

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
LAW DIVISION - COUNTY DEPARTMENT**

| | | |
|--|---|----------------------------------|
| JOHN FRIEL |) | |
| |) | 2018 L 004793 |
| Plaintiffs, |) | |
| |) | case refiled on |
| V. |) | May 9, 2018 |
| |) | |
| DARRELL MILLER individually, and as |) | No. 2015-L-006664 |
| agent, servant and/or employee of CENTURY |) | voluntarily dismissed on 9/29/17 |
| TRADE SHOW SERVICES, INC. and; |) | |
| CENTURY TRADE SHOW SERVICES, |) | (Date of Loss 9/14/14) |
| INC., |) | |
| |) | Ann Collins-Dole, Judge |
| Defendants. |) | Ct. Room 2309 |

ORDER ON MOTIONS IN LIMINE

This cause coming to be heard at jury trial, on motions in limine of **DARRELL MILLER** and **CENTURY TRADE SHOW SERVICES, INC.**, due notice given and the court advised in the premises.

IT IS ORDERED:

1. Bar any opinion, innuendo or reference from any witness that after **July 21, 2015 John Friel** will incur any future medical treatment or medical expense relating to the **September 14, 2014** accident. After **July 21, 2015**, there is no testimony **John Friel** will need future medical treatment for any injury sustained in the **September 14, 2014** accident. For the injuries **Friel** sustained on **September 14, 2014**, **Coats, MD** last saw **Friel** on **July 21, 2015** (pg. 58, line 16). **Coats, MD** visits after **July 21, 2015** had no relationship with the **September 14, 2014** anterior tear (pg. 60, line 17). **Coats, MD** discharged **Friel** on **July 21, 2015**, allowing **Friel** to go back to all duties without restrictions (pg. 79, lines 1-3). Further, plaintiff has not offered any testimony by any medical providers that **Friel** will incur future medical treatment and expense for the **September, 14, 2014** accident. There is no testimony establishing what treatment would be required in the future or its cost. To prove future medical care, treatment and expenses, plaintiff must prove within *reasonable certainty* the need for future medical care and treatment in order to receive such an award, IPI 30.06.

Granted Denied ____ Reserved ____ Withdrawn ____

2. Bar plaintiff from introducing or referencing any medical treatment and or medical expense from **Coats, MD** after **July 21, 2015**. This motion is also based on the **February 18, 2020**

S.C.R. 219 (c) renewed motion for sanctions against **John Friel** before Judge Kathy Flanagan (attached). In that motion defendant renewed sanctions against **John Friel** when it was learned **Coats, MD's** treatment starting on **July 17, 2017** was not related to the **September 14, 2014** accident. Judge Flanagan granted defendant's S.C.R. 219 (c) motion as to claimed medical treatments and medical expense after **July 17, 2017** (See **February 18, 2020** order)

Granted Denied ____ Reserved ____ Withdrawn ____

3. Bar any argument, request, or innuendo that plaintiff is entitled to a loss of earnings after **April 15, 2015** and cap the lost earnings claim at \$77,906.40

AUTHORITY: Plaintiff answered interrogatories and provided deposition testimony that his lost income claim stopped after **April 15, 2015** (**Friel** supplemental deposition, page 10, line 7). On **April 28, 2015** he returned to work and plaintiffs only claim is for lost earnings and benefits is from **September 14, 2014** to **April 27, 2015**. (**January 4, 2019** supplemental deposition, page 10 lines 12-19; **April 15, 2016** deposition, page 136, lines 14-20; page 137, lines 2-11; **Friel's October 23, 2015** interrogatory answer no. 11; Exhibit 1 of **April 15, 2016 Friel** discovery deposition). See **March 10, 2016 Friel** wage loss affidavit (attached).

Granted Denied ____ Reserved ____ Withdrawn ____

4. No lay witness medical testimony about what any doctor told **John Friel** about **Friel's** injury. It is proper to bar plaintiffs (or any other lay witness) from offering medical opinions or and testimony concerning causation and injuries.

AUTHORITY: No testimony by plaintiff Bernadette Friel or other witnesses what any doctor told plaintiff about any specific medical condition caused by the accident with defendants such testimony is incompetent hearsay authority. *Jordan v. Morrisey*, 264 N.E.2d 734 (1S1 Dist., 1978).

Granted as Modified: Friel may testify about treatments received.

5. Bar **Tonino MD** as plaintiff's SCR 213 (f) (2) witness and or enter an I.P.I 5.01 missing witness instruction. The evidence deposition of **Tonino, MD** was set for **February 17, 2020** but cancelled by the office of the plaintiff's counsel. On **August 21, 2019**, Judge Flanagan entered the following order: *all evidence depositions are to be completed by February 20, 2020. Any witness not giving an evidence deposition must appear live at trial. If witness does not appear, counsel shall seek compliance from the trial judge.* **Tonino, MD** was not deposed and is not testifying. All direct testimony from **Tonino, MD** must be barred or an I.P.I.5.01 missing witness instruction should be read to the jury.

Granted Denied ____ Reserved ____ Withdrawn ____

6. Bar **Pietro Tonino, MD** from offering opinions on permanency and any opinions beyond **Tonino, MD's December 18, 2014** letter. **Tonino, MD** saw **Friel** once on **December 18, 2014**, knows nothing of **Friel's** treatment thereafter, cannot render a current opinion of **Friel's** medical conditions, has no knowledge to provide opinions on future medical treatment and expenses, and knows nothing of **Coats, MD's** treatments after **Tonino, MD** saw him on **December 18, 2014**. (See **Tonino, MD** letter).

AUTHORITY: *Soto v. Gaytan*, 313 Ill. App. 3d 137, 146 (2000).

Granted Denied ____ Reserved ____ Withdrawn ____

7. Bar **John Friel** from claiming any treatment expenses from **Tonino, MD**. **Tonino, MD** was The Hartford's 820 ILCS 305/12 workers compensation I.M.E. physician and was hired by The Hartford. **Tonino, MD** did not treat **John Friel** during the exam and **John Friel** did not go to **Tonino, MD** for treatment. No physician patient relationship was created between **Friel** and **Tonino, MD**. **Tonino MD's December 18, 2014** I.M.E. report was sent to The Hartford's workers' compensation defense attorney Frank Gildea.

Granted Denied ____ Reserved ____ Withdrawn ____

8. Bar **Cara Jo Klockow, MSPT** from testifying to any untreated diagnosis, or future diagnosis that are not in her records or her chart. For the **September 14, 2014 accident**, **Friel** was last treated at Select Physical Therapy on **July 17, 2015** by **Klockow**. **Klockow** cannot provide any opinion on any future medical treatment or future disability beyond her last **July 17, 2015** chart entry. She is also not qualified to comment on **Coats, MD's January 15, 2015** arthroscopy.

AUTHORITY: **Klockow, MSPT** also was not asked to make a prognosis of **Friel's** condition separate from what is in her records. Consequently, **Klockow** does not "have any independent diagnosis or prognosis for Friel beyond what is contained in the medical records.

Klockow should be prohibited from offering her own independent diagnoses or prognoses on **Friel's** condition that were not contained in **Klockow's** medical records. For example, **Klockow** should be barred from testifying **Friel** more likely than not needs further medical treatment. As another example, **Klockow** should be precluded from providing any testimony or any opinions regarding any future disability **Friel** may experience.

Granted Denied ____ Reserved ____ Withdrawn ____

9. Pursuant to S.C.R. 213(f) (1), (2), and (3), defendants moves to bar plaintiff from discussing and introducing any evidence and/or calling any witness whose identity has not been properly disclosed from testifying at trial. Further, in dismissed case 2015-L-006664, plaintiff's S.C.R. 213(f) interrogatory answers name S.C.R. 213 (f) (2) witnesses **Robert Coats, MD, Pietro Tonino, MD** and **Cara Jo Klockow, MSPT**. These are the same witnesses identified two years later in the **November 18, 2018** and **December 11, 2018** amended SCR (f) (2) disclosures. No other 213 (f) (2) witnesses are identified. Any other S.C.R. 213 (f) (2) medical witnesses should be barred from testifying.

Granted Denied ____ Reserved ____ Withdrawn ____

10. Bar plaintiff from using or referring to any Indiana medical bill not produced pursuant to Judge Flanagan's **October 30, 2018** CMC order, ¶ 2 and 3 (order attached). Plaintiff may have received medical services from:

- | | |
|--------------------------------------|--|
| (a) St. Mary Medical Center | Hobart, Indiana (bills before 10/20/17) not produced |
| (b) Loyola University Medical Center | Maywood, Illinois |
| (c) Franciscan Alliance | Indianapolis, Indiana |
| (d) Select Physical Therapy | Hebron, Indiana |
| (e) Lakeshore Anesthesia PC | Hobart, Indiana |
| (f) Homelink | ? |
| (g) Walgreens Pharmacy | ? |
| (h) Robert Coats, MD | Hobart, Indiana (bills produced) |
| (i) Concentra Medical Center | Illinois |

Granted ____ Denied ____ Reserved ____ Withdrawn

11. In violation of Judge Flanagan's **October 30, 2018** order, Indiana bills from St. Mary Medical Center, Loyola University Medical Center, Franciscan Alliance, Select Physical Therapy and Lakeshore Anesthesia PC were not produced. Plaintiff's repeated discovery violations are recorded in Judge Flanagan's **July 1, 2019** order and **February 10, 2020** order. Accordingly, plaintiff should be barred from relying on St. Mary Medical Center, Franciscan Alliance, Select Physical Therapy and Lakeshore Anesthesia PC as plaintiff did not produce these records in compliance with Judge Flanagan's **October 30, 2018** order. If plaintiff

sought exception from the terms of Judge Flanagan’s **October 30, 2018** order, then the proper showing should have been made. (**July 1, 2019**, order attached).

AUTHORITY: Proper to grant motion in limine based on discovery violation. *Willbourn v. Cavalenes M.D.*, 923 N.E.2d 937 (1st Dis, 2010).

Granted ____ Denied ____ Reserved ____ Withdrawn

12. Bar any records keeper, billing coordinator or record clerk from testifying about **Friel’s** medical bills. No opinions from any undisclosed medical record keepers or billing coordinators of the need, necessity and reasonableness of any care and treatment of **John Friel** have been provided in any S.C.R. 213 (f) (2) disclosures. No records keepers or billing coordinators were ever named in plaintiff’s S.C.R. 213 (f) (1) and (2) filings. Since **July, 2015**, plaintiff has had to chance to supplement and confirm prior S.C.R. 213 (f) (2) disclosures; plaintiff could have used a S.C.R. 216 request to admit the bills but failed to do so. By **July 29, 2019** CMC order, ¶ 13, S.C.R. 216 discovery is closed.

Granted Denied ____ Reserved ____ Withdrawn ____

13. Bar introduction of **Friel’s** medical billing and treatment expenses in this case. Based on The Hartford’s Illinois workers compensation treatment schedule all of **Friel’s** medical bills are not fully paid and were discounted by the workers compensation carrier, The Hartford. **Friel** has never seen the medical bills, does not know if they were paid or discounted, and does not know the usual customary charges for any of his treatment expenses. **Friel** is unable to prove the medical bills are paid, un-paid, or discounted. Based on **Friel’s** answers to S.C.R. 213(f) (2) interrogatories and Friel’s April 15, 2016 and January 4, 2019 discovery depositions with exhibits, **Friel** is unable to establish the foundational requirements for admission of the medical bills at trial. (See deposition pages).

AUTHORITY: In a case where a treatment bill has only been partially paid in part, e.g., where a workers compensation carrier and/or plaintiff paid portions of the medical bills because of contractual adjustments, the plaintiff must establish the reasonable cost by other means. *Arthur v. Catour*, 833 N.E.2d 847 (Ill. 2005). For unpaid bills and discounts, the plaintiff can establish reasonableness through testimony of a person who (i) has knowledge of the services rendered, (ii) has knowledge of the usual and customary charges for such services, and (iii) can say the bills in question are fair and reasonable. *Id.* See also *Klesowitch v. Smith*, 52 N.E.3d 365 (2016). **Friel** does not possess specialized knowledge to testify regarding the nature of medical services rendered and the usual and customary charges for such services, this means expert is needed on these issues. *Baker v. Hutson*, 775 N.E.2d 631 (2002); *Kunz v Little Co. of Mary Hosp.*, 869 N.E.2d 328 (2017).

Plaintiff has not disclosed any expert witness who has the knowledge, skill, experience, training, or education regarding the usual and customary bills for the medical services plaintiff received. Consequently, plaintiff is unable to establish the unpaid portions of his medical bills were reasonable. *Baker v. Hutson*, 775 N.E.2d 631 (2002). Plaintiff should have made complete disclosures in S.C.R. 213 (f) (1) and (f) (2) interrogatory answers. Additionally, plaintiff never made 213 (f) (3) disclosures as to expert testimony on medical bills.

Granted as Modified: Coats, MD billing, evidence deposition exhibit 7, in the amount of \$ 6,018.57, may be used at trial. Select Physical Therapy billing may be introduced by Cara Jo Klockow, MSPT, if sufficient foundation provided. All other medical billing barred.

14. Bar plaintiffs from referencing permanency, permanent medical condition, or permanent disability; no S.C.R. 213(f) (2) disclosures has identified any such condition; no doctor's or physical therapists testimony has been offered to support a claim of permanency; **John Friel** testified no physician ever diagnosed a permanent injury or disability. At the **February 10, 2020 Coats, MD** evidence deposition, **Coats, MD** said the last visit with **Friel** was on **July 15, 2015**. For the **September 14, 2014** accident, **Coats, MD** did not see **Friel** after **July 21, 2015**, and **Coats, MD** has no opinion on permanency or any other treatment prognosis.

AUTHORITY: *Soto v. Gaytan*, 313 Ill. App. 3d 137, 146 (2000).

Granted Denied ____ Reserved ____ Withdrawn ____

15. No reference any Defendants have insurance; no reference to Defendant's insurance adjusters, Defendant's insurance claim handling, or any matters referencing Defendant's insurance or insurance investigators; further that all counsel advise all witnesses of this prohibition.

AUTHORITY: Ill. Evid. Rule 411 states: Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully.

Granted Denied ____ Reserved ____ Withdrawn ____

16. That all counsel advise all testifying witnesses of the prohibitions contained in this Court's orders on all motions in limine.

Granted Denied ____ Reserved ____ Withdrawn ____

17. Bar Plaintiff from commenting during trial, including *voire dire*, that plaintiff has not had to wait many years “to get his day in court”, or commentary the defendants caused any trial delay.

Granted Denied ____ Reserved ____ Withdrawn ____

18. That all counsel refrain from vouching for the credibility of any witness and bar counsel’s statements of personal beliefs before the jury.

Granted Denied ____ Reserved ____ Withdrawn ____

19. No lay opinion testimony on causation.

AUTHORITY: *Hernandez v. Paschen Contractors, Inc.*, 335 Ill. App. 3d 936, 945–46, 269 Ill. Dec. 893, 781 N.E.2d 1083 (1st Dist. 2002) (witness who was only disclosed as a factual witness and not an opinion witness cannot give opinion testimony regarding causation) (citing Ill. S. Ct. R. 213).

Granted Denied ____ Reserved ____ Withdrawn ____

20. Bar any inquiry regarding criminal arrests of any party.

AUTHORITY: *People v. Montgomery*. 47 Ill. 2d 510, 268 N.E.2d 695 (1971).

Granted Denied ____ Reserved ____ Withdrawn ____

21. No reference to any prior settlement discussions, compromise, offers, pretrial conference, partial summary judgement motions, discovery motions, sanctions motions, and/or motions to bar testimony for discovery violations and results of motions in limine. These discussions are not relevant under Ill. Evid. Rule 401.

Granted Denied ____ Reserved ____ Withdrawn ____

22. All non-party witnesses should be excluded from the courtroom during trial testimony.

AUTHORITY: Ill. Evid. Rule 615.

Granted Denied ____ Reserved ____ Withdrawn ____

23. That all counsel refrain from asking jurors to put themselves in the position of Plaintiffs or Defendants, and bar the litigants lawyers during jury voir dire from talking to prospective jurors regarding the facts of the case.

AUTHORITY: *Gasiorowski v. Homer*, 47 Ill. App. 3d 989, 994, 7 Ill. Dec. 758, 761 (1st Dist. 1977). Questions which put prospective jurors in the place of the parties to the litigation create possibilities for indoctrination, and lend themselves to attempts to obtain some positive indication as to which party the jurors might favor." *Gasiorowski*, 47 Ill.App.3d at 994, 7 Ill.Dec. 758,365 N.E.2d 43. See also *Rub v. Consolidated Rail Corp.*, 771 N.E.2d 1015, 265 Ill. Dec. 56, 331 Ill. App. 3d 692 (1st Dis. 2002).

Granted Denied ____ Reserved ____ Withdrawn ____

24. Bar any inquiry to plaintiff about plaintiff's inability to afford medical treatment.

Granted Denied ____ Reserved ____ Withdrawn ____

25. Bar any reference to or inference regarding the wealth, size, number of employees, gross sales, nationwide operations, revenues or financial wealth of **Century Trade Show Services, Inc.** *McHale v. WD. Trucking*, 39 N.E.2d 595 (2015).

Granted as Modified: Plaintiff may ask questions about how many Century Trade Show Services, Inc. employees at 2014 IMTS show.

26. No lay witness opinion testimony on whether a party could have avoided the accident.

AUTHORITY: *Freeding-Skokie Roll-Off Service, Inc. v. Hamilton*, 108 Ill. 2d 217, 219–23, 91 Ill. Dec. 178, 483 N.E.2d 524 (1985) (lay witness opinion regarding whether a party could have avoided the accident should not be admitted because it was not helpful to the trier of fact, which could have made its own assessment by hearing the relevant facts without the addition of the opinion testimony) (citing Ill. Evid. Rule 701 and 704).

Granted as Modified: But, may talk about other routes.

27. No references to causes of actions not plead in the **May 9, 2018** refiled complaint. Count I of the refiled complaint pleads allegations of **Darrell Miller's** driving negligence. Count II pleads **Century Trade Show Services, Inc.'s** responsibility for **Miller's** driving negligence under an agency and *respondent superior* theory only. (See complaint and amended complaint answer).

AUTHORITY: Evidence outside the pleadings should be excluded. *Gerwig v. Bruere*, 537 N.E 2d 844 (2nd Dis. 1989). *Carlyle v. Jaskiewicz*, 464 N.E 2d 751 (1st Dis 1984).

Granted Denied ____ Reserved ____ Withdrawn ____

28. No reference, innuendos, questions, or discussions that **Darrell Miller** was negligently trained, retained or hired, as **Century Trade Show Service, Inc.** admitted that **Darrell Miller** was its agent and employee. Further, any reference to the Staffing Solutions application for temporary employment is not relevant.

AUTHORITY: In Illinois “once an employer admits responsibility under *respondent superior*, a plaintiff may not proceed against the employer on another theory of imputed liability.” *Gant v. L.U. Transport, Inc.*, 770 N.E.2d 1155, 1159 (Ill. App. Ct. 2002); *Ledesma v. Cannonball, Inc.*, 538 N.E.2d 655, 661 (Ill. App. Ct. 1989); *Neff v. Davenport Packing Co.*, 268 N.E.2d 574, 575 (Ill. App. Ct. 1971). Under this rule, if it is undisputed that the employer is liable for the employee's negligence under *respondent superior*, then a cause of action under another theory of imputed liability — like negligent hiring, entrustment, or supervision —cannot be maintained.

Granted Denied ____ Reserved ____ Withdrawn ____

29. Bar any reference or inquiry to whether **Darrell Miller** had a driver's license while operating the three-wheeled cart.

AUTHORITY: Failure to have a valid operator's license is not evidence of negligence. *French v. City of Springfield*, 65 Ill.2d 74, 80-81, 2 Ill. Dec. 271,357 N.E.2d 438 (1976) (" licensing statutes do not set forth specific standards of care and the fact that a driver has not submitted to the State for testing of his driving skills is not evidence that he was driving negligently when involved in an accident"). *Eyrich v. Estate of Waldemar*, 327 Ill.App.3d 1 095, 262 Ill.Dec. 367, 765 N.E.2d 504 (2002).

Granted Denied ____ Reserved ____ Withdrawn ____

30. No references by the parties to any previously filed third party action (contribution and discovery petition) against G.E.S.

AUTHORITY: On **March 3, 2016**, in prior case 2015-L-00664, the third-party contribution claim by **Miller** and **Century Trade Show Services, Inc.** was voluntarily dismissed prior to any decision on the merits. On **May 4, 2016**, a 735 ILCS 5/2-402 discovery petition was filed against G.E.S. by defendants. On **July 27, 2016**, defendants terminated their 735 ILCS 5/2-402 discovery petition against G.E.S. Defendant's prior pleadings were not dismissed on the merits and *res judicata* does not apply. Prior pleadings are not relevant to this action. Ill. Evid. Rule 401.

Granted Denied ____ Reserved ____ Withdrawn ____

31. Bar any reference to **Century Trade Show Services, Inc.**'s need to discipline **Darrell Miller** or **Darrell Miller's** employment after the incident. **Darrell Miller** was not disciplined for the accident. Further, evidence of **Darrell Miller's** current occupations, unemployment, or the fact that he has not worked as a scooter driver since the **September 14, 2014** accident is irrelevant and inadmissible under Ill. Evid. Rule 401.

Granted in part: Plaintiff may ask questions regarding Miller's employment post-accident.

32. Bar any arguments Defendants should be punished or that a message should be sent to defendants to prevent future negligence.

Granted Denied ____ Reserved ____ Withdrawn ____

33. Bar any evidence, innuendo, or suggestion that **Century Trade Show Services, Inc.** or **Darrell Miller** was involved in similar accidents at McCormick Place or elsewhere.

Granted Denied ____ Reserved ____ Withdrawn ____

34. Bar Plaintiffs from presenting any evidence or argument relating to any of **Century Trade Show Services, Inc.'s** employment guidelines, internal rules, operating procedures, or requirements including, but not limited to a lack of Defendant's employee manual and driver manuals.

AUTHORITY: Illinois recognizes that it cannot reasonably be inferred from a failure to follow internal rules or guidelines that a defendant breached his duty of care. Illinois law holds that the violation of self-imposed rules or internal guidelines does not normally impose a legal duty, let alone constitute evidence of negligence, or beyond that, willful and wanton conduct." *Morton v. City of Chicago*, 676 N.E.2d 985, 992 (Ill. App. 1997).

Granted Denied ____ Reserved ____ Withdrawn ____

35. Bar any reference arguing **Century Trade Show Services, Inc.** was in breach of the Janitorial and Cleaning Services Agreement G.E.S. had with **Century Trade Show Services, Inc.** (Daddano Deposition; Plaintiffs ' Exhibit 6). The Janitorial Service Agreement does not apply to the **2014** IMTS show as **Century Trade Show Services, Inc.** had a Janitorial Services Agreement with IMTS, not G.E.S.

Granted Denied ____ Reserved ____ Withdrawn ____

36. Bar and exclude testimony from plaintiff and plaintiff's fact witnesses that **Century Trade Show Services, Inc.** and **Darrell Miller** operated or used an unsafe scooter or dumpster or that the equipment was improperly maintained. There is no complaint allegation or any facts showing the scooter or dumpster were defective or unsafe. Plaintiff has offered no fact evidence or complaint allegations that the scooter or dumpster was unsafe or improperly maintained.

AUTHORITY: IL Evid. Rule 702 requires expert disclosure of such opinions or facts. Also by **July 1, 2019** CMC order, ¶9, plaintiff waived all S.C.R. 213 (f) (3) disclosures. This is a refile of a prior voluntarily dismissed action. The time to amend complaint allegations has expired.

Granted Denied ____ Reserved ____ Withdrawn ____

37. Bar plaintiff's and plaintiff's fact witnesses from introducing evidence or testimony arguing there existed safer method of hauling a dumpster at the IMTS trade show. Such facts and testimony is not plead in the refiled complaint, nor disclosed in plaintiff's interrogatory answers. Any basis for this expert's opinion on alternative safety measures has not been disclosed in S.C.R. 213(f)(1), S.C.R. 213 (f)(2) or S.C.R. 213 (f)(3) answers. By **July 1, 2019**, Plaintiff waived S.C.R. 213 (f) (3) disclosures.

AUTHORITY: Ill. Evid. Rule 702 requires expert testimony to testify the scooter and dumpster were unsafe. *Wakeford v. Rodehouse Restaurants of Missouri, Inc.*, 610 N.E.2d 77 (1992) (opinions unrelated to plaintiffs' involvement in the case relating to the conduct of third parties must be disclosed).

Granted Denied ____ Reserved ____ Withdrawn ____

38. Bar any testimony by any lay person or physician the speed at which the scooter and dumpster were driven is indicative of any injuries; no opinion is disclosed in any S.C.R. 213

interrogatory answers, nor is it an elaboration of a disclosed opinion. *Boehm v. Ramsey*, 329 Ill.App.3d 357, 771 N.E.2d 493 (4th Dist., 2002). By **July 1, 2019** court order, plaintiff waived S.C.R. 213 (f) (3) disclosures.

Granted Denied ____ Reserved ____ Withdrawn ____

39. Bar **John Friel** from requesting or arguing he is entitled to damages for disfigurement.

Granted ____ Denied Reserved ____ Withdrawn ____

40. Bar any claim for emotional distress. No testimony has been offered to establish any claim for emotional distress.

Granted Denied ____ Reserved ____ Withdrawn ____

41. Bar any reference or innuendo **John Friel's** wife, **Bernadette Friel** sustained any injury of any type and bar **Bernadette Friel** from testifying about any treatment diagnoses of **John Friel**. On **February 20, 2019 Bernadette Friel's** consortium claims (plead as counts III and IV) were dismissed with prejudice. **Bernadette Friel's** innuendos as to inconvenience, changed job assignments or other indirect claims for damages must be barred from this case. Further, any reference by **John Friel** and or **Bernadette Friel** to dismissed Counts III and IV or the facts therein alleged are no longer part of this case and are not relevant under Ill. Evid. Rule 401. (Order attached).

Granted Denied ____ Reserved ____ Withdrawn ____

42. Bar any reference or innuendo by **John Friel** that he is seeking damages for neck and back injuries and bar any reference to medical treatment, medical bills or expense for medical treatments of the neck and back.

AUTHORITY: At page 96, lines 11-14 of **John Friel's April 15, 2016** discovery deposition, **Friel** said his injury case against **Miller** and **Century Trade Show Services, Inc.** is for his left shoulder only. Evidence, testimony and innuendos of **John Friel's** physical conditions that are not in issue should be excluded from this case. Ill. Evid. Rule 401.

Granted Denied ____ Reserved ____ Withdrawn ____

43. Relative to **September 14, 2014** accident, no discussion, reference or evidence that defendants are responsible for the increased risk of future injuries to **John Friel** resulting from the **September 14, 2014** accident. *Dillon v. Evanston Hospital*, 771 N.E. 2d. 357 (2002). Plaintiff provided opinions disclosed pursuant to S.C.R. 213 (f) (2) and plaintiff did not make the disclosures under S.C.R. 213 (f) (3) or at the **February 10, 2020 Coats, MD** evidence deposition.

Granted Denied ____ Reserved ____ Withdrawn ____

44. No reference that **John Friel** is now in a weakened condition as a result of the **September 14, 2014** accident and is now more susceptible to future injury; no treatment opinion or S.C.R. 213 (f) (2) disclosure has been offered to establish same. Plaintiff's S.C.R. 213 (f) (2) disclosures provide no such opinions. Plaintiff also waived S.C.R. 213 (f) (3) disclosures on this topic.

Granted Denied ____ Reserved ____ Withdrawn ____

45. Bar argument or testimony by Plaintiff or her counsel suggesting the application of mortality tables to prove future medical expenses, and future pain and suffering. *Caley v. Manicke*, 24 Ill.2d 390 (1962) (" It would appear that a formula, rather than encouraging reasonable and practical consideration, would tend to discourage such consideration"); *Ramirez v. City of Chicago*, 318 Ill. App. 3d 1 8, 29 (1st Dist. 2000).

AUTHORITY: Under Illinois law, mortality tables are admitted in personal injury cases involving permanent injuries, to help the jury determine future damages. *Danzico v. Kelly*, 112 Ill. App. 2d 14, 29 (1st Dist. 1969) ; *Savka v. Smith*, 58 Ill. App. 3d 12 , 17, 15 Ill. Dec. 579 , 583 (3d Dist. 1978) ; *Leggett v. Kumar* , 212 Ill . App. 3d 255,281,156 Ill. Dec. 527,543 (2d Dist. 1991). In injury cases, life expectancy tables should not be admitted when pain and suffering is recurrent, but not permanent. *Savka*, 58 Ill.App. 3d at 17-18. Plaintiff has not made any S.C.R. 213 (f) (2) and S.C.R. 213 (f) (3) disclosures that plaintiff seeks to introduce this evidence and or what witness will provide the foundations for this treatment.

Granted Denied ____ Reserved ____ Withdrawn ____

46. Bar Plaintiff from requesting or arguing Plaintiff is entitled to aggravation of any pre-existing ailment resulting from the **September 24, 2014** accident. There has been no disclosure that any pre-existing conditions were exacerbated by the **September 24, 2014** accident.

Granted Denied ____ Reserved ____ Withdrawn ____

47. Bar **John Friel** from referencing or arguing any medical expenses incurred are a factor in any claim for pain and suffering and/or loss of normal life. I.P.I. 30.04.01 and I.P.I. 30.05 are separate damage instructions. Arguing medical expenses are a factor in any claim for pain and suffering and loss of normal life is inconsistent with I.P.I. 30.04.01 and I.P.I. 30.05 and should be barred.

Granted Denied ____ Reserved ____ Withdrawn ____

48. Bar plaintiff from relying on the **Coats, MD** demonstrative chart first offered at the **February 10, 2020 Coats, MD** evidence deposition. It was never marked at the evidence deposition. There was insufficient evidentiary foundation used to introduce and authenticate the chart. There was insufficient foundation to introduce the self-serving writings on the chart which were never explained or authenticated by **Coats, MD**. Additionally, the exhibit was never offered into evidence.

AUTHORITY: Proper to exclude charts that have self-serving writings on them. *Zinser v. Sanitary District of Chicago*, 175 Ill. App. 9 (1912). Further it is error to permit the trier of fact to consider documents that have not been tendered or admitted into evidence. *Jill Knowles Enterprises, Inc. v. Dunkin*, 80 N.E 3d 743 (2nd Dis. 2017)

Granted in part: Coats, MD demonstrative medical illustration may be used but not offered into evidence.

49. Bar statements by plaintiff that Coats, MD's demonstrative chart and medical bill records were admitted into evidence and bar the charts publication to the jury. These records were marked for identification but not offered and received into evidence.

AUTHORITY: Above.

Granted in part: Coats, MD chart may be used but not offered into evidence.

50. As to video surveillance, no reference that **Robert Tracy** was hired by any insurance company to provide testimony in this case; no reference that **Robert Tracy** had conferences with any insurance claim representative about any aspect of this case, or that **Detective Tracy** customarily testifies for insurance companies or was paid by insurance companies. No reference that **Robert Tracy** was paid by any insurance company for his surveillance.

Granted Denied ____ Reserved ____ Withdrawn ____

51. No reference to any defense witness as a “hired gun” or “high priced expert”.

AUTHORITY: *Mayeri v. Erie Insurance Exchange*. 2018 Ill. App. 172446 (Ill. App. Ct. 2018) [collecting cases]

Granted ____ Denied Reserved ____ Withdrawn ____

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March 4, 2020

ENTER:

Judge

Judge's No.