

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

Estate of Petersen v. Koelsch Senior Communities · No. CV 22-11-BLG-SPW · Decided December 2, 2025

SUMMARY

The United States District Court for the District of Montana ruled on plaintiffs’ omnibus motions in limine in a negligence action arising from alleged failures to care for residents during the COVID-19 outbreak at an assisted living and memory care facility. The court denied four motions, allowing renewal of objections at trial for three, granted the motion concerning arguments impugning attorneys subject to a voir dire exception, and denied the motion to exclude defendants’ expert John Bowblis. The order addresses discovery-related impeachment evidence, expressions of sympathy, pleadings, attorney conduct, and the admissibility of expert testimony under Federal Rule of Evidence 702.

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	Plaintiffs moved in limine before trial to exclude five categories of evidence and argument in their negligence action. The district court granted the fourth motion in part and denied the other motions, generally with leave to renew objections at trial.

STANDARD OF REVIEW	Motions in limine are committed to the district court's discretion. Evidence should be excluded before trial only when it is inadmissible on all potential grounds; otherwise, admissibility ordinarily should be addressed in the context of trial. Expert testimony is governed by Federal Rule of Evidence 702.
PRECEDENTIAL VALUE	district court order; precedential status not stated
PARTIES	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, Estate of Charlotte Elaine Guilford, by and through Charles Guilford as Personal Representative v. Koelsch Senior Communities, LLC, Billings Partners, LLC d/b/a Canyon Creek

TOPICS

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QUESTIONS PRESENTED

1. Whether the court should exclude personnel information concerning former employees that Defendants allegedly failed to disclose in discovery.
2. Whether the court should prospectively exclude statements of sympathy, apologies, or references to opposing counsel as 'my friend' or by first name.
3. Whether references to allegations or claims in prior pleadings should be excluded because the final pretrial order superseded the pleadings.
4. Whether arguments impugning counsel, including attorney advertising and how counsel came to represent the parties, should be excluded, subject to voir dire questioning about jurors' familiarity with counsel.
5. Whether John Bowblis, Ph.D., was qualified under Federal Rule of Evidence 702 and whether his proposed opinions were relevant and helpful to the jury.

HOLDINGS

1. The court declined to resolve the underlying discovery dispute before trial and denied the motion, with leave to renew objections at trial. Undisclosed information may be used solely for impeachment and only when applicable on cross-examination.
2. A motion in limine should be granted only when the challenged evidence is inadmissible on all potential grounds; otherwise, the court should ordinarily defer evidentiary rulings until trial.

3. The final pretrial order supersedes prior pleadings and controls the subsequent course and scope of the action; claims, issues, defenses, or damages theories omitted from the pretrial order are waived even if included in the complaint. The motion was nevertheless denied as vague and overbroad, with leave to renew objections at trial.
4. The motion to exclude arguments impugning counsel, including attorney advertising and how counsel came to represent the parties, was granted, except that the parties could ask prospective jurors during voir dire about familiarity with counsel and whether that familiarity would affect impartiality.
5. Dr. Bowblis was qualified under Federal Rule of Evidence 702, and his proposed testimony was relevant and helpful to the jury. The motion to exclude his opinions was denied.

KEY QUOTATIONS

“The Court shall exclude evidence in limine only if the evidence is inadmissible on all potential grounds.” (at 1)

“Claims, issues, defenses, or theories of damages not included in the pretrial order are waived even if they appeared in the complaint.” (at 5)

“A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:” (at 8)

FACTUAL BACKGROUND

Plaintiffs alleged that Canyon Creek failed to provide adequate staffing, nutrition, hydration, and infection-control measures during the COVID-19 outbreak, causing injuries and deaths. They also sought punitive damages based on alleged failures to implement enhanced infection-control procedures, provide specially trained staff during shortages, and disclose COVID-19 infections to residents and families. The challenged expert, John Bowblis, Ph.D., offered economic and regulatory opinions concerning staffing levels, assisted-living operations, PPE, resident-care levels, and the relationship between Canyon Creek and Koelsch.

PROCEDURAL HISTORY

Plaintiffs brought a negligence action alleging that Canyon Creek, a licensed memory-care and assisted-living facility, failed to properly care for three residents during the COVID-19 outbreak. After the case proceeded toward trial, Plaintiffs filed omnibus motions in limine. The motions were fully briefed, and the district court entered this pretrial evidentiary order.

DISPOSITION

other

CASES CITED

- *Agan v. BNSF Ry.*, 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)
- Kelley v. Smith's Food & Drug Ctrs., Inc., No. 2:14-cv-00856, 2014 WL 6474026, at *4 n.3 (D. Nev. Nov. 19, 2014)
- Duhn Oil Tool, Inc. v. Cooper Cameron Corp., 818 F. Supp. 2d 1193, 1207 (E.D. Cal. 2011)
- Hardesty v. Barcus, No. CV 11-103-M, 2012 WL 5906797, at *2 (D. Mont. Nov. 26, 2012)
- Hangarter v. Provident Life & Accident Ins. Co., 373 F.3d 998, 1015-16 (9th Cir. 2004)
- Santos v. Posadas de Puerto Rico Assocs., Inc., 452 F.3d 59, 64 (1st Cir. 2006)
- Carroll v. Otis Elevator Co., 896 F.2d 210, 212 (7th Cir. 1990)
- Hemmings v. Tidyman's Inc., 285 F.3d 1174, 1184 (9th Cir. 2002)
- United States v. Sandoval-Mendoza, 472 F.3d 645, 654 (9th Cir. 2006)