|  |  |
| --- | --- |
| DISTRICT COURT, ADAMS COUNTY, COLORADO  1100 Judicial Center Drive Brighton, CO 80601  **Plaintiff :**  American Family Mutual Insurance Company, As Subrogee of Kathryn Windt, | DATE FILED: January 23, 2017 7:32 P FILING ID: 88D7822E84C29  CASE NUMBER: 2015CV31808   * COURT USE ONLY  |
| v. |  |
| **Defendants/Third Party Plaintiffs:**  Jvonne Becerril and Aurelio Meza-Cuevas, | Case Number: 2015CV31808 |
| v. | Div.: W Ctrm.: |
| **Third Party Defendant/Counterclaimant:** |  |
| Kathryn Windt |  |
| **Attorneys for Defendants Becerril and Meza-Cuevas:**  Jeffrey Clay Ruebel Katherine L. Brim Ruebel & Quillen, LLC  8501 Turnpike Drive, Ste 106  Westminster, Colorado 80031  Phone Number: (888) 989-1777  FAX Number: (303) 362-5724  E-mail: [Jeffrey@rq-law.com](mailto:Jeffrey@rq-law.com) |  |
| **MOTION IN LIMINE RE STATEMENTS AS TO MRS. BECERRIL’S IMMIGRATION STATUS AND LICENSURE** | |

M

DEFENDANTS JVONNE BECERRIL and AURELIO MEZA-CUEVAS (“Mrs.

Becceril” and “Mr. Meza-Cuevas”), by and through counsel, RUEBEL & QUILLEN, LLC, hereby submit their Motion in Limine seeking an Order precluding any party from making argument, statements, or inferences as to Mrs. Becerril’s immigration status and

as to whether Mrs. Becerril had a United States drivers’ license at the time of the accident.

# CERTIFICATE OF RULE 121 CONFERRAL:

Counsel for Defendants has conferred with Conrsel for Mrs. Windt as to this Motion. Mrs. Windt opposes the Motion.

# BACKGROUND

This matter arises out of an October 3, 2014 motor vehicle accident (“the accident”). Liability for the accident is disputed; both Mrs. Becerril and Mrs. Windt have testified that they entered the intersection immediately prior to the accident on a green light, and both allege that the other ran a red light thereby causing the accident. The investigating police officer was unable to determine fault. Mrs. Windt claims that she incurred physical injuries and lost wages due to the accident. Mrs. Becerril is not making a personal injury claim or any other affirmative claim for damages against Mrs. Windt.[1](#_bookmark0)

Although Mrs. Becerril obtained a Colorado drivers’ license shortly after the accident, she did not have a Colorado license when the accident occurred. Mrs. Becerril moved to the United States from Mexico. She is not fluent in English. In deposition, counsel attempted to question Mrs. Becerril as to her immigration status. The questioning did not concern any affirmative act of misconduct or specific prior misrepresentation; rather, it was generally directed to whether Mrs. Becerril was a legal United States resident at the time of the accident. Undersigned counsel objected to the questioning.

# STANDARD OF REVIEW

1 Mrs. Becerril originally asserted a claim for property damage she incurred in the accident. The parties have now reached a settlement as to that claim.

Rule 104(a) of the Colorado Rules of Evidence provides that “[p]reliminary questions concerning the qualifications of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court…” The purpose of a motion *in limine* is to allow the court to rule in advance of trial on the admissibility and relevance of certain anticipated evidence. *Uptain v. Huntington Lab, Inc.,* 723 P.2d 1322, 1330 (Colo. 1986). A motion *in limine* provides the court with the opportunity to rule on the admissibility of evidence to shorten trial time, simplify the issues, and reduce the possibility of mistrial. *Id.* Motions *in limine* allow the Court to thoughtfully consider evidentiary issues, expedite trials, eliminate bench conferences, avoid juror annoyance and permit more accurate rulings. *Uptain v. Huntington Lab, Inc.*, 723 P.2d 1322, 1333 (Colo. 1986). A party’s motion *in limine* is adequate to preserve that party’s objection to the evidence that is the subject of the motion *in limine* without the need for contemporaneous objections. *Id.*

# ARGUMENT

Mrs. Becerril and Mr. Meza-Cuevas anticipate that Mrs. Windt may attempt to offer evidence or make statements as to Mrs. Becerril’s immigration status and as to whether Mrs. Becerril had a valid United States drivers’ license at the time of the subject accident. Statements regarding Mrs. Becerril’s immigration status and licensure are wholly irrrelevant, constitute improper character evidence prohibited by C.R.E. 404(b), and are unfairly prejudicial and hence inadmissible pursuant to C.R.E. 403.

The determinative issues at trial will be whether Mrs. Becerril’s conduct or that of Mrs. Windt caused the accident and the nature and extent of Mrs. Windt’s injuries, damages, and losses. To sustain her burden of proof as to her claims against Mrs.

Becerril, Mrs. Windt must, of course, prove that Mrs. Becerril was negligent. Mrs. Becerril’s immigration status has no bearing whatsoever on the determination as to whether she acted negligently at the time of the accident.

There is no Colorado precedent holding that a defendant’s immigration status is relevant in a personal injury action against her. While in *Silva v. Wilcox,* 223 p.3d 127, (Colo. App. 2009), the immigration status of a plaintiff making a wage loss claim was held relevant *for the specific purposes of considering his claim for lost wages*, *id*. at 131- 132, here, Mrs. Becerril is making no wage loss claim or any other affirmative claim for damages to which her immigration status would have any bearing. It must not be mentioned solely due to its irrelevance. C.R.E. 402.

Moreover, even if the evidence were determined to have some minimal relevance, it must be excluded because it is improper character evidence. C.R.E. 404 (b) prohibits the admission of other crimes, wrongs, or acts to prove the character of a person in order to show that he acted in conformity therewith. The admission of a witness’s prior misdeeds for the purpose of attacking credibility is generally prohibited. *People v. Saldana*, 670 P.2d 14, 15 (Colo. App. 1983) (court properly prohibited inquiry as to a witness’s prior use of marijuana where such evidence would have been used to attack his credibility). A witness cannot be impeached by acts or occurrences which show “bad character.” *People v. Barker*, 538 P.2d 109, 110 (1975); *People v. Couch*, 500 P.2d 967 (1972). To the extent that Mrs. Becerril’s immigration status could be construed as a prior bad act or misdeed, it is inadmissible to attack her credibility or to impugn her character.

Finally, any mention of Mrs. Becerril’s immigration status would be unfairly prejudicial and distracting and hence must be prohibited pursuant to C.R.E. 403. Trial courts have broad discretion in balancing the probative value of the evidence against the danger of unfair prejudice or confusion the issues. *People v. Watkins*, 83 P.3d 1182, 1184 (Colo. App. 2003); *People v. Ibarra*, 849 P.2d 33 (Colo. 1993). A trial court's decision to exclude evidence under C.R.E. 403 will not be disturbed on review in the absence of an abuse of that discretion. *Watkins*, 83 P.3d at 1184.

Evidence *must* be excluded on C.R.E. 403 grounds if it appeals to the jury's sympathies, arouses its sense of horror, provokes its instinct to punish, or triggers other mainsprings of human action. *People v. Hulsing*, 825 P.2d 1027, 1031 (Colo. App. 1991). Where proffered testimony could confuse the issues, mislead the jury, and open the door to cross-examination concerning collateral issues, or distract the jury from the important issues in a case, it should be excluded. *See id*; *see also People v. Underwood*, 53 P.3d 765 (Colo. App. 2002). Cross-examination may properly be limited due to concerns of prejudice; where the court evaluates the extent of the permissible cross- examination of a witness, the danger of unfair prejudice must be weighed and is grounds for the prohibition of a proposed inquiry even if it relates to the credibility of the witness. *People v. Lesslie*, 939 P.2d 443 (Colo. App. 1996); *People v. Wilson*, 2014 COA 114,

356 P.3d 956 (Colo. App. 2014).

Mrs. Becerril’s immigration status is a highly sensitive collateral issue. Any mention of it carries the danger of encouraging the jury to make a decision on an improper basis and would distract the jury from the issues it is to decide. It would be error to allow Mrs. Windt to inject such a prejudicial, politically controversial, and

provocative issue into the case, especially where evidence as to Mrs. Becerril’s immigration status has no value whatsoever to the jury’s determination as to liability. See Order of District Court Judge Deborah Grohs, May 9, 2013, attached hereto as **Exhibit A**.

Nor may evidence as to whether Mrs. Becerril had a Colorado drivers’ license at the time of the accident be admitted. Like her immigration status, Mrs. Becerril’s licensure is wholly irrelevant to the issues in this case. In *Lawrence v. Taylor,* 8 P.3d 607 (Colo. App. 2000), the Court of Appeals specifically held that a party’s the lack of a valid drivers’ license at the time of the subject accident was inadmissible because it was *not* evidence of negligence. *Id*. at 610-611.

Moreover, if this Court concludes that Mrs. Becerril’s immigration status cannot be mentioned, it must also prohibit the mention of her licensure status at the time of the accident. Mrs. Becerril cannot respond to evidence that she did not have a United States drivers’ license at the time of the accident without discussing her own immigration status. If Mrs. Windt is permitted to question Mrs. Becerril as to her licensure status, the jury will thus be left to speculate as to why Mrs. Becerril had no license, or Mrs. Becerril’s character will be unduly maligned with evidence as to her immigration status. Under these circumstances, Mrs. Windt must be precluded from inquiry into Mrs. Becerril’s licensure. *See People v. Wilson*, 356 P.3d 956, 966 (Colo. App. 2014) (where proposed inquiry raised the prospect of either unduly maligning the character of a witness or leaving the jury to speculate about unexplained events, inquiry properly prohibited).

Statements as to Mrs. Becerril’s immigration status and licensure have no relevance to the issues the jury is to determine at trial. Any mention of them would

distract from the issues of the case and would risk encouraging the jury to make a decision based on prejudice towards Mrs. Becerril rather than the evidence presented as to liability. Allegations as to Mrs. Becceril’s immigration status may not be employed to question her character. Any mention of Mrs. Becerril’s immigration status and the closely related status of her licensure at the time of the accident must not be allowed.

WHEREFORE, Defendants seek an Order prohibiting the mention of Mrs.

Becerril’s immigration status or licensure at trial.

**DATED** this 23rd day of January, 2017.

Respectfully submitted, RUEBEL & QUILLEN, LLC



Katherine L. Brim, No. 46532

# CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing Motion in Limine was E-Served by the Court-authorized E-System provider, to the following on this 23rd day of January, 2017:

David Perry

Law Office of David B. Perry, LLC 7200 East Dry Creek, F203 Centennial, CO 80112

Dave@DBP ‐Law.com

*Counsel for American Family Mutual Insurance Company, as Subrogee of Kathryn Windt*

COOK & PAGANO, P.C.

Stephen H. Cook: 6692 James L. Pagano: 39508

2590 Trailridge Drive East, Suite 202

Lafayette, Colorado 80026

*Counsel for Third Party Defendant Windt*

Megan Fountain Dylan Lewis PO Box 3328

Englewood, CO 80155 ‐3328

[MFountai@AmFam.com](mailto:MFountai@AmFam.com)

*Counsel for Third Party Defendant Windt*

*/s/ Katherine L. Brim*

Katherine L. Brim