IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

BRIAN OEDEKOVEN,	*	LAW NO. CVCV170280
	*	
Plaintiff,	*	
	*	PLAINTIFF'S MOTION IN
v.	*	LIMINE
	*	
FORD MOTOR COMPANY,	*	
	*	
Defendant.	*	

COMES NOW the Plaintiff, by and through his attorney, and request that the Court enter an order before selection of the jury, instructing the Defendant, their 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 client and each and every witness to strictly follow any order entered by the court in connection with this motion.

1. The undersigned law firm has encountered other defense counsel strategies in similar cases in Woodbury County wherein the attorney for the defense will refer to the plaintiff's case as an attempt to "hit a lottery" or "hit a jackpot" or be rewarded by a jury. The purpose of such tactics is to mislead the jury into thinking that the Plaintiff is attempting to use the jury system to obtain a financial windfall. This tactic is offensive and prejudicial to the Plaintiff. Other statements by defense counsel suggesting that the Plaintiff is greedy by taking a case to the jury are equally offensive and prejudicial. There have been no such comments by the attorney for the Defendant in the instant matter to date. However, the Plaintiff seeks to prevent such tactics from being used in this trial.

The type of statements referred to above should be excluded on the following grounds:

A. It reflects a non-expert opinion and is not rooted in fact. Rule 5.701 of the Iowa Rules of Evidence limits lay opinions to those which are "(a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact issue." Use of the word "lottery" or suggestions that the Plaintiff is greedy fits neither of the exceptions in Rule 5.701.

B. Under Rule 5.403 of the Iowa Rules of Evidence, the probative value of these statements is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.

C. These statements are offensive and connote a negative implication for the civil jury system.

2. Defendant has raised the affirmative defenses of Plaintiff overloading the trailer causing too much towing weight which has caused the vibration, the alleged nonconformity is the result of neglect, abuse or unauthorized medication or altercation by Plaintiff and the alleged nonconformity does not substantially impair the motor vehicle. Each of these are inapplicable in this case. Defendant has the burden of proof here. Defendant seeks to rely upon an expert who is not an expert, but who claims to be an engineer. See Plaintiff's Motion to Strike which is incorporated by this reference. The only affirmative defense allowed by law is a nonconformity is the result of an accident, abuse, neglect, or unauthorized modification or alteration of the motor vehicle by a person other than the manufacturer or the authorized service agent. There was no accident, no abuse, no neglect, no unauthorized medication, modification or alteration. Defendant's affirmative defenses fail here.

3. Defense counsel seeks to plant the concept of abuse of the product when no qualified expert can testify this Ford truck was abused or misused by Plaintiff.

4. Any evidence relating to the facts that a recovery by Plaintiff would or would not be subject to taxation or that his income would or would not be subject to taxation should not be

allowed. See, *Stover v. Lakeland Square Owners Ass'n,* 434 N.W.2d 866 (Iowa 1989). *Hinzman v. Palmanteer,* 81 Wash. 2d 327, 501 P.2d 1228 (1972) (disapproved of by, *Wooldridge v. Woolett,* 96 Wash. 2d 659. 638 P.2d 566 (1981)).

5. The defense should not be allowed to offer any evidence, argument or reference that Defendant could not be or was not injured because the property or car damage is minimal pursuant to Iowa Rule of Evidence 5.401

6. Plaintiff is entitled to statuatory damages including collateral charges pursuant to Iowa Code Section 322G.2(1) and incidental charges under Section 322G.2(6). Plaintiff is also entitled to reasonable attorneys' fees and costs pursuant to Section 322G.8. The Court and not a jury should decide these last two issues.

7. Plaintiff's expert is Jim Caylor who is Plaintiff's authorized service agent. Plaintiff has been forced to take the truck to Ford for all warranty and service work. Defendant should not be allowed to suggest that Plaintiff could or should have taken the truck somewhere else. Pursuant to Iowa Code Section 322G.4(4), a manufacturer, or its authorized service agent, shall not refuse to examine or repair any nonconformity for the purpose of avoiding liability under this chapter.

8. Defense should not be allowed to refer to any hypothetical use or misuse of the truck as it relates to overloading the bed of the truck or the trailer by excess pounds or by common usage or presumed accepted percentages. Comments or queries on these issues will result in no more than speculation on the part of the jury.

9. Plaintiffs request the Court issue a sequestration order stating that all non-party witnesses should be excluded from the courtroom during the trial so they cannot hear the testimony of other witnesses.

10. It is common for defense counsel to discuss the effects of lawsuits. Plaintiff requests that defense be prohibited from offering any testimony, evidence, or argument concerning the effects of lawsuits including the following:

a. Anybody can file a lawsuit regardless of whether grounds exist or not;
b. There are too many lawsuits;
c. Lawsuits have a chilling effect on people's lives;
d. Lawsuits increase the cost of living;
e. People have to defend themselves against lawsuits or frivolous lawsuits; and
f. The "McDonald's case".

See *Fratzke v. Meyer*, 398 N.W.2d 200, 205 (Iowa Ct. App. 1986) *citing*, *Laguna v. Prouty*, 300 N.W.2d 98, 101 (Iowa 1981); *See also*, Iowa R. Evid. 5.411.

DATED this 25th day of January, 2017.

RHINEHART LAW, P.C.

By: /s/ R. Scott Rhinehart

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleading on January 25, 2017.

By: _____ U.S. Mail _____ Facsimile
_____ Hand delivered _____ Overnight courier
__X__ E-file
_____ Other _____

Signature /s/ Melissa Johnk