THE HONORABLE JAMES

Date of Hearing: June 1, 2022 @ 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, LEWIS COUNTY

SCOTT HAMILTON, as guardian ad litem for Z.H., Plaintiffs, vs. LINDA AMONDSON-MULLER, Personal Representative of the ESTATE of LAURA HAMILTON, Defendants.	NO. 20-2-00543-21 PLAINTIFF'S AMENDED MOTIONS *IN LIMINE*

I. RELIEF REQUESTED

The plaintiff, Scott Hamilton, guardian ad litem for Z.H., respectfully moves the Court for an order instructing the parties and their counsel not to directly or indirectly mention, refer to, or convey to jurors in any manner any of the facts indicated below without first obtaining the permission of the Court outside the presence of the jury. Plaintiff further requests the Court instruct defendant's attorneys to caution each of their witnesses to follow the order entered by the Court in connection with these motions *in limine*. This motion was amended because Motions No. 40 and 41 were inadvertently ommitted.

II. STATEMENT OF FACTS

Z.H. was injured on April 9, 2014, when defendant/deceased Laura Hamilton's treatment during labor and delivery fell below the standard of care, causing his multiple brachial plexus nerve avulsions and permanent physical disability.

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III. AUTHORITY

When a trial court can determine the admissibility of the questioned testimony prior to its introduction at trial, it is appropriate to grant a motion *in limine* and thereby avoid prejudice before the jury. *State v. Kelly*, 102 Wn.2d 188, 192-93 (1984). Pretrial motions to exclude evidence are designed to simplify the trial and to avoid the prejudice which often occurs when a party is forced to object in front of the jury. *Fenimore v. Drake Construction Co.*, 87 Wn.2d 85, 89 (1976). The granting or denial of a motion *in limine* is within the discretion of the trial court, subject only to review for abuse. *Fenimore*, 87 Wn.2d at 91.

IV. MOTIONS IN LIMINE

Based on the foregoing, and the authorities discussed below, plaintiffs request that the Court preclude evidence and testimony regarding the following matters:

1. The Defense Should be Precluded from Using the Name Zack.

Throughout discovery, the defense has referred to Zachary Hamilton as Zack. The Court should preclude the defense from using the diminutive form of Zachary's name. First, he has never given them permission to use the diminutive form of his name.

Second, it allows the defense to imply that the defense attorneys and experts are his friends, and that they care about him. This implication is prejudicial and false.

Defense attorneys and experts should be precluded from referring to Zachary as Zack.

2. Act of God.

The defense should be precluded from referring to Zachary's injury or the natural forces of labor as an "act of God." Such references are highly prejudicial to the plaintiffs. Defendant's natural forces of labor defense is an alternative theory of causation. By framing this as an affirmative defense, the defendant chose to accept a burden of proof on this issue. Given that neither the merits nor substance of the natural forces of labor defense change depending on whether it is framed as an

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attack on plaintiff's ability to prove causation or an "act of God" affirmative defense, the only reason to accept a burden of proof on this issue is a desire to use the term "act of God" to appeal to the juror's religious sensibilities and create prejudice. These sort of underhanded trial tactics have no place in the courtroom.

Further, the defense has announced that Laura Hamilton was a devout Christian. Machler Dec., Exh. 1. The plaintiff anticipates that the defense may interject this information into the trial to further associate the defendant with God. This is highly prejudicial to plaintiff, and there is no reason to allow it.

The defense claims that the phrase "act of God" is a term of "art" and simply means "natural forces." This is an esoteric definition learned during law school or while working for insurance companies. It is certainly not a meaning that the average juror will ascribe to the phrase. In addition, this is an incorrect definition of "act of God" as defined by Washington courts: "An act of God is a natural phenomenon . . . so far outside the range of human experience that ordinary care did not require that it should be anticipated or provided against." *Wills v. Vancouver,* 77 Wn.2d 800, 803, 467 P.2d 292 (1970). It is well known to the medical community both in Washington State and at large that permanent brachial plexus avulsion injuries can occur during delivery of a child. Therefore, birth attendants, like Laura Hamilton, are trained to provide against these injuries by using only gentle traction to assist with delivery. The "act of God" defense to a personal injury action, as defined by Washington courts, does not fit the facts of this case.

In this case, even the defense experts agree that the standard of care allows only gentle traction on a baby's head to protect against the very injury Z.H. suffered. Machler Dec., Exhibit 7, p.25 line 20 through p.26, line 2. Invocation of the term "act of God," invites the jury to speculate that medical outcomes are divinely pre-determined and compliance with the standard of care makes no difference to the safety of a newborn infant. Such a belief could prevent a person from finding that Laura Hamilton was negligent. In addition, the unnecessary use of this phrase by the defense is

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highly prejudicial to the plaintiff because it implies that God is on the defense side.

Finally, no defense witness has testified that Zachary's injury was an "act of God." If no defense witnesses testify that this injury was an "act of God," certainly defense attorneys should be prohibited from using the term. There is no authority anywhere that attorneys can testify at trial in this way, and the Court should preclude the use of the term "act of God."

If the Court allows the defense to use the term "act of God," the Court should allow plaintiff to question potential jurors on their religious beliefs to prepare to excuse them for cause. Further, the plaintiff should be allowed to present an expert theologian to testify regarding the idea that God causes injuries to babies and to testify that using "God" in this way is a well-known rhetorical technique.

However, it would be easier and save time to preclude the defense from use of the term "act of God."

3. Exclude Testimony of the Personal Representative.

The Court should preclude the entire testimony of the Personal Representative, Linda Amondson-Mueller. She has no personal knowledge of this case and knows only what the defense attorneys have told her. She indicated that she intends to testify about what kind of person Laura Hamilton was and what kind of a midwife she was. This is inadmissible character evidence under ER 404.

Ms. Amondson-Mueller may have knowledge of the contents of Laura Hamilton's business records, but nothing from her business records, besides Seng Hamilton's medical records, is relevant to any issues in this case. Ms. Amondson-Mueller may have knowledge of the circumstances surrounding Laura Hamilton's death, but nothing about her death is relevant to the issues in this case. Such testimony would prejudice the plaintiff by eliciting sympathy from the jurors.

She may have knowledge of the contents of Laura Hamilton's estate, but the defense has taken the position that the plaintiff is only entitled to the insurance coverage. Thus, nothing about

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the estate is relevant to the issues in this case.

The Court should preclude any testimony from Ms. Amondson-Mueller. The plaintiff is attaching her entire deposition so that the Court can determine whether there is any admissible testimony. Machler Decl., Exh. 2.

4. Sidebar Remarks.

The Court should preclude counsel from repeating, referring to or mentioning any sidebar remarks or non-evidentiary statements made during the depositions of any of the witnesses who have been deposed in this case.

5. Display and Publishing of Exhibits.

The Court should preclude the display of any exhibits, whether direct or demonstrative, by any party until admitted into evidence. If an exhibit is used in an opening statement or closing argument, and such exhibit is not admissible evidence or is not a fair summary of admissible evidence, the opposing party is unfairly prejudiced.

6. Objections to Discovery and/or Discovery Disputes.

The Court should preclude counsel from any reference to objections to discovery requests made by plaintiff and/or any discovery disputes. Any mention or reference to any discovery disputes between the parties or any alleged improprieties with respect to discovery issues is irrelevant to the material issues in the case and is highly prejudicial. ER 402; ER 403.

Any statement, argument or suggestion that plaintiff purportedly limited, denied or obstructed defendant's ability to examine any witness or attempted to "hide witnesses," purportedly obstructed any discovery, or purportedly obstructed justice in any manner should be excluded.

7. Witnesses and Evidence Not Previously Disclosed.

Any witness not identified by the defendant before trial should be excluded, as well as any witness withdrawn from the witness list. It would be unfair and unduly prejudicial to plaintiffs if

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defendants introduce testimony of these unknown witnesses in the middle of trial.

Furthermore, defendant's attorneys should be instructed not to offer any evidence or attempt to admit any record, document, or other material that was not timely or properly identified and produced in compliance with the case scheduling order.

8. Consulting Experts.

Plaintiff and defendant have identified several experts during discovery who will not testify at trial because the parties have voluntarily reduced the number of experts. Defense counsel should not be allowed to mention or call any of plaintiff's consulting experts unless, and until, they have been called to testify at trial. Several Washington cases, including *Mothershead v. Adams,* 32 Wn. App. 235, 647 P.2d 525 (1982), and *Crenna v. Ford Motor Company*, 12 Wn. App. 824, 532 P.2d 290 (1975), hold that consulting experts should not be mentioned or called by an opposing party at trial. Plaintiff requests that the Court instruct counsel accordingly.

9. Filing of Motion.

The Court should preclude any reference to the filing of these motions *in limine.* Any such reference could only be made to prejudice the plaintiff. ER 402; 403.

10. Absent Witnesses/ Failure to Call Witness.

The Court should preclude witnesses from mentioning or stating to the jury the probable testimony of a witness who is absent, unavailable, or not properly identified or called to testify in this case. *State v. Washington Irrigation and Development Co. v. Sherman*, 106 Wn.2d 685 (1986); *State v. Davis*, 73 Wn.2d 271 (1960); *Carlos v. Cain*, 4 Wn App. 475 (1981). Where medical reports were available to both parties, and where either party could have called the doctor as a witness, no inference can arise from the failure of either party to call a doctor, especially where such testimony would be cumulative. *Carlos v. Cain*, 4 Wn. App. 475, 481 P.2d 945 (1971); *State v. Davis*, 73 Wn.2d 271, 438 P.2d 185 (1968). This rule applies to all witnesses, not merely physicians or other experts. See 29 Am. Jur. 2d Evidence § 180 n.13 (1967).

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11. The Court Should Require 24-Hour Notice of Live Witnesses.

All parties should be required to inform the court and all parties as to the identification of the live witnesses that they intend to call at trial not less than 24 hours in advance so the parties have time to make designations and counter-designations of witness video.

12. Defendant's Financial Status, Insurance, or Policy Limits.

The defendant should be prohibited from making any reference to its financial status, lack of insurance, insurance policy limits, or implication that the defendant may be bankrupt because of this verdict. Evidence of the financial circumstances of the parties to an action is irrelevant and immaterial. *Cramer v. Van Parys*, 7 Wn. App. 584, 500 P.2d 1255 (1972). It is improper for a defendant to introduce whether or not she has insurance. *King v. Starr*, 43 Wn.2d 115, 260 P. 2d 799 (1953). *Miller v. Staton*, 64 Wn.2d 837, 394 P.2d 799 (1964), holds that it is error for a defense attorney in summation to imply that a judgment would "come out of the pockets of the defendants," because it implies that there is no liability insurance.

13. Effect of Jury Verdict on Insurance Rates or Cost of Medical Care.

Reference to the effect of jury verdict on insurance rates or charges or the cost of medical care in general should be prohibited. Such evidence is highly speculative and not relevant in a personal injury action. Such reference will lead to confusion of the issues and waste of time. ER 402. Even if relevant, the probative value of is greatly outweighed by the prejudicial effect and should be excluded. ER 403.

14. All References to Income Tax Should Be Excluded.

The Court should prohibit the defendants from discussing, arguing, or otherwise mentioning the subject of income tax related to plaintiff's earnings and/or recovery. Washington courts have consistently held the issue of taxation of awards is simply too speculative and,

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therefore, is inadmissible. *Hinzman v. Palmanteer*, 81 Wn.2d 327, 501 P.2d 1228 (1972); *Boeke v. International Paint Co., Inc.*, 27 Wn. App. 611, 620 P.2d 103 (1980).

15. Plaintiff's Financial Status or "Secondary Gain."

That no mention or reference be made to the financial status of either party. *King v. Starr*, 43 Wn.2d 115, 260 P.2d 351 (1963); *Miller v. Staton*, 64 Wn.2d 837, 394 P.2d 799 (1964). No defense witness has or will testify to any correlation between plaintiffs' injuries and any "motivation for secondary gain." These questions are improperly intended by inuendo to cause the jury to speculate and should be prevented. ER 401, 403.

16. No References to How Plaintiff Might Use the Proceeds of Any Judgment.

Defense counsel and defense witnesses should be instructed not to make any reference to what use to which the plaintiff might put the proceeds from this case. ER 401, 403.

17. Attorneys' Fees, Employment of Lawyer, And Advice of Counsel.

Defendant should be prohibited from referring to the circumstances under which the plaintiff employed their attorneys or the details of the fee agreements or legal advice. *State v. Sexsmith*, 186 Wash. 345, 57 P.2d 1249 (1936); ER 402, ER 403.

18. Opinions Regarding the Truthfulness of Witnesses.

The Court should preclude defense witnesses, particularly experts, from opining on the credibility or truthfulness of plaintiff or their witnesses. It is an invasion of the province of the jury for any expert witness to express an opinion as to whether a witness is telling the truth. *State v. Carlin,* 40 Wn. App. 698, 700 P.2d 323, (1985); *Webb v. Seattle,* 22 Wn.2d 596, 157 P.2d 312, 158 ALR 810 (1945); *State v. Wilbur,* 55 Wn. App. 294, 777 P.2d 36 (1989); *State v. Fitzgerald,* 39 Wn. App. 652, 694 P.2d 1117 (1985).

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19. Vouching Testimony.

The Court should prohibit defense counsel from asking one witness to vouch for the testimony of other witnesses. An example might include: "Dr. Able, do you agree with the testimony of Dr. Baker when he said … xyz?" This type of questioning is, in effect, the attorney asking the witness to accept the attorney's recollection of prior (or perhaps even future) testimony, and then go forward with the balance of the question at hand. The question therefore is converted into counsel's argument based upon his or her recollection of testimony of other witnesses.

This type of questioning is an impermissible attempt to lead the witness to accept counsel's statements about what another witness may have said. Aside from reliability and hearsay problems, this type of questioning is inherently misleading. As such, this type of questioning and any other attempts to get witnesses to vouch for the testimony of other witnesses should be excluded from trial.

20. "Golden Rule" Argument Prohibited.

Washington case law clearly prohibits asking a jury to base its findings upon what the jurors would wish for themselves. *Adkins v. Aluminum Co. of America*, 110 Wn.2d 128, 139, 750 P.2d 1257 (1988). These "Golden Rule" arguments are improper "because [they] encourage a jury to depart from neutrality and to decide the case on the basis of personal interest and bias rather than on the evidence. Id. (quoting *Rojas v. Richardson,* 703 F.2d 186 (5th Cir. 1983).

21. Jury Nullification.

Jury nullification has been defined as:

> A jury's knowing and deliberate rejection of the evidence or refusal to apply the law either because the jury wants to send a message about some social issue that

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is larger than the case itself or because the result dictated by law is contrary to the jury's sense of justice, morality, or fairness.

Black's Law Dictionary 875 (8th ed. 2004).

Counsel should be precluded from suggesting that the jury need not follow the law or the Court's instructions. *State v. Bonisisio*, 92 Wn. App. 783, 964 P.2d 1222, rev. den. 137 Wn.2d 1024 (1998).

22. Personal Opinion.

In most instances, an attorney must not inject personal opinion into his or her argument. Washington RPC 3.4(e) says that a lawyer shall not "state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused."

23. Preclude Admission of Medical Records.

The Court should preclude the admission of medical records without a testifying physician or expert to lay a proper foundation. The admission of hundreds of pages of medical records would invite the jury to form their own medical opinions based upon their review of the records and ignore the testimony of treating doctors and experts. The documents contain matters of a medical nature outside a lay person's normal experience which, without expert testimony, would likely confuse, mislead, or prejudice a jury and are inadmissible under ER 403.

Further, it is likewise impermissible to allow counsel to use medical records to make arguments to the jury that are not supported by expert testimony. The Court should not allow medical records to go back to the jury or be displayed when no foundation has been provided by expert medical testimony. There is no error in refusing the entire record. *Kennard v. Mountain View Dev. Co.*, 69 Wn.2d 492, 419 P.2d 154 (1966).

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Finally, defendants should be prohibited from introducing any medical records that express opinions on proximate causation or damages, except for the records of physicians who actually testify at trial. *See, Young v. Liddington*, 50 Wn.2d 78 (1957); *Liljeblom v. Dept. of Labor and Industries*, 57 Wn.2d 136 (1960); *State v. White*, 72 Wn.2d 524 (1967). Such documents not only contain inadmissible hearsay, but also contain opinions of health care providers who cannot be cross-examined. Therefore, the foundation underlying any opinions cannot be determined by plaintiff. For these reasons, they may not be used as proof on any issue and must be excluded from evidence. *See*, *Young*, 50 Wn.2d 78 (admission of hospital records containing examining doctor's conclusion as to causation of present epileptic condition constituted reversible error). It is vitally important, when an expert medical opinion is expressed, that the foundation of that opinion be disclosed. *Young*, 50 Wn.2d at 84. Any medical records, correspondence, or other documents on issues of proximate causation or damages must be excluded if the physician is not available to testify at trial.

24. Experts Referencing Evidence Ruled Inadmissible.

Plaintiff moves to prohibit defense experts from referencing or relying upon evidence ruled inadmissible by the Court. *State v. Martinez*, 78 Wn. App. 870, 880-881, 899 P.2d 1302 (1995); *State v. Nation*, 110 Wn. App. 651, 662-664, 41 P.3d 1204 (2002).

25. Evidence Not Disclosed by Defendant in Response to Plaintiff's Discovery Requests.

Defendant should be prohibited from introducing any evidence previously requested through discovery by plaintiff and not disclosed by defendant. If a party fails to disclose witnesses, evidentiary facts, documents or other tangible evidence in response to proper discovery requests, such evidence may be excluded by the court at time of trial. CR 37;

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Lampard v. Roth, 38 Wn. App. 198, 684 P.2d 1343 (1984); *Sather v. Lindahl*, 43 Wn.2d 463, 261 P.2d 682 (1953).

26. Collateral Sources.

The Court should exclude mention of collateral sources not allowed by RCW 7.70.080. RCW 7.70.080 modifies the common law by creating a narrow exception to the collateral source rule in cases against health care providers for past economic damages only. It does not apply to future benefits or future payments. The statute provides as follows:

> Any party may present evidence to the trier of fact that the plaintiff has already been compensated for the injury complained of from any source except the assets of the plaintiff, the plaintiff's representative, or the plaintiff's immediate family. In the event such evidence is admitted, the plaintiff may present evidence of an obligation to repay such compensation and evidence of any amount paid by the plaintiff, or his or her representative or immediate family, to secure the right to the compensation.

Under the statute, the only evidence allowed by the statute is that which shows "that the plaintiff has already been compensated for the injury complained of." Any evidence of future government, insurance, or other benefits that the plaintiffs may receive remains inadmissible. *Adcox v. Children's Orthopedic Hosp. & Medical Ctr.*, 123 Wn. 2d 15, 47, 864 P.2d 921 (1993).

27. Disclosure of Illustrative and Demonstrative Exhibits.

Plaintiff respectfully requests adequate notice and an opportunity to review and verify the accuracy of exhibits that will be used by defendant at trial for illustrative or demonstrative purposes 24 hours before presentation.

28. Events From Dr. Freeman's Past.

It is anticipated that the defense may attempt to introduce irrelevant, collateral, prejudicial evidence concerning plaintiff's expert witness, Dr. Michael D. Freeman, who is

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testifying in this case as an epidemiologist. At his deposition, the defense attorney asked questions about an incident in which he was suspended from a chiropractic school in the 1980's. Machler Decl., Exh. 3, p. 117, line 14 through p. 118, line 12. He later received his chiropractic degree and practiced as a chiropractor for many years.

Dr. Freeman was also asked about a lawsuit approximately 30 years ago in which he was a defendant. The claims against him were dismissed. Machler Decl., Exh. 3, p. 113, line 2 through p. 116, line 9. None of the lawsuits asked about have any relevance to the facts of this case or Dr. Freeman's credibility.

The impeachment of a witness with specific instances of conduct is governed by ER 608(b):

> (b) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Certainly, the prior lawsuit is not probative of truthfulness, and the Court should preclude the defense from asking about it. Machler Decl., Exh. 3, p. 113, lines 16-22. Defense counsel made a letter allegedly from a chiropractic school an exhibit and asked Dr. Freeman about it. He did not remember receiving the letter and could not identify it. The defense cannot authenticate it, and it is hearsay. ER 801; 802; 1003. The Court should preclude the defense from offering it or asking about the incident. Machler Decl., Exh. 3, p. 117, line 14 through p. 118, line 12.

Both incidents occurred at least 30 years ago. Washington courts have ruled that a party

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may impeach a witness under ER 608(b) if the instances are probative of truthfulness and ***not remote in time.*** *Harbottle v. Braun,* 10 Wn. App. 2d 374, 447 P.3d 654 (2019) (excluding prior acts occurring in 2003 and 2005 in a 2015 trial).

Further, the court should apply the overriding protection of ER 403 (excluding evidence if its probative value is outweighed by danger of unfair prejudice, confusion of issues, or misleading the jury) and of ER 611(a) (prohibiting harassment and undue embarrassment). *State v. Wilson*, 60 Wash. App. 887, 893, 808 P.2d 754, 758 (1991). The probative value of the letter is outweighed by the unfair prejudice. The incident was over 30 years ago, and since then Dr. Freeman has acquired his chiropractic degree, a medical degree, a Ph.D., and two masters degrees. He also is still licensed as a chiropractor by the State of Oregon.

The Court should preclude the defense from questioning Dr. Freeman about these incidents.

29. Dr. Freeman's Amicus Brief.

Dr. Freeman wrote an amicus brief for the Supreme Court in the Myhre case, with which this Court is familiar. Defense counsel questioned Dr. Freeman about the amicus brief, suggesting that one of Levi Myhre's attorneys wrote it and just had Dr. Freeman sign it. Machler Decl., Exh. 3, p. 105, lines 18-22. The question was ridiculous, especially since the amicus brief was filed by attorney David Heller. Machler Decl., Exh. 4 The Court should preclude the defense from making this suggestion in front of the jury.

30. Dr. Gurewitsch Allen's Brachial Plexus Case.

In her deposition, Dr. Gurewitsch Allen was asked about a permanent brachial plexus case in which she was the delivering physician. The delivery in question occurred in 1999. Apparently,

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there was also a lawsuit. Machler Decl., Exh. 5, p. 24, line 8 through p. 25, line 25.

Questioning about this prior act is also barred by ER 608, as this delivery occurred in 1999, over 22 years ago. Washington courts have ruled that a party may impeach a witness under ER 608(b) if the instances are probative of truthfulness and ***not remote in time.*** *Harbottle v. Braun,* 10 Wn. App. 2d 374, 447 P.3d 654 (2019) (excluding prior acts occurring in 2003 and 2005 in a 2015 trial).

Information regarding this delivery is not relevant to any issue in this case. It does not show bias or untruthfulness on the part of Dr. Gurewitsch Allen and is far more prejudicial than it is probative. ER 403. Dr. Gurewitsch Allen testified at length how a birth attendant can be justified in applying greater force to resolve a shoulder dystocia and how Laura Hamilton was not justified in applying such force in this case. Machler Decl., Exh 5, p. 74, line 18 through p. 77, line 22.

The Court should preclude the defense from questioning Dr. Gurewitsch Allen about the case.

31. Dr. Allen and Dr. Gurewitsch Allen's Marriage and Daughter.

The defense has questioned Dr. Robert Allen regarding their marriage, including how long they have been married and whether they had been married before. The defense also questioned Dr. Allen about Niva Gurewitsch, Dr. Gurewitsch Allen's daughter, who works for each of them as an administrative assistant. Machler Decl., Exh. 6, p. 7, line 7 through p. 9, line 22.

This evidence is not relevant, and any conceivable probative value is far more prejudicial than probative, especially regarding Niva Gurewitsch. The Court should preclude the defense from inquiring about the family matters of plaintiff's experts.

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32. Prohibition Regarding Reputation of Defendant.

The Court should prohibit defense witnesses from testifying, directly or indirectly, that Laura Hamilton enjoys any particular reputation or character in any respect. Wash. R. Evid. 401, 402, 403, 404, 701. If ANY testimony is allowed about Laura Hamilton's prior experience, reputation, or character, it would open the evidence door to cross-examination on her prior lawsuits and actions involving the Washington State Department of Health.

33. Abortions.

Z.H.'s mother has acknowledged that she had two abortions in 1996. The Court should preclude the defense from referencing these procedures. Seng Hamilton is not a party to this case. The procedures are irrelevant to any issues in this case. ER 402. The evidence is highly prejudicial and has no probative value. ER 403; *Kirk v. Washington State University,* 109 Wn. 2d 448, 746 P.2d 285 (1987).

The prejudicial effect of abortion-related evidence is especially severe given that the defendant has alleged Z.H.'s injury occurred due to an act of God. Any testimony or argument about Seng Hamilton's abortions, in conjunction with the "act of God" affirmative defense, invites the jury to conclude God was punishing the Hamilton family because of Seng Hamilton's abortions, which are considered morally wrong by all organized religions. This is wildly prejudicial and inappropriate. The Court should exclude evidence or argument about Seng Hamilton's abortions.

34. Religious Beliefs or Political Views.

The plaintiff has brought a motion regarding the defense claim that Zachary's injuries were caused by God. If the Court grants plaintiff's motion to preclude the use of the term "act of God," the Court should then preclude the defense from referencing plaintiffs' religious beliefs or political

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views. These subjects are irrelevant to the plaintiffs' damages and can be highly prejudicial. ER 402; ER 610.

35. Failure to Mitigate Damages.

The Court should preclude the defense from alleging or implying that the plaintiff has failed to mitigate his damages. This is an affirmative defense, and the defense did not plead it.

36. Appellate Action.

The Court should preclude counsel from mentioning or commenting to the jury that the judge, or an appellate court, may have a right, duty, or ability to alter, or change, the ultimate verdict of the jury in this case or review the verdict in any manner.

37. Juror Names.

Any reference to specific jurors by name after the jury has been impaneled is improper and should be excluded.

38. Remarks or Argument About the Age or Inexperience of Counsel.

The Court should prohibit lawyers from both sides from making any remarks or argument about the age or inexperience of opposing counsel. Any such remarks or argument are irrelevant and prejudicial and should therefore be excluded. ER 401; ER 403.

39. Preclude Testimony or Argument About Midwives in Other Countries

The Court should preclude defense counsel from eliciting testimony or making argument about midwifery in other countries. The prevalence of midwifery in foreign countries and the standard of care for midwives in those foreign countries is not at issue in this case. Testimony or argument of this nature is not relevant and will both confuse and mislead the jury. Any such testimony or argument should be excluded. ER 401; ER 403.

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40. Seng Hamilton's Attorney Discipline.

Seng Hamilton was suspended from practicing law. Her suspension period is now over. The Court should preclude the defense from mentioning this fact or questioning any witness about it. Such evidence is irrelevant and prejudicial. ER 401; 403.

41. Marital Difficulties.

Defense counsel have questioned several witnesses regarding marital difficulties experienced by the Hamiltons. The Court should preclude the defense from mentioning this fact or questioning any witness about it. Such evidence is irrelevant and prejudicial. ER 401; 403.

V. CONCLUSION

For the above and foregoing reasons, plaintiffs request that the Court grant their motions *in limine* as set forth above.

VI. PROPOSED ORDER

A proposed order is submitted herewith.

Dated this 20th day of May 2022.

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206-441-4110 (Tel)
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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that I caused the foregoing to serve upon the following in the manner indicated below:

Attorneys for Defendant:

Donna Moniz
925 4th Ave, Ste. 2300
Seattle, WA 98104

☐ Via Electronic Filing
☐ Via Legal Messenger
☐ Via U.S. Mail
☒ Via E-Mail: monizd@jgkmw.com; vasquezb@jgkmw.com; randp@jgkmw.com; sproulj@jgkmw.com
☐ Via Fax:

Dated this 20th day of June, 2022 at Seattle, Washington.

Jenine Michaelis

OSBORN MACHLER
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