

2014 WL 6989744 (Colo.Dist.Ct.) (Trial Motion, Memorandum and Affidavit)
District Court of Colorado.
La Plata County

Rita HARTFORD,
v.
ORLANDO GRIEGO LIVING TRUST, et al.

No. 2013CV000042.
September 2, 2014.

Div.: 4

Tequilas's Motion in Limine to Prohibit Irrelevant Expert Testimony

Name: [Bruce N. Shibles](#), Address: 1801 Broadway, Suite 1300, Denver, CO 80202-3878, Phone: (303) 298-1407, Fax: (303) 297-8443, E-mail: bruce.shibles@farmersinsurance.com, Arty. Reg. No.: 32745, for defendant Tequilas, Inc.

Defendant Tequilas Inc. ("Tequilas"), by and through its counsel, HUNTER & ASSOC, moves *in limine* under [C.R.C.P. 16](#), [26](#), and [37](#) and [C.R.E. 103](#), [104](#), and [611](#), prior to the opening of trial and prior to voir dire of the prospective jury panel and opening statement by counsel, for an Order prohibiting any testimony by Plaintiff's Human Factors Expert that opines on the foreseeability of alleged dangers to **elderly** patrons by Tequilas for the reasons stated as follows:

[C.R.C.P. 121](#), §1-15(8) Certification

Counsel for Tequilas has conferred with counsel for Plaintiff and can state as a result of that conferral that this motion is opposed.

ARGUMENT

1. This Motion requests a ruling that will avoid prejudice and prevent a waste of the Court's trial time. The decision whether to admit or exclude evidence is left to the sound discretion of the trial court; a verdict following such rulings will not be set aside unless it can be shown that the ruling substantially affected a party's right to a fair trial. *See Plank and Gill, Colorado Appellate Law* §§ 18.8 and 18.9 (1999).

2. [C.R.E. 403](#) allows the Court to prohibit evidence which, even if it is relevant could result in a danger of unfair prejudice, confusion of the issues, or misleading of the jury. [C.R.E. 103](#) and [104](#) allow the Court to make preliminary rulings regarding the matters raised in this Motion. [C.R.E. 104](#) further permits a court to rule in advance of trial on key evidentiary issues. By making these rulings, the court can prevent the prejudice that would result if argument on, or evidence of patently impermissible matters is presented to the jury. *See Luce v. United States*, 469 U.S. 38, n2 (1984). Once an *in limine* ruling issues, the parties need not re-offer the objection or re-argue the legal issues during trial. *See Uptain v. Huntington Lab, Inc.*, 723 P.2d 1322 (Colo. 1986).

3. In the present case, the following improper and highly prejudicial evidence or testimony should be excluded: Any evidence, argument, or testimony by any expert witness, lay witness, or party that opines on the foreseeability of alleged dangers to **elderly** patrons since such evidence is irrelevant in a premises liability case and would tend to confuse and mislead the jury.

4. There is no dispute that Plaintiff was an invitee of Tequilas regarding the claims made in this case. There is also no dispute that the Plaintiff can only bring an action against Tequilas *in* this case under the Premises Liability Act (C.R.S. §13-21-115) and the law interpreting the same.

5. To prove her claim against Tequilas, the jury will be given the following jury instruction:

For the plaintiff, Rita Hartford, to recover from the defendant Tequilas, on her claim of premises liability, you must find all the following have been proved by a preponderance of the evidence:

1. The plaintiff had injuries or damages;
2. The defendant actually knew about a danger on the property or, as a person using reasonable care, should have known about it;
3. The defendant failed to use reasonable care to protect against the danger on the property; and
4. The defendant's failure was a cause of the plaintiff's injuries or damages.

If you find that any one or more of these four (4) statements has not been proved, then your verdict must be for the defendant.
CJI Civ. 4th 12:3

6. The term “reasonable care” is the determinative factor is analyzing the evidence and that is defined as “that degree of care which a reasonably careful person would use under the same or similar circumstances.” CJI Civ. 4th 9:8. The term “danger” is not defined and is left solely to the jury to determine.

7. Putting aside the fact that a step is not a dangerous condition, nowhere in these instructions is there any distinction regarding the age of patrons who are invitees on a property, nor is foreseeability part of or used in these instructions.

8. Yet Plaintiff has disclosed an expert, Dr. Lila Laux, Ph.D. who offers, inter alia, the following opinions:
Older people have less stability in their walking gait and are more prone to loss of balance. Older people who experience falls are more likely to suffer serious breaks and injuries and heal more slowly than younger people. Tequila's knew that many of their clients would be older men and women who are at greater risk for falls and for injury from a fall.

It was foreseeable to Tequila's that Mrs. Hartford, and any customers entering the Tequila's store through the north door could fail to notice the unmarked and unexpected change in elevation/step-up at the opening to the south dining room.

9. These opinions are wholly irrelevant, not to mention conclusory and without foundational support, and should not be allowed to be presented to the jury. The age of patrons has nothing to do with liability under the applicable statute and foreseeability is not part of any instruction that can be properly given in this case. The reasonableness of my client's action are for the jury to decide without the aid of inadmissible irrelevant opinions

Having folly presented its arguments, Tequilas respectfully request that this Court enter an Order granting this Motion in Limine to prohibit the irrelevant opinions and for such other relief that the interests of **justice** may require.

Dated: August 29, 2014

HUNTER & ASSOCIATES

<<signature>>

By: /s/ *Bruce N. Shibles*

Bruce N. Shibles, Esq.

Reg. No. 32745

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