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| DISTRICT COURT, ADAMS COUNTY, COLORADO  1100 Judicial Center Drive, Brighton, CO 80601 | DATE FILED: January 23, 2017 3 FILING ID: 866CA473FE9E4 CASE NUMBER: 2015CV31808 |
| **PLAINTIFF: AMERICAN FAMILY MUTUAL INSURANCE COMPANY, AS SUBROGEE OF KATHRYN WINDT** |
| **V.** |  |
| **DEFENDANTS: JVONNE BECERRIL & AURELIO MEZA-CUEVAS** | * COURT USE ONLY  |
| **&** |  |
| **DEFENDANTS:/THIRD PARTY PLAINTIFFS: IVONNE BECERRIL & AURELIO MEZA-CUEVAS** |  |
| **V.** |  |
| **THIRD PARTY DEFENDANT/COUNTERCLAIMANT: KATHRYN WINDT** |  |
| Name: **COOK & PAGANO, P.C.**  Address: 2590 Trailridge Drive East, Suite 202 Lafayette, Colorado 80026  Telephone: 303-543-1000  Facsimile: 303-543-8582  Atty. Reg#: Stephen H. Cook: 6692  James L. Pagano: 39508 | Case No. 2015CV31808  Ctrm: |
| **KATHRYN WINDT’S COMBINED MOTIONS *IN LIMINE*** | |

Kathryn Windt submits his motions *in limine* as follows:

Certificate of Conferral

Pursuant to C.R.C.P. 121 §1-15(8), undersigned counsel conferred with counsel for Defendants by providing a copy of this pleading on January 20, 2017 and through attempted telephone conferral on January 23, 2017. Defendant’s positions are indicated in the heading for each topic.

# Defendants’ ability to pay judgment on compensatory damages - Unopposed.

* Defendants’ ability to pay should not be argued or presented in evidence; it is not relevant to any claim or defense.
* Such testimony is inadmissible under C.R.E. 401 - 403.

# Collateral Source Payments - Opposed.

* Evidence of payments made by health insurers is not admissible for any purpose. *C.R.S. § 10-1-135(10)(c).*

# Financial Motives/Greed/Secondary Gain - Opposed.

* Defendants should be prohibited from using improper inflammatory openings or closing statements, *voir dire* questioning, or arguments referencing Mrs. Windt’s motive, alleged greed, or alleged attempt to obtain an undue financial benefit. There is no evidence, either through lay or expert testimony to support any such arguments.
* Evidence or argument that leads a jury to make a decision on an improper basis is prejudicial. *People v. Nunez,* 973 P.2d 1260 (Colo. 1999).
* Statements or arguments which lack a basis in the facts of the case and which are designed to create undue prejudice or passion or so as to unduly taint the proceedings are improper and should not be allowed. *See People v. Oliver,* 745 P.2d 222 (Colo. 1987) and C.R.E. 402 and 403.

# Discussion of Insurance Rates – Opposed.

* Any such discussion is not relevant to any claim or defense and is inadmissible under C.R.E. 401-403.
* It is prejudicial for an attorney to appeal to any jurors’ personal financial interest. *Denver Bank v. Commissioners,* 98 P.2d 283 (Colo. 1940).

# Prior Unrelated Medical Conditions and Worker’s Compensation Claim- Opposed.

* During her deposition, Mrs. Windt discussed a tailbone injury that she had over twenty years ago. She testified that she fully recovered from that injury within 3-4 years after it happened. She testified that a worker’s compensation claim was filed.
* Mrs. Windt is not making a claim based on any injury to her tailbone in this litigation. Testimony related to her now 20-year-old tailbone injury is irrelevant and not admissible under C.R.E. 401-403.
* Evidence of her prior worker’s compensation claim is inadmissible under *Westfall v. Town of Hugo,* 851 P.2d 299, 302 (Colo. App. 1993)(citing *Outley v. City of New York,* 837 F.2d 587 (2d Cir. 1988)(reversible error to receive evidence of other suits against police officers filed by plaintiff pressing civil rights claim against police officers); *Knight v. Hasler,* 128 N.W.2d 407 (1964)(reversible error to allow cross-examination of personal injury plaintiff as to previous claims for personal injuries asserted against others); *Lowenthal v. Mortimer,* 270 P.2d 942 (1954)(same); and *Richardson v. Missouri Pacific RR,* 186 F.3d 1273, 1278 (10th Cir. 1999)(“ “Evidence of the previous lawsuit, the compensation paid to plaintiff, its amount, and the release signed has no relevance to the determination of [damages in current litigation]. The admission of this evidence was extremely prejudicial and therefore requires that this case be reversed and remanded for a new trial.”)

# Taxation of Judgment - Unopposed.

* Colorado has adopted the majority view that it is reversible error to give an instruction to the jury that damages awarded would not be subject to income taxes. *Rego Company v. McKown-Katy,* 801 P.2d 536, 539 (Colo. 1990).

Wherefore, Mrs. Windt requests that the Court enter an Order *in limine* prohibiting Defendants from arguing directly or indirectly or introducing evidence as to:

* 1. Defendants’ ability to pay any judgment.
  2. Reference or any discussion of collateral source payments.
  3. Mrs. Windt’s financial motives, greed, or similar arguments of secondary gain.
  4. The effects of a judgment on insurance rates, premiums, etc.
  5. Mrs. Windt’s prior unrelated medical conditions and worker’s compensation claim.
  6. Discussing whether any recovery by Mrs. Windt would be subject to taxation or not.

Dated: January 23, 2017.

# COOK & PAGANO, P.C.

*Original Signature on file at the offices of Cook & Pagano, P.C.*

By: */s/ James Pagano*

James Pagano

Attorney for Kathryn Windt

# CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on January 23, 2017 via *ICCES* to the following:

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| David Perry  Law Office of David B. Perry, LLC 7200 East Dry Creek, F203 Centennial, CO 80112  Megan Fountain PO Box 3328  Englewood, CO 80155-3328 | Jeffrey Ruebel  RUEBEL & QUILLEN, LLC  8501 Turnpike Drive, Suite 106  Westminster, CO 80031 |

*Signature on file at COOK & PAGANO, P.C.*

*/s/ Ashley Neumann*

Ashley Neumann