied in part as set forth above.

Entered this 29th day of October, 2015.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of October, 2015, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

<u>Lawyer</u>	<u>Fax #</u>	<u>Lawyer</u>	<u>Fax #</u>
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Jeanne Clausen, Deputy Clerk

