

Form 10

Standard Order *in Limine*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
_____ DIVISION**

<p style="text-align: center;">Plaintiff,</p>	§ § § § § § § § § §	<p style="text-align: right;">Civil Action No. _____</p>
<p style="text-align: center;">Defendant.</p>		

STANDARD ORDER *IN LIMINE*

This Order applies to all parties during the trial of this matter. Where used in this Order:

- The term “party” means each party in this action, and includes counsel, representatives, and all witnesses tendered by any of them; and
- The term “reference” means any reference to, mention of, or suggestion about, whether direct or indirect, and includes any oral reference as well as reference to any document, information, or other tangible thing.

Whenever in the presence or hearing of the jury, the venire, or any member of either, no party shall make any reference to the topics listed below without first approaching the bench and securing a ruling from the Court.

Each attorney shall admonish the client, client’s representatives, and all non-adverse witnesses the attorney may call to testify to refrain from any such reference unless it is essential to respond truthfully to a question asked by opposing counsel.

To the extent that an exhibit includes inadmissible topics, the party must redact the inadmissible portion and retain only the admissible portion for use at trial.

Pretrial Positions, Rulings, and Preparations

1. **Alternative pleadings, theories, and requests for relief.** Any reference regarding the fact that a party may have had alternative pleadings, other theories of liability, or other requests for relief in this lawsuit that did not go to trial. Fed. R. Evid. 401 – 403.
2. **Pretrial motions or matters.** Any reference to pre-trial motions or matters, including summary judgment motions and the Court’s rulings on such motions. Fed. R. Evid. 401 – 403.
3. **Discovery disputes.** Any reference to discovery disputes that arose during the preparation of the case for trial, any position taken by any party, or to the Court’s rulings. Fed. R. Evid. 401 – 403.
4. **Reference to the filing of any motion *in limine*.** Any reference to the filing of any motion *in limine* by any party or the Court’s ruling on any such motion. Fed. R. Evid. 401 – 403.
5. **Exclusion of evidence.** Any reference that suggests that a party sought to exclude from evidence or proof any matters bearing on the issues in this case or the rights of any party to this suit. Fed. R. Evid. 401 – 403.
6. **Retention of attorney.** Any reference to the time or circumstances under which either party consulted or retained an attorney. Fed. R. Evid. 401 – 403.
7. **Trial preparation of represented witnesses.** Any reference about how other counsel prepared witnesses who they represent for trial testimony. Fed. R. Evid. 401 – 403.
8. **Jury research.** Any reference to the fact that any party may have retained or consulted with jury consultants or conducted mock trials or focus groups. Fed. R. Evid. 401 – 403.

Responsibility and Recovery

9. **Settlement discussions.** Any reference to any negotiations, offers, or demands with respect to any attempted settlement or mediation, including all statements made by any party in settlement discussions during the course of those discussions. Fed. R. Evid. 408.
10. **Collateral source to the plaintiff.** Any reference suggesting that the damages sought by the plaintiff have been or will be paid in whole or in part by any collateral source including any insurance or employee benefit plan, social security or welfare, veterans or other benefits, or charitable services. Fed. R. Evid. 401 – 403.
11. **Liability or non-liability for judgment.** Any reference suggesting that any defendant may or may not have to pay any resulting judgment.
12. **Insurance to the defense.** Any reference suggesting the involvement of an insurance company with the defense of the case including that the defendant is or is not protected by liability insurance in whole or in part, or that defense counsel was retained by an insurance company, or that all or any part of the costs of defense, or of any resulting judgment, are or will be paid by an insurance company. Fed. R. Evid. 401 – 403.

13. **Attorneys' fees.** Any reference suggesting the amount or basis of any attorneys' fees or that any party will have to pay attorneys' fees. Fed. R. Evid. 401 – 403.
14. **Social cost of award.** Any reference suggesting that an award of damages will affect insurance premiums, the price of any goods or services, or the level of taxation. Fed. R. Evid. 401 – 403.
15. **Golden Rule.** Any reference that the jurors should put themselves in the position of a party. Fed. R. Evid. 401 – 403.
16. **Hardship or privation.** Any reference suggesting that a failure to award damages will cause a plaintiff privation or financial hardship. Fed. R. Evid. 401 – 403.

Personal Characteristics

17. **Prior suits or claims.** Any reference that any party has been party to a prior legal proceeding, has asserted a prior claim, or has had a prior claim or suit asserted against it. Fed. R. Evid. 401 – 403.
18. **Criminal offenses.** Any reference suggesting that any party or witness has been suspected of, arrested for, charged with, or convicted of any criminal offense unless the Court has previously ruled admissible evidence of a specific conviction. Fed. R. Evid. 404(b).
19. **Discrimination.** Any reference suggesting favorable or unfavorable treatment due to the race, gender, national origin, nationality, religion, political beliefs, marital status, occupation, or financial status of any party or person. Fed. R. Evid. 401 – 403.
20. **Alcohol or drug use.** Any reference suggesting that any party or witness uses or abuses alcohol, tobacco, or any controlled substance unless the Court has previously ruled that such alleged use or abuse is relevant to the matters in controversy. Fed. R. Evid. 401 – 403.
21. **Comparison of relative size.** Any reference to the relative economic size of each party, including any comparison of numbers of employees, revenues, net worth, earnings, or profits. Fed. R. Evid. 401 – 403.
22. **Location or size of any firm.** Any reference suggesting favorable or unfavorable treatment due to where a particular lawyer or firm is from or how big it is. Fed. R. Evid. 401 – 403.
23. **Independent medical examination.** Any reference that the plaintiff offered to or is willing to undergo an examination by an independent physician or psychologist. Fed. R. Evid. 401 – 403.
24. **Hearsay medical opinions.** Any hearsay statement by an allegedly injured person concerning any diagnosis or medical opinions communicated to such person by a physician or other health care provider. Fed. R. Evid. 401 – 403.

Trial Conduct

25. **Privileged communications.** Any reference to the intent or understanding of counsel to any party, including any reference to the content of any attorney-client privileged or confidential communications or lack thereof. Fed. R. Evid. 501.
- Counsel shall refrain from asking any question that may tend to require an attorney or witness to divulge a client confidential or privileged communication, or which may tend to require an attorney or witness to have to object to answering on such grounds. Fed. R. Evid. 403.
26. **Requests for stipulations.** Any reference to the fact that counsel for any party may have declined or refused to stipulate to any matter.
- Counsel shall refrain from making any request or demand for a stipulation to any fact or that counsel admit or deny any fact.
27. **Requests for files.** Any request or demand that opposing counsel or any party or witness produce any document or thing or display, turn over, or allow examination of the contents of any file, briefcase, or box in the courtroom. This does not apply to documents used by a witness to refresh recollection.
28. **Statement of any venire person.** Any reference to a statement of any venire person after the conclusion of jury selection. Fed. R. Evid. 401 – 403.
29. **Counsel’s opinion of credibility.** Any reference to counsel’s personal opinion regarding the credibility of any witness.
30. **Testimony of absent witness.** Any reference as to the probable testimony or its nature of any witness who is unavailable to testify or not called to testify. This does not apply if the party suggesting such testimony in good faith expects the witness to testify in person or by deposition.
31. **Failure to call witness.** Any reference to the failure of an opposing party to call any witness.
32. **Attendees in the courtroom.** Any reference to any person sitting in the courtroom other than witnesses, counsel, the party’s corporate representatives, or Court personnel. Fed. R. Evid. 401 – 403.
33. **Items not offered as an exhibit.** Any reference to any document or material not being offered by any party. Fed. R. Evid. 401 – 403.
34. **Evidence not produced as required.** Any reference to any witness or document not disclosed in Rule 26 disclosures or in response to a proper discovery request.
35. **Objections to evidence not produced in discovery.** Any reference to an alleged failure or refusal by one party to provide the other with discovery, including any reference that a party has not engaged in good faith discovery or has withheld or failed to produce any document or other material to which the other party claims entitlement.
- Any party desiring to urge any objection on such basis shall request to approach the bench and urge this objection outside the hearing of the jury.

36. **Display before admission or approval.** Any reference to material not admitted or approved for showing to the jury, including display of any demonstrative evidence that has not previously been shown to the opposing party's counsel outside the presence of the jury.

Counsel shall not show, display, or store any exhibits or demonstrative exhibits in such a manner that the jury or any juror can see them unless and until the Court has admitted the item in evidence or approved its use before the jury.

It is SO ORDERED.

Signed this ____ of _____, 2020.

DREW B. TIPTON
UNITED STATES DISTRICT JUDGE