*The Colorado Lawyer*
**November 2010**
**Vol. 39, No. 11 [Page 37]**



Articles
Evidence

# *The Admissibility of a Party's Financial Status*

by Christina L. Dixon

**Evidence articles are presented in a hypothetical format, addressing legal issues of particular import to trial lawyers. Readers who are interested in submitting an article should contact the Coordinating Editor.**

## *Coordinating Editor*

*Lawrence M. Zavadil—(303) 389-4644, lzavadil@jcfkk.com*

## *About the Author*

*Christina L. Dixon is an associate with The Waltz Law Firm—cdixon@waltzlaw.com.*

**Q: Is a party's financial status admissible?**

**A: Statements concerning the financial status of a party or creating the inference of an absence of insurance generally are not admissible because they have little or no probative value, are inflammatory, and may appeal to the sympathy of the jury.**

## Assumed Facts

Joe Injured is involved in an automobile accident and files a personal injury action against the other driver. Joe seeks recovery of his medical costs, as well as damages for his emotional distress. He attempts to introduce testimony that he is a single father whose credit rating has been damaged because he has not been able to pay his medical bills. He also has a car payment and rent he is barely able to pay since he lost his job. The attorney for the other driver objects, arguing that such evidence is inadmissible. How should the court rule?

## Discussion

As a general rule, it is error to admit evidence of a party's financial condition, whether it is evidence of wealth or poverty.[1] Consistent with this general rule, in Colorado, a party's net worth or income cannot be considered in a civil action to determine the appropriateness or amount of punitive or exemplary damages that may be recoverable.[2]

Whether a party's financial condition is admissible begins with an analysis of Colorado Rule of Evidence (C.R.E.) 403. This rule gives the trial court discretion to exclude evidence "if its probative value is substantially outweighed by the danger of unfair prejudice. . . ."[3] The mere potential of damaging a party's case does not mean evidence is unfairly prejudicial—relevant evidence is inherently prejudicial. Rather, evidence may be excluded as unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis.[4]

Early decisions regarding the inadmissibility of a party's financial status were rooted in the classic balance between probative value and unfair prejudice under the C.R.E.[5] For example, in *National Surety Co. v. Morlan*,[6] the Colorado Supreme Court addressed the admissibility of a defendant insurance company's financial status. The defendant argued that the plaintiff's attorney had used closing argument to "inflame the minds of the jury" and prejudice them against the defendant by, among other things, pointing out that the defendant had assets exceeding $15 million. In reversing a verdict for the plaintiff, the court cited the imperative necessity that trials should be "a search for the truth, and not an arena for the contest of shrewd lawyers playing up the passions and prejudices of the jury."[7]

In *Garcia v. Mekonnen*,[8] under circumstances similar to those in the assumed facts, the trial court permitted the plaintiff, who was involved in an auto accident, to testify about her inability to pay her medical bills. The Colorado Court of Appeals noted the general rule that statements concerning the financial status of a party or creating an inference of the absence of insurance are improper because they have little or no probative value, are inflammatory,

and may appeal to the sympathy of the jury.[9] The court also noted that, in particular, evidence of a plaintiff's poverty and financial distress caused by medical bills is inadmissible in a personal injury action.[10] The court determined that the admission of evidence of the personal injury plaintiff's poor financial status was erroneous. It also determined that the admission of the testimony did not constitute reversible error where the admission was found to be harmless, because the jury's verdict indicated that the jury had not been unduly inflamed, and a limiting instruction regarding sympathy and prejudice was given.[11]

Despite the general rule articulated in *Mekonnen*, not all references to financial status are precluded. Colorado courts have held that inadmissible statements regarding financial status must be specific in nature and refer directly to financial status.[12] In *Anderson v. Dunton Mgmt. Co.*,[13] the court held that the statement of the plaintiff's attorney referring to letting "those two big companies off the hook" did not implicate financial status of the defendant corporations to a degree that would cause prejudice in the jury.[14]

Similarly, in *Celebrities Bowling, Inc. v. Shattuck*,[15] the court determined that a reference to the vast size and cost of the defendant's recreational facility was not prejudicial, because the statement, in context, did not "appeal to the passions and prejudices of the jury." The court determined that the comment regarding the size and cost of the defendant's recreational facility merely referenced the size of the facility and not the wealth of the defendant for purposes of obtaining a more substantial judgment. That evidence, however, certainly permitted the jury to make a reasonable inference regarding a party's wealth. Thus, a contextual premise may be a way to get information to the jury regarding a party's financial status.

Like evidence of financial status, evidence of insurance coverage generally is inadmissible to show that a party acted wrongfully. However, evidence of insurance may be offered for another purpose, "such as proof of agency, ownership, control, or bias or prejudice of a witness."[16]

## Conclusion

Colorado case law generally prohibits admissibility of a party's wealth or poverty where statements regarding financial status are direct, specific, inflammatory, and unfairly prejudicial. An evidentiary challenge should demonstrate that the evidence sought to be admitted is specifically and clearly designed to inflame the passion of the jury.

**Notes**

1. *Whiteley v. OKC Corp.*, 719 F.2d 1051, 1055 (10th Cir. 1983) (stating general rule but finding that defendant opened the door to such evidence).

2. *See* CRS § 13-21-102(6). *See also Leidholdt v. District Court*, 619 P.2d 768, 770 (Colo. 1980).

3. C.R.E. 403.

4. *See generally Masters v. People*, 58 P.3d 979, 1001 (Colo. 2002).

5. *See Nat'l Surety Co. v. Morlan*, 13 P.2d 260 (Colo. 1932).

6. *Id.*

7. *Id.* at 261, *quoting Woolworth Co. v. Davis*, 41 F.2d 342, 346 (10th Cir. 1930).

8. *Garcia v. Mekonnen*, 156 P.3d 1171 (Colo.App. 2006).

9. *Id.* at 1177, *citing Morlan, supra* note 5.

10. *Id.* at 1177.

11. *Id.*

12. *Anderson v. Dunton Mgmt. Co.*, 865 P.2d 887 (Colo.App. 1993).

13. *Id.*

14. *Id.* at 892.

15. *Celebrities Bowling, Inc. v. Shattuck*, 414 P.2d 657, 660 (Colo. 1966).

16. C.R.E. 411; *Garcia, supra* note 8 at 1173. *See generally* LaFontaine, "Rule 411: Excluding Evidence of Insurance Offered to Show Witness Bias," 38 *The Colorado Lawyer* 17 (Jan. 2009). *See, e.g., Greene v. Julius Lefkowitz & Co.*, 470 P.2d 586, 588 (Colo.App. 1970) (plaintiff's attorney repeatedly mentioned throughout the trial defendant's insurance coverage and defendant's general ability to pay, and the court determined there were sufficient grounds for a new trial).



Back

Colorado Bar Association | 1900 Grant St, 9th Floor | Denver, CO 80203 | 303.860.1115