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**SUPERIOR COURT OF WASHINGTON FOR \_\_\_\_\_ COUNTY**

NAME,

Plaintiff,

vs.

TORTFEASOR,

Defendant.

NO.

**PLAINTIFF’S MOTION IN LIMINE**

**I. RELIEF REQUESTED**

Comes now the Plaintiff, by and through her attorney and requests that the court enter an order before selection of the jury, instructing the defendant, his attorney and witnesses, not to directly or indirectly mention, refer to, interrogate concerning, or attempt to convey to the jury in any manner any of the facts indicated below without first obtaining the permission of the court outside the presence and hearing of the jury and further instructing the defense attorney to warn and caution his clients and each and every witness to strictly follow any order entered by the court in connection with this motion.

## II. ITEMS SUBJECT TO EXCLUSION

The Motion in Limine encompasses the following items:

1. **Taxation.** Any evidence relating to the facts that a recovery by Plaintiff would or would not be subject to taxation or that her income would or would not be subject to taxation. *Hinzman v. Palmanteer*, 81 Wn.2d 327 (1972).
2. **Lack of Insurance.** Any suggestion to the jury that there is no insurance coverage or that the judgment would come “out of the pocket” of Defendant, or any reference to Defendant as an impecunious person. *Miller v. Staton*, 64 Wn.2d 887 (1964).
3. **Lack of Injury.** Any evidence or reference that Defendant or any of its passengers were not injured or any of Plaintiff’s passengers were not injured. ER 401, 402, 403.
4. **Prior Accidents.** Any evidence or reference to any prior motor vehicle collisions on the part of Plaintiff. 5 K. Tegland, *Evidence* § 86 at pp. 183-186 (2<sup>nd</sup> ed.)  
*See also O’Dell v. Chicago, M., StP & PRR*, 6 Wn.App., 817, 828, 496 P.2d 519 (1972).
5. **Prior L&I Claim.** Any evidence or reference to any L&I claim filed by Plaintiff stemming from her work injury. ER 401, 402, 403.
6. **Specifically the L&I medical exam.** Any evidence or reference to any L&I medical exam which the state required Plaintiff to attend relating to work injuries. See, RCW 51. 24.100 - The fact that the injured worker or beneficiary is entitled

1 to compensation under this title shall not be pleaded or admissible in evidence in  
2 any third party action under this chapter. Additionally, the court should bar any  
3 defense claim that the industrial insurance file supports a finding of malingering,  
4 can be used to impeach plaintiff's medical experts, or may attribute plaintiff's  
5 injuries here to the work place injury. *See, Cox v. Spangler*, 141 Wn.2d 431, 5  
6 P.3d 1265 (2000). Though evidence of collateral source compensation may well  
7 be relevant for a variety of purposes, such evidence is excluded on the basis that  
8 it is unfairly prejudicial because the jury could use it for improper purposes. Even  
9 when it is otherwise relevant, proof of such collateral payments is usually strictly  
10 excluded, lest it be improperly used by the jury to reduce the plaintiff's damage  
11 award. *Boeke v. International Paint Co.*, 27 Wash.App. 611, 618, 620 P.2d 103  
12 (1980) (quoting *Reinan v. Pacific Motor Trucking Co.*, 270 Or. 208, 213, 527  
13 P.2d 256 (1974)).

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18 7. **Evidence of Prior Unrelated Injuries or Medical Treatment.** Any evidence or  
19 reference to Plaintiff's prior physical health unless (a) such condition was  
20 symptomatic at the time of injury, or was (b) a latent pre-existing condition that  
21 was made active by the injury. *Bennett v. Messick*, 76 Wn.2d 474, 457 P.2d  
22 609 (1969); *Greenwood v. Olympic, Inc.*, 51 Wn.2d 18, 315 P.2d 295 (1957);  
23 *Reeder v. Sears, Roebuck & Co.*, 41 Wn.2d 550, 250 P.2d 518 (1952). Such  
24 conditions to include but not be limited to:  
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27 a. Birth of children  
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1           b.     Thrombosis on left forearm from carrying infant

2           c.     Gynecological matters

3   8.     **Evidence of Subsequent Unrelated Injuries or Medical Treatment.** Including

4           but not limited to:

5           a.     Rash

6           b.     Eye itching

7           c.     Child birth

8           d.     Gynecological matters

9           e.     Post partum depression

10   9.     **Evidence of Children’s Medical Condition.** Including but not limited to

11           developmental conditions.

12   10.    **Failure to Call Witness.** No reference to the failure of Plaintiff to call a doctor

13           or any other witness, especially where such testimony would be cumulative.

14           *Carlos v. Cain*, 4 Wn.App. 475, 481 P.2d 945 (1971).

15   11.    **Prior Drug use.** No reference to Plaintiff’s possible drug use of many years

16           ago. ER 403.

17   12.    **Unavoidable Accident.** Any evidence or reference insinuating that the collision

18           was unavoidable. *Cooper v. Pay-N-Save Drugs, Inc.*, 59 Wash.2d 829, 835, 371

19           P.2d 43, 47 (1962), *Zook v. Baier*, 9 Wn.App. 708, 514 P.2d 923 (1973).

20   13.    **Absence of Police Report.** No reference to whether police investigated the

21           collision or not, or whether there was a police collision report generated or not.

- 1 14. **Change of Attorneys.** No reference to whether Plaintiff was previously  
2 represented by another attorney.
- 3 15. **Hypothetical Medical Conditions.** No reference as to whether Plaintiff was  
4 bleeding or suffered broken bones as a result of the accident, since s/he makes  
5 no such claims. Comments or queries on these issues, will result in no more  
6 than speculation on the part of the jury. "A verdict cannot be founded on mere  
7 theory or speculation." *Marshall v. Bally's Pacwest Inc.*, 94 Wash.App. 372, 972  
8 P.2d 475, 479 (1999).
- 9 16. **Undisclosed Evidence.** Any witnesses, movies, photographs, or other  
10 evidence relating to the case previously requested but not disclosed during  
11 discovery. *Sather v. Lindahl*, 43 Wn.2d 463 (1953).
- 12 17. **Exclusion of Witnesses.** All non-party witnesses should be excluded from the  
13 courtroom during the course of trial so they cannot hear the testimony of other  
14 witnesses.
- 15 18. **Filing of Motion.** The fact that plaintiff's motion was filed or any ruling made by  
16 the court regarding the motion or content thereof. *Texas Employers Ins. Ass'n v.*  
17 *Phillips*, 255 S.W.2d 364 (1963).

### 24 III. LEGAL AUTHORITY

25 In addition to the authority above supplied, it has long been held that a pretrial  
26 motion to exclude evidence is proper. *State v. Smith*, 189 Wash. 422, 65 P.2d 1075  
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1 (1937), *See also Fenimore v. Drake Construction Co.*, 87 Wn.2d 85, 549 P.2d 483

2 (1976).

3 Such motions are designed to simplify the trial and avoid prejudice which often  
4 occurs when a party is forced to object in front of the jury to the introduction of  
5 evidence. *Fenimore, supra*.

7 When a trial court is able to determine the admissibility of the questioned  
8 testimony prior to its introduction at trial, it is appropriate to grant the motion in limine  
9 and thereby avoid prejudice before the jury. *State v. Kelly*, 103 Wn.2d 188, 192-193,  
10 685 P.2d 564 (1984). The standards for granting a motion in limine are as follows:  
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12 [T]he trial court should grant such a motion if it describes the evidence  
13 which is sought to be excluded with sufficient specificity to enable the trial  
14 court to determine that it is clearly inadmissible under the issues as drawn  
15 which may develop during the trial and if the evidence is so prejudicial in  
16 its nature that the moving party should be spared the necessity of calling  
17 attention to it by objecting when it is offered during the trial.

18 *Fenimore, supra*, 87 Wn.2d at 91.

19 ER 402 provides in relative part: "evidence which is not relevant is not  
20 admissible." Relevant evidence is defined by ER 401 as "facts of consequence to the  
21 determination of the action." ER403 states that "relevant evidence may be excluded if  
22 its probative value is substantially outweighed by the danger of unfair prejudice,  
23 confusion of issues, or misleading the jury, or by considerations of undue delay, waste  
24 of time, or needless presentation of cumulative evidence." CR 16 and ER 104 allow the  
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1 court to enter an order in limine prohibiting trial counsel from presenting evidence on  
2 matters properly excludable.

3 In *Garcia v. Providence Medical Center*, 60 Wn.App. 635, 641-642, 806 P.2d  
4 766, (Wash.App. 1991), the trial court refused to exclude evidence of prior abortions  
5 on the mistaken belief it was relevant to Garcia's claim for emotional damages. In  
6 reversing, the appellate court found that ER 403 further requires the evidence be more  
7 probative than prejudicial. Citing *Kirk v. WSU*, 109 Wash.2d 448, 462, 746 P.2d 285  
8 (1987), the court concluded that statements made by expert witnesses that the  
9 abortions were "possibly" a factor in the plaintiff's pre-injury depression were not  
10 sufficiently relevant to outweigh the prejudicial nature of the evidence. *Kirk*, 109  
11 Wash.2d at 462-463. Likewise, in *Garcia*, the appeals court found "The evidence  
12 adduced on this issue does not establish the relevance of Garcia's prior abortions to her  
13 present claims for emotional damages." *Id.* at 642.

14 In *Osborne v. Lake Washington School Dist. No.1*, 1 Wn.App. 534, 538, 462  
15 P.2d 966 (1969), the court recognized that a motion in limine made prior to the  
16 impaneling of a jury is a proper method to exclude such unworthy evidence.  
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18 **IV. PROPOSED ORDER**

19 Attached.

20 DATED this \_\_\_\_ day of \_\_\_\_\_.

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22 Attorneys for Plaintiff  
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