

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PRECEDENTIAL VALUE	unpublished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](#)
[relevancy](#)
[hearsay](#)
[negligence](#)

PRACTICE AREAS

[civil procedure](#)
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[health law](#)
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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)