

11/05/2019 "See News Release 046 for any Concurrences and/or Dissents."

SUPREME COURT OF LOUISIANA

No. 2019-CC-01237

MARK ODOM AND PATTI ODOM

VS.

**LUIS ALBERTO FLORES, STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, UNITED SERVICES AUTOMOBILE
ASSOCIATION**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF LIVINGSTON**

GENOVESE, J., would deny this writ for the following reasons:

In this case, plaintiff was involved in a car accident. One of plaintiff's treating physicians was a neuropsychologist who opined in a letter that plaintiff was completely disabled and unable to work as a result of the accident in question. However, within a month of that opinion letter, said physician retired due to Alzheimer's and is thus not able to be a witness in this case.

Defendant insurer filed a motion in limine to exclude the physician's testimony and medical records. The trial court granted defendant's motion to exclude the physician's testimony, but denied the motion to exclude the physician's medical records regarding his treatment of plaintiff post-accident.

The court of appeal granted defendant's writ, reversed the trial court, and granted defendant's motion in limine thereby excluding the introduction of these medical records at trial. It is undisputed that said physician will be designated as unavailable and not capable of being cross-examined. Hence, I agree with the court of appeal that La.R.S. 13:3714 controls.

Louisiana Revised Statutes 13:3714 provides that medical records sought to be introduced into evidence shall be received in evidence as prima facie proof of its contents "provided that the party against whom the bills, medical narrative, chart, or

record is sought to be used may summon and examine those making the original of the bills, medical narrative, chart, or record as witnesses under cross-examination.”

In other words, and in this case, in order for these medical records to be introduced, said physician must be available for cross-examination — and he is not. Thus, in my view, the court of appeal got it right, and the medical records in question cannot be introduced into evidence at trial. Therefore, I would deny this writ.