

PUBLICATION INFORMATION:

Estate of Rick v. Stevens, 2002 WL 1713301 (N.D. Iowa July 2, 2002) (Unpublished decision)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

ESTATE OF JOHN RICK, JR., by PEG RICK, personal representative, and PEG RICK, individually, TRICIA RICK, and SARA RICK,

Plaintiffs,

vs.

GILMORE STEVENS, Q CARRIERS, INC., a Minnesota corporation, and VALLEY RIDGE LEASING, INC., a Minnesota corporation,

Defendants.

No. C 00-4144-MWB

**MEMORANDUM OPINION AND
ORDER REGARDING PLAINTIFFS'
FIRST MOTION TO OFFER
DEPOSITION TESTIMONY INTO
THE RECORD BY WRITTEN
SUBMISSION AND DEFENDANTS'
MOTION IN LIMINE**

TABLE OF CONTENTS

<i>I. INTRODUCTION</i>	2
<i>II. LEGAL ANALYSIS</i>	3
<i>A. Plaintiffs' Motion To Submit Depositions</i>	3
<i>B. The Defendants' Motion In Limine</i>	3
<i>1. Evidence and grounds for exclusion</i>	3
<i>2. Purposes of a motion in limine</i>	5
<i>3. Admissibility of the challenged evidence</i>	8
<i>a. Evidence of settlement negotiations</i>	8
<i>b. Evidence of liability insurance</i>	9
<i>c. Evidence of post-accident training or counseling</i>	11
<i>d. Evidence of regulatory violations</i>	12
<i>III. CONCLUSION</i>	13

I. INTRODUCTION

This diversity action involves personal injury claims arising from an automobile accident in Juneau County, Wisconsin, on January 8, 1999. Plaintiffs' decedent, John Rick, Jr., an Iowa resident, suffered fatal injuries in an accident involving his vehicle, two vehicles driven by Wisconsin residents, and a semi-trailer truck operated by defendant Gilmore Stevens, a South Carolina resident, and leased from defendant Valley Ridge Leasing, Inc. (Valley Ridge), a Minnesota corporation. At the time of the accident, Gilmore was hauling a load as an employee or independent contractor of defendant Q Carriers, Inc., a Minnesota corporation.¹ This matter is set for a bench trial beginning July 29, 2002.

Four pretrial motions are currently pending before the court, but only two of them are currently ripe for consideration: (1) the plaintiffs' June 4, 2002, "Motion for Permission to Offer Deposition Testimony into the Record by Written Submission"; and (2) the defendants' June 17, 2002, "Motion in Limine."² The first motion is ripe, because the time

¹By order dated June 11, 2001, the court denied the separate motions to dismiss for lack of personal jurisdiction filed by defendants Valley Ridge and Stevens and the defendants' joint motion to dismiss or transfer based on *forum non conveniens*, concluding, *inter alia*, that the defendants had waived any contention that the forum was improper, not merely inconvenient. *See Rick v. Stevens*, 145 F. Supp. 2d 1026 (N.D. Iowa 2001). By order dated July 18, 2001, the court reaffirmed its conclusion concerning waiver of any improper forum challenge and denied the defendants' motion to reconsider on that ground.

²The other two motions currently pending before the court are the defendants' June 12, 2002, "Motion for Offer of Deposition Testimony by Written Submission," and the plaintiffs' second "Motion for Permission to Offer Deposition Testimony," filed June 21, 2002, and concerning the deposition testimony of defendant Gilmore Stevens. Neither motion indicates that it is unresisted, nor has the opposing party filed a statement indicating
(continued...)

for any resistance by the defendants under N.D. IA. L.R. 7.1(e) and FED. R. CIV. P. 6(e) has expired, and the motion may therefore be granted without prior notice from the court. See N.D. IA. L.R. 7.1(f). The second motion is ripe, because the plaintiffs' resisted it on June 19, 2002.

II. LEGAL ANALYSIS

A. Plaintiffs' Motion To Submit Depositions

In their June 4, 2002, "Motion for Permission to Offer Deposition Testimony into the Record by Written Submission," the plaintiffs assert that five witnesses are either out of state and unavailable for trial or are adverse parties or officers of adverse parties. The plaintiffs assert, further, that the depositions of these witnesses are offered as written submissions in lieu of the wasteful process of reading the depositions into the record in the course of a bench trial. The plaintiffs have attached to their motion the full text of the depositions they seek to offer as written submissions. The court agrees that submission of these depositions to the written record is the most efficient way of offering the evidence into the record for a bench trial and, in the absence of any timely resistance, see N.D. IA. L.R. 7.1(f), concludes that the plaintiffs' motion should be granted.

B. The Defendants' Motion In Limine

1. Evidence and grounds for exclusion

The defendants' June 17, 2002, "Motion in Limine" is not quite so swiftly resolved, in light of the plaintiffs' timely resistance. In their "Motion in Limine," the defendants seek to exclude five categories of evidence: (1) evidence of defendant Stevens's log book

²(...continued)

that the motion will not be resisted. See N.D. IA. L.R. 7.1(f). Therefore, the court must await either a timely resistance or the expiration of the time for such a resistance.

violations, because such evidence is irrelevant where there is no evidence that the log book violations or defendant Stevens's alleged over-hours driving had any causal relationship to the accident giving rise to this lawsuit; (2) evidence of alleged regulatory violations by Q Carriers and DOT audits regarding those violations, because one such regulatory action was reversed after investigation, and there is no evidence that any other regulatory violations were related to the cause of the accident at issue here; (3) evidence that defendant Stevens received counseling regarding following distances after the accident, on the ground that such evidence is precluded by Rule 407 of the Federal Rules of Evidence; (4) evidence of liability insurance, on the ground that such evidence should be barred by Rule 403 of the Federal Rules of Evidence; and (5) evidence of attempts to settle this matter, on the ground that such evidence is barred by Rule 408 of the Federal Rules of Evidence.

The plaintiffs' general response is that the defendants' motion in limine is a waste of time in the context of a bench trial. However, the plaintiffs also assert more specific arguments concerning the admissibility of at least some of the evidence the defendants seek to exclude. First, they argue that evidence of the defendants' liability insurance will be offered only insofar as it relates to the issue of whether Stevens is an "employee" of the defendant corporations or is instead an "independent contractor," because the defendants have admitted that Stevens was covered by the corporations' liability policy and consequently did not have to procure his own insurance. The plaintiffs also argue that the numerous log and hours violations before and after the accident, and the fact that Stevens was required to take additional training on following distances, because he himself, his safety manager, and his employer all admitted that he was following too close at the time of the accident, are "relevant and admissible," although the plaintiffs do not clarify the grounds for admissibility of this evidence on which they rely.

2. Purposes of a motion in limine

As least one trial court fervently agrees with the plaintiffs' contention that the defendants' motion in limine is ill advised in the context of a bench trial. See *Cramer v. Sabine Transp. Co.*, 141 F. Supp. 2d 727, 733 (S.D. Tex. 2001). That court denied the plaintiffs' motion in limine, at least in part, because "this is a bench trial, making any motion in limine asinine on its face." *Cramer*, 141 F. Supp. 2d at 733. That court's diatribe continued, "Motions in limine are intended to prevent allegedly prejudicial evidence from being so much as whispered before a jury prior to obtaining the Court's permission to broach the topic. In a bench trial, such procedures are unnecessary, as the Court can and does readily exclude from its consideration inappropriate evidence of whatever ilk." *Id.* There may be some—even considerable—merit to this view of appropriateness of motions in limine prior to bench trials.

However, it is far from universal. First, at least in theory, the Federal Rules of Evidence apply with full force to bench trials. See FED. R. EVID. 1101(b); see also 9 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 2411, at 587 (2d ed. 1995) ("In theory, the Federal Rules of Evidence apply equally in court trials and jury trials."). Second, "prevent[ing] allegedly prejudicial evidence from being so much as whispered before a jury prior to obtaining the Court's permission to broach the topic," as noted by the court in *Cramer*, is not the only purpose of a motion in limine, notwithstanding the obvious benefits, in a jury trial, of neither wasting the jury's time while evidentiary questions that could have been forecast are resolved, nor contaminating the jury with evidence that the jury should not hear, let alone consider. See, e.g., *Wilson v. Williams*, 182 F.3d 562, 575 (7th Cir. 1999) (Manion, J., concurring in part and dissenting

in part);³ *Jonasson v. Lutheran Child and Family Services*, 115 F.3d 436, 440 (7th Cir. 1997) (a ruling on a motion in limine “eliminates further consideration of materials that should not be presented to the jury because they would be inadmissible for any purpose.”).

Instead, there are trial management benefits to a motion in limine that, in this court’s view, are equally applicable to a bench or jury trial. As the Supreme Court explained,

³Judge Manion recognized, and eloquently explained, both time-savings and avoidance of exposure of the jury to prejudicial evidence as virtues of a motion in limine in his concurring and dissenting opinion in *Wilson*:

A pre-trial motion in limine serves two valuable purposes. The first is to allow the court and the parties to argue evidentiary issues in detail, avoiding significant delay after a jury has been impaneled. Thereby, when the issue presents itself during trial, counsel need do no more than renew the motion in limine (or the objection thereto). If, as the trial evidence develops, the district court is of the same opinion as before trial, the judge merely has to incorporate his reasoning in denying (or granting) the motion in limine. This is neither time-consuming nor difficult. The second benefit of the motion is to alert the district court to evidentiary issues which are potentially prejudicial in their nature. Rule 103(c) of the Federal Rules of Evidence already recognizes this concern, and directs district courts to conduct proceedings “so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof . . . in the hearing of the jury.” A motion in limine allows counsel to apprise the district court of these potential issues, so that when (and if) they arise during the proceedings, the district court will be positioned to excuse the jury or call a sidebar if necessary. And if the factual basis of the motion in limine was accurate, and the judge sees no need to revisit the issue, the attorneys and court may simply incorporate the motion in limine material by reference, without alerting the jury to their substance. Or, if necessary, opposing counsel can make an offer of proof when the jury isn’t present.

Wilson, 182 F.3d at 575 (Manion, J., concurring in part and dissenting in part).

“Although the Federal Rules of Evidence do not explicitly authorize *in limine* rulings, the practice has developed pursuant to the district court’s inherent authority to manage the course of trials.” *Luce v. United States*, 469 U.S. 38, 41 n.4 (1984). In its decision in *Luce*, the Sixth Circuit Court of Appeals suggested that the primary purposes of an *in limine* ruling are to streamline the case for trial and to provide guidance to counsel regarding evidentiary issues. *United States v. Luce*, 713 F.2d 1236, 1239 (6th Cir. 1983), *aff’d*, 469 U.S. 38 (1984). As explained more fully and more recently by the Seventh Circuit Court of Appeals in *Jonasson*,

[T]he motion *in limine* is an important tool available to the trial judge to ensure the expeditious and evenhanded management of the trial proceedings. It performs a gatekeeping function and permits the trial judge to eliminate from further consideration evidentiary submissions that clearly ought not be presented to the jury because they clearly would be inadmissible for any purpose. The prudent use of the *in limine* motion sharpens the focus of later trial proceedings and permits the parties to focus their preparation on those matters that will be considered by the jury.

Jonasson, 115 F.3d at 440; *accord Palmieri v. Defaria*, 88 F.3d 136, 141 (2d Cir. 1996) (“The purpose of an *in limine* motion is ‘to aid the trial process by enabling the Court to rule in advance of trial on the relevance of certain forecasted evidence, as to issues that are definitely set for trial, without lengthy argument at, or interruption of, the trial.’”) (quoting *Banque Hypothecaire Du Canton De Geneve v. Union Mines*, 652 F. Supp. 1400, 1401 (D. Md. 1987)). These observations concerning the virtues of trial management and clarification of the focus upon pertinent issues that can be gained from a motion *in limine* are just as applicable when the trial court, rather than a jury, is the finder of fact.

Even though a ruling on a motion *in limine* may have considerable benefits, even in a bench trial, sometimes the trial court, like a reviewing court, “is handicapped in any effort to rule on subtle evidentiary questions outside a factual context.” *Cf. Luce*, 469 U.S.

at 41. As the Seventh Circuit Court of Appeals also explained in *Jonasson*,

Some evidentiary submissions, however, cannot be evaluated accurately or sufficiently by the trial judge in [the] procedural environment [of a ruling on a motion in limine]. In these instances, it is necessary to defer ruling until during trial, when the trial judge can better estimate its impact on the jury. Here the district court demonstrated a keen understanding of the proper role and limits of the motion in limine. It ruled on those matters that could be determined as threshold issues and deferred ruling on those matters on which it believed that the interest of both parties would be better served by deferring the ruling until the issue could be determined in a more concrete setting.

Jonasson, 115 F.3d at 440; see also *Walden v. Georgia-Pacific Corp.*, 126 F.3d 506, 518 (3d Cir. 1997) (“As we [have] explained . . . , ‘if an issue is fully briefed and the trial court is able to make a definitive ruling, then the motion in limine provides a useful tool for eliminating unnecessary trial interruptions.’”) (quoting *American Home Assurance Co. v. Sunshine Supermarket, Inc.*, 753 F.2d 321, 324 (3d Cir. 1985)), cert. denied, 523 U.S. 1074 (1998). Therefore, not all evidentiary questions presented in a motion in limine can—or should—necessarily be resolved prior to trial.

3. Admissibility of the challenged evidence

Under the circumstances, the court finds it appropriate to consider in reverse order the five categories of evidence that the defendants seek to exclude. Therefore, the court begins its analysis of the admissibility or excludability of the challenged evidence with consideration of evidence of settlement negotiations.

a. Evidence of settlement negotiations

The court notes that the plaintiffs made no specific resistance to the defendants’ argument that the court should exclude the fifth category of challenged evidence, identified by the defendants as evidence of attempts to settle this matter. Cf. N.D. IA. L.R. 7.1(f) (the court may grant a motion in its entirety, without prior notice, if the motion is not timely

resisted). Indeed, such evidence falls so squarely within the prohibitions of Rule 408 of the Federal Rules of Evidence that the court would have excluded it in any event in the absence of any argument that the evidence also fit an exclusion identified in the Rule. See FED. R. EVID. 408 (evidence of offering or accepting a valuable consideration in compromising a claim or attempting to compromise a claim “is not admissible to prove liability for or the invalidity of the claim or its amount”). The plaintiffs have not asserted that any of the permissible purposes for offering such evidence is applicable in this case, see FED. R. EVID. 408 (permissible grounds for admissibility of evidence of settlement negotiations include “proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution”), so that evidence of settlement negotiations here is evidence “that clearly ought not be presented to the [trier of fact] because [it] clearly would be inadmissible for any purpose.” *Jonasson*, 115 F.3d at 440. Thus, this portion of the defendants’ motion in limine properly forecasts evidence that should not be considered by the trier of fact, see *Palmieri*, 88 F.3d at 141, and such evidence of settlement negotiations will be excluded.

b. Evidence of liability insurance

Continuing in reverse order, the defendants also seek to exclude evidence of liability insurance, on the ground that such evidence should be barred by Rule 403 of the Federal Rules of Evidence. The plaintiffs do argue that this evidence is admissible, and will be offered, only insofar as it relates to the issue of whether Stevens is an “employee” of the defendant corporations or is instead an “independent contractor.”

Although the defendants assert that this evidence should be excluded under Rule 403, the court finds that the pertinent rule of evidence is, at least in the first instance, Rule 411. That Rule provides as follows:

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. This rule does not

require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

FED. R. EVID. 411. Thus, by referring to the admissibility of evidence of liability insurance for purposes of proving “agency . . . or control,” Rule 411 opens the door for the admissibility of the evidence for plaintiffs’ asserted purpose of proving that Stevens was an “employee” of the defendants, not merely an “independent contractor.”

However, turning to a balance of probative value against unfair prejudice under Rule 403, the court finds that the plaintiffs’ further argument somewhat undercuts the need for such evidence, because the plaintiffs add that the defendants have admitted that Stevens was covered by the corporations’ liability policy and consequently did not have to procure his own insurance. If the defendants were to so stipulate concerning Stevens’s coverage by the corporations’ liability policy, it is not altogether clear why the policy itself would have to be admitted into evidence. On the other hand, if the plaintiffs’ argument is that the corporations’ liability insurance policy, by its specific terms, only covered “employees,” then the evidence of the liability insurance policy itself would be relevant and admissible on the question of whether or not Stevens was, indeed, an “employee” of the defendant corporations and such evidence would not be unfairly prejudicial. *See* FED. R. EVID. 411 & 403.

Merely framing the remaining questions demonstrates that this is a situation in which the “evidentiary submissio[n] cannot be evaluated accurately or sufficiently by the trial judge in [the] procedural environment [of a ruling on a motion in limine],” so that “it is necessary to defer ruling until during trial, when the trial judge can better estimate its impact on the [trier of fact]” and “the issue could be determined in a more concrete setting.” *Jonasson*, 115 F.3d at 440; *and compare Walden*, 126 F.3d at 518 (“As we [have] explained . . . , ‘if an issue is fully briefed and the trial court is able to make a definitive ruling, then the motion in limine provides a useful tool for eliminating unnecessary trial

interruptions.’”) (quoting *American Home Assurance Co.*, 753 F.2d at 324). Therefore, this portion of the defendants’ motion in limine will be denied, but without prejudice to the defendants’ timely objection to the admissibility of such evidence at trial.

c. Evidence of post-accident training or counseling

The defendants also seek to exclude evidence that defendant Stevens received counseling regarding following distances after the accident, on the ground that such evidence is precluded by Rule 407 of the Federal Rules of Evidence. The plaintiffs argue that the fact that Stevens was required to take additional training on following distances is “relevant and admissible,” because he himself, his safety manager, and his employer all admitted that he was following too close at the time of the accident. However, as mentioned above, the plaintiffs do not make clear what the grounds for admissibility of this evidence might be, even in light of the purported admission.

Rule 407 of the Federal Rules of Evidence provides, in pertinent part, as follows:

When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence [or] culpable conduct. . . . This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

FED. R. EVID. 407. The evidence of post-accident training or counseling on following distances, as characterized by both the defendants, in the motion in limine, and the plaintiffs, in their resistance, appears to fall squarely within the prohibition of Rule 407 on evidence of “subsequent measures.” *Id.* Moreover, unlike the evidence of liability insurance, where the plaintiffs’ argument plainly implicated an exception to inadmissibility under Rule 411, it is not at all clear what exception in Rule 407 the plaintiffs may be relying upon for the admissibility of the defendants’ post-accident remedial measures. Nor does

the suggestion that following distances played a part in the accident appear to be “controverted,” even if the plaintiffs are asserting the feasibility of pre-accident training for Stevens on following distances, and the plaintiffs do not appear to suggest that requiring Stevens to undergo such training demonstrates the defendant corporations’ “control” over Stevens, which might go to whether or not he was an “employee.” *See id.* (evidence of post-event remedial measures is admissible to prove “ownership, control, or feasibility of precautionary measures, *if controverted*”) (emphasis added). If the plaintiffs’ intent is to impeach any testimony by the defendants that following too close was *not* a cause of the accident, and hence neither they nor Stevens was negligent, *see id.* (identifying “impeachment” as a permissible purpose of introducing evidence of post-event remedial measures), then the impeachment would come from the purported “admission” by Stevens, his safety manager, and his employer that Stevens was following too close at the time of the accident, not from the subsequent remedial training. *See id.*, Advisory Committee Notes (1972) (“The rule rests on [the] groun[d] [that] the conduct is not in fact an admission, since the conduct is equally consistent with injury by mere accident or through contributory negligence.”).

Therefore, this portion of the defendants’ motion in limine will be granted, but the exclusion of the evidence is conditional: The plaintiffs may make an offer of proof demonstrating the admissibility of the evidence for a proper purpose, if they have one.

d. Evidence of regulatory violations

The court will lump together the two remaining categories of evidence that the defendants seek to exclude, which are evidence of log book violations by Stevens and evidence of alleged regulatory violations by Q Carriers and DOT audits regarding those violations. Consideration of these two categories together is appropriate, because the defendants make essentially the same arguments for inadmissibility of the evidence on relevance grounds. They insist that there is no evidence that the log book violations or

defendant Stevens's alleged over-hours driving or any regulatory violations by Q Carriers had any causal relationship to the accident giving rise to this lawsuit. Again, the plaintiffs' resistance to exclusion of this evidence consists of the obscure assertion that the evidence is "relevant and admissible." Whatever else the plaintiffs may be arguing, it appears that they challenge the defendants' assertion that the regulatory violations are not related to the cause of the accident giving rise to this lawsuit.

The court concludes that these categories of evidence also present a situation in which the "evidentiary submissions cannot be evaluated accurately or sufficiently by the trial judge in [the] procedural environment [of a ruling on a motion in limine]," so that "it is necessary to defer ruling until during trial, when the trial judge can better estimate its impact on the [trier of fact]" and "the issue could be determined in a more concrete setting." *Jonasson*, 115 F.3d at 440; *and compare Walden*, 126 F.3d at 518 ("As we [have] explained . . . , 'if an issue is fully briefed and the trial court is able to make a definitive ruling, then the motion in limine provides a useful tool for eliminating unnecessary trial interruptions.'") (quoting *American Home Assurance Co.*, 753 F.2d at 324). Therefore, this portion of the defendants' motion in limine will be denied, but without prejudice to the defendants' timely objection to the admissibility of such evidence at trial.

III. CONCLUSION

Upon consideration of the submissions of the parties, the court finds no ground for denying the plaintiffs' unresisted first motion to submit depositions in writing to the trial record. However, the court concludes that the defendants' motion in limine can be granted only in part, and must be denied in part, and both resolutions must be conditional, at least as to some categories of evidence.

THEREFORE,

1. The plaintiffs' June 4, 2002, "Motion for Permission to Offer Deposition

Testimony into the Record by Written Submission” is **granted**. The pertinent depositions, already marked as trial exhibits and submitted with the plaintiffs’ motion, shall be deemed part of the trial record.

2. The defendants’ June 17, 2002, “Motion in Limine” is **granted in part and denied in part**, as follows:

a. The defendants’ motion is **granted** as to evidence of settlement negotiations, and such evidence is **excluded** pursuant to Rule 408 of the Federal Rules of Evidence;

b. The defendants’ motion is **denied** as to evidence of liability insurance, but such denial is without prejudice to the defendants’ timely objection to the admissibility of such evidence at trial;

c. The defendants’ motion is **granted** as to evidence of post-accident remedial training or counseling of defendant Stevens regarding following distances, and such evidence is **excluded** pursuant to Rule 407 of the Federal Rules of Evidence, but without prejudice to an offer of proof by the plaintiffs demonstrating the admissibility of the evidence for a proper purpose, if they have one; and

d. The defendants’ motion is **denied** as to evidence of regulatory violations by any of the defendants, but without prejudice to the defendants’ timely objection to the admissibility of such evidence at trial.

IT IS SO ORDERED.

DATED this 2nd day of July, 2002.

Mark W. Bennett

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA