<<COURT\_NAME>>

|  |  |
| --- | --- |
| <<INJUREDPARTY\_NAME>>  Plaintiff,  vs.   <<INSURANCECOMPANY\_SUITNAME>>   Defendant.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/ | Case No. <<INDEXORAAA\_NUMBER>> |

MOTION IN LIMINE

COMES NOW, the Plaintiff, <<INJUREDPARTY\_NAME>>, by and though the undersigned counsel, hereby files this Motion in Limine, and in support thereof further states:

1. This is an action for overdue Property Damage Benefits.
2. Plaintiff anticipates that Defendant may attempt to elicit and make prohibited allegations and remarks during the trial.
3. The purpose of this Motion in Limine is to prevent prejudice to the parties at the time of trial that cannot be corrected which would result in a party not receiving a fair trial.
4. This Court has the power to issue a preliminary ruling as to the admissibility of evidence at trial.
5. Furthermore, this motion is designed to simplify the issues at trial, avoid excessive sidebars, and avoid the prejudice that often occurs when a party is forced to object in front of the jury to the introduction of prejudicial evidence.
6. Plaintiff moves to preclude Defendant, Defendant’s attorneys, or Defendant’s witnesses from directly or indirectly making any references, speculations, and comments regarding the following:
   1. Any reference to the fact that Plaintiff made an objection to interrogatories or document requests, or asserted a claim of privilege, during the pretrial phase of this case.
   2. Any speculation or argument about the substance of the testimony of any witness who is absent or unavailable, or whom plaintiff did not call to testify.
   3. Any reference to the fact that Plaintiff failed to call any witness equally available to all parties in the case. Kersey v. Rush Trucking, Inc., 800 N.E.2d 847, 279 Ill. Dec. 559 (2d Dist. 2003).
   4. Any reference to the existence or filing of this Motion in Limine, or to the fact that plaintiff has sought to exclude evidence, or to any ruling on the Motion in Limine by the court.
   5. Any reference to the receipt by Plaintiff, or his entitlement to receive, benefits of any kind from a collateral source.
   6. Any references concerning attorney-client privilege and retainer agreements between Plaintiff and his attorney.
   7. Any mention, comment, reference, suggestion or question to the financial status of the Plaintiff. Levinson v. State Farm Mutual Auto. Ins. Co., 9 Fla. L. Weekly Supp. 721 (Fla. Broward Cty. Ct. 2002).
   8. Any reference to “crowded courtrooms” or any comments or remarks that this case or type of case causes delays or backlogs in the court system. See Stokes v. Wet’n Wild, Inc., 523 So. 2d 181 (Fla. 5th DCA 1988); Levinson v. State Farm Mutual Auto. Ins. Co., 9 Fla L. Weekly Supp. 721 (Fla. Broward Cty. Ct. 2002).
   9. Any mention that the result of a claim, suit, or judgment affects insurance rates, premiums, or charges as a result of this lawsuit or any other lawsuit. Davidoff v. Segret, 551 So. 2d 1274 (Fla. 4th DCA 1989); Russel v. Guider, 362 So. 2d 55 (Fla. 4th DCA 1978).
   10. Any mention, comment, reference, suggestion or question about the Plaintiff’s concerning licensing. See Ortega v. United Automobile Insurance Company, 847 So.2d 994 (Fla. 3d DCA 2003).
   11. That defendant be prohibited from making any mention, comment or reference to an “insurance crisis” in the State of Florida. Davidoff v. Segret, 551 So.2d 1274 (4th DCA 1989); Levinson v. State Farm Mutual Auto. Ins. Co., 9 Fla. L. Weekly Supp. 721 (Fla. Broward Cty. Ct. 2002).
   12. That defendant be prohibited from making any mention, comment or reference to an “Assignment of Benefits (AOB) crisis” in the State of Florida.
   13. Plaintiff seeks an Order precluding questioning of the claimant regarding prior losses. Allstate v. Mazzorana, 731 So. 2d 38 (Fla. 4th DCA 1999); See also Smith v. Courtesy Car Rental and Sales, 696 So. 2d 1228 (Fla. 4th DCA 1999).
   14. Any disparaging comment, reference, suggestion or question regarding obtaining an Assignment of Benefits.
   15. Any use of the phrases “[w]elcome to the world of Property Damage,” “…all you need is an assignment, and you are off and running,” and any other terms or phrases that improperly and negatively characterize the nature of this lawsuit.
   16. Defendant should be precluded from making any mention, comment, reference, or suggestion that Plaintiff may obtain or obtained a settlement against any other party or parties. Levinson v. State Farm Mutual Auto. Ins. Co., 9 Fla. L. Weekly Supp. 721 (Fla. Broward Cty. Ct. 2002).
   17. Any questions or interrogations regarding the time period or circumstances under which the Plaintiff hired an attorney or changed attorneys. Watson v. Builders Square, Inc., 564 So. 2d 721 (Fla. 4th DCA 1990); Levinson v. State Farm Mutual Auto. Ins. Co., 9 Fla. L. Weekly Supp. 721 (Fla. Broward Cty. Ct. 2002). The Plaintiff seeks an Order of the Court precluding the Defendant, Defendant’s attorney, or the Defendant’s witnesses from testifying or inquiring in any fashion as to when the Plaintiff retained the services of an attorney. The date the Plaintiff retained the services of an attorney is not relevant and extremely prejudicial. There is no probative value in learning when the Plaintiff retained the services of an attorney, and any evidence or testimony of any kind reflecting the date when aid attorney was retained would be unfairly prejudicial to the Plaintiff. The Plaintiff has the right to obtain competent counsel to obtain assistance during the process.
   18. Defendant should be precluded from making any mention, comment, reference, or suggestion that any provider has attempted to take advantage of the Insured or any other person.
   19. The Court should bar argument and testimony about referencing other lawsuits and claims the Plaintiff may have.
   20. Defendant shall be prohibited from making any mention, comment, reference, suggestion or question of the opinion of any adjuster of Defendant or the opinion of any witness appearing on behalf of the defendant or the opinion any witness appearing on behalf of Defendant as to the validity or the lack of validity of the Plaintiff’s claim. Levinson v. State Farm Mutual Auto. Ins. Co., 9 Fla. L. Weekly Supp. 721 (Fla. Broward Cty. Ct. 2002).
   21. The Defendant should be precluded from making any reference or comment that the Defendant may have to pay attorney’s fees and costs if it loses this case.
   22. The Defendant should be precluded from stating whether the policy insurance is exhausted. Exhaustion is not an issue for the jury and if the jury learns the policy is exhausted, they may become confused as to what are the true issues for them. Exhaustion is a legal defense and there is no place for this argument at the time of the trial.
   23. Defendant shall be precluded from raising any additional affirmative defenses, legal issues, or claims which have not been raised. Plaintiff will be severely prejudiced at trial if Defendant presents new legal arguments on unpled issues.
   24. Any mention, comment, reference, suggestion or question of contributory negligence on the part of the homeowner or property damage provider—not pled as an affirmative defense in this case.
   25. Any mention, comment, reference, suggestion or question that the damages to the property were a preexisting damage, which was not pled as an affirmative defense.
   26. That defendant be precluded from proffering evidence that contradicts its admissions.
   27. That defendant be precluded from bringing duplicative testimony because it would be unfairly prejudicial, and because it will lead to undue delays, waste of time, or needless presentation of cumulative evidence. Plaintiff anticipates that Defendant may bring experts with identical specialties that will offer identical opinions based upon identical facts.
   28. That any witnesses, not previously offered to the court as an expert, be precluded from providing opinion testimony if they are not “a person duly and regularly engaged in the practice of one who holds a professional degree from a university or college and has had special professional training and experience, or one possessed of special knowledge or skill about the subject upon which they are called to testify”. SEE Florida Rule of Civil Procedure 1.390; *Fla. Stat.* § 90.702 (2020).
   29. Plaintiff moves to preclude Defendant, Defendant’s attorneys, or Defendant’s witnesses from directly or indirectly making any reference, comment, remark, or inference concerning fraud that has not been pled as an affirmative defense. Any mention or inference of fraud would be improper and would severely prejudice the jury’s impartiality. Defendant will not be prejudiced by the exclusion of this highly prejudicial “buzzword.” The Plaintiff anticipates that the Defendant may attempt to allege or infer fraud which was not pled. It is a well-established point of law that fraud must be plead with specificity. See Fla. Rules of Civil Procedure 1.120(b). See Bankers Mutual Cap. Corp. v. US Fidelity & Guaranty Co., 784 So. 2d 485 (Fla. 4th DCA 2001); Peninsular Florida Dist. Council v. Pan Am. Invest & Dev. Corp., 450 So. 2d 1231 (Fla. 4th DCA 1984). The elements of fraud are: 1) misrepresentation of a material fact; 2) knowledge that misrepresentation is false; 3) intention that the other party rely on said misrepresentation; 4) justifiable reliance and; 5) resulting injury or damage. See Eastern Cement v. Halliburton Co., 600 So. 2d 469 (Fla. 4th DCA 1992); Arnold v. Wick, 388 So. 2d 269 (Fla. 4th DCA 1980). Pleading fraud without particularity in an affirmative defense does not raise the issue of fraud for trial. Cady v. Chevy Case S. & L. Assoc., 528 So. 2d 136 (1988). Moreover, elements not pled may not be inferred from context. Myers v. Myers, 652 So. 2d 1214 (Fla. 5th DCA 1995). Failure to allege fraud with particularity is grounds for dismissal of the claim. General Dynamics Corp. v. Hewitt, 225 So. 2d 561 (Fla. 3rd DCA 1979).
   30. Defendant should be precluded from eliciting any lay witness opinion testimony regarding Plaintiff’s services. Florida courts have adopted the long-standing common-law rule that precludes law witnesses from offering testimony in the form of an opinion or inference. See Fino v. Nodine, 646 So. 2d 746 (Fla. 4th DCA 1994). The reason lay witnesses must not be allowed to testify about their opinions is that such testimony would take over the role of the jury, which is to determine witness credibility, draw inferences and opinions from the witnesses’ testimony, assess their credibility, and determine the facts of the litigation. Id. Since, in this matter, the opinion is to be presented would involve matters of specialized knowledge, it is prohibited under the statute. Laffman v. Shrrod, 565 So. 2d 760 (Fla. 3d DCA 1990). A witness is not permitted to give testimony about a matter not generally known by any ordinary person unless the witness is an expert in the field about which he is testifying. Dragon v. Grant, 429 So. 2d 1329, 1330 (Fla. 5th DCA 1983). None of the Defendant’s witnesses are an expert in the field of engineering and, thus, they must be prohibited from offering opinion testimony on any of these issues. Further, lay witnesses are prohibited from giving opinions which reflect “flights of fancy, speculation, hunches, intuitions, or rumors about matters remote from” their personal experiences. Visser v. Packer Eng’g Assocs., 924 F. 2d 655, 659 (7th Cir. 1991). To the extent Defendant intends to elicit impermissible lay witness opinion testimony from the trial witnesses identified above, it must be prohibited.
   31. Defendant should be precluded from inferring or claiming any kind of fraud which is inadmissible as a matter of law at trial.
   32. Defendant should be precluded from raising any additional affirmative defenses, legal issues, or claims that the services have not been lawfully rendered as these issues have not been raised. Plaintiff will be prejudiced at trial if Defendant presents new legal arguments on unpled issues.
   33. Defendant should be precluded from stating that there is something suspicious about Plaintiff’s services. Levinson v. Tate Farm Mutual Auto. Ins. Co., 9 Fla. L. Weekly Supp. 721 (Fla. Broward Cty. Ct. 2002).
   34. Defendant should be precluded from raising financial motives that the Plaintiff may have had in performing its services. Any reference to financial motivation would be extremely prejudicial and should be excluded in any form. Diagnostic Neurology Group, Inc. v. Allstate, 5 Fla. L. Weekly Supp. 134 (Fla. 9th Jud. Cir. Ct. 1997).
   35. Plaintiff moves to limit Defendant’s attorney, experts, and/or lay witnesses from stating personal opinions about the Plaintiff and the merits of the services rendered in connection with this particular case. See Waste vs. Seaboard Coast Line R.R. Co., 474 So. 2d 825 (Fla. 2nd DCA 1985) (finding error in statement of personal opinions about the merits of the case or credibility of the Plaintiff). *See* *also* generally, Moore vs. Taylor Concrete & Supply Co., Inc., 553 So. 2d 787 (Fla. 1st DCA 1989); Blue Grass Shows, Inc. vs. Collins, 614 So. 2d 626 (Fla. 1st DCA 1993).
   36. If Defendant’s Expert is permitted to testify, he or she will not be permitted to express his or her opinion of the Plaintiff’s Expert or reference any opinions not expressed in the Defendant’s Expert report. Carver vs. Orange County, 444 So. 2d 452 (Fla. 5th DCA 1983) (holding that it is error to permit expert witness to impeach another expert witness by asking first expert witness as to second expert’s ability). It is improper to impeach an expert witness by eliciting from another expert witness what he thinks of that expert. Schwab vs. Tolley, 345 So. 2d 747 (Fla. 4th DCA 1977); Ecker vs. Nashville Roofing of Miami, Inc., 201 So. 2d 586 (Fla. 3rd DCA 1967). See also, Dungan vs. Ford, 632 So. 2d 159 (Fla. 1st DCA 1994) (holding that it is improper to allow expert to testify on lack of skill or judgment and poor results achieved by a treating physician); Levinson vs. State Farm Mutual Auto. Ins. Co., 9 Fla. L. Weekly Supp. 721 (Fla. Broward Cty. Ct. 2002).
   37. Defendant should be precluded from making any mention, comment, reference, or suggestion that Plaintiff may obtain or has obtained a settlement against any other party or parties. Levinson vs. State Farm Mutual Auto. Ins. Co., 9 Fla. L. Weekly Supp. 721 (Fla. Broward Cty. Ct. 2002).

Plaintiff hereby requests this Honorable Court to exclude the above testimony as it is either not relevant, highly prejudicial, or both. Additionally, some of the above types of testimony would confuse or mislead the jury.

WHEREFORE, Plaintiff respectfully request this Honorable Court grant this Motion and preclude Defendant, Defendant’s attorneys, and Defendant witnesses from making any of the above comments together with any and all further relief this Court deems just and proper.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 19, 2022, a true and correct copy of the foregoing was filed and served on the Defendant through Florida Courts E-Filing Portal.

**Florida Insurance Law Group, LLC**

6330 Manor Lane, Ste 200B

South Miami, FL 33143

Tel. (305) 906-4262



Robert F. Gonzalez, Esq.

Fla. Bar No. 68865

[Pleadings@flinslaw.com](mailto:Pleadings@flinslaw.com)