

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT  
IN AND FOR FLAGLER COUNTY, FLORIDA**

Case No.: 2017-CA-203

IMAD MANSOUR and GAIL MANSOUR,  
individually and as husband and wife,  
Plaintiffs,

vs.

CAPTAIN'S BAIT, TACKLE & BBQ, LLC, a  
Florida limited liability company, and COUNTY  
OF FLAGLER, a political subdivision of the State  
of Florida,  
Defendants.

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**PLAINTIFFS' MOTION IN LIMINE**

COME NOW the Plaintiffs, IMAD MANSOUR and GAIL MANSOUR, by and through the undersigned counsel, and file this Motion in Limine, and in support thereof state:

**FACTS OF THE CASE**

This lawsuit arises out of a visit by the Plaintiff, IMAD MANSOUR, on or about August 4, 2016, as a business invitee, to the premises owned by the Defendant, COUNTY OF FLAGLER, upon which a restaurant was operated by the Defendant, CAPTAIN'S BAIT, TACKLE & BBQ, LLC. Plaintiff slipped and fell on the steps of the restaurant as he was leaving, resulting in permanent injuries. Plaintiff, GAIL MANSOUR, has been damaged by the loss of her husband's services and consortium as a result of this accident.

**FIRST MOTION IN LIMINE**

1. Defense counsel should not be permitted to question Plaintiff or any other witnesses regarding prior litigation involving Plaintiff.
2. Pursuant to Colvin v. Williams, 564 So. 2d 1249 (Fla. 4th DCA 1990) and Zabner v. Howard Johnson's Inc. of Florida, Inc., 227 So. 2d 543 (Fla. 4th DCA 1969) the issue of litigiousness is not

the proper subject or cross examination for impeachment purposes, since it would be tantamount to stating that one creates illegal wrong by enforcing one's legal rights when they are violated.

**SECOND MOTION IN LIMINE**

3. Defense counsel should be prevented from cross examining the Plaintiff or any other witnesses or arguing in the closing argument that any recovery made by the Plaintiffs in this action will not be subject to Federal Income Tax or any other form of taxation. See Good Samaritan Hospital v. Saylor, 495 So. 2d 782 (Fla. 4th DCA 1986) and Comfort Makers v. Kenton, 515 So. 2d 1384 (Fla. 5th DCA 1987).

**THIRD MOTION IN LIMINE**

4. Defense counsel should be prevented from arguing that Plaintiff's counsel is asking the jury to award an amount greater than Plaintiff's counsel actually believes is just and proper compensation for Plaintiff's injuries. McPherson v. Phillips, 877 So. 2d 755 (Fla. 4th DCA 2004).

**FOURTH MOTION IN LIMINE**

5. Defense should not be permitted to mention whether or not Plaintiff's counsel referred Plaintiff to any doctor. See Burt v. GEICO, 603 So. 2d 125 (Fla. 2d DCA 1992).

**FIFTH MOTION IN LIMINE**

6. Defense counsel should not be permitted to mention to the jury any absence of prior accidents at the scene of the subject accident. Darley v. Marquee Enterprises, Inc., 565 So. 2d 715 (Fla. 4th DCA 1990).

**SIXTH MOTION IN LIMINE**

7. Defense counsel should be prevented from making any reference in front of the jury to "crowded courtrooms," or identifying either directly or implicitly this case as being the type of

case that causes delays or backlogs in the court system. See Stokes v. Wet 'N Wild, 523 So. 2d 181 (Fla. 5th DCA 1998).

#### **SEVENTH MOTION IN LIMINE**

8. Defense counsel should be prevented from presenting evidence or arguing that claims, lawsuits and judgments affect or increase insurance rates, premiums or charges or that an “insurance crisis” exists in the State of Florida. See Davidoff v. Segret, 551 So. 2d 1274 (Fla. 4th DCA 1989).

#### **EIGHTH MOTION IN LIMINE**

9. Defense counsel should not be permitted to refer to any of its defense medical examiner(s) as “independent” medical examiner(s). See Allstate v. Boecher, 733 So. 2d 993 (Fla. 1999).

#### **NINTH MOTION IN LIMINE**

10. Defendant’s compulsory examination physician and any defense witnesses should be prevented from stating personal opinions about the Plaintiff.

11. It is error to state personal opinions about the merits of the case or the credibility of the Plaintiff. See Wasden v. Seaboard Coast Line Railroad Co., 474 So. 2d 825 (Fla. 2d DCA 1985).

#### **TENTH MOTION IN LIMINE**

12. Defense counsel’s compulsory examination physician should be prevented from testifying about the reasonableness of any of the medical bills incurred by the Plaintiff in this case. See Dungan v. Ford, 632 So. 2d 159 (Fla. 1st DCA 1994).

#### **ELEVENTH MOTION IN LIMINE**

13. Defense counsel should be prevented from presenting testimony or arguing to the jury that the jury should “send a message” by its verdict, or use its verdict to punish the Plaintiff. See Erie Insurance Company v. Bushy, 394 So. 2d 228 (Fla. 5th DCA 1981).

### **TWELFTH MOTION IN LIMINE**

14. Defense counsel's compulsory examination physician should be limited to expressing only those opinions contained within his or her report. See Suarez-Burgos v. Morhaim, 745 So. 2d 368 (Fla. 4th DCA 1999).

### **THIRTEENTH MOTION IN LIMINE**

15. Defense counsel should be prevented from presenting testimony or arguing in front of the jury that Plaintiffs are "greedy" or are "liars" or are "ridiculous" or by otherwise demeaning, degrading or humiliating the Plaintiff. See Ryan v. State, 457 So. 2d 1084 (Fla. 4th DCA 1984); see also Hartford Accident and Indemnity Co. v. Ocha, 472 So. 2d 1338 (Fla. 4th DCA 1985).

### **FOURTEENTH MOTION IN LIMINE**

16. Defense counsel should be prevented from attempting to accuse Plaintiff's medical experts of perjury, or accuse Plaintiff's counsel of fraud or unethical conduct. See Venning v. Roe, 616 So. 2d 604 (Fla. 2d DCA 1993).

### **FIFTEENTH MOTION IN LIMINE**

17. Defense counsel should be prevented from calling upon Plaintiff's counsel to explain why Plaintiff's counsel did not call certain witnesses, why certain witnesses that were deposed in the case were not at trial, or making other references to matters outside the record. See Riggins v. Mariner Boat Works, 545 So. 2d 430 (Fla. 2d DCA 1989).

### **SIXTEENTH MOTION IN LIMINE**

18. Defense counsel should not argue or imply that there is any liability of any nonparties unless and to the extent that the Court finds that *Fabre* defendants are permitted on the verdict form.

19. The Defendants should be precluded from presenting any "empty chair" defense outside the Court's acknowledgment of a properly named *Fabre* defendant. See Loureiro v. Pools by

Greg, Inc., 698 So. 2d 1262 (Fla. 4th DCA 1997), rev. den., 707 So. 2d 1125 (Fla. 1998); Phillips v. Guarneri, 785 So. 2d 705 (Fla. 4th DCA 2001).

### **SEVENTEENTH MOTION IN LIMINE**

20. Defense counsel should be precluded from eliciting testimony, discussing, mentioning, or implying anything in regard to when the plaintiffs first sought the assistance of counsel.

21. Such questioning or argument is irrelevant to the issues being litigated and no basis exists for any Defendant to prove Plaintiff's litigiousness. Watson v. Builders Square, Inc., 563 So. 2d 721 (Fla. 4th DCA 1990).

22. Lines of questioning regarding when claimants first sought legal assistance are also unethical. The Preamble to the Rules of Professional Conduct, which discusses a lawyer's responsibilities, including the goal of encouraging people to seek legal advice.

23. Moreover, the Comment to Rules of Professional Conduct, Rule 4-1.6, Confidentiality of Information, states that a lawyer's obligation to hold inviolate confidential information of the client not only facilitates the full development of facts essential to proper representation of the client but also encourages people to seek early legal assistance so that she can quickly determine whether there has been a compensable injury and so that immediate steps can be taken to protect the client's rights under the law.

24. In this case, while there is no direct communication to a lawyer at stake, the mere argument that the plaintiff's motives should be considered suspect simply because she seeks early legal advice is contrary to the Rules' goal of encouraging people to seek early legal assistance. One of the reasons people should seek early legal advice is so that a prompt investigation can be made before conditions change or witnesses become lost or lose memory of the events.

25. To allow a line of questioning or argument chastising Plaintiff for seeking counsel early would be to discourage the early retention of counsel encouraged by the rules and to encourage the exact opposite response: lay people will delay the retention of counsel and thereby prejudice their own cases.

**EIGHTEENTH MOTION IN LIMINE**

26. Defense counsel shall not argue the existence or lack of insurance, whether PIP, health insurance, or liability insurance and similar references.

**NINETEENTH MOTION IN LIMINE**

27. Defense counsel shall not make any reference, question or inference regarding the lottery, gambling, or other games of chance or implying a financial windfall to Plaintiff.

**TWENTIETH MOTION IN LIMINE**

28. Defense counsel shall not make any references to lawyer advertising, including 1-800 “ask ads”, or other attempts to demean, insult, or otherwise place Plaintiff’s attorney in a bad light, generally.

**TWENTY-FIRST MOTION IN LIMINE**

29. Defense counsel shall not make any references regarding the relationships between experts and a party or counsel, except for the accepted financial discovery enumerated in Allstate v. Boecher, 733 So. 2d 993 (Fla. 1999) and its progeny.

**TWENTY-SECOND MOTION IN LIMINE**

30. Defense counsel shall not make any references to any surveillance as same has not been disclosed in discovery.

WHEREFORE, the Plaintiffs, IMAD MANSOUR and GAIL MANSOUR, respectfully request that this Court enter appropriate Orders preventing counsel for the Defendants,

CAPTAIN'S BAIT, TACKLE & BBQ, LLC, and COUNTY OF FLAGLER, from questioning any witnesses at the trial of this matter or introducing any evidence at the trial of this matter concerning any of the above issues.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing document was filed electronically and was sent by E-Mail from the Florida Courts' E-Filing Portal system, unless otherwise noted below, on all counsel or parties of record, on May 17, 2019.

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