

origins of climate change and its effects both globally and in Montana. It also appears that Plaintiffs' expert witnesses may testify as to one or more specific aspects of climate change or global warming, but also testify to many of the same basic facts underlying those opinions. The testimony and reports of these experts is in some instances overlapping and in others, cumulative and redundant, even as described in Plaintiffs' expert witness disclosures (cited in pertinent part):

Dr. Steven Running, Ph.D., M.S.:

Dr. Running, with Dr. Cathy Whitlock as co-author of the report, will provide expert testimony explaining Earth's Energy Imbalance; how the emission of greenhouse gases to the atmosphere is driving climate change globally and in Montana; the state of Montana's longstanding knowledge of the dangers posed by climate change and fossil fuels; and how human caused fossil fuel development and the resulting release of CO₂ into the atmosphere are harming Montana's ecosystems, water supplies, and communities. The report presents recent trends and future projections in temperature, precipitation, snow accumulation and snowmelt, and stream runoff in Montana and explain how they affect terrestrial ecosystems, communities, and the livelihoods of people that depend on these ecosystem services.

Plaintiffs' Expert Disclosures pp. 2-3 (Doc. 97).

Dr. Cathy L. Whitlock, Ph.D., M.S.: "Dr. Whitlock jointly authored her report with Dr. Running. To the extent Dr. Whitlock is deposed or offers any rebuttal opinions in this matter, Plaintiffs expect Dr. Whitlock's opinions will be consistent with those elicited in any such deposition or contained in any such rebuttal report." *Id.* p. 3.

Dr. Jack Stanford, Ph.D., M.S.: Dr. Stanford will provide expert testimony on the adverse impacts of climate change on Montana's freshwater ecosystems, including the interconnectivity of climate, hydrology, geomorphology and the ecology of river landscapes as well as how anthropogenic climate change disrupts biophysical connectivity, thereby causing significant degradation and depletion of Montana's freshwater ecosystems. *Id.* p. 4.

Peter Erickson: “Mr. Erickson will provide expert testimony on fossil fuel consumption, extraction, and infrastructure in Montana, according to three categories of activities: extraction of fossil fuels; processing and transportation of fossil fuels; and consumption of fossil fuels by end users.” *Id.* pp. 5-6.

Dr. Lori Byron, M.D., M.S., FAAP: Dr. Lori Byron, with Dr. Robert Byron as co-author of the report, will provide expert testimony on how climate change and the air pollution associated with it are negatively affecting children in Montana, with a strong likelihood that those impacts will worsen in the absence of aggressive actions to mitigate climate change. *Id.* p. 8.

Dr. Robert Byron, M.D., MPH, FACP: “Dr. Robert Byron jointly authored his report with Dr. Lori Byron.” *Id.*

Additionally, each of these experts, individually or jointly as with Running/Whitlock and the Doctors Byron, have authored reports which Plaintiffs may intend to introduce at trial, containing similar discussions of the anthropogenic (human activity) aspects of climate change. The 84-page Running/Whitlock report contains a section entitled “The Science of Climate Change” with subsections, *inter alia*, on “anthropogenic emissions of CO₂ and other greenhouse gases ...causing warming of the earth’s surface and climate change” and “[a]nthropogenic GHG emissions have disrupted the Earth’s energy balance.”

Dr. Stanford’s 74-page report contains a section entitled: “Effects of Anthropogenic Climate Change on Montana’s Freshwater Ecosystem”, and cites, *inter alia*, Dr. Whitlock. Dr. Stanford’s first opinion is that “there is ample evidence that anthropogenic climate change is unambiguously occurring and impacting the state of Montana with a high degree of scientific certainty.”

The Byrons' report contains a section entitled "Anthropogenic Climate Change Harms Children's Health in Montana, Including the Health of Plaintiffs". The report contains various statements of this nature: "Climate change leads to myriad health impacts. Increasing anthropogenic greenhouse gas (GHG) emissions cause various climate pressures, such as higher temperatures, extreme precipitation events and droughts, sea level rise, and more extreme weather (see Figure 1)." ¹

B. Argument

A district court has broad discretion to determine whether evidence is relevant and admissible. *Simmons Oil Corp. v. Wells Fargo Bank*, 1998 MT 129, ¶19, 289 Mont. 119, 960 P.2d 291. Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Rule 401, Mont. R. Evid. Even if relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, *or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence*. Rule 403, Mont. R. Evid. (emphasis added).

The purpose of a motion *in limine* is to prevent the introduction of evidence which is irrelevant, immaterial, or unfairly prejudicial. *Hulse v. Montana Dep't of Justice*, 1998 MT 108, ¶15, 289 Mont. 1, 961 P.2d 75. Accordingly, the authority to grant or deny a motion *in limine* "rests in the inherent power of the court to admit or exclude evidence and to take such

¹ Plaintiffs have identified rebuttal experts including others not listed here, such as Dr. Kevin Trenberth. If those rebuttal witnesses are called, the same possibility of redundancy exists, unless the Court clearly limits their testimony to matters genuinely subject to rebuttal. However, the purposes of this motion should apply equally to those experts.

precautions as are necessary to afford a fair trial for all parties.” *Id.*, quoting *City of Helena v. Lewis*, 260 Mont. 421, 425-26, 860 P.2d 698, 700 (1993).

To be clear, this motion is not intended to bar Plaintiffs’ experts from discussing different alleged impacts of climate change (if not objectionable on other grounds). Rather, it is intended to limit unnecessary repetition of testimony or evidence about global warming and climate change generally, beyond that which is needed for the foundation of each expert’s testimony. However, once Plaintiffs have introduced expert testimony regarding the existence of climate change or global warming, including anthropogenic causes, they should not be permitted to repeat essentially the same testimony with additional experts. Although there is no jury in this case, perhaps reducing the possibility of confusing or misleading the trier of fact, that does not reduce the importance of avoiding undue delay, wasted time, and the inherent prejudice of redundant testimony.

C. Conclusion

Plaintiffs should be barred from presenting cumulative or redundant expert testimony about global warming. Once Plaintiffs have presented such evidence through an expert, additional testimony of the same nature should be excluded.

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I hereby certify that on the 1st day of February, 2023, a copy of the foregoing document was served on the following persons by the following means:

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