

**PLAINTIFFS' MOTIONS IN LIMINE NOS. 4-13 AND
MEMORANDUM IN SUPPORT**

Plaintiffs respectfully move this Honorable Court, *in limine*, to exclude from trial any testimony, documents or other evidence, argument, reference or mention, directly or indirectly regarding the following topics:

NO. 4

EVIDENCE	BASIS FOR OBJECTION	DISCUSSION
<p>Mold or suspicions of mold in XXX's home and/or any suggestion that this mold adversely affected her health or otherwise caused or contributed to her death. This would include any testimony or evidence related to XXX's hair being tested after her death for the effects of mold or other toxins including those test results, Bates numbered XXX 102-103 (attached as Exhibit A hereto).</p>	<p>The evidence at issue is not relevant to the issues in this case and therefore should not be admitted into evidence as it would only confuse or mislead the jury, could cause the jury to speculate and would unfairly prejudice the Plaintiff. T.R.E. 401, 402, 403.</p>	<p>Witnesses have testified that XXX was concerned about mold in her home and whether the mold was negatively impacting her health. Following XXX's death, Dr. XXX's office ordered testing of a hair sample of XXX to rule out effects of toxic mold. Dr. XXX testified that the test results were essentially negative as they would relate to the issues in this case. None of the defendants have disclosed any expert opinions that would establish any link between the alleged mold and the issues of liability or causation in this case. Dr. XXX also did not identify the mold as the cause of XXX's death.</p>

NO. 5

EVIDENCE	BASIS FOR OBJECTION	DISCUSSION
Testimony or other evidence related to XXX’s relationship with her ex-husband XXX before, during and after their marriage, other than the fact that they were married, divorced and had their son XXX during their marriage. In particular Plaintiff moves to exclude evidence regarding allegations of domestic violence, photographs evidencing domestic violence, and/or death threats by XXX.	The evidence at issue is not relevant to the issues in this case and therefore should not be admitted into evidence as it would only confuse or mislead the jury and would unfairly prejudice the Plaintiff. T.R.E. 401, 402, 403.	Witnesses have testified that XXX and XXX had a tumultuous marriage. XXX and XXX were divorced before the events giving rise to this lawsuit. XXX and XXX’s relationship is not relevant to any of the issues in this case. No expert witness has been identified as having an opinion that XXX played any role in XXXs death.

NO. 6

EVIDENCE	BASIS FOR OBJECTION	DISCUSSION
Testimony or other evidence related to the fact that XXX filed bankruptcy during her lifetime.	The evidence at issue is not relevant to the issues in this case and therefore should not be admitted into evidence as it would only confuse or mislead the jury and would unfairly prejudice the Plaintiff. T.R.E. 401, 402, 403.	The fact that XXX filed bankruptcy is not relevant and may unfairly prejudice the jury against XXX. There is no claim for lost earning capacity in this case.

NO. 7

Intentionally omitted.

NO. 8

EVIDENCE	BASIS FOR OBJECTION	DISCUSSION
Allegations or insinuations of fault on the part of XXX.	T.R.C.P. 56.05, 8.03	Defendants XXX and XXX pled the comparative fault of XXX in their answer. An order was entered on XXX, dismissing this affirmative defense. Given the Court’s order, and

		<p>the fact that no other party pled the comparative fault of XXX, none of the Defendants should be allowed to argue or insinuate in any way that XXX bears any fault for her daughter's death.</p>
--	--	---

NO. 9

EVIDENCE	BASIS FOR OBJECTION	DISCUSSION
<p>Argument or testimony to the effect that, other than the Defendants, none of the medical providers who cared for XXX during her lifetime are testifying during this trial.</p>	<p>In order to comment on the absence of testimony by XXX's medical providers, the evidence must show that the missing witness was not equally available to both parties and that it is more likely that the testimony of the witness would favor the plaintiff than the defendant. <i>Bland v. Allstate Ins. Co.</i>, 944 S.W.2d 372, 379 (Tenn. Ct. App. 1996) (citation omitted); <i>see also Smith v. State</i>, No. E2004-0737-COA-R3-CV, 2005 WL 589818, at *12 (Tenn. Ct. App. Mar. 14, 2005) (case attached) (medical malpractice case holding that the plaintiff was not entitled to a missing witness jury instruction on the basis of the defendant's failure to call an LPN who made notations in the plaintiff's chart concerning plaintiff's injuries because, <i>inter alia</i>, "if Plaintiff wanted to call [the LPN] as a witness, Plaintiff was as free to do so as was the [Defendant]."); <i>Pinion v. Strait</i>, No. 03A01-9101-CV-</p>	<p>Defendants as well as Plaintiffs had the opportunity to subpoena XXX's medical providers to testify in this case. Therefore, Defendants should be precluded from arguing or insinuating at trial that the absence of testimony from those medical providers suggests anything about how those medical providers would have testified if called upon to do so. In other words, Defendants should be precluded from arguing or suggesting that the absence of those medical providers' testimony suggests that they would have disagreed with the Plaintiff with regard to any in issue in this case or would have otherwise offered any additional factual information that the Plaintiff has chosen to keep from the jury.</p>

	<p>00330, 1993 WL 266809, at *5 (Tenn. Ct. App. July 16, 1993) (case attached) (holding in another medical malpractice case that the defendant's failure to call a doctor practicing in the same group who substituted for the defendant doctor in the treatment of the plaintiff did not support the application of the missing witness rule where the witness was not unavailable to the plaintiff).</p>	
--	--	--

NO. 10

EVIDENCE	BASIS FOR OBJECTION	DISCUSSION
<p>XXX was a TennCare recipient.</p>	<p>The evidence at issue is not relevant to the issues in this case and therefore should not be admitted into evidence as it would only confuse or mislead the jury and would unfairly prejudice the Plaintiff. T.R.E. 401, 402, 403.</p>	<p>The fact that XXX had medical benefits and the source of those benefits is not relevant. Plaintiff will not be making a claim for medical expenses.</p>

NO. 11

EVIDENCE	BASIS FOR OBJECTION	DISCUSSION
<p>XXX was a recipient of social security disability benefits.</p>	<p>The evidence at issue is not relevant to the issues in this case and therefore should not be admitted into evidence as it would only confuse or mislead the jury and would unfairly prejudice the Plaintiff. T.R.E. 401, 402, 403.</p>	<p>The fact that XXX was a recipient of social security disability benefits is not relevant. Plaintiffs do not dispute that XXX was not working and was not able to work at the time of the incidents giving rise to this cause of action. Plaintiffs have not made a claim for lost wages or lost earning capacity. There is some social stigma associated with receiving social security</p>

		<p>disability benefits and therefore this evidence could be unfairly prejudicial to Plaintiffs.</p>
--	--	---

NO. 12

EVIDENCE	BASIS FOR OBJECTION	DISCUSSION
<p>XXX is a recipient of social security death benefits as a result of his mother’s death.</p>	<p>The evidence at issue is not relevant to the issues in this case and therefore should not be admitted into evidence as it would only confuse or mislead the jury and would unfairly prejudice the Plaintiff. T.R.E. 401, 402, 403.</p>	<p>The fact that XXX receives social security death benefits is not relevant.</p>

NO. 13

EVIDENCE	BASIS FOR OBJECTION	DISCUSSION
<p>Testimony or other evidence regarding the fact that XXX left her dialysis treatment early on XXX, including Bates numbered pages XXX 85 (attached as Exhibit B).</p>	<p>The evidence at issue is not relevant to the issues in this case and therefore should not be admitted into evidence as it would only confuse or mislead the jury and would unfairly prejudice the Plaintiff. T.R.E. 401, 402, 403.</p>	<p>According to the medical records XXX left a single dialysis treatment early. That occurred on XXX. No party in this case has disclosed a single expert opinion, nor has anyone testified, that XXX’s leaving dialysis early on this single occasion had any effect on the issues of liability or causation in this case. There also appears to be no dispute that on XXX, XXX’s dialysis was stopped and she was sent to the XXX Emergency Department on the order of her nephrologist. If, the fact that XXX left dialysis early on XXX, were admitted into evidence it could confuse or mislead the jury regarding what happened on the relevant date in this case</p>

		and/or could cause the jury to speculate.
--	--	---

NOTICE OF HEARING

THIS MOTION IS EXPECTED TO BE HEARD ON XXX AT XXX A.M. ON THE COURT'S REGULAR MOTION DOCKET. FAILURE TO FILE AND SERVE A TIMELY RESPONSE MAY RESULT IN THE MOTION BEING GRANTED WITHOUT FURTHER HEARING.