

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

v.

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Civil Action No.

STANDING 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 authorizing such reference.

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.

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.

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.

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.

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.

6. **Retention of attorney.** Any reference to the time or circumstances under which either party consulted or retained an attorney, provided that if any attorney referred a party to a health care provider who testifies in the case (or whose medical records are introduced by such party), that fact may be a subject of inquiry.

7. **Trial preparation of represented witnesses.** Any reference about how other counsel prepared witnesses who they represent for trial testimony.

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.

RESPONSIBILITY AND RECOVERY

9. **Settlement negotiations or mediation.** 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.

10. **Collateral source.** 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 but not limited to:

- a. health and accident or disability insurance;
- b. any employee benefit plan, formal or informal, including payment of wages for time not actually worked;
- c. social security or welfare;
- d. veterans or other benefits;
- e. provisions of medical services free of charge or for less than reasonable and customary charges, provided that the foregoing does not prohibit reference to unpaid charges of any health care provider who actually testifies for the plaintiff (or whose medical records are offered by the plaintiff), or to any letter of protection securing any such charges.

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. Unless the defendant is an insurance company, any reference suggesting that the defendant is or is not protected, in whole or in part, by liability insurance, or that defense counsel was retained by, or all or any part of the costs of defense, or of any resulting judgment, are or will be paid by an insurance company, or any other matter suggesting the involvement of any insurance company with the defense of the case.

13. Jurors' connection with insurance industry. Inquiring of potential jurors as to their present or past employment or connection with the insurance industry, or present or past connection of any family member with the insurance industry, except that:

- a. If a potential juror's Juror Questionnaire discloses employment in the insurance industry, that juror may be questioned concerning his/her employment.

- b. Inquiry may be made of potential jurors concerning their experience (or that of members of their family), if any, reviewing, adjusting or allowing/disallowing claims, as long as no express reference is made to “insurance.”

14. Attorneys’ fees. Any reference suggesting the amount or basis of any attorneys’ fees or that any party will have to pay attorneys’ fees, unless a claim for recovery of attorneys’ fees in the case will be submitted to the jury.

15. 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.

16. Golden Rule. Any reference that the jurors should put themselves in the position of a party.

17. Hardship or privation. Any argument or suggestion that a failure to award damages will cause a plaintiff privation or financial hardship.

PERSONAL CHARACTERISTICS

18. Prior suits or claims. Any reference that any party has been a party to a prior legal proceeding, or has asserted any prior claim, or that any prior claim has been asserted against a party, provided that this does not prohibit inquiry about a prior injury that may have been the subject of another claim, if the nature of injuries claimed in the present suit make the prior injury relevant.

19. 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.

20. Discrimination. Any reference suggesting that a party should be treated more or less favorably because of such party’s race, gender, national origin, nationality, religion, political beliefs,

marital status, occupation, or financial status.

21. 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.

22. 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.

23. 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.

24. Independent medical examination. Any reference that the plaintiff offered to, or was or is willing to, undergo an examination by an independent physician or psychologist.

25. 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.

TRIAL CONDUCT

26. 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. 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.

27. Questioning attorneys. Any question by a witness directed to the adverse party's counsel.

28. 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 in the presence of the jury for a stipulation to any fact, or that counsel admit or deny any fact.

29. Requests for files. Any request or demand in the presence of the jury that opposing counsel or any party or witness produce any document or thing, or that opposing counsel or any party or witness exhibit, turn over, or allow examination of the contents of any file or briefcase (except that a party may demand to see a document used by a witness on the stand to refresh his/her recollection, or that a witness testifies that he/she has used previously to refresh his/her recollection).

30. Statement of any venire person. Any reference to a statement of any venire person after the conclusion of jury selection.

31. Counsel's opinion of credibility. Any reference to counsel's personal opinion regarding the credibility of any witness.

32. Testimony of absent witness. Any reference to the probable testimony, or its nature, of any witness who is unavailable to testify or not called to testify, or whom the party suggesting such testimony does not, in good faith, expect to testify in the trial. If the party is expected to testify by deposition, this does not apply to testimony contained in the deposition expected to be offered.

33. Failure to call witness. Any reference to the failure of an opposing party to call any witness.

34. 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.

35. Items not offered as an exhibit. Any reference to any document or material not being offered by any party.

36. 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. If a party has a good faith basis to urge that such witness or document should be received either because (a) neither Rule 26 nor any discovery request properly called for its disclosure, or (b) good cause existed for failure timely to disclose, counsel shall first approach the bench and secure a ruling. To the extent possible or predictable, such matters should be addressed and a ruling sought at the pretrial conference.

37. 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 such objection shall request to approach the bench and urge this objection outside the hearing of the jury. To the extent possible or predictable, such matters should be addressed and a ruling sought at the pretrial conference.

38. 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 evidence 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.

39. Ex parte statements of witnesses. Any reference to any ex parte statement of any witness or alleged witness, other than an adverse party or agent of an adverse party, unless and until such witness has been called to testify and has given testimony conflicting with such ex parte

statement. A deposition or a statement in business or medical records that have been proved up as required by the Federal Rules of Evidence is not an ex parte statement.

Signed at Houston, Texas on _____, 2021.

Gray H. Miller
Senior United States District Judge