

# Index

## ACCEPTANCE

- Statistical evidence, **5:59 to 5:62**
- Tests and experiments. See index heading TESTS AND EXPERIMENTS, MOTION TO EXCLUDE

## ACCIDENT RECONSTRUCTION, MOTION TO EXCLUDE

- Junk science and related evidence, **5:36, 5:63**
- Low-speed impact automobile cases; supporting authorities, **5:38**

## ACCIDENT REPORTS, MOTIONS TO EXCLUDE

- Hearsay. See index heading HEARSAY
- Sample motions, **4:145**

## ACCIDENTS

- Alcohol consumption. See index heading ALCOHOL CONSUMPTION, MOTION TO EXCLUDE EVIDENCE OF
- License suspension. See index heading DRIVER'S LICENSE SUSPENSION, MOTION TO EXCLUDE EVIDENCE OF
- Motion to exclude prior accidents, **10:255**
- Prior accidents. See index heading PRIOR ACCIDENTS, MOTION TO EXCLUDE EVIDENCE OF
- Reports. See index heading ACCIDENT REPORTS, MOTION TO EXCLUDE
- Seat belts. See index heading SEAT BELT, MOTION TO EXCLUDE EVIDENCE OF FAILURE TO WEAR
- Subsequent accidents, evidence of. See index heading SUBSEQUENT ACCIDENTS, EXCLUSION OF EVIDENCE OF

## ADMISSIONS

- Discovery. See index heading DISCOVERY MOTIONS

## ALCOHOL CONSUMPTION, MOTION TO EXCLUDE EVIDENCE OF

- Generally, **10:116 to 10:133**

## ALCOHOL CONSUMPTION, MOTION TO EXCLUDE EVIDENCE OF—Cont'd

- Accident causation, inebriation as, **10:125**
- Automobile case exclusion, **10:123**
- Driving under the influence. See index heading DRIVING UNDER THE INFLUENCE CONVICTION, MOTION TO EXCLUDE EVIDENCE OF PRIOR
- Impeachment, **10:132**
  - motion to exclude character evidence used for, **7:8**
- Inebriation, supporting authorities
  - causation of accident, **10:125**
  - proof of, **10:121**
- Irrelevancy, **10:119**
- Opposing authorities; relevancy generally, **10:131 to 10:133**
  - admissible evidence of drinking habit, **10:132**
  - drinking contemporaneous to incident, **10:133**
  - driving under the influence, **10:131**
  - impeachment, **10:132**
- Relevancy. Opposing authorities, above
- Suggested text, **10:116**
- Summary, motion, **10:117**
- Supporting authorities
  - generally, **10:118 to 10:130**
  - automobile case exclusion, **10:123**
  - blood alcohol level and blood tests, **10:127**
  - lack of foundation, **10:128**
  - consumption by passenger, **10:124**
  - general intemperance, habit of, **10:126**
  - inebriation
    - causation of accident, **10:125**
    - proof of, **10:121**
  - irrelevancy, **10:119**

**ALCOHOL CONSUMPTION,  
MOTION TO EXCLUDE  
EVIDENCE OF—Cont’d**

Supporting authorities—Cont’d  
lack of foundation, **10:121, 10:122**  
blood alcohol level and blood  
tests, **10:128**  
no impairment, consumption by  
driver where, **10:123**  
other grounds, **10:130**  
prejudicial evidence, **10:118**

**ALCOHOL RELATED OFFENSES,  
MOTION TO EXCLUDE  
EVIDENCE OF**

Impeachment, motion to exclude  
character evidence used for,  
**7:26**

**ALFORD PLEAS**

Character evidence, motion to  
exclude evidence of prior felony  
convictions, **7:64**

**ANTHROPOMORPHIC DUMMIES**

Biomechanic evidence, excluding,  
**10:168**

**ARBITRATION AND  
ARBITRATORS**

Testimony of arbitrators. See index  
heading JUDGES, ARBITRATORS,  
MEDIATORS OR JURORS, MOTION TO  
EXCLUDE TESTIMONY OF

**ARRESTS**

Impeachment  
character evidence used for arrests,  
motion to exclude, **7:9**  
driving under the influence conviction,  
motion to exclude evidence of prior, **10:139**  
Prior arrest, motion to exclude evidence of  
prior felony convictions misdemeanor conviction,  
or pending charges, **7:52**  
Witness, motion to exclude evidence  
of prior, **7:77**

**ART EVIDENCE, MOTION TO  
EXCLUDE**

Photographs, gruesome or inflammatory, **4:41**

**ARTICLES AS EVIDENCE,  
MOTION TO EXCLUDE**

Generally, **4:22 to 4:36**  
Cumulative evidence; supporting  
authorities, **2:29, 4:66**  
Hearsay, **4:67**  
Nonhearsay, **4:71**  
Opposing authorities  
nonhearsay, **4:71**  
relevancy, **4:70**  
Prejudicial evidence, **4:65**  
Relevancy, **4:70**  
Sample motion to exclude newspaper  
article, **4:139**  
Suggested text, **4:63**  
Summary, motion, **4:64**  
Supporting authorities  
generally, **4:65 to 4:69**  
cumulative evidence, **2:29**  
hearsay, **4:67**  
other grounds, **4:69**  
prejudicial evidence, **4:68**  
published articles, cumulative,  
**4:66**

**ATTORNEY AS WITNESS**

Judges, arbitrators, mediators or  
jurors, motion to exclude  
testimony of, **8:64, 8:66 to 8:71**

**AUTHENTICATION OF  
DOCUMENTS**

See index heading DOCUMENTARY EVIDENCE,  
MOTION TO INCLUDE

**AUTOMOBILE ACCIDENTS**

See index heading ACCIDENTS

**BATTERED WOMAN SYNDROME**

Junk science and related evidence,  
motion to exclude, **5:44, 5:56**

**BENEVOLENCE OR SYMPATHY**

Liability or fault evidence where  
liability not at issue, motion to  
exclude, **10:215**

**BIAS**

Character evidence  
experts, motion to exclude  
character evidence used for  
impeachment, **7:17**

## INDEX

### **BIAS—Cont'd**

- Character evidence—Cont'd
  - motion to exclude character evidence used for impeachment, **7:18**
  - used for impeachment, motion to exclude
    - generally, **7:24**
    - veracity, witness, **7:23**
- Emotional bias. See index heading EMOTIONAL BIAS, MOTION TO EXCLUDE EVIDENCE USED TO CREATE
- Settlement evidence, motion to exclude, **10:47**

### **BIOMECHANIC EVIDENCE**

- See index heading RECONSTRUCTION OF ACCIDENT AND BIOMECHANIC EVIDENCE, MOTION TO EXCLUDE
- Motion to exclude, **5:69**

### **BLOOD ALCOHOL LEVEL AND BLOOD TESTS**

- Alcohol consumption, motion to exclude evidence of, **10:127, 10:128**

### **BULLET ANALYSIS, COMPARATIVE**

- Junk science and related evidence, motion to exclude, **5:46**

### **CAPITAL CASES, PENALTY PHASE**

- Character evidence, motion to exclude evidence of prior felony convictions, **7:69**

### **CAUSATION**

- Proximate causation. See index heading PROXIMATE CAUSATION

### **CHARACTER EVIDENCE**

- Generally, **7:1 to 7:78**
- Admissible character evidence, **7:1**
- Admissible plea evidence
  - felony convictions, motion to exclude evidence of prior, **7:64**
- Alcohol consumption; impeachment, **7:8**

### **CHARACTER EVIDENCE—Cont'd**

- Alcoholism of percipient witness, motion to exclude evidence of, **7:70**
- Alcohol related offenses, **7:26**
- Alford pleas
  - felony convictions, motion to exclude evidence of prior, **7:64**
- Arrests; impeachment, **7:9**
- Bias
  - expert's bias, motion to exclude character evidence used for impeachment, **7:17**
  - motion to exclude character evidence used for impeachment, **7:18**
- Capital cases, penalty phase
  - felony convictions, motion to exclude evidence of prior, **7:69**
- Collateral issues
  - felony convictions, motion to exclude evidence of prior, **7:57**
  - motion to exclude character evidence used for impeachment, **7:16, 7:25**
- Conduct, motion to exclude character evidence used to prove
  - generally, **7:29 to 7:40**
  - crimes evidence, **7:35**
  - impeachment of witness, **7:39**
  - improper character evidence, **7:33 to 7:35**
  - irrelevant evidence, **7:32**
  - negligence cases, care of skill in, **7:34**
  - opposing authorities, **7:37 to 7:40**
  - other grounds, **7:36**
  - prejudicial evidence, **7:31**
  - relevancy, **7:38**
  - suggested text, **7:29**
  - summary, motion, **7:30**
  - supporting authorities, **7:31 to 7:36**
  - trait at issue, **7:40**
- Crime
  - conduct, motion to exclude

**CHARACTER EVIDENCE—Cont’d**

Crime—Cont’d  
     character evidence used to  
     prove, **7:35**  
     felony convictions, motion to  
     exclude evidence of prior,  
     below  
     impeachment by evidence of  
     conviction of  
         generally, **7:9**  
         felonies, **7:11**  
         misdemeanors, **7:9**  
     Drug use; impeachment, **7:10**  
     Evidence regarding witness  
         mental health, motion to  
         exclude, **7:78**  
     Exclusion, character evidence subject  
     to; generally, **7:2**  
     Facts at issue; impeachment, **7:20**  
     Felony convictions, motion to  
     exclude evidence of prior  
         generally, **7:41 to 7:69**  
         admissible plea evidence, **7:64**  
         Alford pleas, **7:64**  
         balancing prejudicial impact, **7:47**  
         capital cases, penalty phase, **7:69**  
         collateral issues, **7:57**  
         credibility, required reflection on,  
         **7:48**  
         firearms possession, **7:53**  
         guilty plea, **7:65**  
         impeachment  
             generally, **7:11**  
             civil cases, **7:63**  
             prior qualifying convictions,  
             **7:62**  
         improper character evidence,  
         exclusion of, **7:50**  
         irrelevant evidence, **7:44**  
         moral turpitude crimes, **7:49, 7:60**  
         nolo contendere pleas, **7:64**  
         opposing authorities, **7:59 to 7:69**  
         other grounds, **7:58**  
         prejudicial evidence, **7:43**  
         prior arrest, misdemeanor conviction,  
         or pending charges, **7:52**  
         prior criminal pleas, non-felony,  
         **7:54**

**CHARACTER EVIDENCE—Cont’d**

Felony convictions, motion to  
     exclude evidence of prior  
     —Cont’d  
     remote convictions, exclusion of,  
     **7:51**  
     remoteness of convictions, **7:61**  
     sample motion, **7:71**  
     suggested text, **7:41**  
     summary, motion, **7:42**  
     supporting authorities, **7:43 to**  
     **7:58**  
     uncharged conduct or dismissed  
     charges  
         exclusion of; supporting authorities,  
         **7:55**  
         opposing authorities, **7:66**  
         violent character, **7:56, 7:68**  
         opposing authorities, **7:67**  
     Firearms possession  
         felony convictions, motion to  
         exclude evidence of prior,  
         **7:53**  
     Fraudulent acts, **7:12**  
     Good character of witness; impeachment,  
     **7:13, 7:28**  
     Guilty plea  
         felony convictions, motion to  
         exclude evidence of prior,  
         **7:65**  
     Impeachment, motion to exclude  
     character evidence used for  
         generally, **7:3 to 7:28**  
         alcohol consumption, **7:8**  
         alcohol related offenses, **7:26**  
         arrests, **7:9**  
         bias  
             generally, **7:24**  
             excluding evidence of, **7:17,**  
             **7:18**  
             veracity, witness, **7:23**  
         collateral issues, **7:16, 7:25**  
         conduct, use of evidence to prove,  
         **7:39**  
         crime, impeachment by evidence  
         of conviction of, above  
         drug use, **7:10**  
         facts at issue, **7:20**

## INDEX

### CHARACTER EVIDENCE—Cont'd

- Impeachment, motion to exclude character evidence used for
  - Cont'd
  - felony convictions, motion to exclude evidence of prior. above
  - fraudulent acts, **7:12**
  - good character of witness, **7:13, 7:28**
  - improper impeachment evidence, **7:7 to 7:18**
  - irrelevant evidence, **7:6**
  - misdemeanor convictions, **7:9**
  - opening the door doctrine, **7:28**
  - opposing authorities, **7:20 to 7:28**
  - other grounds, **7:19**
  - perceptions, witness, **7:21**
  - prejudicial evidence, **7:5**
  - religious beliefs, **7:14, 7:27**
  - sexual preference or behavior, **7:15**
  - suggested text, **7:3**
  - summary, motion, **7:4**
  - supporting authorities, **7:5 to 7:19**
- Improper character evidence, motion to exclude
  - conduct, character evidence used to prove, **7:33 to 7:35**
  - felony convictions, evidence of prior, **7:50**
  - juvenile adjudication, sample motion to exclude, **7:75**
  - marital fidelity, sample motion to exclude, **7:73**
  - religious beliefs, sample motion to exclude, **7:74**
- Inflammatory evidence, opposition to motion to exclude, **7:79**
- Irrelevant evidence
  - conduct, motion to exclude character evidence used to prove, **7:32**
  - felony convictions, motion to exclude evidence of prior, **7:44**
  - impeachment, motion to exclude character evidence used for, **7:6**

### CHARACTER EVIDENCE—Cont'd

- Moral turpitude crimes
  - felony convictions, motion to exclude evidence of prior, **7:49, 7:60**
- Negligence cases, care of skill in conduct, motion to exclude character evidence used to prove, **7:34**
- Nolo contendere pleas
  - felony convictions, motion to exclude evidence of prior, **7:64**
- Opening the door doctrine, **7:28**
- Prejudicial evidence
  - conduct, motion to exclude character evidence used to prove, **7:31**
  - felony convictions, motion to exclude evidence of prior, **7:43**
  - impeachment, motion to exclude character evidence used for, **7:5**
- Prescription drug abuse, motion to exclude, **7:76**
- Prior arrest, misdemeanor conviction, or pending charges, motion to exclude evidence of prior felony convictions, **7:52**
- Prior arrest of witness, motion to exclude evidence of prior, **7:77**
- Prior criminal pleas, non-felony felony convictions, motion to exclude evidence of prior, **7:54**
- Relevancy
  - conduct, motion to exclude character evidence used to prove, **7:38**
- Religious belief; impeachment, **7:14, 7:27**
- Religious beliefs, motion to exclude improper character evidence, **7:74**
- Remote convictions, motion to exclude evidence of prior felony convictions, **7:51**
- Sample motions
  - alcoholism of percipient witness,

## **CHARACTER EVIDENCE—Cont'd**

- Sample motions—Cont'd
  - motion to exclude evidence of, **7:70**
  - felony convictions, motion to exclude evidence of prior, **7:71**
  - inflammatory evidence, opposition to motion to exclude, **7:79**
  - motion to exclude evidence regarding witness's mental health, **7:78**
  - prior arrest of witness, motion to exclude evidence of prior, **7:77**
  - witness' habit of intemperance, motion to exclude, **7:72**
- Sexual preference or behavior, impeachment, **7:15**
- Trait at issue, **7:40**
- Uncharged conduct or dismissed charges, exclusion of, **7:55**
- Violent character, motion to exclude evidence of prior felony convictions
  - opposing authorities, **7:67, 7:68**
  - supporting authorities, **7:56**
- Witness' habit of intemperance, motion to exclude, **7:72**

## **CHARTS AS EVIDENCE**

- See index heading MAPS, MODELS AND CHARTS, MOTION TO EXCLUDE

## **CHILDREN**

- Incompetent witness, motion to exclude testimony of, **8:53, 8:58**

## **CHILD SEXUAL ABUSE ACCOMMODATION SYNDROME**

- Junk science and related evidence, motion to exclude, supporting authorities, **5:31**

## **CHIROPRACTORS**

- Non-chiropractor, motion to preclude from giving opinion on necessity of chiropractic treatment, **8:115**

## **CIVIL CASE STATISTICS**

- Junk science and related evidence, motion to exclude, **5:41**

## **COLLATERAL ISSUES**

- Character evidence
  - felony convictions, motion to exclude evidence of prior, **7:57**
  - motion to exclude character evidence used for impeachment, **7:16, 7:25**
- Tests and experiments, motion to exclude, **5:10**
- Uncontroverted evidence, motion to exclude, **3:17, 3:20**

## **COLLATERAL SOURCE PAYMENTS, MOTION TO EXCLUDE EVIDENCE OF**

- Generally, **10:1 to 10:19**
- Co-tortfeasor, payments to, opposing authorities, **10:15**
- Disability benefits, supporting authorities, **10:8**
- Financial hardship, **10:18**
- Gratuitous payments, **10:6**
- Hardship, financial, **10:18**
- Immunity, opposing authorities, **10:19**
- Irrelevant evidence, **10:4**
- Malingering, **10:17**
- Medical or liability policy payments, supporting authorities, **10:7**
- Motion sample, **10:242**
- Not "wholly independent" source, opposing authorities, **10:14**
- Opposing authorities
  - generally, **10:13 to 10:19**
  - co-tortfeasor, payments to, **10:15**
  - financial hardship, **10:18**
  - immunity, **10:19**
  - malingering, **10:17**
  - not "wholly independent" source, **10:14**
  - payment not collateral source, **10:20**
  - relevancy, **10:16**
  - financial hardship, **10:18**
  - malingering, **10:17**

## INDEX

### **COLLATERAL SOURCE PAYMENTS, MOTION TO EXCLUDE EVIDENCE OF —Cont'd**

Opposing authorities—Cont'd  
workers' compensation cases, **10:9**  
Payment not a collateral source,  
**10:20**

Prejudicial evidence, **10:3**

Relevancy  
generally, **10:16**  
financial hardship, **10:18**  
irrelevant evidence, **10:4**  
malingering, **10:17**

Sample motion, **10:242**

Suggested text, **10:1**

Summary, motion, **10:2**

Supporting authorities  
generally, **10:3 to 10:12**  
disability benefits, **10:8**  
gratuitous payments, **10:6**  
irrelevant evidence, **10:4**  
medical or liability policy pay-  
ments, **10:7**  
other grounds, **10:12**  
prejudicial evidence, **10:3**  
tax benefits, **10:11**  
wage payments, **10:10**  
workers compensation benefits,  
**10:9**

Tax benefits, supporting authorities,  
**10:11**

Wage payments, **10:10**

Workers compensation benefits, **10:9**

Workers' compensation cases, **10:9**

### **'COMMON KNOWLEDGE' EXCEPTION**

Nonexpert opinion, medical malprac-  
tice cases, **8:49**

### **COMPUTERIZED VALUATIONS**

Motion to exclude evidence of  
computerized valuations of busi-  
ness, **8:116**

### **CONCLUSORY TERMINOLOGY**

See index heading TERMINOLOGY,  
MOTION TO EXCLUDE LEGAL OR  
CONCLUSORY

### **CONDEMNATION PROCEEDINGS**

Damage evidence, motion to exclude  
improper, **10:227**

### **CONDUCT**

Character evidence used to prove.  
See index heading CHARACTER  
EVIDENCE

### **CONFUSING EVIDENCE**

See index heading MISLEADING OR  
CONFUSING EVIDENCE, MOTION TO  
EXCLUDE

### **CONJECTURE**

Expert opinion, motion to exclude  
improper, **8:15**

Tests and experiments, motion to  
exclude, **5:8**

### **CONTROVERSY, MATTERS NOT IN**

See index heading UNCONTROVERTED  
EVIDENCE, MOTION TO EXCLUDE

### **CREDENTIALS AS EVIDENCE, MOTION TO EXCLUDE**

Cumulative evidence; supporting  
authorities, **2:30**

### **CRIME AND CRIMINAL CASES**

Character evidence. See index head-  
ing CHARACTER EVIDENCE

Driving under the influence. See  
index heading DRIVING UNDER THE  
INFLUENCE CONVICTION, MOTION TO  
EXCLUDE EVIDENCE OF PRIOR

Felonies. See index heading FELONY  
CONVICTIONS

Misdemeanor convictions, impeach-  
ment using evidence of  
character evidence, **7:9**  
driving under the influence, **10:139**

Rape trauma syndrome, **5:30, 5:55**

Witnesses; courtroom prior to testify-  
ing, motion to exclude witness  
from, **8:75**

### **CUMULATIVE EVIDENCE, MOTION TO EXCLUDE OR LIMIT**

Generally, **2:25 to 2:41**

Articles; supporting authorities, **2:29**



**CUMULATIVE EVIDENCE,  
MOTION TO EXCLUDE OR  
LIMIT—Cont'd**

Confuse the jury  
    opposition to motion, sample, **2:49**  
Credentials; supporting authorities, **2:30**  
Letters; supporting authorities, **2:29**, **4:78**  
Number of witnesses, **2:31**, **2:39**  
Opposing authorities  
    generally, **2:38 to 2:41**  
    number of witnesses, **2:39**  
    videotapes, **2:40**  
Opposition to motion, sample  
    confuse the jury, **2:49**  
Photographs, **2:32**, **2:41**  
Rebuttal testimony, supporting  
    authorities, **2:37**  
Repetitive testimony, supporting  
    authorities, **2:36**  
Reports; supporting authorities, **2:33**  
Sample motions, **2:42**, **2:43**  
    motion to exclude confusing evidence, **2:42**  
    motion to exclude cumulative evidence, **2:43**  
    motion to exclude evidence that  
        will confuse the jury, **2:45**  
Suggested text, **2:25**  
Summary, motion, **2:26**  
Supporting authorities  
    generally, **2:27 to 2:37**  
    articles, **2:29**  
    credentials, **2:30**  
    letters, **2:29**  
    number of witnesses, **2:31**  
    photographs, **2:32**  
    rebuttal testimony, **2:37**  
    repetitive testimony, **2:36**  
    reports, **2:33**  
    testimony, witness, **2:34**  
    time-wasting evidence, **2:27**  
    videotapes, **2:35**  
Testimony  
    expert witnesses, motion to  
        exclude improper expert  
        opinion, **8:22**

**CUMULATIVE EVIDENCE,  
MOTION TO EXCLUDE OR  
LIMIT—Cont'd**

Testimony—Cont'd  
    opposition to motion, sample, **2:48**  
    ultimate issues, motion to exclude  
        improper expert opinion, **8:32**  
    witness, supporting authorities,  
        **2:34**  
Videotapes, **2:35**, **2:40**  
Waste court's time, motion to exclude  
    evidence that will  
        supporting authorities, **2:27**  
Witnesses  
    number of, **2:31**, **2:39**  
    testimony  
        opposition to motion, sample,  
            **2:48**  
        supporting authorities, **2:34**

**CUMULATIVE TESTIMONY**

See index heading CUMULATIVE EVIDENCE, MOTION TO EXCLUDE OR LIMIT

**DAMAGE EVIDENCE, MOTION  
TO EXCLUDE IMPROPER**

Generally, **10:219 to 10:235**  
Condemnation proceedings, **10:227**  
Denied claims, **10:232**  
Estoppel, **10:231**  
Hedonic damages, **5:25**, **5:50**  
Lost profits, **10:228**  
Opposing authorities  
    estoppel, **10:231**  
    speculative damages, below  
    unpleaded claims, **10:230 to 10:235**  
Prior accidents, **10:255**  
Reasonably certain damages, **10:235**  
Speculative damages  
    opposing authorities  
        generally, **10:233 to 10:235**  
        reasonably certain damages,  
            **10:235**  
        weight vs. admissibility, **10:234**  
    supporting authorities, **10:225**  
Speculative evidence of lost profits, **10:254**



## INDEX

### **DAMAGE EVIDENCE, MOTION TO EXCLUDE IMPROPER —Cont'd**

- Suggested text, **10:219**
- Summary, motion, **10:220**
- Supporting authorities
  - condemnation proceedings, **10:227**
  - irrelevancy, **10:229**
  - lost profits, **10:228**
  - speculative damages, **10:225**
  - stated damages, amounts in excess of, **10:224**
  - statutory limitations on damages, above
  - surprise claims, **10:221 to 10:224**
  - undisputed matters, **10:221 to 10:224**
  - unpleaded matters, **10:221 to 10:224**
- Surprise claims, **10:221 to 10:224**
- Unpleaded claims or issues, **10:221 to 10:224, 10:230 to 10:235**
- Weight vs. admissibility, **10:234**

### **DAMAGES**

- Bifurcated trial, in. See index heading **DAMAGES IN BIFURCATED TRIAL, MOTION TO EXCLUDE EVIDENCE OF**
- Improper damage evidence. See index heading **DAMAGE EVIDENCE, MOTION TO EXCLUDE IMPROPER**
- Punitive damages
  - financial status, motion to exclude evidence of party's, **10:195**
- Tax implications on, **10:202**

### **DAMAGES IN BIFURCATED TRIAL, MOTION TO EXCLUDE EVIDENCE OF**

- Generally, **9:31 to 9:37**
- Liability issues relevant to damages, **9:36**
- Opposing authorities, **9:36, 9:37**
  - inappropriate matter, **9:37**
- Suggested text, **9:31**
- Summary, motion, **9:32**
- Supporting authorities
  - generally, **9:33 to 9:35**
  - other grounds, **9:35**
  - policy considerations, **9:34**

### **DAMAGES IN BIFURCATED TRIAL, MOTION TO EXCLUDE EVIDENCE OF —Cont'd**

- Supporting authorities—Cont'd
  - statutory authority, **9:33**

### **DAUBERT ANALYSIS**

- Hearings, computerized valuations of business, motion to exclude evidence of, **8:116**
- Test, junk science and related evidence, motion to exclude, **5:48**

### **DEFENSES**

- Rebuttal to affirmative defenses, premature. See index heading **REBUTTAL TO AFFIRMATIVE DEFENSES, MOTION TO BAR PREMATURE**

### **DELAY OF PROCEEDINGS**

- See index heading **WASTE COURT'S TIME, MOTION TO EXCLUDE EVIDENCE THAT WILL**

### **DELTA V TESTIMONY, EXCLUSION**

- Reconstruction of accident and biomechanic evidence, motion to exclude, **10:172**

### **DEMONSTRATIVE AND REAL EVIDENCE**

- Defendant's tattoo, **4:141**
- Sample motion to exclude, **4:136, 4:141**

### **DENIED CLAIMS**

- Damage evidence, motion to exclude improper, **10:232**
- Discovery, claims denied during. See index heading **DISCOVERY MOTIONS**

### **DEPOSITIONS**

- Evidentiary sanctions, motion for supporting authorities, **6:9 to 6:11**
- Exclude evidence, sanction to, **6:10**
- Expert declarations and depositions, motions regarding. See index heading **EXPERT WITNESSES**
- Terminating sanctions, **6:11**

## **DESTROYED EVIDENCE**

See index heading **LOST OR DESTROYED EVIDENCE, MOTION TO EXCLUDE REFERENCE TO**

## **DISABILITY BENEFITS**

Collateral source payments, motion to exclude evidence of, **10:8**

## **DISCOVERY MOTIONS**

### **Admissions**

conclusively establish admitted matters, motion to, **6:37**

motion summary, **6:36**

non-responsive matters deemed admitted, **6:20**

failure to comply with order, **6:21**

terminating sanctions, **6:22**

opposing authorities, **6:39**

purpose, **6:38**

requests for, **6:20**

suggested text, **6:35**

Conclusively establish admitted matters, motion to

generally, **6:35 to 6:39**

motion summary, **6:36**

opposing authorities, **6:39**

purpose of discovery, **6:38**

suggested text, **6:35**

supporting authorities, **6:37**

Evidentiary sanctions, motion for generally, **6:1 to 6:34**

admissions, requests for failure to comply with order, **6:21**

non-responsive matters deemed admitted, **6:20**

terminating sanctions, **6:22**

deadline, discovery produced beyond

sample motion to exclude testimony, **6:66**

depositions, **6:30**

depositions. See index heading **DEPOSITIONS**

discovery produced beyond deadline

sample motion to exclude testimony, **6:66**

## **DISCOVERY MOTIONS—Cont'd**

Evidentiary sanctions, motion for —Cont'd

dismissal or other action terminating case, sanction of, **6:11**

documents, requests for inspection or production of. See index heading **DOCUMENTARY EVIDENCE**

exclude evidence, sanction to, **6:4**

general authority, **6:3 to 6:8**

interrogatories, **6:31**

interrogatories. See index heading **INTERROGATORIES**

issue sanction, **6:5**

matters deemed admitted, **6:33**

mental and physical examinations, **6:18, 6:19**

mental examinations, **6:18, 6:19**

no prior order, opposing authorities, **6:34**

opposing authorities, **6:26 to 6:34**

physical examinations, **6:18, 6:19**

prior order on motion to compel unnecessary, when, **6:7**

production, requests, **6:15 to 6:17, 6:32**

reasonable alternative remedy, **6:28**

suggested text, **6:1**

summary, motion, **6:2**

supporting authorities, **6:3 to 6:25** mental and physical examinations, **6:18, 6:19**

supporting authorities, general authority, **6:3 to 6:8**

terminating sanction, **6:6**

termination or default sanctions, production requests, **6:17**

willfulness requirement, **6:8, 6:29**

witnesses, failure to disclose identity of, **6:23**

faulty expert designations or declarations, **6:24**

other grounds, **6:25**

sample motion to exclude testimony, **6:65**

Exclude evidence of claims denied during discovery, motion to generally, **6:40 to 6:46**

## INDEX

### DISCOVERY MOTIONS—Cont'd

- Exclude evidence of claims denied during discovery, motion to—Cont'd
  - opposing authorities, **6:46**
  - prejudicial evidence, exclusion of, **6:42**
  - sample motion, **6:62**
  - suggested text, **6:40**
  - summary motion, **6:41**
  - supporting authorities
    - generally, **6:42 to 6:45**
    - other grounds, **6:45**
    - privilege raised during discovery, where, **6:44**
    - unfair surprise, **6:43**
- Exclude evidence of medical bills for services obtained after [date], sample motion, **6:64**
- Expert declarations and depositions, motions regarding. See index heading EXPERT WITNESSES
- Issue sanction, **6:5**
- Mental examinations, **6:18, 6:19**
- Motion for evidentiary sanctions for failure to serve answers/objections to interrogatories, **6:70**
- No prior order, opposing authorities evidentiary sanctions, motion for, **6:34**
- Opposition to defendants' motion to limit plaintiff's expert opinions, **6:71**
- Physical examinations
  - supporting authorities, **6:19**
- Physical examinations, supporting authorities, **6:18**
- Prior orders, motion for evidentiary sanctions
  - no prior orders, opposing authorities, **6:34**
  - order on motion to compel unnecessary, when; supporting authorities, **6:7**
- Reasonable alternative remedy, evidentiary sanctions, **6:28**
- Sample motions, **6:62 to 6:67**

### DISCOVERY MOTIONS—Cont'd

- Sanction establishing facts
  - sample motion, **6:68**
- Willfulness requirement
  - evidentiary sanctions, motion for, **6:8, 6:29**
- Witnesses, failure to disclose identity of, **6:23**
  - faulty expert designations or declarations, **6:24**
  - other grounds, **6:25**
  - sample motion to exclude testimony, **6:65**

### DISCRETION OF COURT

- Damage evidence, motion to exclude improper, **10:230**
- Irrelevant evidence, motion to exclude, **3:10**
- Juror questionnaire, motion to submit, **9:59**
- Maps, models and charts, motion to exclude, **4:90, 4:99**
- Prior accidents, motion to exclude evidence of, **10:66**
- Subsequent accidents, exclusion of evidence of, **10:72**
- Tests and experiments, motion to exclude, **5:14**
- Witness from courtroom prior to testifying, motion to exclude, **8:76**

### DISMISSAL

- See index heading DISCOVERY MOTIONS

### DOCUMENTARY EVIDENCE, MOTION TO EXCLUDE

- Generally, **4:22 to 4:36**
- Adequate foundations, opposing authorities, **4:33**
- Authentication
  - general requirement for, **4:26**
  - medical records, reports or bills, motion to exclude improper proper, **4:118**
  - opposing authorities, **4:32**
  - supporting authorities; unauthenticated writings
    - exclusion of, **4:27**

**DOCUMENTARY EVIDENCE,  
MOTION TO EXCLUDE**

**—Cont’d**

- Authentication—Cont’d
  - supporting authorities; unauthenticated writings
  - Cont’d
    - general authentication requirement, **4:26**
- Definition of writing, **4:24**
- Examples of writings held inadmissible, **4:31**
- Foundation, evidence lacking. See index heading FOUNDATION, MOTION TO EXCLUDE EVIDENCE LACKING
- Hearsay. See index heading HEARSAY
- Inadequate foundation for writing, **4:25**
- Letters. See index heading LETTERS AS EVIDENCE, MOTION TO EXCLUDE
- Lists, opposing authorities, **4:36**
- Medical records. See index heading MEDICAL RECORDS, REPORTS OR BILLS, MOTION TO EXCLUDE IMPROPER
- Opposing authorities, **4:32 to 4:36**
  - adequate foundations, examples, **4:33**
  - authentication, **4:32**
  - hearsay exceptions, **4:34**
  - lists, **4:36**
  - secondary evidence, **4:35**
- Secondary evidence, **4:30, 4:35**
- Social media. See index heading SOCIAL MEDIA EVIDENCE
- Suggested text, **4:22**
- Summary, motion, **4:23**
- Supporting authorities
  - definition of writing, **4:24**
  - hearsay, inadmissible
    - generally, **4:28, 4:29**
    - examples, **4:29**
  - inadequate foundation for writing, **4:25**
  - secondary evidence, inadmissible, **4:30**
  - unauthenticated writings, exclusion of, **4:27**

**DOCUMENTARY EVIDENCE,  
MOTION TO EXCLUDE**

**—Cont’d**

- Supporting authorities—Cont’d
  - writing examples held inadmissible, **4:31**
- Unauthenticated writings
  - exclusion of, **4:27**
  - general authentication requirement, **4:26**

**DOG TRACKING**

- Junk science and related evidence, motion to exclude, **5:43**

**DRIVER’S LICENSE  
SUSPENSION, MOTION TO  
EXCLUDE EVIDENCE OF**

- Generally, **10:99 to 10:105**
- Opposing authorities
  - prejudice, lack of, **10:104**
  - relevancy, **10:105**
- Relevancy, **10:105**
- Suggested text, **10:99**
- Summary, motion, **10:100**
- Supporting authorities
  - generally, **10:101 to 10:103**
  - negligence, no evidence of, **10:102**
  - other grounds, **10:103**

**DRIVING UNDER THE  
INFLUENCE CONVICTION,  
MOTION TO EXCLUDE  
EVIDENCE OF PRIOR**

- Generally, **10:134 to 10:148**
- Conviction, evidence of prior. See index heading DRIVING UNDER THE INFLUENCE CONVICTION, MOTION TO EXCLUDE EVIDENCE OF PRIOR
- Defendant’s, sample motion to exclude evidence, **10:252**
- Impeachment, exclusion of crimes
  - evidence used for
    - opposing authorities
      - generally, **10:145 to 10:147**
    - supporting authorities
      - generally, **10:136 to 10:143**
      - arrests, **10:139**
  - improper conduct, exclusion of
    - D.U.I. evidence where used

## INDEX

### **DRIVING UNDER THE INFLUENCE CONVICTION, MOTION TO EXCLUDE EVIDENCE OF PRIOR —Cont'd**

- Impeachment, exclusion of crimes evidence used for—Cont'd supporting authorities—Cont'd to prove, **10:142** misdemeanor convictions, **10:139** other grounds, **10:143** probative value outweighed by risk of undue prejudice, **10:141**
- Irrelevancy, **10:137**
- Moral turpitude
  - opposing authorities, DUI as crime of moral turpitude, **10:147**
  - supporting authorities, felony convictions excluded where no crime of moral turpitude, **10:140**
- Opposing authorities
  - generally, **10:144 to 10:148**
  - impeachment, exclusion of crimes evidence used for, above moral turpitude, DUI as crime of, **10:147**
  - relevancy, **10:148**
- Relevancy, **10:148**
  - prior conviction, motion to exclude evidence of
    - opposing authorities, **10:148**
- Suggested text, **10:134**
- Summary, motion, **10:135**
- Supporting authorities
  - impeachment, exclusion of crimes evidence used for, above
    - irrelevancy, **10:137**
  - moral turpitude, felony convictions excluded where no crime of, **10:140**
  - prejudicial evidence, **10:136**

### **DRUG USE**

- Impeachment, motion to exclude character evidence used for, **7:10**

### **DRUG USE—Cont'd**

- Prescription abuse, motion to exclude, **7:76**

### **ELECTRONIC PENILE PLETHYSMOGRAPH TEST**

- Junk science and related evidence, motion to exclude, **5:33**

### **EMOTIONAL BIAS, MOTION TO EXCLUDE EVIDENCE USED TO CREATE**

- Generally, **2:17 to 2:24**
- “Golden rule” argument
  - supporting authorities, **2:22**
- Jurors’ emotions, evidence intended to inflame
  - generally, **2:20**
  - “golden rule” argument, **2:22**
  - photographs, gruesome or inflammatory, **4:42**
  - poverty as motive, evidence of, **2:23**
  - taxpayers, jurors’ self-interest as, **2:21**
- Opposing authorities
  - general authority, **2:24**
- Photographs, gruesome or inflammatory, **4:41, 4:42**
- Poverty as motive, evidence of supporting authorities, **2:23**
- Suggested text, **2:17**
- Summary, motion, **2:18**
- Supporting authorities
  - jurors’ emotions, evidence intended to inflame, above prejudicial evidence, **2:19**
- Taxpayers, jurors’ self-interest as, **2:21**

### **EMOTIONAL STATE**

- Bias. See index heading EMOTIONAL BIAS, MOTION TO EXCLUDE EVIDENCE USED TO CREATE

### **EMPLOYMENT, PROOF OF**

- Collateral source payments, motion to exclude evidence of
  - wages, **10:10**
- Liability insurance, motion to exclude evidence of, **10:34**

## EMPLOYMENT

### DISCRIMINATION CASES

Junk science and related evidence,  
motion to exclude, **5:42**

## ESTOPPEL

Damage evidence, motion to exclude  
improper, **10:231**

Uncontroverted evidence, motion to  
exclude, **3:21**

## EXPERIMENTS

See index heading TESTS AND EXPERI-  
MENTS, MOTION TO EXCLUDE

## EXPERT WITNESSES

Credibility of witness, motion to  
exclude, **5:68**

Cumulative testimony, motion to  
exclude improper expert  
opinion, **8:22**

Declarations and depositions,  
motions regarding

deficient declaration, **6:50**

non-retained experts, no declara-  
tion required, **6:52**

retained experts, declaration  
required, **6:51**

failure to disclose identity of wit-  
ness, motion for evidentiary  
sanctions, **6:24**

faulty expert designations or decla-  
rations, motion for eviden-  
tiary sanctions, **6:24**

follow up by deposing party, no  
effort to

improper expert witness  
disclosure, motion to  
exclude, **6:59**

re-depose experts, opportunity to,  
**6:61**

retained experts, declaration  
required

improper expert witness  
disclosure, motion to  
exclude, **6:51**

sample motion to exclude  
testimony of expert witness,  
**6:63**

suggested text, **6:47**

## EXPERT WITNESSES—Cont'd

Depositions. Declarations and depo-  
sitions, motions regarding,  
above

Exclude testimony, lack of personal  
knowledge of subject matter,  
**8:120**

Experiments. See index heading TESTS  
AND EXPERIMENTS, MOTION TO  
EXCLUDE

Foundation, evidence lacking, **4:13**

Hearsay

improper expert opinion, motion to  
exclude, **8:25**

opposing authorities

statements of others, **8:26**

treatises, documents and text,  
**8:27**

supporting authorities

opinions of others, **8:7**

statements of others, **8:8**

treatises, documents and text,  
**8:9**

Hypothetical questions, **8:5, 8:28**

Improper expert opinion, motion to  
exclude

generally, **8:1 to 8:32**

common experience, matters of,  
**8:12**

conjecture, **8:15**

cumulative testimony, **8:22**

hearsay, above

hypothetical questions, **8:5, 8:28**

inadequate foundation, **8:4**

inadmissible hearsay, **8:6**

irrelevant matters, **8:19**

jury function, usurping of, **8:18**

legal questions

generally, **8:10, 8:11**

ultimate issues compared, **8:29**

opinions of others, **8:7**

opposing authorities, **8:24 to 8:32**

other grounds, **8:23**

outside area of specialty or  
expertise, **8:21**

perceived or admitted into evi-  
dence, not, **8:14**

perception of expert, **8:31**

profile evidence, improper, **8:20**

## INDEX

### EXPERT WITNESSES—Cont'd

- Improper expert opinion, motion to exclude—Cont'd
  - reasonable reliance by experts, no, **8:13**
  - speculation, **8:15**
  - statements of others, **8:8, 8:26**
  - suggested text, **8:1**
  - summary, motion, **8:2**
  - supporting authorities, **8:3 to 8:23**
  - treatises, documents, and text, **8:9, 8:27**
  - ultimate issues, **8:11**
  - uncooperative witness, **8:17, 8:30**
  - usurping of jury function, **8:18**
  - variables, too many, **8:16**
- Improper expert witness disclosure, motion to exclude
  - generally, **6:47 to 6:61**
  - compensation, **6:60**
  - continuance, **6:56**
  - declaration, deficient, **6:50**
  - deposition
    - opinions not referenced at, **6:54**
    - opposition to motion based on failure to reference opinions at, **6:57**
  - follow up by deposing party, no effort to, **6:59**
  - non-retained experts, no declaration required, **6:52**
  - opposing authorities, generally, **6:55 to 6:61**
  - prior testimony information, **6:60**
  - re-depose experts, opportunity to, **6:61**
  - retained experts, declaration required, **6:51**
  - sample motion to exclude testimony of expert witness, **6:63**
  - suggested text, **6:47**
  - summary motion, **6:48**
  - supporting authorities, generally, **6:49 to 6:54**
  - undisclosed witness, **6:53**
  - volunteer information, no obligation to, **6:58**

### EXPERT WITNESSES—Cont'd

- Incompetent witness, motion to exclude testimony, **8:124**
- Irrelevant matters, **8:19**
- Junk science and related evidence.
  - See index heading JUNK SCIENCE AND RELATED EVIDENCE, MOTION TO EXCLUDE
- Nonexpert opinion. See index heading NONEXPERT OPINION
- Nonqualified expert, motion to exclude testimony of
  - examples of improper qualifications, **8:36**
  - non-chiropractor, motion to preclude from giving opinion on necessity of chiropractic treatment, **8:115**
  - opposing authorities, **8:38**
  - opposition to motion to exclude, **8:123**
- Opposing authorities, motion to exclude testimony of nonqualified expert, **8:38**
- Order rendering default judgment as discovery sanction, sample motions, **6:72**
- Profile evidence, improper, **8:20**
- Qualifications
  - nonqualified expert, motion to exclude testimony of, above
- tests and experiments. See index heading TESTS AND EXPERIMENTS, MOTION TO EXCLUDE
- Sample motions
  - deem matters admitted, **6:67**
  - expert testimony, motion to exclude, **5:67**
    - generally, **5:67**
    - credibility of witness, **5:68**
  - medical doctor, motion to exclude testimony and opinions of, **8:117**
  - order rendering default judgment as discovery sanction, **6:72**
  - speculative expert testimony, motion to exclude, **8:113**
  - testimony of expert witness, motion to exclude, **6:63**



**EXPERT WITNESSES—Cont'd**

Sample motions—Cont'd  
testimony relating to matters not  
disclosed during discovery,  
**6:69**

Tests. See index heading TESTS AND  
EXPERIMENTS, MOTION TO EXCLUDE

Ultimate issues  
helpful expert testimony as to  
terminology, **9:47, 9:48**  
legal questions compared, **8:29**

**EXTRAORDINARY  
CIRCUMSTANCES**

Judges, arbitrators, mediators or  
jurors, motion to exclude  
testimony of, **8:70**

**FAILURE TO PAY TAXES**

Motion to exclude evidence of,  
**10:248**

**FELONY CONVICTIONS**

Character evidence. See index head-  
ing CHARACTER EVIDENCE  
Driving under the influence convic-  
tion, motion to exclude evidence  
of prior; past conviction as ele-  
ment of felony D.U.I. offense,  
**10:146**

**FILM**

See index heading VIDEO EVIDENCE,  
MOTION TO EXCLUDE

**FINANCIAL HARDSHIP**

Collateral source payments, motion  
to exclude evidence of, **10:18**

**FINANCIAL STATUS, MOTION TO  
EXCLUDE EVIDENCE OF  
PARTY'S**

Generally, **10:187 to 10:197**  
Irrelevancy, **10:190**  
Opposing authorities, relevancy,  
**10:197**  
Opposition to motion to exclude,  
**10:258**  
Plaintiff's, sample motion to exclude  
evidence, **10:251**  
Punitive damages, supporting  
authorities, **10:195**

**FINANCIAL STATUS, MOTION TO  
EXCLUDE EVIDENCE OF  
PARTY'S—Cont'd**

Relevancy, **10:197**  
Suggested text, **10:187**  
Summary, motion, **10:188**  
Supporting authorities  
generally, **10:189 to 10:196**  
defendant's financial status,  
**10:193**  
irrelevancy, **10:190**  
other grounds, **10:196**  
plaintiff's financial status, **10:192**  
prejudicial evidence, **10:189**  
punitive damages cases, **10:195**  
wrongful death cases, **10:194**  
Wrongful death cases, supporting  
authorities, **10:194**

**FINITE ELEMENT ANALYSIS  
TESTS**

Biomechanic evidence, excluding,  
**10:169**

**FIREARM RESIDUE**

Personal injury motions, sample  
motion to admit evidence of  
laboratory testing regarding  
firearm residue, **10:244**

**FIREARMS POSSESSION**

Character evidence, motion to  
exclude evidence of prior felony  
convictions, **7:53**

**FOUNDATION, MOTION TO  
EXCLUDE EVIDENCE  
LACKING**

Generally, **4:1 to 4:21**  
Conditional admissibility, **4:19**  
Definitions, **4:4**  
Documents  
preliminary fact determinations  
related to, **4:7**  
self-authenticating documents,  
**4:17**  
writings, **4:15**  
Examples of improper foundations,  
**4:8 to 4:17**  
Experiments, **4:11**  
Expert testimony, **4:13**

## INDEX

### **FOUNDATION, MOTION TO EXCLUDE EVIDENCE LACKING—Cont'd**

- Medical reports. See index heading  
MEDICAL RECORDS, REPORTS OR  
BILLS, MOTION TO EXCLUDE  
IMPROPER
- Motion pictures, **4:12**
- Opposing authorities
  - generally, **4:18 to 4:21**
  - conditional admissibility, **4:19**
  - outside juror's presence, **4:20**
  - weight vs. admissibility, **4:21**
- Photographs, **4:9**
- Prejudicial evidence; supporting  
authorities, **4:3**
- Preliminary matters
  - conditional admissibility of evi-  
dence, **4:6**
  - definitions, **4:4**
  - out of jury presence required,  
when determination, **4:5**
- Social media evidence, **4:129, 4:133**
- Suggested text, **4:1**
- Summary, motion, **4:2**
- Supporting authorities
  - examples of improper foundations,  
**4:8 to 4:17**
  - prejudicial evidence, exclusion of,  
**4:3**
  - preliminary matters, above
- Testimony, witness
  - expert, **4:13**
  - lay, **4:14**
- Tests and experiments, **4:11**
- Videotapes, **4:12**
- Weight vs. admissibility, **4:21**
- Writings, **4:15**

### **FRAUDULENT ACTS**

- Character evidence used for impeach-  
ment, motion to exclude, **7:12**

### **GOLDEN RULE ARGUMENT**

- Motion to exclude, **9:63**

### **“GOLDEN RULE” ARGUMENT, MOTION TO PRECLUDE**

- Generally, **9:38 to 9:42**

### **“GOLDEN RULE” ARGUMENT, MOTION TO PRECLUDE —Cont'd**

- Emotional bias, motion to exclude  
evidence used to create  
supporting authorities, **2:22**
- Prejudicial evidence, **9:40**
- Suggested text, **9:38**
- Summary, motion, **9:38**
- Supporting authorities
  - generally, **9:40 to 9:42**
  - other grounds, **9:42**
  - rejection of argument, **9:41**

### **GUILTY PLEA**

- Character evidence, motion to  
exclude evidence of prior felony  
convictions, **7:65**

### **HEALTH OR INJURIES OF PARTY NOT AT ISSUE, MOTION TO EXCLUDE EVIDENCE OF**

- Generally, **10:149 to 10:157**
- Irrelevancy, **10:152**
- Opposing authorities
  - generally, **10:155 to 10:157**
  - demonstration of injury, **10:156**
  - other demonstrations, **10:157**
  - relevancy, **10:155**
- Suggested text, **10:149**
- Summary, motion, **10:150**
- Supporting authorities
  - generally, **10:151 to 10:154**
  - irrelevancy, **10:152**
  - other grounds, **10:154**
  - prejudicial evidence, **10:151**

### **HEARSAY**

- Articles
  - hearsay, **4:67**
  - nonhearsay, **4:71**
- Business records exception to rule  
letters, **4:83**  
medical opinions, **4:120**
- Documents. Written hearsay,  
inadmissible, below
- Exceptions to rule
  - generally, **8:106**
  - business records exception to rule,  
above

**HEARSAY—Cont’d**

Exceptions to rule—Cont’d

letters, below

public records

letters, **4:84**

purpose of, **8:107**

written hearsay, **4:34**

Exclude hearsay evidence, motion to

generally, **8:99 to 8:112**

broad discretion, **8:112**

exceptions to rule, above

general authority, **8:101**

multiple hearsay

opposing authorities, **8:110**

supporting authorities, **8:105**

opposing authorities

generally, **8:106 to 8:112**

broad discretion, **8:112**

multiple hearsay, **8:110**

nonassertive conduct, **8:109**

nonhearsay evidence, **8:108**

witness credibility, used to

impeach, **8:111**

suggested text, **8:99**

summary, motion, **8:100**

supporting authorities, **8:101 to 8:105**

multiple hearsay, **8:105**

purpose of rule, **8:102**

witness credibility, used to

impeach, **8:111**

written hearsay, inadmissible,

below

Expert witnesses. See index heading

EXPERT WITNESSES

General authority for exclusion,

**8:101**

Letters

generally, **4:76**

exceptions

generally, **4:82**

business records, **4:83**

public records, **4:84**

Medical records, reports or bills. See

index heading MEDICAL RECORDS,

REPORTS OR BILLS, MOTION TO

EXCLUDE IMPROPER

Multiple hearsay, **8:105, 8:110**

**HEARSAY—Cont’d**

Nonassertive conduct, **8:109**

Nonhearsay evidence, **8:108**

Patient medical history, **4:113**

Public records exception to rule

letters, **4:84**

Purpose of hearsay rule, **8:102**

Reconstruction of accident and

biomechanic evidence, motion

to exclude, **10:162**

Social media evidence

exclusion of, **4:128**

nonhearsay, status as, **4:132**

Written hearsay, inadmissible

generally, **4:28 to 4:29**

examples, **4:29, 8:104**

exceptions, **4:34**

general authority for exclusion,

**8:103**

**HUMAN CRASH TEST DUMMY  
TESTIMONY**

Reconstruction of accident and

biomechanic evidence, motion

to exclude, **10:174**

**HYPNOSIS EVIDENCE, MOTION  
TO EXCLUDE**

Generally, **5:34, 5:57, 5:58**

Sample motion to exclude, **5:66**

**HYPOTHETICAL QUESTIONS**

Expert opinion, motion to exclude

improper, **8:13, 8:28**

**IMMIGRATION STATUS, MOTION  
TO EXCLUDE EVIDENCE OF  
PARTY’S**

Generally, **10:236 to 10:241**

Irrelevancy, **10:239**

liability, status irrelevant to issue

of, **10:241**

Irrelevant evidence, motion to

exclude, **3:24**

Sample motions

immigration status, motion to

exclude irrelevant evidence,

**3:24**

Suggested text, **10:236**

Summary, motion, **10:237**

## INDEX

### **IMMIGRATION STATUS, MOTION TO EXCLUDE EVIDENCE OF PARTY'S—Cont'd**

- Supporting authorities
  - generally, **10:238 to 10:241**
  - irrelevancy, **10:239**
  - liability, status irrelevant to issue of, **10:241**
  - prejudicial evidence, **10:238**
  - unpleaded issues, **10:240**

### **IMMUNITY**

- Collateral source payments, motion to exclude evidence of, **10:19**

### **IMPEACHMENT**

- Alcohol consumption, motion to exclude evidence of, **10:132**
- Character evidence used for. See index heading CHARACTER EVIDENCE
- Driving under the influence. See index heading DRIVING UNDER THE INFLUENCE CONVICTION, MOTION TO EXCLUDE EVIDENCE OF PRIOR
- Prior accidents, motion to exclude evidence of, **10:71**
- Settlement evidence, motion to exclude, **10:49**
- Statute violation, motion to exclude evidence of, **10:96**
- Subsequent accidents, exclusion of evidence of, **10:74**

### **INCOMPETENT WITNESS, MOTION TO EXCLUDE TESTIMONY OF**

- Generally, **8:50 to 8:60**
- Children, **8:53, 8:58**
- General rule of competency, **8:52**
- Insanity, **8:54, 8:59**
- Lack of personal knowledge of subject matter, **8:55, 8:60**
- Mental incompetence, **8:54, 8:59**
- Opposing authorities
  - generally, **8:57 to 8:60**
  - children, **8:58**
  - general authority, **8:57**
  - insanity, **8:59**

### **INCOMPETENT WITNESS, MOTION TO EXCLUDE TESTIMONY OF—Cont'd**

- Opposing authorities—Cont'd
  - lack of personal knowledge of subject matter, **8:60**
  - mental incompetence, **8:59**
  - personal knowledge of subject matter, lack of, **8:60**
- Personal knowledge of subject matter, lack of, **8:55, 8:60**
- Suggested text, **8:50**
- Summary, motion, **8:51**
- Supporting authorities
  - generally, **8:52 to 8:56**
  - children, **8:53**
  - general rule of competency, **8:52**
  - insanity, **8:54**
  - lack of personal knowledge of subject matter, **8:55**
  - mental incompetence, **8:54**
  - other grounds, **8:56**
  - personal knowledge of subject matter, lack of, **8:55**

### **INFLAMMATORY EVIDENCE**

- Sample motions, opposition to motion to exclude, **7:79**

### **INJURIES OF PARTY NOT AT ISSUE, MOTION TO EXCLUDE EVIDENCE OF**

- See index heading HEALTH OR INJURIES OF PARTY NOT AT ISSUE, MOTION TO EXCLUDE

### **INSANITY**

- See index heading INCOMPETENT WITNESS, MOTION TO EXCLUDE TESTIMONY OF

### **INSURANCE**

- Liability insurance, See index heading LIABILITY INSURANCE
- Voir dire, motion to prevent improper references to insurance, **9:9**

### **INSURANCE CASES**

- Settlement evidence, motion to exclude, **10:52**

## INTERROGATORIES

Evidentiary sanctions, motion for  
opposing authorities, **6:31**  
supporting authorities  
generally, **6:12 to 6:14**  
dismissal, harsher sanctions,  
**6:14**  
evidentiary sanctions, **6:13**

## IRRELEVANT EVIDENCE, MOTION TO EXCLUDE

See also index heading RELEVANCY  
Generally, **3:1 to 3:12**  
Alcohol consumption, evidence of,  
**10:119**  
Character evidence  
conduct, character evidence used  
to prove, **7:32**  
felony convictions, motion to  
exclude evidence of prior,  
**7:44**  
impeachment, character evidence  
used for, **7:6**  
Collateral source payments, evidence  
of, **10:4**  
Discretion of court, **3:10**  
Driving under the influence conviction,  
prior, **10:137**  
Expert opinion, **8:19**  
Financial status, evidence of party's,  
**10:190**  
Gruesome or inflammatory  
photographs, **4:40**  
Health or injuries of party not at  
issue, motion to exclude evidence of,  
**10:152**  
Immigration status  
evidence of party's, **10:239**  
liability, status irrelevant to issue  
of, **10:241**  
Immigration status, evidence, **3:24**  
Insurance case, motion to exclude  
irrelevant evidence, **3:26**  
Letters, **4:77**  
Liability evidence where liability not  
at issue, **10:211**  
Liability insurance, **10:24, 10:27**  
Opposing authorities, generally, **3:12**  
Other states' laws, **3:6**

## IRRELEVANT EVIDENCE, MOTION TO EXCLUDE

### —Cont'd

Outside pleadings, **3:7**  
Physical conditions not at issue;  
form, **3:25**  
Prejudicial evidence, **3:8**  
Prior accidents, evidence of, **10:56,**  
**10:60**  
Remoteness, **3:11**  
Repairs, evidence of subsequent,  
**10:81**  
Sample motions  
generally, **3:27**  
immigration status, motion to  
exclude irrelevant evidence,  
**3:24**  
insurance case, motion to exclude  
irrelevant evidence, **3:26**  
physical conditions not at issue,  
motion to exclude evidence,  
**3:25**  
unpleaded issues, **3:28**  
Seat belt, evidence of failure to wear,  
**10:109**  
Settlement evidence, **10:38**  
Speculative evidence, **3:9**  
Statute violation, motion to exclude  
evidence of, **10:90**  
Suggested text, **3:1**  
Summary, motion, **3:2**  
Supporting authorities  
generally, **3:3 to 3:11**  
discretion of court, **3:10**  
no unlimited inquiry, **3:5**  
other states' laws, **3:6**  
outside pleadings, **3:7**  
prejudicial evidence, **3:8**  
remoteness, **3:11**  
speculative evidence, **3:9**  
undisputed matters, **3:4**  
Tax evidence, motion to exclude,  
**10:201**  
Uncontroverted evidence. See index  
heading UNCONTROVERTED EVIDENCE,  
MOTION TO EXCLUDE  
**IRREPARABLE HARM**  
Judges, arbitrators, mediators or  
jurors, motion to exclude

## INDEX

### **IRREPARABLE HARM—Cont'd** testimony of, **8:70**

### **JUDGES, ARBITRATORS, MEDIATORS OR JURORS, MOTION TO EXCLUDE TESTIMONY OF**

Generally, **8:61 to 8:71**

Arbitrator as witness, **8:61**  
testimony, opposing authorities,  
**8:71**

Attorney as witness, **8:64**

Mediator as witness, **8:61**  
testimony, opposing authorities,  
**8:71**

Opposing authorities  
generally, **8:66 to 8:71**  
arbitrator testimony, **8:71**  
attorney testimony, **8:66 to 8:71**  
crime or injury prevention allowed,  
**8:69**

extraordinary circumstances, **8:70**

irreparable harm, **8:70**

judge, **8:71**

legal services, value of, **8:67**

mediator testimony, **8:71**

waiver, **8:68**

Suggested text, **8:61**

Summary, motion, **8:62**

Supporting authorities  
attorney as witness, **8:64**  
judge as witness, **8:63**  
juror as witness, **8:65**

### **JUDICIAL ECONOMY**

Juror questionnaire, motion to  
submit, **9:58**

### **JUNK SCIENCE AND RELATED EVIDENCE, MOTION TO EXCLUDE**

Generally, **5:14 to 5:63**

Accident and biomechanic evidence,  
reconstruction of, **5:37, 5:38,**  
**5:63**

Accident reconstruction, **5:36**

Approved tests, **5:49**

Battered woman syndrome, **5:44,**  
**5:56**

### **JUNK SCIENCE AND RELATED EVIDENCE, MOTION TO EXCLUDE—Cont'd**

Biomechanic evidence, reconstruc-  
tion of accident and, **5:36, 5:63**  
supporting authorities, **5:37, 5:38**

Child sexual abuse accommodation  
syndrome, supporting authori-  
ties, **5:31**

Disapproved statistics and evidence,  
**5:40**

Hedonic damages, **5:25, 5:50**

Hypnosis evidence  
opposing authorities, criminal  
cases, **5:57**

admissibility exceptions, **5:58**

sample motion to exclude, **5:66**

supporting authorities, **5:34**

Judicial notice, **5:62**

New scientific evidence, **5:24**

Opposing authorities

generally, **5:47 to 5:63**

approved tests, **5:49**

battered woman syndrome, **5:56**

Daubert test requirement, **5:48**

hedonic damages, **5:50**

hypnosis evidence, **5:57**

judicial notice, **5:62**

polygraph evidence. See index  
heading **POLYGRAPH EVIDENCE**

psychological profiling, **5:61**

psychological test vs. psychologi-  
cal opinion, **5:54**

rape trauma syndrome, **5:55**

statistics evidence, **5:59 to 5:62**

truth serum evidence, **5:51**

weight vs. admissibility, **5:60**

Pedophilia profiling, **5:32**

Polygraph evidence. See index head-  
ing **POLYGRAPH EVIDENCE**

Psychological profiling, **5:61**

Psychological tests and syndromes

opposing authorities

profiling, **5:61**

supporting authorities

generally, **5:29**

child sexual abuse accommoda-  
tion syndrome, **5:31**

**JUNK SCIENCE AND RELATED EVIDENCE, MOTION TO EXCLUDE—Cont'd**

- Psychological test vs. psychological opinion, **5:54**
- Rape trauma syndrome, **5:30, 5:55**
- Statistical evidence. See index heading **STATISTICAL EVIDENCE**
- Statistics evidence, opposing authorities, **5:59 to 5:62**
- Suggested text, **5:22**
- Summary, motion, **5:23**
- Supporting authorities
  - generally, **5:24 to 5:46**
  - accident reconstruction, **5:36**
  - battered woman syndrome, **5:44**
  - biomechanic evidence, **5:37, 5:38**
  - bullet analysis, comparative, **5:46**
  - child sexual abuse accommodation syndrome, **5:31**
  - civil case statistics, **5:41**
  - disapproved statistics and evidence, **5:40**
  - dog tracking, **5:43**
  - electronic penile plethysmograph test, **5:33**
  - employment discrimination case, **5:42**
  - hedonic damages, **5:25**
  - hypnosis evidence, **5:34**
  - new scientific evidence, **5:24**
  - pedophilia profile, **5:32**
  - polygraph evidence. See index heading **POLYGRAPH EVIDENCE**
  - psychological tests and syndromes generally, **5:29**
  - rape trauma syndrome, **5:30**
  - statistical evidence. See index heading **STATISTICAL EVIDENCE**
  - truth serum evidence, **5:26**
  - urine test results, **5:45**
  - voiceprint identification, **5:35**
- Truth serum evidence, **5:26, 5:51**
- Weight vs. admissibility, **5:60**

**JURIES AND JURORS**

- Foundation lacking, determination outside juror's presence, **4:20**

**JURIES AND JURORS—Cont'd**

- Golden rule argument, motion to exclude, **9:63**
- Juror as witness, **8:65**
- Juror questionnaire submission. See index heading **JUROR QUESTIONNAIRE, MOTION TO SUBMIT**
- Preliminary matters out of jury presence, determination of, **4:5**
- Premature rebuttal to affirmative defense, motion to bar, **9:67**
- Terminology, motion to exclude legal or conclusory
  - preconditioning jury, **9:50**
  - usurping of jury function, **9:51**
- Testimony of arbitrators. See index heading **JUDGES, ARBITRATORS, MEDIATORS OR JURORS, MOTION TO EXCLUDE TESTIMONY OF**
- Usurping of jury function
  - expert opinion, motion to exclude improper, **8:18**
  - terminology, motion to exclude legal or conclusory, **9:51**
- Voir dire. See index heading **VOIR DIRE, MOTION TO PREVENT IMPROPER**

**JUROR QUESTIONNAIRE, MOTION TO SUBMIT**

- Generally, **9:55 to 9:59**
- Motion to allow use of jury questionnaire during voir dire, sample, **9:61**
- Opposing authorities, discretion of court, **9:59**
- Sample motion
  - motion to allow use of jury questionnaire during voir dire, **9:61**
- Suggested text, **9:55**
- Summary, motion, **9:56**
- Supporting authorities
  - generally, **9:57, 9:58**
  - judicial economy, **9:58**

**JUVENILE ADJUDICATION**

- Motion to exclude improper character evidence, **7:75**

**JUVENILES**

- See index heading **CHILDREN**



## INDEX

### LEGAL TERMINOLOGY

See index heading **TERMINOLOGY,  
MOTION TO EXCLUDE LEGAL OR  
CONCLUSORY**

### LETTERS AS EVIDENCE, MOTION TO EXCLUDE

Cumulative evidence; supporting  
authorities, **2:29, 4:78**  
Hearsay. See index heading **HEARSAY**  
Inconsistent statement, **4:86**  
Irrelevancy, **4:77**  
Opposing authorities  
generally, **4:81 to 4:86**  
hearsay rule exception. See index  
heading **HEARSAY**  
inconsistent statement, **4:86**  
relevancy, **4:85**  
Prejudicial evidence, **4:74**  
Relevancy, **4:85**  
Suggested text, **4:72**  
Summary, motion, **4:73**  
Supporting authorities  
generally, **4:74 to 4:80**  
cumulative, **2:29, 4:78**  
hearsay, **4:76**  
irrelevancy, **4:77**  
lack of foundation, **4:79**  
other grounds, **4:80**  
prejudicial evidence, **4:74**  
Written letter, sample motion to  
exclude, **4:137**

### LIABILITY CASES

Seat belt, motion to exclude evidence  
of failure to wear, **10:112**

### LIABILITY INSURANCE, MOTION TO EXCLUDE EVIDENCE OF

Generally, **10:21 to 10:34**  
Employment, proof of, **10:34**  
Fault, admission of, **10:33**  
Incidental reference to insurance,  
**10:31**  
Irrelevancy, **10:24, 10:27**  
Lack of insurance, **10:26**  
Non-prejudicial references to insur-  
ance, **10:32**

### LIABILITY INSURANCE, MOTION TO EXCLUDE EVIDENCE OF—Cont'd

Opposing authorities, **10:29 to 10:34**  
employment, proof of, **10:34**  
fault, admission of, **10:33**  
incidental reference to insurance,  
**10:31**  
non-prejudicial references to insur-  
ance, **10:32**  
ownership, proof of, **10:34**  
relevancy, **10:30**  
Ownership, proof of, **10:34**  
Prejudicial evidence, **10:23**  
Relevancy, **10:30**  
Sample motion, **10:250**  
Suggested text, **10:21**  
Summary, motion, **10:22**  
Supporting authorities  
generally, **10:23 to 10:28**  
irrelevancy, **10:24, 10:27**  
lack of insurance, **10:26**  
other grounds, **10:28**  
prejudicial evidence, **10:23**

### LIABILITY OR FAULT EVIDENCE WHERE LIABILITY NOT AT ISSUE, MOTION TO EXCLUDE

Generally, **10:208 to 10:218**  
Admitted matters, **10:212**  
Irrelevancy, **10:211**  
Motion sample  
exclusion of evidence of  
defendant's liability, **10:243**  
Negotiations, admissions made dur-  
ing settlement, **10:213**  
Opposing authorities  
generally, **10:217**  
fault, admission of, **10:218**  
Prejudicial evidence, **10:210**  
Sample motion to exclude evidence  
of defendant's liability, **10:243**  
Suggested text, **10:208**  
Summary, motion, **10:209**  
Supporting authorities  
generally, **10:210 to 10:216**  
admitted matters, **10:212**  
irrelevancy, **10:211**

**LIABILITY OR FAULT EVIDENCE  
WHERE LIABILITY NOT AT  
ISSUE, MOTION TO  
EXCLUDE—Cont'd**

Supporting authorities—Cont'd  
lay witnesses, inadmissible legal  
opinions by, **10:214**  
negotiations, admissions made  
during settlement, **10:213**  
other grounds, **10:216**  
prejudicial evidence, **10:210**  
sympathy or benevolence, **10:215**  
Sympathy or benevolence, **10:215**

**LOST OR DESTROYED  
EVIDENCE, MOTION TO  
EXCLUDE REFERENCE TO**

Generally, **9:21 to 9:30**  
Citations, opposing, **9:29**  
Improper argument during opening  
statement, **9:66**  
Opposing authorities  
generally, **9:29**  
citations, opposing, **9:29**  
other remedies, **9:30**  
Opposition to motion for missing  
evidence, **9:68**  
Prejudicial evidence, **9:23**  
Sample motion to exclude destroyed  
evidence, **9:60**  
Suggested text, **9:21 to 9:30**  
Summary, motion, **9:22**  
Supporting authorities  
generally, **9:23 to 9:28**  
prejudicial evidence, **9:23**

**LOST PROFITS**

Damage evidence, motion to exclude  
improper, **10:228, 10:254**

**LOW-IMPACT TESTS**

Reconstruction of accident and  
biomechanic evidence, motion  
to exclude, not opposing  
motions to exclude, accident  
reconstruction evidence, **10:186**

**MALINGERING**

Collateral source payments, motion  
to exclude evidence of, **10:17**

**MAPS, MODELS AND CHARTS,  
MOTION TO EXCLUDE**

Generally, **4:87 to 4:105**  
Computer databases, opposing  
authorities, **4:101**  
Demonstrative evidence, **4:93, 4:104,  
4:105**  
Diagrams, **4:94, 4:103**  
Exhibits, supporting authorities, **4:92**  
Illustrative purposes, opposing  
authorities, **4:96 to 4:105**  
Injury, demonstration of  
opposing authorities, **4:105**  
Lists, opposing authorities, **4:100**  
Opposing authorities  
generally, **4:96 to 4:105**  
accuracy not disputed, **4:97**  
computer databases, **4:101**  
demonstrative evidence, **4:104,  
4:105**  
diagrams, **4:103**  
discretion of court, **4:99**  
illustrations, **4:103**  
illustrative purposes, **4:96 to 4:105**  
injury, demonstration of, **4:105**  
lists, **4:100**  
relevancy, **4:98**  
Prejudicial evidence, **4:89**  
Sample motion, **4:143**  
Suggested text, **4:87**  
Summary, motion, **4:88**  
Supporting authorities  
generally, **4:89 to 4:95**  
demonstrative evidence, **4:93**  
diagrams, **4:94**  
discretion of court, **4:90**  
exclusions, **4:91**  
exhibits, **4:92**  
illustrations, **4:94**  
other grounds, **4:95**  
prejudicial evidence, **4:89**

**MEDIATION EVIDENCE**

Form, motion to exclude mediation  
evidence, **9:62**

**MEDIATOR**

Motion to exclude testimony, **8:121**  
sample motion, **8:121**

## INDEX

### MEDIATORS

Testimony of arbitrators. See index heading JUDGES, ARBITRATORS, MEDIATORS OR JURORS, MOTION TO EXCLUDE TESTIMONY OF

### MEDICAL DOCTORS

Expert witnesses, sample motion to exclude testimony and opinions of medical doctor, **8:117**

### MEDICAL MALPRACTICE CASES

Nonexpert opinion, ‘common knowledge’ exception, **8:49**

### MEDICAL RECORDS, REPORTS OR BILLS, MOTION TO EXCLUDE IMPROPER

Generally, **4:106 to 4:123**

Authentication, proper, **4:118**

Billing records, **4:108 to 4:117, 4:123**

Business records exception, **4:120**

Diagnosis and treatment

history used in formation of, medical, **4:121, 4:122**

opinion used in formation of, **4:119**

Foundation

improper

generally, **4:16, 4:109**

billing records, **4:109**

objects or things, **4:17**

proper, **4:118**

Hearsay

business records exception, **4:120**

opinions, medical, **4:110**

History, patient medical

opposing authorities

generally, **4:118 to 4:123**

relevance to medical diagnosis, **4:122**

supporting authorities, **4:112**

Opinions, medical

opposing authorities

business records exception, **4:120**

diagnosis and treatment, opinion used in formation of, **4:119**

### MEDICAL RECORDS, REPORTS OR BILLS, MOTION TO EXCLUDE IMPROPER

#### —Cont’d

Opinions, medical—Cont’d

supporting authorities

hearsay, improper, **4:110**

personal knowledge, lack of, **4:111**

Opposing authorities

authentication, proper, **4:118**

billing records; reasonableness of charges, **4:123**

history, patient medical

generally, **4:121, 4:122**

relevance to medical diagnosis, **4:122**

opinions, medical, above

Plaintiff’s medical history, sample

motion to exclude, **4:138**

Prejudicial matter, **4:108**

Relevance to medical diagnosis

patient medical history, opposing authorities, **4:122**

Sample motion, **6:64**

Suggested text, **4:106**

Summary, motion, **4:107**

Supporting authorities

billing records

generally, **4:114, 4:115**

failure to pay medical bill, **4:115**

foundation

improper, **4:109**

foundation, improper, **4:16**

history, patient medical

generally, **4:112**

hearsay, **4:113**

opinions, medical

hearsay, improper, **4:110**

personal knowledge, lack of, **4:111**

prejudicial matter, **4:108**

### MENTAL EXAMINATIONS

Psychological tests and syndromes.

See index heading JUNK SCIENCE AND RELATED EVIDENCE, MOTION TO EXCLUDE

Supporting authorities, **6:18, 6:19**

**MENTALLY INCOMPETENT  
WITNESS, MOTION TO  
EXCLUDE TESTIMONY OF**

See index heading INCOMPETENT WIT-  
NESS, MOTION TO EXCLUDE  
TESTIMONY OF

**MISDEMEANOR CONVICTIONS**

Impeachment by evidence of  
character evidence, **7:9**  
driving under the influence, **10:139**  
Prior arrest, motion to exclude evi-  
dence of prior felony convic-  
tions misdemeanor conviction,  
or pending charges, **7:52**

**MISLEADING OR CONFUSING  
EVIDENCE, MOTION TO  
EXCLUDE**

Generally, **2:12 to 2:16**  
Limiting instructions, opposing  
authorities, **2:16**  
Opposing authorities, **2:15, 2:16**  
limiting instructions, **2:16**  
Statistical evidence, **5:39 to 5:42**  
Suggested text, **2:12**  
Summary, motion, **2:13**  
Supporting authorities, **2:14**  
Terminology, motion to exclude legal  
or conclusory, **9:45**

**MISUSED TERMS**

Terminology, motion to exclude legal  
or conclusory, **9:49**

**MODELS AS EVIDENCE**

See index heading MAPS, MODELS AND  
CHARTS, MOTION TO EXCLUDE

**MORAL TURPITUDE**

Crimes  
character evidence, motion to  
exclude evidence of prior  
felony convictions  
opposing authorities, **7:60**  
supporting authorities, **7:49**  
Driving under the influence convic-  
tion, motion to exclude evidence  
of prior  
opposing authorities, DUI as crime  
of, **10:147**

**MORAL TURPITUDE—Cont'd**

Driving under the influence convic-  
tion, motion to exclude evidence  
of prior—Cont'd  
supporting authorities, felony  
convictions excluded where  
no crime of, **10:140**

**MOTION IN LIMINE  
(GENERALLY)**

Generally, **1:1 to 1:16**  
Authority for motion, **1:2**  
Court record of rulings, **1:10**  
Description of motion, **1:1**  
Drafting suggestions  
generally, **1:12 to 1:14**  
facts, motions supported by, **1:13**  
succinctness, **1:14**  
Limitations on use, **1:4**  
Objections, **1:11**  
preservation of, **1:5**  
Preservation of objections, **1:5**  
Procedural requirements, **1:8**  
local rules, **1:9**  
Purpose of motion, **1:1**  
Ruling, court record of, **1:10**  
Samples  
brief, **1:15**  
order, **1:16**  
Scope of motion, **1:7**  
Timing, **1:6**  
Timing of motion, **1:6**  
Typical use of motion  
generally, **1:3 to 1:5**  
limitations on use, **1:4**  
preservation of objections, **1:5**

**MOTION PICTURES**

See index heading VIDEO EVIDENCE

**MOTOR VEHICLE ACCIDENTS**

See index heading ACCIDENTS

**NEGLIGENCE, NO EVIDENCE OF**

Driver's license suspension, motion  
to exclude evidence of, **10:102**

**NEGLIGENCE CASES**

Character evidence, motion to  
exclude character evidence used  
to prove conduct, **7:34**

## INDEX

### NEGLIGENCE PER SE

Statute violation, motion to exclude evidence of, **10:98**

### NEWSPAPER ARTICLE

Sample motion to exclude, **4:139**

### ‘NO DAMAGE’ TO VEHICLES

Photographs depicting, accident reconstruction evidence, **10:175, 10:184**

### NOLO CONTENDERE PLEAS

Character evidence, motion to exclude evidence of prior felony convictions, **7:64**

### NONEXPERT OPINION

Generally, **8:33 to 8:38**

Causation, **8:42**

Chiropractic treatment, motion to preclude non-chiropractor from giving opinion on necessity of, **8:115**

Exclusion of non-expert opinion, **8:41**

Experiments, **8:44**

Lay witness, opposition to motion to exclude evidence, **8:118**

Legal opinions, **8:43**

Medical malpractice cases, ‘common knowledge’ exception, **8:49**

Medical opinion by nonexpert ‘common knowledge’ exception, medical malpractice cases, **8:49**

non-chiropractor, motion to preclude from giving opinion on necessity of chiropractic treatment, **8:115**

Motion summary, **8:40**

Nonqualified expert, motion to exclude testimony of. See index heading EXPERT WITNESSES

Opposing authorities generally, **8:46 to 8:49**  
helpful to clear understanding, **8:48**

perceptions of witness, **8:46**  
sanity, **8:47**

### NONEXPERT OPINION—Cont’d

Opposing authorities—Cont’d  
understanding, helpful to clear, **8:48**

Other grounds, **8:45**

Perceptions of witness, opposing authorities, **8:46**

Sanity, **8:47**

Suggested text, **8:33, 8:39**

Summary, motion, **8:34**

Supporting authorities, **8:41 to 8:45**  
generally, **8:35 to 8:37**

other grounds, **8:37**

Ultimate issues compared, **9:48**

Understanding, helpful to clear, **8:48**

### OBJECTIONS

Generally, **1:11**

Preservation of, **1:5**

### OPENING STATEMENT, MOTION TO EXCLUDE IMPROPER ARGUMENT IN

Generally, **9:10 to 9:15**

Opposing authorities, **9:15**

Prejudicial matter, exclusion in opening statement, **9:12**

Suggested text, **9:10**

Summary, motion, **9:11**

Supporting authorities  
generally, **9:12 to 9:14**

other grounds, **9:14**

prejudicial evidence, **9:12 to 9:14**

prejudicial matter, exclusion in opening statement, **9:13**

### OPENING THE DOOR DOCTRINE

Character evidence, motion to exclude character evidence used for impeachment, **7:28**

### OWNERSHIP, PROOF OF

Liability insurance, motion to exclude evidence of, **10:34**

### PATTERN OF INJURY TESTS

Biomechanic evidence, excluding, **10:170**

**PEDOPHILIA PROFILING**

Junk science and related evidence,  
motion to exclude, **5:32**

**PERSONAL INJURY MOTIONS**

Generally, **10:1 to 10:253**

Accidents. See index heading  
ACCIDENTS

Alcohol consumption. See index  
heading ALCOHOL CONSUMPTION,  
MOTION TO EXCLUDE EVIDENCE OF

Collateral source payments. See  
index heading COLLATERAL SOURCE  
PAYMENTS, MOTION TO EXCLUDE EVI-  
DENCE OF

Damages. See index heading DAMAGES

Driver's license suspension. See  
index heading DRIVER'S LICENSE  
SUSPENSION, MOTION TO EXCLUDE  
EVIDENCE OF

Driving under the influence. See  
index heading DRIVING UNDER THE  
INFLUENCE CONVICTION, MOTION TO  
EXCLUDE EVIDENCE OF PRIOR

Financial status, party's. See index  
heading FINANCIAL STATUS, MOTION  
TO EXCLUDE EVIDENCE OF PARTY'S

Firearm residue, sample motion to  
admit evidence of laboratory  
testing regarding, **10:244**

Health of party not at issue. See  
index heading HEALTH OR INJURIES  
OF PARTY NOT AT ISSUE, MOTION TO  
EXCLUDE EVIDENCE OF

Immigration status. See index head-  
ing IMMIGRATION STATUS, MOTION TO  
EXCLUDE EVIDENCE OF PARTY'S

Injuries of party not at issue. See  
index heading HEALTH OR INJURIES  
OF PARTY NOT AT ISSUE, MOTION TO  
EXCLUDE EVIDENCE OF

Insurance. See index heading  
LIABILITY INSURANCE

Liability evidence. See index heading  
LIABILITY EVIDENCE WHERE LIABILITY  
NOT AT ISSUE, MOTION TO EXCLUDE

Liability insurance. See index head-  
ing LIABILITY INSURANCE

Negligence/ NEGLIGENCE

Prior accidents. See index heading  
PRIOR ACCIDENTS, MOTION TO

**PERSONAL INJURY MOTIONS**

**—Cont'd**

EXCLUDE EVIDENCE OF

Repairs. See index heading REPAIRS,  
MOTION TO EXCLUDE EVIDENCE OF  
SUBSEQUENT

Sample motions, **10:242 to 10:247**

Seat belt. See index heading SEAT BELT,  
MOTION TO EXCLUDE EVIDENCE OF  
FAILURE TO WEAR

Settlement. See index heading SETTLE-  
MENT EVIDENCE, MOTION TO  
EXCLUDE

Statute violation. See index heading  
STATUTE VIOLATION, MOTION TO  
EXCLUDE EVIDENCE OF

Subsequent accidents, evidence of.  
See index heading SUBSEQUENT  
ACCIDENTS, EXCLUSION OF EVIDENCE  
OF

Surveillance video, sample motion to  
exclude, **10:245**

Tax evidence. See index heading TAX  
EVIDENCE, MOTION TO EXCLUDE

**PHOTOGRAPHIC EVIDENCE,  
MOTIONS TO EXCLUDE**

Accident scene photographs, **4:45,**  
**4:52**

Cumulative evidence, **2:32, 2:41**

Exclusion of photographs, generally,  
**4:43**

Foundation, evidence lacking, **4:9**

Gruesome or inflammatory  
photographs  
generally, **4:37 to 4:53**  
accident scene photographs, **4:45,**  
**4:52**

adequate foundation, **4:48**

enlargement, **4:49**

opposing authorities  
generally, **4:47 to 4:53**  
accident scene photographs,  
**4:52**

adequate foundation, **4:48**

enlargement, **4:49**

gruesome photographs, **4:50**

penalty phase, less discretion to  
exclude at, **4:53**

x-rays, **4:44, 4:51**

## INDEX

### PHOTOGRAPHIC EVIDENCE, MOTIONS TO EXCLUDE

#### —Cont'd

- Gruesome or inflammatory photographs—Cont'd
  - Penalty phase, less discretion to exclude at, **4:53**
  - prejudicial
    - inflammatory, **4:140**
    - opposition to motion, **4:148**
  - sample motions, below
  - suggested text, **4:37**
  - summary, motion, **4:38**
  - supporting authorities
    - generally, **4:39 to 4:46**
    - accident scene photographs, **4:45**
    - emotions, purpose to inflame jurors', **4:42**
    - exclusion, generally, **4:43**
    - irrelevant evidence, **4:40**
    - other grounds, **4:46**
    - photographs, **4:41**
    - prejudicial evidence, **4:39**
    - x-rays, **4:44**
  - x-rays, **4:44, 4:51**
- Inflammatory photographs. Gruesome or inflammatory photographs, above
- Opposition to motion, prejudicial, **4:148**
- Other grounds, **4:46**
- Reconstruction of accident and biomechanic evidence,
  - photographs depicting 'no damage' to vehicles
  - opposing authorities, **10:184**
  - supporting authorities, **10:175**
- Sample motion
  - inflammatory and prejudicial, **4:140**
  - motion to exclude gruesome photographs, **4:134**
  - opposition to motion, prejudicial, **4:148**
- Unauthenticated video recording, **4:144**
- X-rays, **4:44, 4:51**

### PHYSICAL EXAMINATIONS

See index heading **DISCOVERY MOTIONS**

### PLEA EVIDENCE, ADMISSIBLE

- Character evidence
  - felony convictions, motion to exclude evidence of prior, **7:64**

### POINT OF IMPACT

- Reconstruction of accident and biomechanic evidence, motion to exclude, **10:164, 10:183**

### POLICE IN UNMARKED VEHICLES

- Incompetent witness, motion to exclude testimony of
  - see also index heading **INCOMPETENT WITNESS, MOTION TO EXCLUDE TESTIMONY OF**

### POLYGRAPH EVIDENCE

- Opposing authorities, **5:52**
  - investigative purposes, **5:53**
- Sample motion to exclude evidence of, **5:65**
- Supporting authorities, **5:27**
  - willingness or refusal to take polygraph, **5:28**

### POVERTY

- Defendant, sample motion to exclude, **2:46**
- Emotional bias, motion to exclude evidence used to create, evidence of poverty as motive, **2:23**

### PREJUDICIAL EVIDENCE, MOTION TO EXCLUDE

- Generally, **2:1 to 2:7**
- Alcohol consumption, motion to exclude evidence of, **10:118**
- Articles, **4:65**
- Character evidence. See index heading **CHARACTER EVIDENCE**
- Collateral source payments, motion to exclude evidence of, **10:3**
- Conduct, motion to exclude character evidence used to prove, **7:31**
- Cumulative witness testimony, opposition to motion, **2:48**



**PREJUDICIAL EVIDENCE,  
MOTION TO EXCLUDE**

**—Cont’d**

- Driving under the influence conviction, motion to exclude evidence of prior supporting authorities, **10:136**
- Emotional bias, **2:19**
- Exclude evidence of claims denied during discovery, motion to, **6:42**
- Felony convictions, motion to exclude evidence of prior, **7:43**
- Films. See index heading VIDEO EVIDENCE, MOTION TO EXCLUDE
- Financial status, motion to exclude evidence of party’s, **10:190**
- Foundation, evidence lacking, **4:3**
- “Golden rule” argument, motion to preclude, **9:40**
- Health or injuries of party not at issue, motion to exclude evidence of, **10:151**
- Immigration status, motion to exclude evidence of party’s, **10:238**
- Impeachment, motion to exclude character evidence used for, **7:5**
- Letters, **4:74**
- Liability evidence where liability not at issue, motion to exclude, **10:210**
- Liability insurance, evidence of, **10:23**
- Lost or destroyed evidence, motion to exclude reference to, **9:24**
- Maps, models and charts, **4:89**
- Medical records, reports or bills, **4:108**
- Opening statement, motion to exclude improper argument in, **9:13**
- Opposing authorities, generally, **2:6, 2:7**
- Opposition to motion to exclude, sample motions, **2:47, 2:48, 4:148**
- Photographs
  - gruesome or inflammatory, **4:41**

**PREJUDICIAL EVIDENCE,  
MOTION TO EXCLUDE**

**—Cont’d**

- Photographs—Cont’d
  - opposition to motion, sample, **4:148**
- Poverty of defendant, sample motion, **2:46**
- Rebuttal to affirmative defenses, motion to bar premature, **9:18**
- Repairs, motion to exclude evidence of subsequent, **10:80**
- Sample motions, **2:42 to 2:47**
- Seat belt, motion to exclude evidence of failure to wear, **10:108**
- Settlement evidence, motion to exclude, **10:37 to 10:52**
- Statute violation, motion to exclude evidence of, **10:89**
- Suggested text, **2:1**
- Summary, motion, **2:2**
- Supporting authorities, generally, **2:3 to 2:5**
- Tax evidence, motion to exclude, **10:200**
- Video evidence. See index heading VIDEO EVIDENCE
- Witnesses
  - cumulative testimony, **2:48**
  - non-called, motion to exclude evidence of, **8:90**

**PRIOR ACCIDENTS, MOTION TO  
EXCLUDE EVIDENCE OF**

- Absence of prior accidents
  - supporting authorities, **10:57**
- Admissibility of other claims, **10:75**
- Dangerous condition, similar, **10:59**
- Defective products, **10:59, 10:67**
  - supporting authorities, **10:59**
- Irrelevancy, **10:56**
- Opposing authorities
  - generally, **10:65 to 10:77**
  - admissibility of other claims, **10:75**
  - bad faith, proof of, **10:76**
  - dangerous conditions, **10:67**
  - dangerous conditions, similar, **10:59**

## INDEX

### **PRIOR ACCIDENTS, MOTION TO EXCLUDE EVIDENCE OF** **—Cont'd**

Opposing authorities—Cont'd  
defective product, similar, **10:59**  
defective products, **10:67**  
discretion of court, **10:66**  
impeachment, **10:71**  
notice, **10:68**  
possible exceptions, **10:71**  
prior accidents, basis for expert opinion, **10:70**  
punitive damages, **10:77**  
relevancy, **10:69**  
similar injuries, **10:69**  
similarity, **10:59, 10:67**  
Prejudicial evidence, **10:55**  
Punitive damages, **10:77**  
Relevancy, **10:69**  
Similar injuries, **10:69**  
Subsequent accidents, evidence of.  
See index heading SUBSEQUENT  
ACCIDENTS, EXCLUSION OF EVIDENCE  
OF  
Suggested text, **10:53**  
Summary, motion, **10:54**  
Supporting authorities  
generally, **10:55 to 10:64**  
absence of prior accidents, **10:57**  
dangerous conditions, similarity,  
**10:59**  
defective products, **10:59**  
irrelevancy, **10:56, 10:60**  
negligence, prior act to prove,  
**10:58**  
prejudicial evidence, **10:55**  
prior accident, exclusion of, **10:57**  
prior accident to prove negligence,  
**10:58**  
similarity, lack of, **10:59, 10:60**  
speculative, **10:61**  
unreliable, **10:61**

### **PRIOR INJURIES, MOTION TO EXCLUDE EVIDENCE OF PARTY'S**

Generally, **10:256**

### **PRIVILEGE NOT TO TESTIFY, MOTION TO EXCLUDE COMMENT ON EXERCISE OF**

Generally, **8:80 to 8:87**  
No-comment rule, **8:82**  
Opposing authorities  
generally, **8:83 to 8:87**  
consequences of silence, civil,  
**8:84**  
failure to invoke, **8:85**  
inferences in civil suits, allowable,  
**8:83**  
intent, **8:87**  
overwhelming evidence, **8:86**  
waiver, **8:85**  
Suggested text, **8:80**  
Summary, motion, **8:81**  
Supporting authorities, **8:82**

### **PRODUCTS LIABILITY**

Repairs, motion to exclude evidence of subsequent, **10:86**

### **PROXIMATE CAUSATION**

Lay witness, motion to exclude evidence, **8:122**  
Statute violation, motion to exclude evidence of  
opposing authorities, **10:97, 10:98**  
supporting authorities  
generally, **10:92**  
traffic violations, prior, **10:93**

### **PSYCHOLOGICAL PROFILING**

Junk science and related evidence, motion to exclude, **5:61**

### **PUBLISHED ARTICLES**

See index heading ARTICLES AS EVIDENCE, MOTION TO EXCLUDE

### **PUNITIVE DAMAGES**

Financial status, motion to exclude evidence of party's, **10:195**  
Prior accidents, motion to exclude evidence of, **10:77**

### **RAPE TRAUMA SYNDROME**

Junk science and related evidence, motion to exclude, **5:30, 5:55**

**REACTION TIME**

**DETERMINATIONS**

Reconstruction of accident and biomechanic evidence, motion to exclude, **10:165**

**REBUTTAL TO AFFIRMATIVE DEFENSES, MOTION TO BAR PREMATURE**

Generally, **9:16 to 9:20**  
 Opposing authorities, **9:20**  
 Suggested text, **9:16**  
 Summary, motion, **9:17**  
 Supporting authorities  
     order of proof, **9:19**  
     prejudicial evidence, **9:18**

**RECONSTRUCTION OF ACCIDENT AND BIOMECHANIC EVIDENCE, MOTION TO EXCLUDE**

Generally, **10:158 to 10:186**  
 Biomechanic evidence, excluding anthropomorphic dummies, **10:168**  
     finite element analysis tests, **10:169**  
     pattern of injury tests, **10:170**  
 Competent facts, accident reconstruction evidence, **10:179**  
 Foundation, accident reconstruction evidence, **10:179**  
 Low-impact tests, not opposing motions to exclude, accident reconstruction evidence, **10:186**  
 Low-speed impact automobile cases generally, **10:171 to 10:176**  
     Delta V testimony, exclusion, **10:172**  
     human crash test dummy testimony, **10:174**  
     photographs depicting ‘no damage’ to vehicles, **10:175**  
     popping into a chair testimony, challenging, **10:173**  
     unreliable tests, **10:176**  
     ‘No damage’ to vehicles, photographs depicting, accident reconstruction evidence, **10:184**  
 Opposing authorities, **5:63**  
     generally, **10:177 to 10:186**

**RECONSTRUCTION OF**

**ACCIDENT AND BIOMECHANIC EVIDENCE, MOTION TO EXCLUDE**

**—Cont’d**

Opposing authorities, **5:63**—Cont’d  
     accident reconstruction evidence admitted, cases where, **10:185**  
     competent facts, **10:179**  
     foundation, **10:179**  
     low-impact tests, not opposing motions to exclude, **10:186**  
     ‘no damage’ to vehicles, photographs depicting, **10:184**  
     point of impact, **10:183**  
     proper basis for opinion, **10:178**  
     skid mark analysis, **10:181**  
     speed of vehicle, **10:180**  
     stopping distances, **10:182**  
     tests and scientific testimony, **10:177**  
 Popping into a chair testimony, challenging  
     low-speed impact automobile cases, **10:173**  
 Point of impact  
     accident reconstruction evidence, **10:183**  
     determinations, excluding accident reconstruction evidence, **10:164**  
 Reaction time determinations, **10:165**  
 Skid mark analysis, accident reconstruction evidence, **10:181**  
 Speed of vehicle, accident reconstruction evidence, **10:180**  
 Stopping distances, accident reconstruction evidence, **10:182**  
 Suggested text, **10:158**  
 Summary, motion, **10:159**  
 Supporting authorities, **5:37, 5:38**  
     generally, **10:160 to 10:176**  
     accident reconstruction evidence, excluding  
         generally, **10:160**  
         hearsay, relying on observations of others, **10:162**

## INDEX

### RECONSTRUCTION OF ACCIDENT AND BIOMECHANIC EVIDENCE, MOTION TO EXCLUDE —Cont'd

- Supporting authorities, **5:37, 5:38**
  - Cont'd
  - accident reconstruction evidence, excluding—Cont'd
    - improper foundation or qualification, **10:163**
    - observations of others, reliance on, **10:162**
    - point of impact determinations, **10:164**
    - reaction time determinations, **10:165**
    - vehicle speed determinations, **10:166**
  - biomechanic evidence, excluding generally, **10:167 to 10:170**
  - anthropomorphic dummies, **10:168**
  - finite element analysis tests, **10:169**
  - pattern of injury tests, **10:170**
  - low-speed impact automobile cases generally, **10:171 to 10:176**
  - Delta V testimony, exclusion, **10:172**
  - human crash test dummy testimony, **10:174**
  - photographs depicting 'no damage' to vehicles, **10:175**
  - popping into a chair testimony, challenging, **10:173**
  - unreliable tests, **10:176**
  - point of impact determinations, excluding accident reconstruction evidence, **10:164**
  - reaction time determinations, **10:165**
  - vehicle speed determinations, **10:166**
- Vehicle speed determinations, **10:166**

### RELEVANCY

See also index heading **IRRELEVANT EVIDENCE, MOTION TO EXCLUDE**

### RELEVANCY—Cont'd

- Alcohol consumption, evidence of.
  - See index heading **ALCOHOL CONSUMPTION, MOTION TO EXCLUDE EVIDENCE OF**
- Articles as evidence, motion to exclude, **4:70**
- Character evidence, motion to exclude character evidence used to prove conduct, **7:38**
- Collateral source payments. **COLLATERAL SOURCE PAYMENTS, MOTION TO EXCLUDE EVIDENCE OF**
- Collateral source payments, motion to exclude evidence of, **10:16**
- Damages, liability issues relevant to, **9:36**
- Driver's license suspension, motion to exclude evidence of, **10:105**
- Driving under the influence. See index heading **DRIVING UNDER THE INFLUENCE**
- Financial status, evidence of party's.
  - See index heading **FINANCIAL STATUS, MOTION TO EXCLUDE EVIDENCE OF PARTY'S**
- Health or injuries of party not at issue, motion to exclude evidence of, **10:155**
- Letters as evidence, motion to exclude, **4:85**
- Liability insurance, motion to exclude evidence of, **10:30**
- Maps, models and charts, motion to exclude, **4:98**
- Medical history of patient, motion to exclude improper, **4:122**
- Prejudicial evidence, motion to exclude, **3:8**
- Prior accidents, motion to exclude evidence of, **10:69**
- Repairs, motion to exclude evidence of subsequent, **10:81**
- Tax evidence, motion to exclude opposing authorities, **10:207**
  - supporting authorities, **10:201**
- Uncontroverted evidence, motion to exclude, **3:22**
- Video evidence, motion to exclude, **4:60**

**RELIGIOUS BELIEFS**

Character evidence used for impeachment, motion to exclude  
opposing authorities, **7:27**  
supporting authorities, **7:14**  
Motion to exclude improper character evidence, **7:74**

**REPAIRS, MOTION TO EXCLUDE EVIDENCE OF SUBSEQUENT**

Generally, **10:78 to 10:86**  
Irrelevancy, **10:81**  
Opposing authorities  
generally, **10:84 to 10:86**  
relevancy, **10:85**  
strict products liability, **10:86**  
Opposition to motion to exclude, **10:257**  
Prejudicial evidence, **10:80**  
Relevancy, **10:85**  
Suggested text, **10:78**  
Summary, motion, **10:79**  
Supporting authorities  
generally, **10:80 to 10:83**  
irrelevancy, **10:81**  
negligence, inadmissible to show, **10:82**  
other grounds, **10:83**  
prejudicial evidence, **10:80**

**REPORTS**

See also index heading DOCUMENTARY EVIDENCE, MOTION TO EXCLUDE  
Accident reports. See index heading ACCIDENT REPORTS  
Cumulative evidence, motion to exclude; supporting authorities, **2:33**  
Foundation, evidence lacking  
medical reports, **4:16**  
Medical reports. See index heading MEDICAL RECORDS, REPORTS OR BILLS, MOTION TO EXCLUDE IMPROPER  
Polygraph examination, motion to exclude, **5:65**  
Statistical report, motion to exclude, **5:64**

**REQUESTS FOR ADMISSION**

Discovery motions, **6:20**

**SEAT BELT, MOTION TO EXCLUDE EVIDENCE OF FAILURE TO WEAR**

Generally, **10:106 to 10:115**  
Irrelevancy, **10:109**  
Opposing authorities  
injuries, use would have reduced, **10:115**  
Prejudicial evidence, **10:108**  
Suggested text, **10:106**  
Summary, motion, **10:107**  
Supporting authorities  
generally, **10:108 to 10:114**  
defendant's burden unchanged by seatbelt law, **10:113**  
expert testimony, **10:111**  
irrelevancy, **10:109**  
other grounds, **10:114**  
prejudicial evidence, **10:108**  
strict liability cases, exclusion, **10:112**

**SETTLEMENT EVIDENCE, MOTION TO EXCLUDE**

Generally, **10:35 to 10:52**  
Co-defendants, settlement with, **10:42, 10:50**  
Irrelevancy, **10:38**  
Liability, to show  
generally, **10:39**  
other than, **10:46**  
Opposing authorities  
generally, **10:46 to 10:52**  
bias, **10:47**  
co-defendant, settlement with, **10:50**  
contract issues, **10:48**  
impeachment, **10:49**  
liability, purpose other than to show, **10:46**  
prejudice, **10:47**  
settlement negotiation, insurance cases, **10:52**  
settlement with co-defendant, **10:50**  
state of mind, **10:51**

## INDEX

### SETTLEMENT EVIDENCE, MOTION TO EXCLUDE

#### —Cont'd

- Prejudice, **10:37, 10:47**
- Sample motion to exclude evidence,  
**10:249**
- Suggested text, **10:35**
- Summary, motion, **10:36**
- Supporting authorities
  - generally, **10:37 to 10:45**
  - co-defendants, settlement with,  
**10:42**
  - irrelevancy, **10:38**
  - liability, settlement evidence used  
to show, **10:39**
  - offer, prior to litigation, **10:43**
  - offer to compromise, **10:44**
  - other grounds, **10:45**
  - prejudicial evidence, **10:37**
  - prior settlements, **10:40**
  - settlement negotiations, **10:41**
  - settlements with co-defendants,  
**10:42**

### SEXUAL ABUSE ACCOMMODATION SYNDROME

- Junk science and related evidence,  
motion to exclude, supporting  
authorities, **5:31**

### SEXUAL PREFERENCE OR BEHAVIOR

- Character evidence used for impeach-  
ment, motion to exclude, **7:15**

### SKID MARK ANALYSIS

- Reconstruction of accident and  
biomechanic evidence, motion  
to exclude
  - opposing authorities, **10:181**

### SOCIAL MEDIA EVIDENCE

- Generally, **4:124 et seq.**
- Exclusion of, **4:127 to 4:129**
- Foundation or authentication
  - lack of, exclusion for, **4:129**
  - proper, **4:133**
- Hearsay, exclusion of, **4:128, 4:132**
- Motion summary, **4:125**
- Motion to exclude, **4:142, 4:147**

### SOCIAL MEDIA EVIDENCE

#### —Cont'd

- Opposing authorities, **4:131 to 4:133**
- Prejudicial evidence, exclusion of,  
**4:126**
- Suggested motion text, **4:124**
- Supporting authorities, **4:126 to**  
**4:130**

### SPECULATION

- Damages, speculative. See index  
heading DAMAGE EVIDENCE, MOTION  
TO EXCLUDE IMPROPER
- Expert opinion, motion to exclude  
improper, **8:15**
- Irrelevancy, **3:9**
- Lost profits, motion to exclude  
speculative evidence, **10:254**
- Tests and experiments, motion to  
exclude, **5:8**

### SPEED OF VEHICLE

- Reconstruction of accident and  
biomechanic evidence, motion  
to exclude
  - determinations, supporting authori-  
ties, **10:166**
  - opposing authorities, **10:180**

### SPOUSAL TESTIMONY, MOTION TO EXCLUDE TESTIMONY OF

- See also index heading INCOMPETENT  
WITNESS, MOTION TO EXCLUDE  
TESTIMONY OF

### STATE OF MIND

- Settlement evidence, motion to  
exclude, **10:51**

### STATISTICAL EVIDENCE

- Acceptance, general, **5:59 to 5:62**
- Confusing evidence, exclusion of,  
**5:39 to 5:42**
- Judicial notice, **5:62**
- Opposing authorities
  - acceptance, general, **5:59 to 5:62**
- Sample motion
  - motion to exclude evidence of  
statistical report, **5:64**

**STATISTICAL EVIDENCE—Cont'd**

Supporting authorities  
confusing evidence, exclusion of,  
**5:39 to 5:42**

**STATUTE VIOLATION**

Personal injury motions, sample  
motion to exclude, **10:247**

**STATUTE VIOLATION, MOTION  
TO EXCLUDE EVIDENCE OF**

Generally, **10:87 to 10:98**

Impeachment, **10:96**

Irrelevancy, **10:90**

Negligence per se, **10:98**

Opposing authorities

generally, **10:96 to 10:98**

impeachment, **10:96**

negligence per se, **10:98**

presumption of negligence, **10:98**

proximate cause, **10:97**

Prejudicial evidence, **10:89**

Protected class, party not within,  
**10:94**

Proximate cause. See index heading

PROXIMATE CAUSATION

Suggested text, **10:87**

Summary, motion, **10:88**

Supporting authorities

generally, **10:89 to 10:95**

irrelevancy, **10:90**

other grounds, **10:95**

prejudicial evidence, **10:89**

protected class, party not within,  
**10:94**

proximate cause, not

generally, **10:92**

traffic violations, prior, **10:93**

traffic citation evidence, exclusion  
of

generally, **10:91**

proximate cause, not, **10:92**

Traffic citation evidence, exclusion of  
generally, **10:91**

proximate cause, not, **10:92**

sample motion to exclude, **10:253**

seat belt. See index heading SEAT

BELT, MOTION TO EXCLUDE EVIDENCE OF FAILURE TO WEAR

**STOPPING DISTANCES**

Reconstruction of accident and  
biomechanic evidence, motion  
to exclude  
opposing authorities, **10:182**

**SUBSEQUENT ACCIDENTS,  
EXCLUSION OF EVIDENCE  
OF**

Opposing authorities

generally, **10:72 to 10:74**

dangerous conditions, **10:73**

discretion of court, **10:72**

evidence of subsequent accidents,  
**10:72**

impeachment, **10:74**

Supporting authorities, **10:62 to  
10:64**

other accidents, **10:63**

other grounds, **10:64**

**SUBSEQUENT REMEDIAL  
MEASURES**

Personal injury motions, sample  
motion to exclude, **10:246**

**SURPRISE**

Damage evidence, motion to exclude  
improper; surprise claims,  
**10:221 to 10:224**

Unfair surprise, discovery motions  
motion to exclude evidence of  
claims denied during  
discovery, **6:43**

**SURVEILLANCE VIDEO**

Personal injury motions, sample  
motion to exclude surveillance  
video, **10:245**

**SYMPATHY OR BENEVOLENCE**

Liability or fault evidence where  
liability not at issue, motion to  
exclude, **10:215**

**TATTOOING**

In limine motions, demonstrative and  
real evidence, motions to  
exclude, **4:141**

**TAX EVIDENCE, MOTION TO  
EXCLUDE**

Generally, **10:198 to 10:207**



## INDEX

### **TAX EVIDENCE, MOTION TO EXCLUDE—Cont'd**

- Failure to pay taxes, motion to exclude evidence of, **10:248**
- Irrelevancy, **10:201**
- Opposing authorities
  - relevancy, **10:207**
- Suggested text, **10:198**
- Summary, motion, **10:199**
- Supporting authorities
  - generally, **10:200 to 10:206**
  - damages, tax implications on, **10:202**
  - irrelevancy, **10:201**
  - jurors as taxpayers, improper appeal to, **2:21, 10:205**
  - other grounds, **10:206**
  - prejudicial evidence, **10:200**
  - tax return, failure to file, **10:203**
  - wrongful death cases, **10:204**
- Tax return, failure to file, **10:203**
- Wrongful death cases, **10:204**

### **TAXPAYERS**

- Jurors' self-interest as
  - emotional bias, **2:21**
  - improper appeal to jurors as taxpayers, **10:205**

### **TAX RETURN, FAILURE TO FILE**

- Tax evidence, motion to exclude, **10:203**

### **TERMINOLOGY, MOTION TO EXCLUDE LEGAL OR CONCLUSORY**

- Generally, **9:43 to 9:54**
- Jury
  - preconditioning, **9:50**
  - usurping jury function, **9:51**
- Legal conclusions, terms containing
  - opposing authorities, **9:54**
  - supporting authorities, **9:46**
- Legal questions vs. ultimate issues, **9:53**
- Opposing authorities
  - generally, **9:53, 9:54**
  - legal conclusions, non-jury cases, **9:54**

### **TERMINOLOGY, MOTION TO EXCLUDE LEGAL OR CONCLUSORY—Cont'd**

- Opposing authorities—Cont'd
  - legal questions vs. ultimate issues, **9:53**
  - ultimate issue, helpful expert testimony on, **9:53**
- Suggested text, **9:43**
- Summary, motion, **9:44**
- Supporting authorities
  - generally, **9:45 to 9:52**
  - confusing evidence, **9:45**
  - exclusion of ultimate issue evidence, **9:47**
- jury
  - preconditioning, **9:50**
  - usurping jury function, **9:51**
- legal conclusions, terms containing, **9:46**
- misused terms, **9:49**
- nonexperts compared, **9:48**
- preconditioning jury, **9:50**
- ultimate issues, **9:47, 9:48**
- Ultimate issues
  - opposing authorities
    - expert testimony on, helpful, **9:53**
    - legal conclusions, non-jury cases, **9:54**
    - legal questions vs. ultimate issues, **9:53**
  - supporting authorities
    - exclusion of ultimate issue evidence, **9:47**
    - nonexperts compared, **9:48**

### **TESTIMONY, WITNESS**

- Arbitrators. See index heading
  - JUDGES, ARBITRATORS, MEDIATORS OR JURORS, MOTION TO EXCLUDE TESTIMONY OF
- Cumulative evidence or testimony. See index heading CUMULATIVE EVIDENCE, MOTION TO EXCLUDE OR LIMIT
- Expert witnesses. See index heading EXPERT WITNESSES

**TESTIMONY, WITNESS—Cont’d**

Foundation, evidence lacking

expert testimony, **4:13**

lay testimony, **4:14**

Hearsay. See index heading HEARSAY

Incompetent witness. See index heading INCOMPETENT WITNESS, MOTION TO EXCLUDE TESTIMONY OF

Judges. See index heading JUDGES, ARBITRATORS, MEDIATORS OR JURORS, MOTION TO EXCLUDE TESTIMONY OF

Jurors. See index heading JUDGES, ARBITRATORS, MEDIATORS OR JURORS, MOTION TO EXCLUDE TESTIMONY OF

Mediators. See index heading JUDGES, ARBITRATORS, MEDIATORS OR JURORS, MOTION TO EXCLUDE TESTIMONY OF

Nonexpert opinion. See index heading NONEXPERT OPINION

Privilege not to testify, comment on exercise of. See index heading PRIVILEGE NOT TO TESTIFY, MOTION TO EXCLUDE COMMENT ON EXERCISE OF

Undisclosed witness, sample motion to exclude testimony of, **6:65**

**TESTS AND EXPERIMENTS, MOTION TO EXCLUDE**

Generally, **5:1 to 5:69**

Acceptance, general  
lack of, **5:4**

Careless testing, **5:19**

Collateral issues, supporting authorities, **5:10**

Conditions  
identical conditions requirement, **5:15**

substantially identical conditions,  
lack of, **5:5**

Conjecture, **5:8**

Discretion of court, opposing authorities, **5:14**

Experts, qualifications of  
lacking, supporting authorities, **5:3, 5:4**

opposing authorities, **5:20**

Foundation, evidence lacking, **4:11**

Foundation, lack of, supporting  
authorities, **5:11**

**TESTS AND EXPERIMENTS, MOTION TO EXCLUDE**

**—Cont’d**

Junk science. See index heading JUNK SCIENCE AND RELATED EVIDENCE, MOTION TO EXCLUDE

Legitimate matters, opinion based on, opposing authorities, **5:21**

Opposing authorities

generally, **5:13 to 5:21**

acceptance, general, **5:16, 5:17**

careless testing, **5:19**

discretion of court, **5:14**

identical conditions requirement,  
**5:15**

legitimate matters, opinion based  
on, **5:21**

published precedent, **5:16**

qualification of expert, **5:20**

scientific community, level of  
acceptance by, **5:17**

weight vs. admissibility, **5:18, 5:19**

Qualification of expert

lacking, supporting authorities,  
**5:3, 5:4**

opposing authorities, **5:20**

Reliability, lack of, **5:6**

Scientific community, level of acceptance by, **5:17**

Scientific procedures, improper, **5:7**

Speculation, **5:8**

Substantially identical conditions,  
lack of, **5:5**

Suggested text, **5:1**

Summary, motion, **5:2**

Supporting authorities

generally, **5:3 to 5:12**

acceptance, lack of general, **5:4**

collateral issues, **5:10**

conjecture, **5:8**

foundation, lack of, **5:11**

other grounds, **5:12**

qualification, expert lacking, **5:3, 5:4**

reliability, lack of, **5:6**

scientific procedures, improper,  
**5:7**

speculation, **5:8**

## INDEX

### TESTS AND EXPERIMENTS, MOTION TO EXCLUDE —Cont'd

- Supporting authorities—Cont'd
  - substantially identical conditions,  
lack of, **5:5**
  - time consuming, **5:10**
  - variables, excessive number of, **5:9**
- Time consuming, **5:10**
- Variables, excessive number of, **5:9**
- Weight vs. admissibility, **5:18, 5:19**

### TEXT MESSAGES, MOTIONS TO EXCLUDE

- Opposition, **4:149**
- Sample motions, **4:146**

### TIME CONSIDERATIONS

- Delay of proceedings. See index  
heading WASTE COURT'S TIME,  
MOTION TO EXCLUDE EVIDENCE THAT  
WILL
- Motion, timing of, **1:6**
- Waste of Court's time. See index  
heading WASTE COURT'S TIME,  
MOTION TO EXCLUDE EVIDENCE THAT  
WILL

### TRAFFIC CITATION EVIDENCE, MOTION TO EXCLUDE

- Generally, **10:91**
- Proximate cause, not, **10:92**
- Sample motion to exclude, **10:253**
- Seat belt. See index heading SEAT BELT,  
MOTION TO EXCLUDE EVIDENCE OF  
FAILURE TO WEAR

### TRIAL PRESENTATION

- Generally, **9:1 to 9:67**
- Arbitration. See index heading  
JUDGES, ARBITRATORS, MEDIATORS OR  
JURORS, MOTION TO EXCLUDE  
TESTIMONY OF
- Damages in bifurcated trial. See  
index heading DAMAGES IN  
BIFURCATED TRIAL, MOTION TO  
EXCLUDE EVIDENCE OF
- Destroyed evidence. See index head-  
ing LOST OR DESTROYED EVIDENCE,  
MOTION TO EXCLUDE REFERENCE TO

### TRIAL PRESENTATION—Cont'd

- “Golden rule” argument. See index  
heading “GOLDEN RULE” ARGU-  
MENT, MOTION TO PRECLUDE
- Lost evidence. See index heading  
LOST OR DESTROYED EVIDENCE,  
MOTION TO EXCLUDE REFERENCE TO
- Opening statement. See index head-  
ing OPENING STATEMENT, MOTION TO  
EXCLUDE IMPROPER ARGUMENT IN
- Rebuttal to affirmative defenses,  
premature. See index heading  
REBUTTAL TO AFFIRMATIVE DEFENSES,  
MOTION TO BAR PREMATURE
- Terminology. See index heading  
TERMINOLOGY, MOTION TO EXCLUDE  
LEGAL OR CONCLUSORY
- Testimony, witness. See index head-  
ing TESTIMONY, WITNESS
- Voir dire. See index heading VOIR  
DIRE, MOTION TO PREVENT IMPROPER
- Witnesses. See index heading WIT-  
NESSES

### TRUTH SERUM EVIDENCE, MOTION TO EXCLUDE

- Opposing authorities, **5:51**
- Supporting authorities, **5:26**

### ULTIMATE ISSUES

- Cumulative testimony, motion to  
exclude improper expert  
opinion, **8:32**
- Expert opinion, motion to exclude  
improper
  - legal questions compared, **8:29**
- Nonexpert opinion, **9:48**
- Terminology, motion to exclude legal  
or conclusory
  - opposition authorities
    - expert testimony on, helpful,  
**9:53**
    - legal conclusions, non-jury  
cases, **9:54**
  - supporting authorities
    - exclusion of ultimate issue evi-  
dence, **9:47**
    - nonexperts compared, **9:48**

### UNCONTESTED ISSUES

- Uncontroverted evidence, motion to  
exclude, **3:23**

**UNCONTROVERTED EVIDENCE,  
MOTION TO EXCLUDE**

Generally, **3:13 to 3:23**  
Admissibility of evidence,  
    uncontested issue  
        opposing authorities, **3:23**  
Collateral issues, **3:17, 3:20**  
Damage evidence, motion to exclude  
    improper; surprise claims,  
        **10:221 to 10:224**  
Estoppel, **3:21**  
Opposing authorities  
    generally, **3:19 to 3:23**  
    admissibility of evidence,  
        uncontested issue, **3:23**  
    collateral issues, **3:20**  
    estoppel, **3:21**  
    other issues, relevancy to, **3:22**  
    unpleaded issues, **3:21**  
Relevancy to other issues, **3:22**  
Suggested text, **3:13**  
Summary motion, **3:14**  
Supporting authorities  
    generally, **3:15**  
    admitted or uncontroverted mat-  
        ters, **3:16**  
    collateral issues, **3:17**  
    undisputed matters, **3:4**  
    unpleaded issues, **3:18**  
Uncontested issue, admissibility of  
    evidence  
        opposing authorities, **3:23**  
Unpleaded issues, **3:18, 3:21**

**UNPLEADED CLAIMS OR ISSUES**

Damage evidence, motion to exclude  
    improper  
        opposing authorities, **10:230 to**  
            **10:232**  
        supporting authorities, **10:221 to**  
            **10:224**  
Immigration status, motion to  
    exclude evidence of party's,  
        **10:240**  
Uncontroverted evidence, motion to  
    exclude, **3:18, 3:21**

**URINE TEST RESULTS**

Junk science and related evidence,  
    motion to exclude, **5:45**

**VEHICLE SPEED  
DETERMINATIONS**

Reconstruction of accident and  
    biomechanic evidence, motion  
    to exclude, **10:166**

**VIDEO EVIDENCE, MOTION TO  
EXCLUDE**

Generally, **4:54 to 4:62**  
Cumulative evidence, **2:35, 2:40**  
Foundation  
    adequacy, opposing authorities,  
        **4:62**  
    evidence lacking, **4:12**  
Opposing authorities  
    generally, **4:59 to 4:62**  
    admonition, cautionary, **4:61**  
    foundation adequacy, **4:62**  
    relevancy, **4:60**  
Relevancy, opposing authorities, **4:60**  
Sample motion  
    motion to admit videotape evi-  
        dence, **4:135**  
    surveillance video, **10:245**  
Summary, motion, **4:55**  
Supporting authorities, **4:56 to 4:58**  
    exclusion, **4:57**  
    other grounds, **4:58**  
Surveillance video, **10:245**  
Unauthenticated recording, **4:144**

**VIOLENT CHARACTER**

Character evidence  
    felony convictions, motion to  
        exclude evidence of prior,  
            **7:67, 7:68**  
    supporting authorities, **7:56**

**VOICEPRINT IDENTIFICATION**

Junk science and related evidence,  
    motion to exclude, **5:35**

**VOIR DIRE, MOTION TO  
PREVENT IMPROPER**

Generally, **9:1 to 9:9**  
Educating jury on law, **9:6**  
Insurance  
    references to, **9:9**  
Jury questionnaire, use of during voir  
    dire, **9:61**

## INDEX

### **VOIR DIRE, MOTION TO PREVENT IMPROPER**

#### **—Cont'd**

- Opposing authorities
  - generally, **9:8, 9:9**
  - insurance, references to, **9:9**
- Preconditioning, **9:4**
- Sample motion, **9:65**
- Suggested text, **9:1**
- Summary, motion, **9:3**
- Supporting authorities
  - generally, **9:3 to 9:7**
  - dollar amount of damages,
    - preconditioning, **9:5**
  - educating jury on law, **9:6**
  - improper voir dire, **9:3**
  - preconditioning, **9:4**
  - dollar amount of damages, **9:5**

### **WAGES**

- Collateral source payments, motion to exclude evidence of, **10:10**

### **WASTE COURT'S TIME, MOTION TO EXCLUDE EVIDENCE THAT WILL**

- Generally, **2:8 to 2:11**
- Cumulative evidence, motion to exclude or limit
  - supporting authorities, **2:27**
- Cumulative evidence. See index heading CUMULATIVE EVIDENCE, MOTION TO EXCLUDE OR LIMIT
- Opposing authorities, **2:11**
- Suggested text, **2:8**
- Summary, motion, **2:9**
- Supporting authorities, **2:10**

### **WEIGHT VS. ADMISSIBILITY**

- Damage evidence, motion to exclude improper, **10:234**
- Foundation, motion to exclude evidence lacking, **4:21**
- Junk science and related evidence, motion to exclude, **5:60**
- Tests and experiments, motion to exclude, **5:18, 5:19**

### **WITNESSES**

- Causation, lay witness, motion to exclude evidence, **8:122**

### **WITNESSES—Cont'd**

- Computerized valuations of business, motion to exclude evidence of, **8:116**
- Courtroom prior to testifying, motion to exclude witness from
  - Generally, **8:72 to 8:79**
  - opposing authorities
    - generally, **8:76 to 8:79**
    - cannot exclude party, **8:77**
    - discretion of court, **8:76**
    - essential to case, **8:78**
    - parties who may not be excluded, **8:78**
    - purpose of rule, **8:79**
  - suggested text, **8:61**
  - summary, motion, **8:73**
  - supporting authorities
    - generally, **8:74, 8:75**
    - criminal cases, **8:75**
- Cumulative evidence or testimony. See index heading CUMULATIVE EVIDENCE, MOTION TO EXCLUDE OR LIMIT
- Exclude witness from courtroom prior to testifying, **8:119**
- Experts. See index heading EXPERT WITNESSES
- Impeachment. IMPEACHMENT
- Incompetent witness, motion to exclude testimony, **8:124**
- Incompetent witness. See index heading INCOMPETENT WITNESS, MOTION TO EXCLUDE TESTIMONY OF
- Intemperance, motion to exclude habit of, **7:72**
- Lay witness, motion to exclude evidence
  - causation, **8:122**
  - opposition to, **8:118**
- Non-called witnesses, motion to exclude evidence of
  - generally, **8:88 to 8:98**
  - motion to exclude reference to non-called witnesses, sample, **8:114**
  - opposing authorities
    - generally, **8:96 to 8:98**

**WITNESSES—Cont'd**

Non-called witnesses, motion to exclude evidence of—Cont'd  
opposing authorities—Cont'd  
material witness, non-calling of, **8:97**  
weight in question, not admissibility, **8:98**  
sample motion to exclude reference to non-called witnesses, **8:114**  
suggested text, **8:88**  
summary, motion, **8:89**  
supporting authorities  
generally, **8:90 to 8:95**  
adequate evidence, availability of other, **8:93**  
equally available to testify, where witness was, **8:91**  
other grounds, **8:95**  
prejudicial evidence, exclusion of, **8:90**  
speculation, comments would invite, **8:92**  
unavailability would be prejudicial, reason for, **8:94**

**WITNESSES—Cont'd**

Nonexpert opinion. See index heading NONEXPERT OPINION  
Perception of  
character evidence used for impeachment, motion to exclude, **7:21**  
Sample motions, **8:113 to 8:123**  
Testimony. See index heading TESTIMONY, WITNESS  
Veracity of; motion to exclude character evidence used for impeachment, **7:23**

**WORKERS COMPENSATION BENEFITS**

Collateral source payments, motion to exclude evidence of, **10:9**

**WRITINGS**

See index heading DOCUMENTARY EVIDENCE, MOTION TO EXCLUDE

**WRONGFUL DEATH CASES**

Financial status, motion to exclude evidence of party's, **10:194**  
Tax evidence, motion to exclude, **10:204**