UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA, BILLINGS DIVISION

# Estate of Robert W. Petersen, by and through Robert T. Petersen as Personal Representative; Estate of Mary Ann Simons, by and through Dean Simons as Personal Representative; and Estate of Charlotte Elaine Guilford, by and through Charles Guilford as Personal Representative v. Koelsch Senior Communities, LLC and Billings Partners, LLC d/b/a Canyon Creek

No. CV 22-11-BLG-SPW (D. Mont. Dec. 2, 2025) · No. CV 22-11-BLG-SPW · Decided December 2, 2025

## SUMMARY

The United States District Court for the District of Montana ruled on Defendants' Motions in Limine Nos. 1-10 in a negligence action arising from alleged failures to care for residents during a COVID-19 outbreak at a memory care and assisted living facility. The court denied or deferred several broad evidentiary requests but granted motions concerning ultimate-issue questions, discovery disputes, witness credibility commentary, hindsight testimony, untimely documents, and medical treatise requirements. The case involves the estates of Robert W. Petersen, Mary Ann Simons, and Charlotte Elaine Guilford against Koelsch Senior Communities, LLC and Billings Partners, LLC.

## CASE DETAILS

| | |
|---|---|
| COURT | United States District Court for the District of Montana, Billings Division |
| WRITING FOR THE COURT | Susan P. Watters |
| JURISDICTION | United States District Court for the District of Montana, Billings Division |
| DECIDED | December 2, 2025 |
| DOCKET | CV 22-11-BLG-SPW |
| DISPOSITION | other |
| PROCEDURAL POSTURE | Defendants moved in limine to exclude or limit ten categories of evidence and trial argument in a negligence action involving alleged inadequate care and infection-control failures at a memory-care and assisted-living facility. |

| | |
|---|---|
| **STANDARD OF REVIEW** | Motions in limine are decided within the district court's discretion. Evidence should be excluded before trial only when it is inadmissible on all potential grounds; otherwise, foundational, relevancy, and prejudice questions should generally be resolved in the context of trial. |
| **PRECEDENTIAL VALUE** | unpublished |

## TOPICS

motion in limine · evidence · relevance · hearsay · negligence

## PRACTICE AREAS

civil procedure · evidence · negligence · health law · damages

## QUESTIONS PRESENTED

1. Whether the challenged categories of lay-witness testimony, damages evidence, opening-statement argument, deposition testimony, discovery-dispute references, credibility testimony, later-created documents, hindsight testimony, and medical literature should be excluded or limited before trial.
2. Whether lay witnesses may testify about personal observations, including observations concerning medical conditions and care, while being barred from offering expert testimony such as causation opinions.
3. Whether the deposition of a witness may be used against an organizational party for any purpose under Federal Rule of Civil Procedure 32 when the witness's title alone does not establish that the witness was an officer, director, managing agent, or Rule 30(b)(6) designee.
4. Whether evidence concerning loss-of-consortium damages and reimbursement fees should be excluded based on pleading or damages-disclosure arguments.
5. Whether evidence and argument concerning documents not in effect during the relevant period, hindsight testimony, credibility opinions, discovery disputes, and medical treatises should be excluded or controlled at trial.

## HOLDINGS

1. A motion in limine should not be used to resolve factual disputes, weigh evidence, or exclude broad categories of evidence when admissibility depends on trial context; evidence should be excluded pretrial only when it is inadmissible on all potential grounds.
2. Lay witnesses may testify about personal observations, including observations pertaining to medical matters, when the testimony is rationally based on their own perception; they may not offer expert testimony, including testimony on causation.
3. A plaintiff may pursue reimbursement fees when the amount can be reasonably approximated, even if the damages request was broadly stated or originally included amounts no longer sought; the plaintiff retains the burden to prove the fees at trial.

4. A motion in limine is not the proper vehicle to obtain a ruling that a loss-of-consortium claim is unavailable or inadequately pleaded; such issues should be raised through a motion to dismiss or summary judgment.
5. A witness's title alone does not establish that the witness is a director under Federal Rule of Civil Procedure 32; deposition testimony may be used for any purpose against an organizational party only when the witness is an adverse party, an officer, director, managing agent, or Rule 30(b)(6) designee, or when another applicable Rule 32 condition such as unavailability is satisfied.
6. A witness may not testify about the credibility of another witness because credibility determinations are for the jury, although counsel may address credibility during cross-examination.
7. Policies, standards, guidelines, procedures, and marketing materials not in effect during the periods relevant to the alleged incidents are inadmissible at trial; an undated document may be admitted only if its proponent lays a foundation showing that it was in effect during the relevant period.
8. Plaintiffs may not elicit irrelevant hindsight testimony that would not assist the jury in evaluating the applicable standard of care and could mislead the jury.
9. Medical treatises and journals may be used only in accordance with Federal Rule of Evidence 803(18), and the court will apply the Rules of Evidence at trial rather than make a broader pretrial ruling.

## KEY QUOTATIONS

> *"The Court shall exclude evidence in limine only if the evidence is inadmissible on all potential grounds."* (Legal Standard)

> *"The Court agrees with Defendants that lay witnesses may not offer expert testimony, including testimony on causation."* (Motion 1)

> *"Here, the Court finds that Ms. Palato's title alone does not render her a "director" under Rule 32."* (Motion 4)

> *"Motion in Limine 4 is GRANTED in part and RESERVED FOR RULING in all other respects;"* (Conclusion)

## FACTUAL BACKGROUND

The action concerns allegations that Canyon Creek, a licensed memory-care and assisted-living facility, failed to provide adequate staffing, nutrition, hydration, and infection control during a COVID-19 outbreak. Plaintiffs allege that these failures proximately caused injuries and deaths to Robert Petersen, Mary Ann Simons, and Charlotte Guilford. Plaintiffs also seek punitive damages based on alleged failures to implement enhanced infection-control procedures, provide specially trained staff during staffing shortages, and disclose COVID-19 infections to residents and their families.

## PROCEDURAL HISTORY

Plaintiffs brought a negligence action arising from the care provided to three residents during a COVID-19 outbreak. Defendants filed ten motions in limine, and the parties fully briefed the motions. The district court issued pretrial evidentiary rulings, denying some motions, granting others, reserving portions for trial, and deeming the challenge to medical expenses moot.

## DISPOSITION

other

## CASES CITED

- Agan v. BNSF Ry., No. CV 19-83-BLG, 2022 WL 3700052, at *1 (D. Mont. Aug. 26, 2022)
- BNSF Ry. v. Quad City Testing Lab'y, Inc., No. CV-07-170-BLG, 2010 WL 4337827, at *1 (D. Mont. Oct. 26, 2010)
- Colton Crane Co. v. Terex Cranes Wilmington, Inc., No. CV 08-8525, 2010 WL 2035800, at *1 (C.D. Cal. May 19, 2010)
- Sperberg v. Goodyear Tire & Rubber Co., 519 F.2d 708, 712 (6th Cir. 1975)
- United States v. Bensimon, 172 F.3d 1121, 1127 (9th Cir. 1999)
- Luce v. United States, 469 U.S. 38, 41 (1984)
- Town of Superior, Mont. v. Asarco, Inc., 874 F. Supp. 2d 937, 944 (D. Mont. 2004)
- Butler v. Unified Life Ins., No. CV 17-50-BLG, 2018 WL 4473883, at *3-7 (D. Mont. July 18, 2018)
- Cadent Ltd. v. 3M Unitek Corp., 232 F.R.D. 625, 668 (C.D. Cal. 2005)
- Weaver v. Att'y Gen. of Mont., 597 F. Supp. 2d 1126, 1130 (D. Mont. 2008)
- Ford v. Allied Mut. Ins., 72 F.3d 836, 841 (10th Cir. 1996)

## OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA BILLINGS DIVISION ESTATE OF ROBERT W. PETERSEN, by and through Robert T. CV 22-11-BLG-SPW Petersen as Personal Representative; ESTATE OF MARY ANN SIMONS, by and through Dean Simons as ORDER ON DEFENDANTS' Personal Representative; and ESTATE MOTIONS IN LIMINE NOS. OF CHARLOTTE ELAINE 1-10 GUILFORD, by and through Charles Guilford as Personal Representative, Plaintiffs, vs. KOELSCH SENIOR COMMUNITIES, LLC and BILLINGS PARTNERS, LLC d/b/a CANYON CREEK, Defendants.

Defendants filed their Motions in Limine Nos. 1-10 (Doc. 187) seeking to exclude the following evidence and argument from trial: 1. Evidence, argument, or testimony by lay witnesses that they are not qualified to provide; 2. Evidence, argument, or suggestion of undisclosed or unsupported damages, including medical expenses and reimbursement for Canyon Creek fees and loss of consortium damages; 3.

Argument at opening statement, including the mischaracterization of the 2020 Monthly Operations Report, the infection prevention and control assessment tool, and evidence related to the National

Guard; 4. Adverse party's use of depositions "for any purpose"; 5. Questions of witnesses regarding the ultimate issues of a party's "fault," negligence, or liability; 6.

Reference to discovery disputes; 7. Testimony or commentary on the credibility of another witness; 8. Evidence, testimony, or argument regarding documents not in effect at the time of the incidents; 9. Plaintiffs' elicitation of irrelevant and prejudicial hindsight testimony from any witness; and 10. Hearsay evidence, including medical treatises, journals, or other medical authorities.

(Id. at 2-3). The Motions are fully briefed and ripe for the Court's review. (See Docs. 188, 199, 204). I. Background This negligence action arises out of Plaintiffs' allegations that Canyon Creek, a licensed memory care and assisted living facility, failed to properly care for Robert Petersen, Mary Ann Simons, and Charlotte Guilford during the COVID-19 outbreak, proximately causing the decedents' injuries and deaths.

(Doc. 10 at 2-3). Plaintiffs allege Defendants breached their duty of care by failing to provide adequate staffing, nutrition, hydration, and infection control, among other failures. Plaintiffs also seek punitive damages, alleging that Defendants failed to implement enhanced infection control procedures, did not provide specially trained staff during staffing shortages, and deliberately withheld critical information about COVID-19 infections from residents and their families.

(Jd. at 28-31). II. Legal Standard A motion in limine is used to preclude prejudicial or objectionable evidence before it is presented to the jury. Agan v. BNSF Ry., No. CV 19-83-BLG, 2022 WL 3700052, at *1 (D. Mont. Aug. 26, 2022).

The Court shall exclude evidence in limine only if the evidence is inadmissible on all potential grounds. Jd. Unless evidence meets this high standard, the Court shall defer evidentiary rulings until trial so that questions of foundation, relevancy, and potential prejudice are resolved in proper context. Jd. "[A] motion in limine should not be used to resolve factual disputes or weigh evidence." BNSF Ry. v. Quad City Testing Lab'y, Inc., No. CV- 07-170-BLG, 2010 WL 4337827, at *1 (D.

Mont. Oct. 26, 2010). Motions in limine must specifically "identify the evidence at issue and state with specificity why such evidence is inadmissible." Colton Crane Co. v. Terex Cranes Wilmington, Inc., No. CV 08-8525, 2010 WL 2035800, at *1 (C.D. Cal. May 19, 2010). "Orders in limine which exclude broad categories of evidence should rarely be employed. A better practice is to deal with questions of admissibility of evidence as they arise." Sperberg v. Goodyear Tire & Rubber Co., 519 F.2d 708, 712 (6th Cir.

1975). The decision on a motion in limine is consigned to the district court's discretion—including the decision of whether to rule before trial at all. United States v. Bensimon, 172 F.3d 1121, 1127

(9th Cir. 1999), Rulings on motions in limine are provisional, and the trial judge may always change their mind during trial. Luce v. United States, 469 U.S. 38, 41 (1984).

III. Discussion A. Motion 1: Evidence, Argument, or Testimony by Lay Witnesses that They Are Not Qualified to Provide Defendants first move to exclude lay witness testimony regarding standards of care or causation, arguing such opinions fall outside the scope of Federal Rule of Evidence 701 and otherwise resemble expert testimony. (Doc. 188 at 11). Defendants identify past instances in which lay witnesses—such as Plaintiffs' family members or former employees—purported to offer opinions on care and causation, which Defendants characterize as subjective and outside the scope of permissible lay witness testimony. (/d. at 11—13).

Plaintiffs counter that lay testimony is admissible when based on personal knowledge rather than specialized expertise. (Doc. 199 at 3). They do not address Defendants' examples, but rather, argue a lay witness should be permitted to testify to the existence of a medical condition based on their personal knowledge. They also argue that family member lay witnesses should be permitted to testify about their personal observations—including that Mr. Petersen, Ms. Simons, and Ms. Guilford appeared inadequately fed or cared for, or that they had bruising on their bodies.

(Jd. at 4—5). Under Rule 701, lay witnesses are limited to opinions: (1) "rationally based on the witness's perception;" (2) "helpful to clearly understanding the witness's testimony or to determining a fact in issue;" and (3) "not based on scientific, technical, or other specialized knowledge." The Court agrees with Defendants that lay witnesses may not offer expert testimony, including testimony on causation.

At the same time, the Court acknowledges Plaintiffs' position that lay witnesses may testify about their personal observations, even when those observations pertain to medical matters, so long as they are rationally based on the witness's own perception.

Here, though Defendants cite examples of lay testimony they contend resemble expert opinions, the Court finds that the Motion is overly broad without the context of trial. Therefore, Motion 1 is DENIED with leave to renew objections at trial. B. Motion 2: Evidence, Argument, or Suggestion of Undisclosed or Unsupported Damages Defendants next move to preclude Plaintiffs from offering evidence of medical expenses, reimbursement for fees, and loss of consortium damages.

(Doc. 188 at 14-17). As an initial matter, Motion 2 is MOOT as to medical expenses because Plaintiffs no longer seek that remedy. (Doc. 199 at 5). 1, Reimbursement Fees As the Motion pertains to reimbursement fees, Defendants allege that Plaintiffs failed to specify a dollar amount and argue that such broadly stated relief would improperly allow recovery for expenses unrelated to the conduct at issue.

(Doc. 188 at 15). In response, Plaintiffs cite to a discovery disclosure identifying the amounts billed and received for the decedents' care: $9,475.02 for Ms. Guilford, $26,098.19 for Mr.

Petersen, and $86,967.28 for Ms. Simons. Plaintiffs assert that Defendants have been aware of these figures since November 2023. (Doc. 199 at 6). Defendants counter that these amounts include medical expenses, which Plaintiffs are no longer seeking, and which further illustrate Plaintiffs' overly broad request.

(Doc. 204 at 5). In general, "a plaintiff [must] prove damages with reasonable certainty." Town of Superior, Mont. v. Asarco, Inc., 874 F. Supp. 2d 937, 944 (D. Mont. 2004). Thus, even if Plaintiffs' original request included medical expenses, Defendants— as the billing entity—should be able to reasonably approximate the portion attributable to reimbursement fees.

Reasonable certainty need not be exact, and it remains Plaintiffs' burden at trial to prove the fees. The Court will not deny Plaintiffs recovery and allow Defendants to escape liability where reimbursement fees can be reasonably approximated.

In this respect, Motion 2 is DENIED. 2. Loss of Consortium As the Motion pertains to loss of consortium relief, Defendants argue those damages were improperly pled and are not available to the decedents' adult children under Montana law. (Doc. 188 at 16).

First, Defendants elevate form over substance by arguing that damages were improperly pled. This Court has previously recognized loss of consortium claims pled in a manner similar to that of Plaintiffs. E.g., Complaint, Butler v. Unified Life Ins., No. CV 17-50-BLG (D. Mont. Jan. 5, 2018); Butler v. Unified Life Ins., No. CV 17-50-BLG, 2018 WL 4473883, at *3-7 (D.

Mont. July 18, 2018); Butler v. Unified Life Ins., No. CV 17-50-BLG, 2018 WL 4462502 (D. Mont. Sept. 18, 2018). Second, it is improper for Defendants to seek a ruling on a contested legal issue through a motion to exclude evidence. If Defendants believed Plaintiffs lacked a viable claim for loss of consortium, or that such a claim was inadequately pled, the appropriate remedy would have been through a motion for summary judgment or a motion to dismiss.

Having failed to pursue such relief, Defendants may not now attempt to exclude evidence on the basis of an alleged inadequately pled claim. In this respect, Motion 2 is DENIED. C. Motion 3: Limiting Plaintiffs' Opening Statement to Prohibit Inappropriate Argument Defendants next move to limit Plaintiffs' opening statement to prevent argumentative interpretations of evidence, such as alleged mischaracterizations of the 2020 Monthly Operations Report, the infection prevention and control assessment tool, and the involvement of the National Guard.

(Doc. 188 at 18-23), They argue that Plaintiffs have previously presented arguments as evidence and maintain that such advocacy is improper in an opening statement. Plaintiffs respond that they "will comply with applicable law by providing an outline of what Plaintiffs expect in good faith to prove during the course of trial." (Doc. 199 at 9). At this stage, the Court declines to address Defendants' request to prohibit Plaintiffs from mischaracterizing particular evidence because the Court lacks sufficient context to make such determinations.

Counsel may not exaggerate or distort what the evidence will show in opening statements. In this respect, Motion 3 is DENIED. D. Motion 4: Limiting Use of Depositions by Adverse Party “For Any Purpose” Pursuant to Federal Rules of Evidence 32(a) and 30(b)(6), Defendants next move to preclude Plaintiffs from offering the deposition testimony of Wendy Palato, Lonna Olson, Rhoda Byorth, and Cheri Asay “for any purpose,” arguing these individuals were not officers, directors, managing agents, or Rule 30(b)(6) designees of Koelsch or Canyon Creek.

(Doc. 188 at 23-24). Plaintiffs dispute this Motion as to Ms. Palato, arguing she served as Canyon Creek’s “director of resident services” during the events at issue and later as Koelsch’s “traveling director of resident services” at the time of her deposition. (Doc. 199 at 11). Plaintiffs seem to assert that her title qualifies her deposition for use “for any purpose.” Plaintiffs further assert that the depositions of Ms. Olson, Ms. Byorth, and Ms. Asay may be used if those witnesses are unavailable at trial.

(Id.). At trial, a deposition may be used as substantive evidence, i.e., for any purpose, in two circumstances: when the witness is an adverse party, and when the witness is unavailable. Fed. R. Civ. P. 32(a)(3)(4). This principle applies to an organizational party’s officers, directors, and managing agents, and to representatives designed under Rule 30(b)(6).

Therefore, if the witness is an officer, director, managing agent, or designated under Rule 30(b)(6), their deposition testimony can be used “for any purpose” against the entity. Cadent Ltd. v. 3M Unitek Corp., 232 F.R.D. 625, 668 (C.D. Cal. 2005). /// Here, the Court finds that Ms. Palato’s title alone does not render her a “director” under Rule 32.' Plaintiffs have not demonstrated that she possessed authority to bind or speak on behalf of Defendants or that she was designated as a Rule 30(b)(6) representative.

Accordingly, her deposition may not be used “for any purpose.” By contrast, Plaintiffs may use the depositions of Ms. Olson, Ms. Byorth, and Ms. Asay if those witnesses are deemed unavailable under Rule 32. For this reason, Motion 4 is GRANTED as to Ms. Palato and RESERVED FOR RULING in all other respects. E. _—_ Motion 5: Questions of Witnesses Regarding the Ultimate Issues of a Party’s “Fault,” Negligence, or Liability Defendants next move to preclude Plaintiffs’ counsel from asking questions regarding ultimate issues of fault, negligence, or liability, because those questions would invade the jury’s role and constitute reversible error.

(Doc. 188 at 24-25). Plaintiffs do not intend to elicit ultimate issue testimony. (Doc. 199 at 11). Because the parties generally agree, Motion 5 is GRANTED. ' The Court notes that Defendants are limited liability companies who do not have directors, The companies are made up of members and are controlled by managers. See Mont. Code Ann. §§ 35- 8-201, -202(1)(e) (2023).

As to expert witnesses, the Court notes there is a fine line between expert opinion on an ultimate issue of fact and a legal conclusion; an expert can testify to an issue of law but may not express an opinion on a conclusion of law. Fed. R. Evid. 704(a); Ford v. Allied Mut. Ins., 72 F.3d 836, 841 (10th Cir. 1996).

The parties are expected to comply with the Rules of Evidence when examining their witnesses and any specific objections related to ultimate conclusions may be made at trial. 10 F. Motion 6: Reference to Discovery Disputes at Trial Defendants next move to preclude Plaintiffs from referencing discovery disputes, arguing that any prior disputes would be irrelevant and prejudicial.

(Doc. 188 at 25-26). The Court finds that any reference to discovery disputes is irrelevant to this case. However, the Court acknowledges that the parties may make arguments that certain documents were not produced to corroborate testimony if relevant to the issues. (See Doc. 199 at 12).

In this respect, Motion 6 is GRANTED. G. Motion 7: Testimony or Commentary on the Credibility of Another Witness Defendants next move to preclude Plaintiffs from eliciting testimony or commentary from a witness on the credibility of another witness, arguing that such testimony would invade the province of the jury. (Doc. 188 at 26-27). Plaintiffs agree that determining witness credibility is solely the jury’s responsibility but argue that implicating the credibility of a witness is one of the essential roles of an attorney at trial.

(Doc. 199 at 13). Neither party is allowed to put a witness on the stand to comment on the credibility of another witness because it is the jury’s responsibility “to make credibility determinations about witnesses.” Weaver v. Att’y Gen. of Mont., 597 F. Supp. 2d 1126, 1130 (D. Mont. 2008).

However, the Court recognizes that counsel 11 may implicate the credibility of a witness during cross-examination. Therefore, in this respect, Motion 7 is GRANTED. H. Motion 8: Evidence, Testimony, or Argument Regarding Documents Not in Effect at the Time of the Incidents Defendants next move to exclude evidence regarding documents and testimony not in effect at the time of the incidents, arguing it would be irrelevant and likely to confuse the jury.

(Doc. 188 at 27-29). Policies, standards, guidelines, procedures, and marketing materials not in effect during time periods relevant to the issues shall be precluded from trial. In this respect, Motion 8 is GRANTED.

However, the Motion is RESERVED FOR RULING as it pertains to the undated core values document (Doc. 188-12). The party introducing the document must lay foundation showing that the document was in effect during the relevant time period. Motion 9: Elicitation of Irrelevant and Prejudicial Hindsight Testimony from Any Witness Defendants next move to preclude Plaintiffs’ counsel from eliciting hindsight testimony, arguing it would not be relevant to the standard of care and could mislead the jury.

(Doc. 188 at 30-31). The Court agrees. Motion 9 is GRANTED. 12 J. Motion 10: Compliance with Federal Rule of Evidence 803(18) Finally, Defendants request that the Court require Plaintiffs to establish the reliability of any medical treatises or journals before introducing them at trial, and that such references should only be read into evidence, not submitted as exhibits.

(Doc. 188 at 32-33); see Fed. R. Evid. 803(18). The Court will apply the Rules of Evidence at trial and implores the parties to do the same. In this respect, Motion 10 is GRANTED. IV. Conclusion For the reasons stated above, IT IS HEREBY ORDERED that the Court's rulings on Defendants' Motions in Limine Nos. 1-10 (Doc. 187) are as follows: (1) Motion in Limine 1 is DENIED with leave to renew objections at trial; (2) Motion in Limine 2 is MOOT as to medical expenses and DENIED in all other respects; (3) Motion in Limine 3 is DENIED; (4) Motion in Limine 4 is GRANTED in part and RESERVED FOR RULING in all other respects; (5) Motion in Limine 5 is GRANTED; (6) Motion in Limine 6 is GRANTED; (7) Motion in Limine 7 is GRANTED; 13 (8) Motion in Limine 8 is GRANTED in part and RESERVED FOR RULING in all other respects; (9) Motion in Limine 9 is GRANTED; and (10) Motion in Limine 10 is GRANTED. ad DATED this _.2day of December, 2025.

SUSAN P. WATTERS United States District Judge 14