

MOTIONS IN LIMINE

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**STATE BAR OF TEXAS
FAMILY LAW BASIC TRAINING
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Chapter 2

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BOARD CERTIFICATION

Family Law - Texas Board of Legal Specialization

AREAS OF PRACTICE

Complex divorces and child custody cases. Protection of separate property and pursuit of reimbursement claims through tracing at time of divorce and/or economic contribution. Prenuptial and post-nuptial agreements. Grandparent and third party conservatorship claims. Interstate and international compacts.

LECTURER & AUTHOR

New Grievance Procedures – Smith County Bar Assoc. - 2004
When Disaster Strikes – SBOT Advanced Family Law 2003
Recent Cases and Legislation, Smith County Bar Assoc., Family Law Section – 2002, 2003
Current Issues in Family Law – TAALP - 2003
Texas Private Schools: Family Law Issues and School Responsibility - 2002
Economic Contribution – Smith County Bar Assoc. - 2002
Economic Contribution – Texas Panhandle Family Law Assoc. - 2002
Modification of Custody – State Bar of Texas – Pro Bono Project - 2001
The New Discovery Rules – Smith County Bar Assoc. - 1998
ATLA Family Law Section Newsletter - Contributor

PROFESSIONAL ASSOCIATIONS

Texas Academy Family Law Specialists
Texas Pattern Jury Charge – Family 2001- current
Grievance Committee – District 2A 2003 - current
Unauthorized Practice of Law Committee – Texas Supreme Court – 2001 - current
Smith County Bar Association – President 2005-2006; Vice President 2004-2005; Secretary 2002-2003; Director 2001-2002
American Trial Lawyers Association
American Bar Association

EDUCATION & ACCOLADES

South Texas College of Law – J.D.
University of Mississippi – B.B.A.
Smith County Bar Association – Young Lawyer of the Year - 2004

PERSONAL

Married to Martha for 13 great years; full time father to three growing boys allowing me to be a part-time outdoorsman and golfer; Scouts, Little League, Soccer, Basketball (you get the picture)

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MOTIONS IN LIMINE

I. INTRODUCTION

Generally, all lawyers know what a motion in limine is, when it is used and its purpose. And my informal poll of area lawyers confirmed my suspicions that the vast majority of lawyers draft their motions in limine the day before the pretrial hearing by pulling their last jury trial file and cutting and pasting their old motion into their current case.

This lack of preparation is a great disservice to their clients because a well crafted, well considered motion in limine can tilt the playing field in your favor. A good motion in limine order can interrupt your opposing counsel's game plan, disrupt his flow of the case and presentation of evidence, as well as make adverse witnesses uncomfortable with their testimony. All this from one short, little Latin phrase.

This paper and accompanying presentation will give you the underlying authority for a motion in limine; introduce you on how and when to effectively use a motion in limine; make you think about them as your case progresses, and give you several forms of motions to utilize and tweak for your specific cases.

II. OVERVIEW

A. To Italicize or not

There's always a question, when using legal terms, on how to present a Latin word or phrase. The term 'in limine' is Latin, meaning "on or at the threshold." And as I was preparing this paper, the question arose about its proper grammatical presentment. As most lawyers do, I asked my partners for their thoughts and received mixed opinions. So, I decided to revert to an "old school" methodology – I actually looked it up. After consulting *The Bluebook*, 17th Ed., I found Rule 7, which states "[t]here is a strong presumption that Latin words and phrases commonly used in legal writing have been incorporated into common usage and thus should not be italicized." Therefore, throughout my paper 'in limine' will not be italicized.

B. Definition and Purpose of Motions in Limine

1. Definition

The general consensus definition of a motion in limine is a written motion filed before trial to try to keep the jury from hearing certain evidence. But the formal definition substantially expands this general perception. A motion in limine is "a written motion which is usually made before or after the beginning of a jury trial for a protective order against prejudicial questions and statements". Black's Law Dictionary, Fifth Edition, West Publishing, 1979.

The most important part of the definition is the one most overlooked – "prejudicial questions and statements." A well crafted motion is directed to both the witness -- to prevent them from testifying about a particular issue -- and the opposing counsel -- to keep them from referencing or asking questions about that same prohibited topic. This dual role supports its underlying purpose to ensure the jury considers only properly presented evidence.

2. Purpose

A motion in limine's purpose is well described in the following two passages.

"Purpose of such motion is to avoid injection into trial of matters which are irrelevant, inadmissible and prejudicial and granting of motion is not a ruling of evidence and, where properly drawn, granting a motion cannot be error." Black's Law Dictionary, Fifth Edition, West Publishing, 1979. T

"The purpose in filing a Motion in Limine to suppress evidence or to instruct opposing counsel not to offer it is to prevent the asking of prejudicial questions and the making of prejudicial statements in the presence of the jury with respect to matters which have no proper bearing on the issues in the case or on the rights of the parties to the suit. It is the prejudicial effect of the questions asked or statements made in connection with the offer of the evidence itself which the motion is intended to reach." *Bridges v. City of Richardson*, 354 S.W.2d 366 (Tex. 1962).

The prejudicial effect of inadmissible evidence being discussed or questioned is the

heart that a motion in limine is intended to protect. It is this author's opinion that in the family law arena, where there are substantially fewer restrictions on evidence than in the general civil dispute between strangers, that the best benefit may be obtained by utilizing motions in limine against attorneys that don't follow, either on purpose or by accident, the Rules of Evidence or Rules of Procedure. By having the court order that a certain topic is off limits and violation of that order may result in not only a mistrial but also contempt of court puts the attorney, and obviously the witnesses, on edge regarding their attempt to introduce inappropriate statements or evidence. Therefore, the ideal purpose is to prevent even the mentioning or inference of the inadmissible evidence to the jury.

III. AUTHORITY FOR A MOTION IN LIMINE

A. Case Law

It is generally accepted that the motion in limine, as commonly thought of today, was first used in *Montgomery v. Vinzant*, 297 S.W.2d 350 (Tex.Civ.App. – Ft. Worth 1956, no writ). The Fort Worth Court of Civil Appeals discussed the propriety and effectiveness of the procedure followed by the trial court. Today's procedure of filing written motions and discussing them in pretrial conference closely follows that recommended by the *Montgomery* court and expounded by the *Bridges* court, *supra*.

The vast majority of subsequent case law speaks of the orders use during trial and whether one party did or did not preserve for appellate review the evidentiary issue in question. *See* Section VII, Use During Trial, *infra*.

B. Texas Rules of Evidence 103(c)

Hearing of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury. TEX. R. EVID 103(c).

This evidence rule goes to the core of the most effective use of the motion as against your

opposing counsel. You do not want the opposing attorney to ask improper questions nor make improper assertions because the statements can not be retracted from the jurors' minds. This rule is also the basis for the bench conferences that regularly occur and the excusal of the jury for the court to determine potentially lengthy evidentiary disputes.

C. Texas Rules of Evidence 104

Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination the court is not bound by the rules of evidence except those with respect to privileges. TEX. R. EVID. 104.

The trial court is given specific and broad authority as gatekeeper of the evidence and determination of privileges. This latitude is why knowledge of the court's propensities on evidentiary matters is important in the evaluation, preparation and presentment of your client's motion in limine and case in general.

D. Texas Rules of Evidence 403

Although 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, or needless presentation of cumulative evidence. TEX. R. EVID. 403.

This well-known but often underutilized rule of evidence is the essence of the motion in limine – relevant evidence that is excluded from consideration. Since the family law arena covers all aspects of a person's life, be it divorce property disputes or the best interest of the child, the typical response to an evidentiary objection is that this evidence is admissible because it goes to the best interest of the children or the just division of assets. But those broad standards are not the criteria for the admission of evidence. The court may still exclude evidence via a motion in limine or a timely objection if the evidence is misleading, confusing, duplicative or poses a danger of unfair prejudice.

E. Texas Rules of Civil Procedure 166

In an appropriate action, to assist in the disposition of the case without undue expense or burden to the parties, the court may in its discretion direct the attorneys for the parties and the parties or their duly authorized agents to appear before it for a conference to consider:

- (a) all pending dilatory pleas, motions and exceptions;
- (b) the necessity or desirability of amendments to the pleadings;
- ...
- (d) requiring written statements of the parties' contentions;
- (e) contested issues of fact and simplification of the issues;
- (f) the possibility of obtaining stipulations of fact;
- (g) the identification of legal matters to be ruled on or decided by the court;
- ...
- (j) agreed applicable propositions of law and contested issues of law;
- ...
- (p) such other matters as may aid in the disposition of the action.

The court shall make an order that recites the action taken at the pretrial conference, the amendments allowed to the pleadings, the time within which same may be filed, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions, agreements of counsel, or rulings of the court; and such order when issued shall control the subsequent course of the action, unless modified a the trial to prevent manifest injustice. The court in its discretion may establish by rule a pretrial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or extend it to all actions. TEX. R. CIV. PRO. 166.

This procedural rule, in addition to the court's inherent power, specifically authorizes judges to run their courts by determining timing and requirements for the filing of the motions, and when, how they are considered. The command language within the last paragraph also allows the entry of an order in such a

manner as to be enforceable by contempt, such as a motion in limine.

F. Texas Rules of Civil Procedure 248

When a jury has been demanded, questions of law, motions, exceptions to pleadings, and other unresolved pending matters shall, as far as practicable, be heard and determined by the court before the trial commences, and jurors shall be summoned to appear on the day so designated. TEX. R. CIV. PRO. 248.

This little utilized rule provides authority for a motion in limine, and allows a specific request be made for the court to rule on a particular topic, question of law or determination of how the case should proceed. For further discussion on how this Rule may be used independently to achieve a narrowing of issues, see *Rule 248 Motions – How to Use Them*, Sally Holt Emerson and Christopher Wrampelmeier, 26th Advanced Family Law 2000, Chap. 58.

G. Local Rules

There are at least 25 counties in Texas that have their local rules published and approved by the Supreme Court of Texas. Obviously, the variances and specifics involved in each one of these sets of Rules are too involved to be discussed within this paper. But suffice it to say that every set of local rules I reviewed contained procedures for conducting pretrial hearings so as to streamline jury trials and dispose of preliminary issues. Ensure that you review your court's local rules prior to beginning your motion in limine so that your time is well utilized.

IV. UTILIZATION, PROCEDURE AND TIMING**A. Utilization**

Motions in limine are utilized for the following reasons:

- i. To streamline trial – takes the evidentiary issues up to the forefront and provides the parties with an inclination on how the judge may rule on potential the critical evidentiary disputes.
- ii. To diminish disruptions for the jury – How many times do we hear that the jury feels like cattle when they are ushered back and forth to the jury room, and how the jury dislikes the bench conferences because of their perception that the

lawyers and judges are trying to keep things from them. Additionally, how often is the bench conference actually confidential so that the jury does not hear the discussion?

iii. Encouraging the attorneys to research the evidentiary issues – This additional research provides the judge supporting authority for their decision. It also allows the judge to make a better informed decision since he is paying specific attention to the issues presented during pretrial hearing, instead of asking the judge to be paying attention to every single question in the middle of the afternoon during the fourth hour of testimony of one of the parties.

iv. To encourage research and preparation of the case by the lawyers – This preparation greatly increases the chance of settlement if a critical evidentiary issue is no longer undecided, and a candid review of what can and can not be presented to the jury.

B. Procedure

Since a motion in limine is typically filed with the court, serve a copy on opposing counsel like other motions. *See* TEX. R. CIV. PRO. 21 and 21a . The one item of note is that many trial courts do not require that the motion in limine be filed or served more than 3 days prior to the hearing. In this case, you should either ask the trial court to modify that portion of the pretrial order or have a written agreement with opposing counsel that exchange occur a meaningful time before the hearing.

The motions in limine are heard by the court either within the pretrial hearing or immediately before jury selection. Either time is appropriate under the rules, but the earlier the better for witness preparation as well as trial planning. *See* TEX. R. CIV. PRO. 166 and 248.

After the motions are exchanged, counsel will review the other's motion, typically agree to the generic specific motions that overlap and then let the court decide the remainder. This hearing is commonly an informal discussion on the record where both counsel inform the judge what they believe the testimony will be and why they feel the evidence should come in or be kept out.

There exists two opportunities to advance your case during the motion in limine hearing: (1) you begin molding the judge's perception of the case with a general statement that is favorable to your client or adverse to the other

side, and (2) you can take advantage of the sometimes lax treatment of motions in limine opposing counsel by being prepared with case law supporting your evidentiary issues. This free bite of the apple is yours for the taking with minor pretrial preparation.

C. Timing

Every time an evidentiary issue arises within your case, the potential for a motion in limine should also be considered. Evidentiary issues arise from the initial meeting with your client to temporary orders to third party interviews to depositions. Whenever you consider how to get specific evidence in front of a jury or to keep it out, a motion in limine may be appropriate.

As several trial preparation sources recommend, a trial notebook created when you start the case is a good place to collect your thoughts on these items. Write down the evidence that you want in or want out and why as you develop your offer of proof. Then when you begin drafting your motion in limine, you will have case specific evidentiary elements that outline your case. This prior preparation allows you to more thoroughly and quickly draft a tailored motion.

But remember no where in the rules or case law does it say a motion in limine can not be presented in the middle of a case. If a motion is presented after the trial has begun, you will have the uphill battle to convince the judge that the evidence you wish to keep out has not already been introduced. But don't be afraid to file a motion as the case progresses to protect your client's interest. This may occur when you realize that a formally unexpected witness is going to take the stand or that a known witness has information that you thought they were not aware of. Try to keep that information out by filing the motion before the jury is reseated after a break.

Similarly, there is no requirement under the Rules of Evidence or Rules of Procedure that the motion must be in writing. If you experienced a momentary lapse in judgment and forgot to include an issue in your written motion, move orally for an amendment to your motion as it is being considered or even during the trial of the case. If presented during the case, you still must demonstrate that the issue you are trying to keep out has not been previously discussed.

If a late filed motion is being urged against you, argue that the pretrial order deadline has passed, or that TEX R.. CIV. PRO. 166 and 248

mandate that this issue be done “before the trial commences.” Also you can defend by asserting that the evidence has already been discussed either in voir dire, opening statements or via another witness.

V. DRAFTING AND RESPONSE

Recall that a motion in limine’s purpose is to protect your client from not only adverse evidence but adverse inferences by improper questions or statements. Witnesses introduce the adverse evidence and opposing counsel introduces the adverse questions or statements. So when drafting the motion, be specific in both what evidence you seek to exclude as well as what questions and statements about the evidence that may lead to the improper inferences.

When titling your motion, include either your client’s name or the appropriate title in the suit – ‘Petitioner’ or ‘Respondent.’ This simple item makes it easier on the judge during the hearing as well as the clerks for filing. Every little help available to the judge, the court clerks and your file assembler will be appreciated.

Attached Exhibit A is the general format for a motion in limine’s introduction.

Another drafting consideration is the number of individual items to be included should be limited. Family law evidence is generally all inclusive due to the argument of best interest of the child. Pick and choose your best ones so that the judge recognizes that you didn’t simply hit cut and paste on the computer. The fewer the issues, the more impact they will have on the judge and opposing counsel.

Support each listed item with a brief cite or paragraph length memorandum of law to substantiate your position. The length of supporting legal authority becomes a judgment call with the knowledge of your judge and her propensities. I recommend erring on the side of abundance.

Attached Exhibit D contains several general motions in limine that cover a variety of topics.

Although no response is necessary nor required by the rules, if the motions are exchanged soon enough to allow you to rebut their position in writing, you should absolutely do so. This provides a level of appellate record protection as well as provides a ready reference resource when the issue comes up during trial. Instead of only arguing from memory about why

an order should be reconsidered or affirmed, you can review your briefing to satisfy the appellate requirement of bringing the proper evidentiary issues to the court’s attention. Recall this may be the judge’s first encounter with this evidence and you want to alert her to the propriety of the evidence, its relevance and its perceived admissibility.

VI. HEARING AND ORDER

Counsel should coordinate with opposing counsel to ensure adequate time to review the other’s proposed motion in limine before the hearing.

A. Hearing

The court coordinator will likely set the hearing on your motion in limine at the same time as other pretrial issues, such as review of exhibits, jury charge, or *Daubert/Robinson* challenges. The content of this multipurpose hearing should be scrutinized regarding when you want your motion in limine heard in the sequence. If your motion is lengthy, you may want it heard early while the court is fresh and has adequate time. Conversely, if your opponent’s motion is lengthy, you may want to have it considered last so that the issues may be more rushed.

Regardless of the timing in the hearing, carefully consider each one of the opposing parties individual motions. Some will be all but identical to yours and an agreement may be reached. But be careful not to trade all of yours for all of theirs without review because you may unwittingly violate one of their motions with your case presentation. This is common rue with the statement that you can always ask the court to reconsider its order during the case. Now is the best time for the court to consider your better researched position.

A substantial caveat, both in drafting and agreeing to competing motions in limine, is to know your opposing counsel and their trial propensities. You should draft and utilized different motions if opposing counsel is belligerent, bellicose, or degrading to witnesses compared to if they are deliberate and methodical. The type of case, the type of evidence and the type of lawyer all are considerations.

After each counsel announce which ones they agree to, the court should then take up each contested item individually. This is where advocacy skills shine because you have the

opportunity to enlighten the judge to your client's case and underlying strong points.

Recall that it is not reversible error of the court to either grant or deny a motion in limine. So, the hearing is not the last battleground.

B. Order

Draft the proposed written order with care because you want it to be enforceable. There is no reason not to draft the order at the same time as you draft your motion in limine. It will be fresh on your mind, you can easily cut and paste between the documents and it is one less item of distraction during pre-trial rush. Similar to the motion, be specific on your order's title so as to identify it as either 'Petitioner's' or 'Respondent's' or by party name.

The order should be specific enough to be enforceable by contempt. After all, it is an order of the court. As such, you must include who is being ordered to do what or prohibited from doing what specific item.

Appendix B and Appendix C are two proposed order styles. Appendix B is a briefer version that is easily reviewed at a glance to see which ones of your potentially several motions were and were not granted. Appendix C is more specific and better utilized if there are several non-party witnesses that may need to be instructed on the court's evidentiary restrictions.

Require your opposing counsel to prepare their own order – do not include it in yours. If there is a deficiency in his motion or order, don't let your client suffer the repercussion. Two separate orders on two separate motions in limine are appropriate and expected.

I can't stress enough that if your requested motion in limine is denied to be sure and still object at trial whenever the mention of evidence or inference is brought up.

After the entry of the order, inform your clients, your experts, as well as all witnesses that the motion has been entered and what it encompasses. It is advisable to provide your witnesses a copy of the order as well as to provide a brief overview of the why you are discussing it with them.

VII. USE DURING TRIAL

Which side of the order your client's interests lie determines how you utilize the order. Either be vigilant in its enforcement by keeping the evidence out by appropriate

objections or be creative in your questions on other topics to demonstrate to the judge that it should reconsider its ruling on this topic of evidence.

The order granting a motion in limine does not keep the evidence out completely. The order is not a final ruling on the evidence. *Redding v. Ferguson*, 501 S.W.2d 717, 722 (Tex.Civ.App.-Fort Worth 1973, ref. n.r.e.). It merely makes the party seeking introduction of the evidence to first obtain a ruling from the court on its admissibility. *Tempo Tamers, Inc. v. Crow-Houston Four, Ltd*, 715 S.W.2d 658, 662 (Tex.App.-Dallas 1986, ref. n.r.e.)

If the judge still denies the attempted introduction of evidence, you still need to offer the evidence or make a bill of exceptions outside the presence of the jury. And once the offer of evidence is completed, you are required to again request the court to reconsider its ruling and allow the evidence to be submitted to the jury. See Jim LoStracco's article on Evidence, Chapter 6.

A. Offensive Use of the Order

When you are successful on your motion in limine, your advocacy skills and knowledge of the opposing party's potential witnesses becomes crucial. Identify the witness that has knowledge of the adverse evidence, make a copy of the order and present it to this adverse witness prior to his testimony. Identify for him the paragraph of interest and request that he read the full order, including the part about contempt. Then walk away. This puts him on notice of the court's order, just like your own witnesses.

This typically rattles the witness and makes them uncomfortable on the stand. You have done nothing more than comply with the court's order by ensuring all witnesses are made aware of the court's ruling. It is the opposing counsel responsibility to urge the court to reconsider its ruling and if possible put the witness at ease.

The order only precludes the introduction of the evidence without getting approval from the judge prior to its introduction. Therefore, the motion in limine order is not a final ruling. If the parties desire to introduce the evidence, they must approach the bench to urge the court to reconsider its ruling. This is where counsel is able to tie in the requested evidence with the evidence already introduced at trial.

B. Defensive Use of the Order

If the opposing party attempts to introduce the evidence or references the prohibitive information, you must timely object to the statement or question or waive the error. *Amarillo Oil Comp. V. Energy –Agri Products*, 731 S.W.2d 113, 116-117 (Tex.App.- Amarillo 1987, no writ.)

This is where the specificity of the final order is important which allows the court to punish the transgressor. Potential remedies for a violation of a motion in limine are a requested recess which allows a judge more time to decide so that a proper evidentiary ruling is obtained; instructions to the jury to disregard the statement or the evidence presented to them, or finding the attorney or the witness or party in contempt for violation of the order; *Roy v. State*, 627 S.W.2d 488 (Tex. App. –Houston [1st. Dist.] 1981, no writ.), or grant a motion for new trial or a mistrial. Again, your effort to inform the adverse witness of the order supports your position that the tainted statements are improperly before the jury through no fault of your own and your client should not suffer the adverse repercussions.

The motion for mistrial is based not on a violation of the motion in limine order, but on the fact that the introduction of tainted evidence creates reversible error. *Atchison Topeka and Santa Fe Railway Co. v. Acosta*, 435 S.W.2d 539 (Tex. Civ. App. – Hoston [1st Dist.] 1969, writ ref. n.r.e.)

VIII. CONCLUSION

The motion in limine is underutilized and unappreciated. A well constructed motion and order will not win the case for you, but it will make the presentment of evidence easier, potentially disrupt your opposing party's case presentation and have you better prepared for trial.

Additionally, a little work on one case can easily be utilized for another just like most lawyers do – just be sure to spend the time to modify as necessary for the case specifics. Whether you italicize your motion in limine or not, adding a well-prepared motion in limine to your trial arsenal is a must.

IX. BIBLIOGRAPHY

Appreciation and gratitude is extended to Larry Schwartz, whose *Motions in Limine* article

from the 1993 Advanced Family Law Course, and Judge Carolyn Wright, whose *Motion in Limine* article from Advanced Family Law Drafting Course, January 1992, were utilized as source materials. Additionally, Randy C. Roberts with Roberts & Roberts in Tyler and Chris Negem with Negem, Bickham & Worthington were instrumental in constructing the appendices by sharing their wisdom.

APPENDIX A

{STYLE OF THE CASE}

PETITIONER'S MOTION IN LIMINE

This Motion in Limine is brought by [name of movant], [party designation], who requests the Court:

To instruct the attorneys not to mention, refer to, or bring before the jury, directly or indirectly, on voir dire examination, reading of the pleadings, statement of the case, interrogation of the witnesses, argument, objections before the jury, or in any other manner any of the matters enumerated below, unless and until the matters have first been called to the Court's attention out of the presence and hearing of the jury and a favorable ruling received on the admissibility and relevance of the matters. *See Cody v. Mustang Oil Tool Co., Inc.*, 595 S.W.2d 214, 216 (Tex. Civ. App. Eastland 1980, writ ref'd n.r.e.).

To instruct the attorneys for [name] to inform [name] and all witnesses called by that party to refrain from mentioning or referring to, in any way, in the presence or hearing of the jury, any of the matters enumerated below, unless specifically permitted to do so by ruling of the Court.

To instruct [name of opposing party] and his attorneys that violation of any of these instructions may cause harm to [name of movant] and deprive [name of movant] of a fair and impartial trial, and the failure to abide by the instructions may constitute contempt of court. Direct or repeated violations of an Order sustaining this Motion in Limine can be reversible error. *Lohmann v. Lohmann*, 62 S.W.3d 875, 881 (Tex. App. El Paso 2001, no pet.); *Ball v. Rao*, 48 S.W.3d 332, 339 (Tex. App. Fort Worth 2001, pet. denied); *Weidner v. Sanchez*, 14 S.W.3d 353, 363 (Tex. App. Houston [14th Dist.] 2000, no pet.); *Kendrix v. S. Pac. Transp. Co.*, 907 S.W.2d 111, 114 (Tex. App. Beaumont 1995, writ denied).

The matters or conduct in question are as follows:

[INSERT THE APPLICABLE SPECIFIC MOTIONS IN LIMINE]

[INSERT PRAYER, CLOSING, CERTIFICATE OF SERVICE AND CERTIFICATE OF CONFERENCE]

APPENDIX B

{INSERT STYLE OF CASE}

ORDER ON PETITIONER’S MOTION IN LIMINE

BE IT REMEMBERED that on this day, prior to the voir dire examination of the Jury Panel, Petitioner’s Motion in Limine was timely filed, and the Court, after hearing argument of counsel and considering said Motion, thereafter ruled with respect to each paragraph as follows:

<u>Paragraph</u>	<u>Granted</u>	<u>Overruled</u>	<u>Modified</u>
1. Motion in Limine Filed	_____	_____	_____
2. Settlement Issues	_____	_____	_____
Etc.			

It is further ORDERED that Respondent, his attorneys, and all witnesses called on his behalf be and the same are hereby instructed not to do or say anything in the presence of the Jury or the Jury Panel which would in any way advise, suggest, or imply any of the matters set forth in the aforementioned paragraphs which have been "GRANTED" or from doing any of the acts set forth in said paragraphs, until after the matter or contemplated act has been discussed with the Court outside of the presence and hearing of the Jury and a favorable ruling received as to its admissibility or permissibility; and

It is further ORDERED that Respondent and his attorneys be and the same are hereby specifically directed to inform and counsel all witnesses called by Respondent or persons in the courtroom at the request of Respondent not to volunteer, inject, disclose, mention, or in any way imply to the Jury any of the matters set forth in the aforementioned paragraphs which have been "GRANTED," unless specifically questioned thereon and only after a favorable ruling by the Court as the admissibility of the matter has been obtained.

SIGNED at _____ . M. on this _____ day of _____, 2005.

JUDGE PRESIDING

APPENDIX C

{INSERT STYLE OF CASE}

ORDER ON PETITIONER'S MOTION IN LIMINE

BE IT REMEMBERED that on this day, prior to the voir dire examination of the Jury Panel, Petitioner's Motion in Limine was timely filed, and the Court, after hearing argument of counsel and considering said Motion, thereafter ruled with respect to each paragraph as follows:

Paragraph

1. The filing of this motion, or any ruling by the Court on this motion, suggesting or implying to the jury that [name of movant] has wrongfully and improperly moved to prohibit proof.

Granted _____ Overruled _____ Modified _____

2. Any reference to sexual activity on the part of [name of movant] not conducted in the presence of the child[ren] or in [his/her/their] sphere of awareness.

Granted _____ Overruled _____ Modified _____

Etc., etc.

It is further ORDERED that Respondent, his attorneys, and all witnesses called on his behalf be and the same are hereby instructed not to do or say anything in the presence of the Jury or the Jury Panel which would in any way advise, suggest, or imply any of the matters set forth in the aforementioned paragraphs which have been "GRANTED" or from doing any of the acts set forth in said paragraphs, until after the matter or contemplated act has been discussed with the Court outside of the presence and hearing of the Jury and a favorable ruling received as to its admissibility or permissibility; and

It is further ORDERED that Respondent and his attorneys be and the same are hereby specifically directed to inform and counsel all witnesses called by Respondent or persons in the courtroom at the request of Respondent not to volunteer, inject, disclose, mention, or in any way imply to the Jury any of the matters set forth in the aforementioned paragraphs which have been "GRANTED," unless specifically

questioned thereon and only after a favorable ruling by the Court as the admissibility of the matter has been obtained.

SIGNED at _____ __. M. on this _____ day of _____, 2005.

JUDGE PRESIDING

APPENDIX D

General Motions in Limine

1. The filing of this Motion, the contents of this Motion, any ruling by the Court on this Motion, or any suggestion or inference to the Jury that the parties moved to prohibit proof or that the Court has excluded proof of any particular matter in this case. *See Burdick v. York Oil Co.*, 364 S.W.2d 766, 767 (Tex. Civ. App. San Antonio 1963, writ ref'd n.r.e.).

2. Any adultery, cruelty, or other acts of fault in disrupting the marital relationship that have not been plead.

3. Any reference to settlement negotiations, TEX. R. EVID. 408, or statements made in mediation. TEX. CIV. PRAC. & REM. CODE § 154.073(a).

4. Any evidence of the character, reputation, or quality of, or the fees for, legal services rendered by any attorneys in this case, unless attorney's fees are a jury issue.

5. Any suggestion that the law requires a showing of unfitness of a party before the other party can be appointed managing conservator.

6. Evidence of the beliefs or opinions of witnesses on matters or religion submitted for purposes of showing that by reason of their nature the witness' credibility is impaired or enhanced. TEX. R. EVID. 610.

7. Any references to the terms of the temporary orders.

8. Any reference to sexual activity on the part of [name of movant] not conducted in the presence of the child[ren] or in [his/her/their] sphere of awareness.

9. Any references to events or actions occurring before [date of rendition of the order to be modified or signing of the mediated or collaborative law settlement agreement on which the order is based].

10. Requesting or in any manner soliciting an agreement or stipulation or understanding from Petitioner or her attorneys in the presence or hearing of the Jury regarding any matter which should arise during this trial. Such ostensible cooperation at this late date is only intended to place Petitioner in an

awkward or embarrassing situation and the refusal on the part of Petitioner could only serve to generate unfair prejudice against Petitioner.

11. Presenting heretofore undisclosed witnesses, tangible evidence, material, or information, which is responsive to any of Petitioner's discovery requests, and which was not disclosed to Petitioner at least thirty (30) days before trial. See TEX. R. CIV. P. 193.5 & 193.6. The remedy of exclusion is "mandatory and automatic unless the court finds there was good cause for the failure to amend or supplement, or the failure will not unfairly surprise or prejudice the other party." *Pilgrim's Pride Corp. v. Smoak*, 134 S.W.3d 880, 902 (Tex. App.–Texarkana 2004, pet. denied); see TEX. R. CIV. P. 193.6; *Morrow v. H.E.B., Inc.*, 714 S.W.2d 297, 297-98 (Tex. 1986). "The burden of establishing good cause or lack of unfair surprise is on the party seeking to introduce the evidence." *Id.* This includes material or information withheld from discovery under a claim of privilege, including a claim sustained by the court. See TEX. R. CIV. P. 193.4(c). Moreover, a party which files a proper objection and thereafter undertakes to supplement an interrogatory response is obligated to respond fully and completely. *Reichhold Chems. v. Puremco Mfg.*, 854 S.W.2d 240, 245 (Tex. App.-Waco 1993, writ denied). The party requesting discovery is not under a duty to request a pretrial hearing to compel undisclosed evidence when it does not have reasonable notice of the nondisclosure. See *Raesner v. Texas Dept. of Pub. Safety*, 982 S.W.2d 131, 133 (Tex. App.-Houston [1st Dist.] 1998, pet. denied); *Tri-State v. Barrera*, 917 S.W.2d 391, 399 (Tex. App.-El Paso 1996, writ dismissed by agr.); *City of Dallas v. Ormsby*, 904 S.W.2d 707, 711 (Tex. App.-Amarillo 1995, writ denied).

12. Disclosing the existence or otherwise showing to the jury any surveillance videotapes or photographs which have not already been produced to Petitioner. *In re Learjet, Inc.*, 59 S.W. 3d 842, 847 (Tex. App.-Texarkana 2001); *British American Ins. Co. v. Howerton*, 877 S.W.2d 347 (Tex. App.-Houston [1st Dist.] 1994, writ dismissed by agr.). All audio or video tapes and photographs which may be offered into evidence are discoverable. See TEX. R. CIV. P. 192.3(b) & 192.5(c)(4).

13. Offering into evidence any exhibit, displaying any exhibit, or otherwise disclosing to the Jury the existence of any exhibit which has not previously been shown to Petitioner's counsel outside the presence of the Jury. See TEX. R. EVID. 103.

14. Commenting on, speculating as to why, or suggesting the consequences of the decision of Petitioner's attorneys to object or to not object to the introduction of any evidence or any rulings of this Court. See *Texas Employers' Ins. Ass'n v. Phillips*, 255 S.W.2d 364, 366 (Tex. Civ. App. BEastland 1953, writ ref'd n.r.e.).

15. Any oral or written statements attributable to Petitioner which have not been disclosed by Respondent in response to Petitioner's Interrogatory or Request for Disclosure inquiring about such statements. For purposes of this Motion in Limine, a "statement" is defined as (a) a written statement signed or otherwise adopted or approved by the person making it, or (b) a stenographic, mechanical, electrical, or other type of recording, or any transcription thereof, which is a substantial verbatim recital of a statement made by the person and contemporaneously recorded. This includes but is not limited to any documents signed by Petitioner or any oral statement which might be offered into evidence under TEX. R. EVID. 801 as an admission by a party opponent. See TEX. R. CIV. P. 192.3(h).

16. Objecting to the introduction into evidence of any portion of any written, oral, or videotaped deposition on the grounds that it constitutes only a portion of the deposition testimony, objecting on the grounds that Petitioner has already introduced another portion of the deposition at an earlier time, or objecting to the reading of deposition testimony by Petitioner's attorney on the grounds that that attorney propounded the questions eliciting the deposition testimony. A party has the right to introduce any part or all of a deposition in any order. See TEX. R. CIV. P. 207; *Texas Dept. of Human Servs. v. Green*, 855 S.W.2d 136, 151 (Tex. App.—Austin 1993, writ denied); *Jones v. Colley*, 820 S.W.2d 863 (Tex. App.—Texarkana 1991, writ denied); *Gilcrease v. Hartford Accident & Indem. Co.*, 252 S.W.2d 715, 719 (Tex. Civ. App.—El Paso 1952, no writ). “A deposition, or any portion thereof, may be offered by either party to support the contention of the offering party....No rule requires that a deposition be read into the record or played before the jury in chronological order.” *Jones v. Colley*, 820 S.W.2d 863, 866 (Tex. App.—Texarkana 1991, writ denied) (emphasis original). “Their remedy was to introduce the unedited deposition or their own edited version in response to [the plaintiff's] offer.” *Id.* “A party, as a matter of trial strategy, is entitled to present his evidence in the order he believes constitutes the most effective presentation of his case, provided that it does not convey a distinctly false impression.” *Id.* (emphasis

original). “By compelling plaintiff to offer a portion of the deposition which he did not desire to offer in order to obtain the right to offer a portion thereof which he did desire to offer, the court unduly interfered with his legal right.” *Gilcrease v. Hartford Accident & Indem. Co.*, 252 S.W.2d 715, 719 (Tex. Civ. App.–El Paso 1952, no writ). Any valid objection may be brought to the attention of the Court outside the presence of a jury. Such objections or comments should be made outside of the presence of the Jury because their 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, or needless presentation of cumulative evidence. See TEX. R. EVID. 403.

17. The existence or nature of any privilege asserted or any objection made by Petitioner or on Petitioner’s behalf to any discovery or in any proceedings conducted prior to the trial of this case. See TEX. R. EVID. 513 (prohibiting comment on the claim of a privilege). The existence of a legal objection is not relevant to any material issue presented to the Jury in this trial, and to the extent that it may be relevant, it should be excluded because 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, or needless presentation of cumulative evidence. See TEX. R. EVID. 402 and 403; *Rios v. MHMR*, 58 S.W.3d 167, 169 (Tex. App.-San Antonio 2001, no pet); *Travelers Ins. Co. v. Woodard*, 461 S.W.2d 493, 496 (Tex. Civ.App.-Tyler 1971, writ ref’d n.r.e.)

18. The failure of Petitioner to call or to produce any witness to testify in this trial who was equally available to all parties. *Tex-Jersey Oil Corp. v. Beck*, 305 S.W.2d 162 (Tex. 1957); *Brazos Graphics, Inc. v. Arvin Indus.*, 574 S.W.2d 240, 243-44 (Tex. Civ. App. Waco 1978), writ ref’d n.r.e. per curiam, 586 S.W.2d 841 (Tex. 1979); *Texas Power & Light Co. v. Walker*, 559 S.W.2d 403, 406 (Tex. Civ. App. Texarkana 1977, no writ); TEX. R. EVID. 804.

19. Engaging in attacks on the integrity of counsel or suggesting that counsel has made misrepresentations to the Jury. *Checker Bag Co. v. Washington*, 27 S.W.3d 625, 643 (Tex. App.-Waco 2000, pet. denied); *NationsBank of Texas v. Akin, Gump, Etc.*, 979 S.W.2d 385, 399 (Tex. App.-Corpus Christi 1998, pet. denied); *Amela's Auto., Inc. v. Rodriguez*, 921 S.W.2d 767, 773 (Tex. App.-San Antonio 1996, no writ); *Beavers v. Northrop Worldwide Aircraft Servs., Inc.*, 821 S.W.2d 669, 680 (Tex.

App.-Amarillo 1991, writ denied); *Am. Petrofina, Inc. v. PPG Indus., Inc.*, 679 S.W.2d 740 (Tex. App.-Ft. Worth 1984, writ dism'd by agr.).

20. Engaging in argument suggesting that Petitioner or her attorneys have engaged in the subordination of perjury, the manufacturing or destruction of evidence, the suppression of evidence, or fraud. *Standard Fire Ins. Co. v. Reese*, 584 S.W.2d 835, 840 (Tex. 1979); *S. Pac. Co. v. Hubbard*, 297 S.W.2d 120 (Tex. 1956); *Lumbermen's Lloyds v. Loper*, 269 S.W.2d 367 (Tex. 1954); *City of Dallas v. Andrews*, 236 S.W.2d 609, 610 (Tex. 1951); *Circle Y of Yoakum v. Blevins*, 826 S.W.2d 753, 758 (Tex. App.--Texarkana 1992, writ denied).

21. When Petitioner may have retained local counsel, why Petitioner may have retained local counsel, or the nature and degree of said local counsel's involvement in the preparation and trial of this case. Such matters are not relevant to any material issue in this trial and they are therefore inadmissible. *See* TEX R. EVID. 401. Moreover, to the extent that such matters are relevant, they should be excluded because their 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. *See* TEX. R. EVID. 403.

22. Expressions of personal opinion by counsel as to the justness of their client's cause, the culpability of any party, the credibility of any witness, or the qualifications of any expert witness. Disc. Rules 3.04; *Wallace v. Liberty Mutual Ins. Co.*, 413 S.W.2d 787, 790 (Tex. Civ. App.-Houston 1967, writ ref'd n.r.e.); and *Levermann v. Cartall*, 393 S.W.2d 931, 937 (Tex.Civ.App.-San Antonio 1965, writ ref'd n.r.e.).

23. Disclosing to the Jury otherwise inadmissible evidence on the grounds that it is the basis of an expert opinion. *See* TEX. R. EVID. 705(d); *Boswell v. Brazos Elec. Power Co-op., Inc.*, 910 S.W.2d 593, 602 (Tex. App.-Ft. Worth 1995, writ denied).

24. Offering to testify after having invoked the Fifth Amendment privilege during the discovery process. *See* *Texas Dept. of Pub. Safety Officers' Ass'n v. Denton*, 897 S.W.2d 757 (Tex. 1995).

25. Disclosing responses to interrogatories or requests for disclosure under Rule 194.2(c) and (d) inquiring about legal theories and the factual bases for them or the amount and method of

- calculating economic damages if those responses have been amended or supplemented. See TEX. R. CIV. P. 194.6 & 197.3
26. The existence or contents of abandoned or dismissed pleadings in this litigation. See *Zock v. Bank of the Southwest Nat'l Ass'c. of Houston*, 464 S.W.2d 375 (Tex.Civ.App.-Houston [14th Dist.] 1976, no writ); *Texaco, Inc. v. Pursley*, 527 S.W.2d 236, 240 (Tex. Civ. App. Eastland 1975, writ ref'd. n.r.e.); *Miller v. Carlson*, 390 S.W.2d 64, 67 (Tex. Civ. App. Texarkana 1965, writ ref'd. n.r.e.). Inconsistent pleadings are allowed, and the discovery process permits pleadings to be refined. See TEX. R. CIV. PRO. 48. Dismissed or abandoned pleadings should be excluded because their probative value is substantially outweighed by the danger of unfair prejudice or confusion of the issues. See TEX. R. EVID. 403. Moreover, reversible error may be avoided if such evidence is excluded until it is first established to the satisfaction of the Court, outside of the presence of the Jury, that the abandoned pleading constitutes a position which is inconsistent with Petitioner's position in this trial.
26. Guilty pleas that were later withdrawn or pleas of *nolo contendere* that do not fall within the exception of TEX. R. EVID. 410.
27. Demonstrative evidence of the sexual practices of a parent (e.g., sexual devices, adult oriented photos) to which the child the subject of the suit was not exposed. *Wolfe v. Wolfe*, 918 S.W.2d 533, 538-539 (Tex.App.-El Paso 1996, writ denied); *Schwartz v. Jacob*, 394 S.W.2d 15 (Tex. Civ.App.-Houston 1965, writ ref'd n.r.e.)
28. Offering (certain documents) because they are inadmissible under the business records exception to the hearsay rule. Business files containing reports or documents not generated by the business or its employees but which were produced from outside sources cannot be business records. *Hooper v. Torres*, 790 S.W.2d 757, 760 (Tex. App.-El Paso 1990, writ denied); and *Associated Indem. Corp. v. Dixon*, 632 S.W.2d 833, 835 (Tex. App.-Dallas 1982, writ ref'd n.r.e)
29. That Petitioner or any witness called on behalf of Petitioner has or has not been arrested, held in police custody, indicted, charged with misconduct, or convicted of a crime. See TEX. R. EVID.

609. Evidence of arrests, detentions, indictments, or charges which do not result in a conviction is not admissible. *Id.* Moreover, evidence of a conviction is inadmissible because Respondent was given a timely written request for any such evidence and failed to give Petitioner sufficient advance written notice of any intent to use such evidence. *See* TEX. R. EVID. 609(f). Where there has been a failure to give advance written notice, such evidence is inadmissible even for impeachment purposes. *Nikoloutsos v. Nikoloutsos*, 47 S.W.3d 837, 839-40 (Tex. App.—Beaumont 2001, pet. denied). Where a conviction may be admissible, reversible error may be avoided if such evidence is excluded until it is first established to the satisfaction of the Court, outside of the presence of the Jury, that: (1) the crime resulted in a conviction; (2) the conviction is not the subject of a pending appeal; (3) the crime was a felony or involved moral turpitude; (4) ten years have not elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction; (5) the conviction has not been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure, or if it has, that the person has been convicted of a subsequent crime which was classified as a felony or involved moral turpitude; (6) probation has not been satisfactorily completed for the crime, or if it has, that the person has been convicted of a subsequent crime which was classified as a felony or involved moral turpitude; (7) the conviction was not a juvenile adjudication; and (8) the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. *See* TEX. R. EVID. 403 and 609; *Engelman Irr. Dist. v. Shields Bros., Inc.*, 960 S.W.2d 343, 355 (Tex. App.—Corpus Christi 1997), pet. denied per curium 989 S.W.2d 360 (Tex. 1998) (expressing no opinion on unrelated issues) ("Before admitting the conviction into evidence, the trial court must determine that the probative value of the evidence outweighs the prejudicial effect to the party the evidence is offered against."). *See also Ortiz v. Furr's Supermarkets*, 26 S.W.3d 646, 655 (Tex. App.—El Paso 2000, no pet.) (holding that it was within the trial court's discretion to exclude a plea of guilty to marijuana possession because the probative value of the conviction was outweighed by its prejudicial effect.)

30. Any evidence as to the character for truthfulness or untruthfulness of or any witness called on behalf. Such evidence should be excluded until it is first established to the satisfaction of the Court, outside of the presence of the Jury, that the character for truthfulness of or a witness called on behalf has been attacked. See TEX. R. EVID. 608.
31. Evidence of alleged good character, traits, or deeds because it is improper bolstering of this witness. See TEX R. EVID. 404 and 608. In this regard, the credibility of a witness may be supported only after the character of the witness for truthfulness has been attacked TEX. R. EVID. 608(a)(2). "Ordinarily mere cross-examination and the laying of a predicate for impeachment is not such an attack as will open the door to evidence of good character." Ray, 1 LAW OF EVIDENCE §771 at 650, (Texas Practice 3d ed. 1980). Moreover, evidence supporting the credibility of a witness may refer only to the character for truthful or untruthfulness. TEX R. EVID. 608(a)(1). "Generally, the credibility of a witness may be supported only by showing his general reputation for truthfulness or untruthfulness." *Eoff v. Hal and Charlie Peterson Found.*, 811 S.W.2d 187, 197 (Tex. App.–San Antonio 1991, no writ). To the extent that such evidence may be relevant, it should also be excluded because its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, whereby considerations of undue delay. See TEX R. EVID. 403.
32. The opinions of any witnesses as to whether the testimony of any other witnesses has been truthful. "A witness may not give an opinion concerning the truth or falsity of another's testimony, for it is the jury's task to assess the credibility of witnesses." *Ochs v. Martinez*, 789 S.W.2d 949, 956 (Tex. App.–San Antonio 1990, writ denied). "Opinions as to the truthfulness of another are generally not allowed." *James v. Texas Dept. of Human Servs.*, 836 S.W.2d 236, 244 (Tex. App.–Texarkana 1992, no writ).

APPENDIX E**Experts Motion in Limine**

Offering the opinions and mental impressions of any expert witness or the bases for the expert's opinions and mental impressions, which have not been expressly disclosed at least thirty (30) days prior to this trial through either a report from said expert, the deposition testimony of said expert, or a response to Petitioner's written discovery inquiring about such items. See TEX. R. CIV. P. 193.5 & 195.6. This includes a material alteration of an expert's opinion that would constitute a surprise attack (*Pilgrim's Pride Corp. v. Smoak*, 134 S.W.3d 880, 902 (Tex. App.–Texarkana 2004, pet denied)) as well as any opinions and mental impressions based upon the expertise of any party not properly disclosed as an expert witness (See *Tinkle v. Henderson*, 777 S.W.2d 537, 539 (Tex. App.Tyler 1989, writ denied)). “The purpose of requiring timely disclosure of a material change in an expert's opinion is to give the other party an opportunity to prepare a rebuttal.” *Smoak*, 134 S.W.3d at 902; *Miller v. Kennedy & Minshew, Prof'l Corp.*, 142 S.W.3d 325, 348 (Tex. App.Fort Worth 2003, pet. denied). "A party who fails to timely provide this information once it has been requested may not offer the expert's testimony unless the trial court finds that there was good cause for the failure to timely provide the information or that the failure to provide the discovery will not unfairly surprise or prejudice the other party." *Miller*, 142 S.W.3d at 348; TEX. R. CIV. P. 193.6.

Cross-examining an expert witness about statements contained in publications or standards, unless they are relied upon by the expert witness or otherwise established as a reliable authority. See *Harlow v. Hayes*, 991 S.W.2d 24, 29 (Tex. App.-Amarillo 1998, pet. denied) ("In that connection, it is well established that an expert witness may be cross-examined by asking whether or not he or she agrees or disagrees with statements contained in treatises, books, and scientific journals."); and TEX. R. EVID. 803(18).

APPENDIX F**Tort Motions in Limine**

That Respondent's attorneys may or may not have a financial interest in the outcome of this trial, including a contingent-fee contract assigning them a percentage of the recovery. *Azar Nut Co. v. Caille*, 720 S.W.2d 685, 688 (Tex. App.-El Paso 1986), *aff'd*, 734 S.W.2d 667 (Tex. 1987). See *Cross v. Houston Belt & Terminal Ry. Co.*, 351 S.W.2d 84, 86 (Tex. Civ. App.-Houston 1961, writ *ref'd n.r.e.*). This includes any reference to the claims as being "lawyer driven" or similarly motivated.

That Respondent and his attorneys be prohibited from implying to the Jury or to the Jury Panel that Petitioner is suing for any specific sum of money or claiming any particular sum of money in compensation. Respondent only limited recoverable damages in accordance with TEX. R. CIV. P. 47 and Petitioner only pled the following in response to Respondent's Special Exceptions: " fair, just, and adequate compensation for these damages, as determined by a Jury, but in no event more than \$." Any suggestion that specifically requesting this sum would be such a distortion of the pleadings that its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the Jury to the extent that it is prohibited under TEX. R. EVID. 403. Moreover, any suggestion that seeking any other specific sum or particular amount of money would only serve to imply or mislead the Jury as to Petitioner's position with respect to settlement and it is therefore prohibited under TEX. R. EVID. 408 as well as TEX. R. EVID. 403. In addition, the limit of liability presents only matters of law with which the Jury is not concerned and unnecessarily advises the Jury of the effect of its answers. See generally *Rial v. Curtis*, 274 S.W.2d 117, 121 (Tex. Civ. App.-Galveston 1954, writ *ref'd n.r.e.*); TEX. R. CIV. P. 277. "It is better practice not to read to the jury those portions of the pleadings with which the jury is not concerned." *Sisk v. Glenn Falls Indemnity Co.*, 310 S.W.2d 118, 121 (Tex. Civ. App.-Houston 1958, writ *ref'd n.r.e.*).