

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

CHARLES E. BUTLER  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 NORTH KING STREET  
Suite 10400  
WILMINGTON, DE 19801  
PHONE: (302) 255-0656  
FAX: (302) 255-2274

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S. Harold Lankenau, Esquire  
Lundy Law  
1600 Pennsylvania Avenue, Suite C  
Wilmington, DE 19806

Joel H. Fredricks, Esquire  
Casarino Christman Shalk Ransom & Doss  
405 N. King Street, Suite 300  
P.O. Box 1276  
Wilmington, DE 19899-1276

**Re: *Jones v. State Farm Mutual Automobile Insurance Co.*  
C.A. No. N11C-09-140 CEB  
*Upon Consideration of Defendant's Motion for a New Trial.*  
**DENIED.****

Dear Counsel:

The Court has reviewed defendant's motion for a new trial. In it, defendant continues to seek reargument on a point the Court has previously ruled adverse to defendant. For the reasons previously stated, numerous times, and again articulated herein, the motion is **DENIED**.

Plaintiff was injured in an automobile accident in which the offending driver was uninsured. Plaintiff was insured by State Farm Mutual Automobile Insurance Company ("State Farm") and State Farm was thus called upon to respond with

uninsured motorist coverage. State Farm defended the action, but stipulated that plaintiff was injured through the negligent driving of the uninsured driver. Thus, State Farm's sole defense to the action was an effort to undermine the damages claimed by plaintiff.

Plaintiff claimed the accident injured her neck and back, describing various trauma and its effects on her day to day living. During discovery, State Farm learned that plaintiff had suffered previous injuries in 2001 and 2004 from different accidents and those injuries were to the same general area (neck and back) as this one. Defendant procured copies of the medical records from those prior accidents.

At the pretrial conference, defendant's counsel urged that he wanted to introduce the medical records from the 2001 and 2004 accidents. Counsel argued that he did not need an expert witness or any other witness to introduce the documents. The Court expressed some skepticism at counsel's argument, but invited him to further elucidate his point via a motion *in limine*. Counsel dutifully filed such a motion and further argument was held. The Court was of the view that plaintiff's expert could be cross examined concerning the 2001 and 2004 injuries, as such inquiry would bear on the expert's opinions and basis of knowledge, but the Court remained unconvinced that whole reams of medical records should be dropped on the jury.

At trial, defense counsel did indeed cross examine the plaintiff's expert at some length and detail about plaintiff's preexisting conditions resulting from the prior accidents. Counsel did likewise with plaintiff herself. Indeed, counsel made great use of the prior records throughout the trial and was not restricted in any way.

Counsel's further argument that the records themselves should go to the jury was ultimately met with the Court's refusal to allow counsel to confuse or mislead the jury by direct entry of the records themselves. That ruling was, the Court still believes, the correct one. Defendant chose not to present expert testimony, relying instead upon a zesty cross examination of plaintiff's expert. Plaintiff's expert testified, to within a reasonable degree of medical certainty, that plaintiff's injuries were caused by the recent (2010) accident and not the prior accidents. As this was the sole testimony that was presented to within a reasonable degree of medical certainty, there is certainly a good argument to be made that defendant should have been precluded from even mentioning the prior accidents.

The Court allowed defense counsel to delve into the prior accidents solely to undermine/impeach plaintiff's expert and his basis for expressing his opinion. Defendant argues that the probative value of the medical records was to show that plaintiff experienced neck pain prior to the 2009 accident. This point was made, several times during defendant's extensive cross examination of the plaintiff and her medical expert, thereby diminishing the probative value of admitting the

records themselves into evidence. In contrast, the risk of confusion to the jury was high. The Court felt then – and feels now—that to allow the records themselves into evidence, for the jury to do whatever it wanted with them, would be to invite the jury to make its own “but for” determination on causation during its deliberations. While the Court allowed impeachment of plaintiff’s expert, it was not willing to allow plaintiff to suggest a different cause of plaintiff’s injuries in the absence of expert testimony.

The Court believes it struck a proper balance in allowing the questions on cross examination but excluding the direct introduction of the records for the jury’s consideration/speculation. Defendant’s motion for a new trial is hereby **DENIED**.

**IT IS SO ORDERED.**

Very truly yours,

**/s/ Charles E. Butler**

Charles E. Butler