

1 Michael J. Miller (appearance *pro hac vice*)
2 Timothy Litzenburg (appearance *pro hac vice*)
3 Curtis G. Hoke (State Bar No. 282465)
4 **THE MILLER FIRM, LLC**
5 108 Railroad Ave.
6 Orange, VA 22960
7 Phone: (540) 672-4224
8 Fax: (540) 672-3055
9 mmiller@millerfirmllc.com
10 tlitzenburg@millerfirmllc.com
11 choke@millerfirmllc.com

12 *Attorneys for Plaintiff*
13 **DEWAYNE JOHNSON**

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
05/24/2018
Clerk of the Court
BY: SANDRA SCHIRO
Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

DEWAYNE JOHNSON,

Plaintiff,

v.

MONSANTO COMPANY, STEVEN D.
GOULD, WILBUR-ELLIS COMPANY
LLC, and WILBUR-ELLIS FEED, LLC,

Defendants.

Case No. CGC-16-550128

**NOTICE OF MOTION AND PLAINTIFF'S
MOTION *IN LIMINE* NO. 10 TO EXCLUDE
EVIDENCE OF HEALTH INSURANCE
POLICIES**

Trial Judge: TBD

Hearing Date: TBD

Time: TBD

Department: TBD

Trial Date: June 18, 2018

[Filed concurrently with Declaration of Curtis
Hoke and [Proposed] Order]

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, at a date and time set by the trial judge assigned to this matter
3 of the above-entitled Court located at 400 McAllister St. San Francisco, CA 94102-4515, Plaintiff
4 Dewayne Johnson will and hereby does move *in limine* to exclude evidence and testimony regarding his
5 health insurance policy and his wife's health insurance policy.

6 Plaintiff hereby seeks an *in limine* order instructing Defendants and their counsel not to refer to,
7 interrogate any witness concerning, comment on, or attempt to suggest to the jury in any way the
8 fact/matter of Plaintiff's health insurance policy or his wife's health insurance policy, and to inform their
9 witnesses of these instructions and direct them not to make any reference to Plaintiff's health insurance
10 policy or his wife's health insurance policy. This motion will be made upon the ground that the matter of
11 Plaintiff's health insurance policy and his wife's health insurance policy is an inadmissible collateral
12 source, and is therefore irrelevant, and any attempt to convey this information to the jury would be
13 against public policy, highly improper and prejudicial to Plaintiff, even if the Court were to sustain an
14 objection and instruct the jury not to consider such facts.

15 This Motion *in Limine* is based on this Notice of Motion, the Motion and accompanying
16 Memorandum of Points and Authorities, the concurrently-filed Declaration of Curtis Hoke, the
17 concurrently-filed Proposed Order, all pleadings and papers on file in this matter, and such further oral
18 and documentary evidence and papers as the Court may consider at the time of the hearing.

19 Respectfully Submitted,

20 Dated: May 24, 2018

THE MILLER FIRM, LLC

21 By: /s/ Curtis G. Hoke

22 Michael J. Miller (appearance *pro hac vice*)
23 Timothy Litzenburg (appearance *pro hac vice*)
24 Curtis G. Hoke (State Bar No. 282465)

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Attorneys for Plaintiff

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF THE ARGUMENT**

3 In August of 2014, Dewayne Johnson was diagnosed with non-Hodgkin lymphoma (“NHL”) at
4 age 43 after spraying glyphosate-based herbicides (GBHs) for over two years. Mr. Johnson's frequency
5 of exposure to GBHs was intense, involving approximately 20-40 days per year at about 2-5 hours per
6 day and starting in June of 2012. Mr. Johnson also suffered acute exposures due to spills which left him
7 soaked to the skin in GBHs. Mr. Johnson’s NHL subtype is t-cell lymphoma mycosis fungoides, an
8 aggressive variant, which involves lymphocytes located in the skin.

9 During the deposition of Mr. Johnson on December 7, 2017, it was disclosed that he had and is
10 in the process of attempting to secure a health insurance policy. See Declaration of Curtis Hoke in
11 Support of Motion *in limine*, Ex. A. (Dewayne Johnson Deposition) at 178:13-179:16. Furthermore,
12 during Mr. Johnson's on January 20, 2018, it was disclosed that Mr. Johnson's wife has a health
13 insurance policy. See, Declaration of Curtis Hoke in Support of Motion *in limine*, Ex. B. (Dewayne
14 Johnson Deposition) at 772:21-773:4.

15 **II. ARGUMENT**

16 **A. Evidence Of Mr. Johnson’s Health Insurance Policy And His Wife’s Health Insurance**
17 **Policy Is Barred By The Collateral Source Rule.**

18
19 During the course of discovery, Mr. Johnson disclosed that he has had health insurance on and off
20 from his diagnosis to present. Ex. A. (Dewayne Johnson Deposition) at 178:13-179:16. It was further
21 disclosed that Mr. Johnson's wife has a health insurance policy. Ex. B. (Dewayne Johnson Deposition) at
22 772:21-773:4. Such evidence should be barred.

23 The collateral source rule permits an injured person to recover damages from the wrongdoer
24 undiminished by any payment he may receive for the injury from a source wholly independent of the
25 wrongdoer. *Neumann v. Bishop*, 59 Cal. App. 3d 451, 469, 130 Cal. Rptr. 786 (1st Dist. 1976), (citing *De*
26 *Cruz v. Reid*, 69 Cal. 2d 217, 70 Cal. Rptr. 550, 444 P.2d 342 (1968)).

1 The collateral source rule is not only substantive, but it is also evidentiary. *Howell v. Hamilton*
2 *Meats & Provisions, Inc.*, 257 P.3d 1130, 1135 (Cal. 2011). As such, evidence of a payment for
3 compensation of damages by an unconnected source is inadmissible for purposes of reducing recoverable
4 damages. *Id.* Evidence Code section 1155 provides: "Evidence that a person was, at the time a harm was
5 suffered by another, insured wholly or partially against loss arising from liability for that harm is
6 inadmissible to prove negligence or other wrongdoing." Cal. Evid. Code. § 1155. Such evidence is
7 "regarded as both irrelevant and prejudicial." *Neumann v. Bishop*, 130 Cal. Rptr. 786, 799 (Cal. App. 1st
8 Dist. 1976). As such, "any attempt to inject it by question, suggestion or argument is considered
9 misconduct of counsel, and is often held reversible error." *Id.*

10 Furthermore, under the common law rule, "compensation for injuries received by an injured party
11 from a source independent of the tortfeasor may not be deducted from the damages the plaintiff collects
12 from the tortfeasor." *Garcia v. County of Sacramento*, 126 Cal. Rptr. 2d 465, 466 (Cal. App. 3d Dist.
13 2002). Likewise, the defendant may not "present evidence that the plaintiff's medical expenses have been
14 paid by an independent source." *Id.*

15 The public policy advanced by the collateral source rule ensures that "plaintiffs will receive the
16 benefits of their decision to carry insurance and thereby encourages them to do so." *Howell v. Hamilton*
17 *Meats & Provisions, Inc.*, 257 P.3d 1130, 1135 (Cal. 2011).

18 As a result, with certain inapplicable exceptions, none of which apply here, evidence of insurance
19 payments should never be introduced to a jury. To allow otherwise would severely prejudice the Plaintiff
20 and prevent him from receiving a fair trial. *Hrnjak v. Graymar, Inc.*, 484 P.2d 599, 604 (Cal. 1971).

21 In short, any statement, reference, inference or suggestion regarding health insurance should be
22 barred.

23 It is also anticipated at trial that Defendant will seek to introduce evidence that Mr. Johnson missed
24 some of his oncology office visits and that those missed visits contributed to Mr. Johnson's current ill
25 health. In order to combat such evidence, Plaintiff intends to introduce evidence that he was too sick to
26 attend the missed appointments or that he could not afford treatment during the missed appointments. Ex.
27 B. (Dewayne Johnson Deposition) at 775:13-24. Evidence of Mr. Johnson missing his appointments due
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1 to affordability does not open the door for the Defendant to then introduce evidence of previous or current
2 health insurance. Plaintiff intends to only bring in such evidence to rebut Defendant's anticipated evidence.
3 At trial, Mr. Johnson will avoid saying that he was uninsured. As such, Plaintiff's testimony will not open
4 the door to evidence of previous or current health insurance.

5 Furthermore, the public policy advanced by the collateral source rule ensures that "plaintiffs will
6 receive the benefits of their decision to carry insurance and thereby encourages them to do so." *Howell v.*
7 *Hamilton Meats & Provisions, Inc.*, 257 P.3d 1130, 1135. If the Defendant is permitted to introduce
8 evidence of Plaintiff's health insurance policy, it is likely that the jury will misuse such evidence, and
9 therefore, destroy the public policy of the collateral source rule, an insensitive to carry health insurance.

10
11 **B. Mr. Johnson's Health Insurance Policy And His Wife's Health Insurance Policy Are
Irrelevant, Highly Prejudicial, And Should Be Excluded.**

12 Even if the court finds that evidence of Mr. Johnson's health insurance policy is admissible, such
13 evidence would be highly prejudicial and grossly outweighing by any probative value it would bring.
14 California courts have consistently held that evidence of collateral insurance receipts offers highly
15 prejudicial evidence that plaintiff is a grasping person." *Hrnjak v. Graymar, Inc.*, 484 P.2d 599, 604 (Cal.
16 1971). Likewise, the United States Supreme Court held in *Eichel* that "the likelihood of misuse by the jury
17 clearly outweighs the value of" such evidence in all but a few exceptions. *Eichel v. New York Cent. R.*
18 *Co.*, 375 U.S. 253, 255 (1963).

19
20 As such, any statement, reference, inference or suggestion regarding Mr. Johnson's health
21 insurance should be barred.

22
23 Furthermore, if the court finds that evidence of Mr. Johnson's wife's health insurance is admissible,
24 the likelihood of misuse by the jury of such evidence clearly outweighs the value of such evidence. First,
25 Mr. Johnson's wife is not a named party. Second, Mr. Johnson's testimony at his deposition clearly states
26 that he has no plans to submit his medical bills for NHL under his wife's health insurance. Ex. B. (Dewayne
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1 Johnson Deposition) at 773:1-4. Such evidence is wholly irrelevant and would be highly prejudicial to
2 Plaintiff. Pursuant to Evidence Code Section 352, such evidence should be barred.

3 **III. CONCLUSION**

4 Based on the foregoing, Plaintiff Dewayne Johnson respectfully requests that the Court enter an
5 Order granting this motion *in limine* and excluding evidence or testimony regarding health insurance
6 policies.

7
8 Respectfully submitted,

9 Dated: May 24, 2018

10 **THE MILLER FIRM, LLC**

11 By: /s/ Curtis G. Hoke

12 Michael J. Miller (appearance *pro hac vice*)
13 Timothy Litzenburg (appearance *pro hac vice*)
14 Curtis G. Hoke (State Bar No. 282465)
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20 tlitzenburg@millerfirmllc.com
21 choke@millerfirmllc.com

22 *Attorneys for Plaintiff*
23 *DEWAYNE JOHNSON*

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