

**PLAINTIFFS' RESPONSE TO MOTION IN LIMINE NO. 1 BY DEFENDANT XXX, MOTION IN LIMINE NO. 3 BY DEFENDANT XXX, AND MOTION IN LIMINE NO. 1 BY DEFENDANT XXX REGARDING DEFENDANTS' PROFESSIONAL LIABILITY INSURANCE**

The Defendants have each filed similar motions *in limine* related to their professional liability insurance. XXX has moved to exclude any evidence that it is covered by a liability insurance policy. Dr. XXX has made the same motion in addition to moving to exclude any evidence that he is covered by the same malpractice insurance carrier as other physicians (including experts) who may offer testimony in this case. Defendant XXX has moved this Court for an Order on both points.

Evidence of liability insurance coverage is not generally admissible. TENN. R. EVID. 411. However, where evidence of insurance is offered for another purpose, such as proof of bias or prejudice of a witness, it is admissible. *Id.* The right to cross-examine a witness for bias should be limited only in extraordinary circumstances. *See Phillips v. Pitts*, 602 S.W.2d 246 (Tenn. Ct. App. 1980) (permitting cross-examination of insurance adjuster called by defendant as a witness to impeach plaintiff's witness on adjuster's employer who was defendant's insurance liability carrier). The admission or exclusion of such evidence is within the trial court's sound discretion. *Patton v. Rose*, 892 S.W.2d 410, 414-415 (holding admission of evidence is within the sound discretion of the trial court and upholding exclusion of evidence of common insurance carrier without further explanation).

Plaintiffs do not intend to introduce evidence of the Defendants' insurance carrier in an inappropriate manner or for an inappropriate purpose. However, to the extent the Defendants and their witnesses are covered by the same professional liability insurance carrier, the Plaintiffs may offer evidence of the same to show bias and/or prejudice. Such evidence is admissible upon a proper foundation. *See Roberson v. Netherton*, No. 01A01-9310-CV-00470, 1994 WL 164153, at \*2 (Tenn. Ct. App. May 4, 1004) (recognizing that "[t]he introduction of evidence to show bias on the part of a witness is, in the proper circumstances, admissible under Rules 411 and 616" but upholding exclusion of evidence of common insurance liability carrier on basis of plaintiff's failure to lay the proper foundation for the evidence) (case attached)).

In the present case, the Defendant doctors have the same insurance carrier – XXX ("XXX"). As insureds of the same company, a company in which they are both part owners, it is in these Defendants' best interests to "hold hands" and reduce the blame that may be attributed to each other. It is also highly likely that some of the experts the Defendants' have identified who practice in the Tennessee area are also insured by XXX. Again, they have every incentive to reduce the blame that may be attributed to their fellow insureds at XXX. In short, the relationship of the Defendants and their expert witnesses as insureds and co-owners of XXX may be relevant to their bias in this case.

A prospective ruling by the Court on this issue is inappropriate because it cannot be said at this juncture that the evidence is not admissible under any circumstances. As a result, the Plaintiffs respectfully request that the Court deny the Defendants' Motions *in Limine*, or in the alternative, that the Court reserve ruling on these Motions until the appropriate juncture at trial.