Index

ACCIDENT RECONSTRUCTION

ABSENCE OR PRESENCE

AND BIOMECHANIC See index heading PRESENCE OR EVIDENCE—Cont'd ABSENCE Speed—Cont'd ACCIDENT RECONSTRUCTION Vehicle speed determinations, AND BIOMECHANIC 10:137, 10:151 **EVIDENCE** Stopping distances, 10:153 Generally, 10:129 to 10:157 Suggested motion text, 10:129 Anthropomorphic dummies, 10:139 Summary, 10:130 Biomechanic evidence, generally, Supporting authorities, 10:131 to 10:138 to 10:141, 10:156 10:147 Competent facts, 10:150 Tests and scientific evidence, 5:32, 5:46 "Delta V" testimony, exclusion of, 10:143 ACCIDENT RECOUNSTRUCTION "Finite element analysis" test, AND BIOMECHANIC 10:140 **EVIDENCE** Foundation, 10:134, 10:150 Sample motions to exclude, 5:53 Hearsay, 10:133 ACCIDENT REPORTS "Human crash test dummy" Generally, **4:69 to 4:77** testimony, 10:145 Improper foundation or qualification, Business records exemption to hearsay rule, 4:76 10:134 Diagrams, 4:73 Incomplete facts, 10:132 Hearsay rule, exceptions to, 4:76, Low speed impact cases, 10:142 to 4:77 10:147, 10:157 Motor carriers, **4:72** Opposing authorities, 10:148 to N.C. Gen. Stat. § 20-166.1, exclusion 10:157 based on, **4:71** Other unreliable tests, 10:147 Opposing authorities, 4:75 to 4:77 "Pattern of injury" tests, 10:141 Public records exemption to hearsay Photographs, 10:146, 10:155 rule, 4:77 "Plopping into chair" testimony, Summary, **4:69** challenging of, 10:144 Supporting authorities, generally, Point of impact, 10:135, 10:154 4:70 to 4:74 Proper basis for opinion, 10:149 ACCIDENT SCENE Reaction time determinations, 10:136 **PHOTOGRAPHS** Reliance on observations of others, Gruesome or inflammatory 10:133 photographs, 4:43, 4:50 Skid mark analysis, 10:152 Speculation, 10:132 ACCIDENTAL DESTRUCTION OF **EVIDENCE** Speed Low speed impact cases, 10:142 to Lost or destroyed evidence, reference 10:147, 10:157 to, 9:26

ACCURACY

Maps, models, charts, exhibits and demonstrative evidence, **4:102**

ACQUITTED CONDUCT

Impeachment, character evidence used for, 7:13

Other crime evidence, 7:54, 7:60

ADEQUATE FOUNDATION

Gruesome or inflammatory photographs, **4:46**

ADMISSIONS AND ADMITTED MATTERS

Deem matters admitted, motion to, **6:54**

Irrelevant evidence, 3:15
Liability or fault evidence, 10:183,
10:184, 10:189

Settlement evidence, 10:43

ADULTERY

Character evidence, 7:74

ADVERSE INTEREST

Lost or destroyed evidence, reference to, 9:28

AFFIRMATIVE DEFENSES

Motion to bar premature rebuttal to, generally, **9:17 to 9:21**

ALCOHOL CONSUMPTION

Generally, 10:93 to 10:107

Automobile cases

Generally, 10:100

DUI. See index heading driving under the influence (dui)

Blood and blood tests, 10:99, 10:102

DUI. See index heading driving under the influence (dui)

Foundation, lack of, 10:98, 10:99

Habit of general intemperance, 7:73, 10:101, 10:107

Horizontal gaze nystagmus, 10:103 Impeachment, 7:12, 7:29, 10:107

Inebriation, proof of, **10:98**, **10:99** Irrelevant evidence, exclusion of,

rrelevant evidence, exclusion of, 10:96

Negligence, DUI as proof of, **10:105**, **10:106**

ALCOHOL CONSUMPTION

-Cont'd

Opposing authorities, **10:105 to 10:107**

Prejudicial evidence, exclusion of, **10:95**

Suggested motion text, 10:93

Summary, 10:94

Supporting authorities, 10:95 to 10:104

AMOUNTS

Improper damage evidence, 10:195

ANSWER TO INTERROGATORIES

Evidentiary sanctions, motion for, 6:5

ANTHROPOMORPHIC DUMMIES

Accident reconstruction and biomechanic evidence. **10:139**

APPEAL TO JURORS AS TAXPAYERS

Tax evidence, 10:176

APPEARANCE

Evidentiary sanctions, motion for, 6:5

ARBITRATOR, MOTION TO EXCLUDE TESTIMONY OF

Generally, 8:75

Motion summary, 8:76

Suggested motion text, **8:75**

Supporting authorities, 8:78

ARRESTS

Impeachment, character evidence used for, 7:13

Prior crime evidence, 7:54

Prior DUI, 10:112

Witnesses, motion to exclude evidence of prior arrest of, **7:78**

ATTORNEY, MOTION TO EXCLUDE TESTIMONY OF

Generally, 8:75

Motion summary, 8:76

Opposing authorities, 8:83 to 8:88

Other attorney in firm or office, testimony of, **8:86**

Prevention of crime or injury, allowance for, **8:87**

ATTORNEY, MOTION TO EXCLUDE TESTIMONY OF —Cont'd

Prosecutor testimony on behalf of defendant, **8:88**

Substantial hardship, 8:85

Suggested motion text, 8:75

Supporting authorities, 8:80

Uncontested issue, 8:83

Value of legal services, 8:84

AUTHORITY AND AUTHORIZATION

Motion in limine law, 1:2

AUTOMOBILES AND MOTOR VEHICLES

Alcohol consumption. See index heading Alcohol consumption

DUI.See index heading driving under INFLUENCE (DUI)

Motor carriers, accident reports, 4:72

BATTERED CHILD SYNDROME

Tests and scientific evidence, 5:40

BATTERED WOMAN'S SYNDROME

Tests and scientific evidence, 5:35

BIFURCATED TRIAL, MOTION TO EXCLUDE EVIDENCE IN

Generally, 9:36 to 9:42

Compensatory damages, 9:38 to 9:40

Damages, 9:62

Opposing authorities, 9:42

Punitive damages, 9:40

Statutory authority, 9:38

Suggested motion text, 9:36

Summary, **9:37**

Supporting authorities, 9:38 to 9:41

BILLING RECORDS

Medical records, reports or bills, **4:118, 4:124, 4:125**

BIOMECHANIC EVIDENCE

Generally, 10:129 to 10:157

For detailed treatment see index heading ACCIDENT RECONSTRUCTION AND BIOMECHANIC EVIDENCE

Exclusion of, sample motion, 5:52

BLOOD AND BLOOD TESTS

Alcohol consumption, 10:99, 10:102

BRIEFS

Motion in limine law, 1:16

BUSINESS RECORDS

Accident reports, 4:76

Letters, **4:88**

Medical records, reports or bills,

4:122

CARE OR SKILL IN NEGLIGENCE CASES

Conduct, character evidence used to prove, **7:38**

CARELESS TESTING

Tests and scientific evidence, 5:17

CAUSATION

Lay witness testimony, 8:54, 8:130

CAUTIONARY ADMONITION

Prejudicial film or videotapes, 4:59

CHARACTER EVIDENCE

Generally, 7:1 to 7:81

Admissible character evidence, generally, **7:2 to 7:4**

Alcoholism or habit of intemperance of witness, **7:71**, **7:73**

Arrest, prior, 7:78

Conduct, character evidence used to prove

Generally, 7:33 to 7:46

For detailed treatment see index heading conduct, Character EVIDENCE USED TO PROVE

Drug abuse, 7:14, 7:77

Exclusion, generally, 7:5

Forms

Alcoholism of percipient witness, 7:71

Intemperance, witness' habit of, 7:73

Prior conviction, 7:72

Impeachment of witness

Generally, 7:7 to 7:32

For detailed treatment see index heading IMPEACHMENT

Inflammatory evidence, 7:79

CHARACTER EVIDENCE—Cont'd

Juvenile adjudications, 7:76

Marital infidelity, 7:74

Motion to exclude evidence regarding witness8217s mental health, **7:80**

Other crimes or wrongs

Generally, 7:3, 7:47 to 7:70

For detailed treatment see index heading other crimes or wrongs

Prior convictions, 7:72

Religious beliefs, 7:75

Sample motions

Generally, 7:71 to 7:79

Alcoholism or habit of intemperance of witness, 7:71, 7:73

Arrest, prior, 7:78

Drug abuse, 7:77

Inflammatory evidence, 7:79

Juvenile adjudications, 7:76

Marital infidelity, 7:74

Prior convictions, 7:72

Religious beliefs, 7:75

CHARTS

Generally, 4:92 to 4:109

For detailed treatment see index heading maps, models, charts, exhibits and demonstrative evidence

CHILD MOLEST SYNDROMES (CSAAS)

Tests and scientific evidence, 5:29

CHILDREN

Battered child syndrome, tests and scientific evidence, **5:40**

Child molest syndromes (CSAAS), tests and scientific evidence, 5:29

Incompetent witness, testimony of, **8:65, 8:71**

Juvenile adjudications, character evidence, **7:53**, **7:76**

CHIROPRACTIC TREATMENT

Form of motion to preclude nonchiropractor from giving evidence on. 8:127

COLLATERAL ISSUES

Impeachment, character evidence used for, 7:20, 7:28
Irrelevant evidence, 3:16, 3:18, 3:25

COLLATERAL SOURCE PAYMENTS

Generally, 10:1 to 10:16

Contract cases, 10:12

Distinct losses, 10:16

Exceptions, 10:12

Gratuitous payments, 10:6

Irrelevant evidence, exclusion of, **10:4**

Liability policy limits, 10:7

Malingering, 10:15

Medical policy limits, 10:7

Not "wholly independent" source, 10:13

Opposing authorities, 10:12 to 10:16

Other grounds, 10:11

Prejudicial evidence, exclusion of, **10:3**

Relevant to issues in case, 10:14, 10:15

Sample motions to exclude, 10:214

Suggested motion text, 10:1

Summary, **10:2**

Supporting authorities, 10:3 to 10:11

Tax benefit, 10:10

Wage payments, 10:9

Workers' compensation benefits, 10:8

COMMENTS

Exercise of privilege not to testify, comment on, 8:100 to 8:105

COMMON EXPERIENCE

Improper expert testimony, 8:13

COMPENSATORY DAMAGES

Bifurcated trial, evidence in, 9:38 to 9:40

COMPROMISE OR SETTLEMENT

Generally, 10:30 to 10:45

For detailed treatment see index heading SETTLEMENT EVIDENCE

COMPUTERIZED VALUATIONS

Witness evidence of computerized valuations of business, **8:128**

CONDEMNATION PROCEEDINGS

Improper damage evidence, 10:198

CONDITIONAL ADMISSIBILITY

Foundation, evidence lacking, 4:18

CONDUCT, CHARACTER EVIDENCE USED TO PROVE

Generally, 7:33 to 7:46

Accused, pertinent trait of, **7:45**Care or skill in negligence cases, **7:38**

Discretion of court, 7:41

Improper character evidence, exclusion of, **7:37 to 7:39**

Irrelevant evidence, 7:36

Negligence cases, care or skill in, 7:38

Opposing authorities, generally, 7:41 to 7:46

Other crimes evidence, 7:39

Pertinent trait, 7:44 to 7:46

Relevancy, 7:42

Suggested motion text, 7:33

Summary, 7:34

Supporting authorities, generally, 7:35 to 7:40

Victim, pertinent trait of, 7:46 Witness, generally, 7:43

CONFUSING OR MISLEADING EVIDENCE

Exclusion of

Generally, 2:12 to 2:16

For detailed treatment see index heading PREJUDICIAL EVIDENCE

Sample motion, 2:48

Improper terminology, 9:50

Tests and scientific evidence, 5:33

CONFUSING OR MISLEADING VOIR DIRE

Generally, 9:8

CONJECTURE

See index heading speculation and Conjecture

CONTRACT CASES

Collateral source payments, 10:12

CONVICTIONS

Impeachment, character evidence used for, **7:15**

COURTROOM, MOTION FOR EXCLUSION OF WITNESS PRIOR TO TESTIFYING

Generally, 8:92 to 8:99

Criminal cases, 8:95

Discretionary decision, 8:96

Essential, person's presence as, 8:98

Opposing authorities, 8:96 to 8:99

Party cannot be excluded, 8:97

Presence of person as essential, 8:98

Purpose of rule, 8:99

Suggested motion text, 8:92

Summary, **8:93**

Supporting authorities, 8:94, 8:95

CREDIBILITY OF WITNESS

Settlement evidence, 10:45

CROSS-EXAMINATION

Liability insurance, 10:25

CUMULATIVE EVIDENCE

Improper expert testimony, 8:25, 8:36

Prejudicial evidence

Generally, 2:24 to 2:35

For detailed treatment see index heading PREJUDICIAL EVIDENCE

Published articles, 4:64

DAMAGES

Improper damage evidence

Generally, 10:190 to 10:206

For detailed treatment see index heading improper damage evidence

Punitive damages. See index heading PUNITIVE DAMAGES

Tax evidence, 10:173, 10:174

DANGEROUS CONDITIONS

Other accidents, claims or lawsuits, 10:52, 10:59

DEAD MAN'S STATUTE

Incompetent witness testimony of, **8:68, 8:74**

DEATH CASES

Tax evidence, 10:175

DEFECTIVE PRODUCTS

Other accidents, claims or lawsuits, 10:52, 10:59

DEFINITIONS

Foundation evidence lacking, **4:4**Prejudicial evidence, **2:4**Writings and physical evidence, **4:23**

"DELTA V" TESTIMONY

Accident reconstruction and biomechanic evidence, **10:143**

DEMONSTRATIVE EVIDENCE

Generally, 4:92 to 4:109

For detailed treatment see index heading MAPS, MODELS, CHARTS, EXHIBITS AND DEMONSTRATIVE EVI-DENCE

DEPOSITIONS

Expert witness disclosure and depositions, motions regarding, **6:47**

DESCRIPTION

Motion in limine law, 1:1

DESTROYED EVIDENCE

Generally, 9:22 to 9:30

For detailed treatment see index heading LOST OR DESTROYED EVIDENCE

DIAGRAMS

Accident reports, 4:73

Maps, models, charts, exhibits and demonstrative evidence, **4:99**, **4:107**

DISAPPROVED STATISTICAL EVIDENCE

Tests and scientific evidence, 5:34

DISCOVERY MOTIONS

Generally, **6:1** to **6:59**

DISCOVERY MOTIONS—Cont'd

Admitted matters, motion to conclusively establish

Generally, 6:23 to 6:27

Opposing authorities, 6:27

Purpose of discovery, **6:26**

Suggested motion text, 6:23

Summary, **6:24**

Supporting authorities, **6:25**, **6:26**

Claims denied or changed during discovery

Generally, 6:28 to 6:33

Opposing authorities, **6:33**

Sample motion, 6:49

Suggested motion text, 6:28

Summary, **6:29**

Supporting authorities, **6:30 to 6:32**

Unfair surprise, 6:31

Deadline for discovery, motion to exclude evidence produced beyond, **6:53**

Deem matters admitted, motion to, **6:54**

Evidentiary sanctions, motion for Generally, **6:1 to 6:22**

For detailed treatment see index heading evidentiary sanctions, MOTION FOR

Expert testimony relating to matters not disclosed, exclusion of, **6:56**

Expert witness disclosure and depositions, motions regarding

Generally, 6:34 to 6:47

For detailed treatment see index heading expert witness DISCLOSURE AND DEPOSITIONS, MOTIONS REGARDING

Facts, motion for sanction establishing, **6:55**

Sample motions

Claim denied during discovery, **6:49**

Deadline for discovery, motion to exclude evidence produced beyond, **6:53**

Deem matters admitted, motion to, **6:54**

Index-6

DISCOVERY MOTIONS—Cont'd

Sample motions—Cont'd
Disclosures and depositions of
experts, motions regarding,
6:48

Dismiss action as discovery sanction, **6:59**

Evidentiary sanctions for failure to serve answers and objections to interrogatories, **6:58**

Expert testimony relating to matters not disclosed, exclusion of, **6:56**

Facts, motion for sanction establishing, **6:55**

Medical bills for services obtained after designated date, **6:51**

Order rendering default judgment as discovery sanction, **6:57**

Supplemental expert witness testimony of, **6:50**

Undisclosed witness, motions to exclude testimony of, **6:52**

Unfair surprise, exclusion of claims denied or changed during discovery, **6:31**

DISCRETION

Conduct character evidence used to prove, **7:41**

Courtroom, motion for exclusion of witness prior to testifying, **8:96** Evidentiary sanctions, motion for, **6:18**

Expert witness disclosure and depositions, motions regarding, **6:42**

Gruesome or inflammatory photographs, **4:51**

Hearsay evidence, 8:124

Irrelevant evidence, 3:8

Maps, models, charts, exhibits and demonstrative evidence, **4:94**, **4:104**

Prejudicial evidence, 2:7
Tests and scientific evidence, 5:11 to
5:19

DOCUMENTS AND TEXTS

Improper expert testimony, **8:10**, **8:30**

DOLLAR AMOUNT OF DAMAGES

Voir dire, motion to prevent improper conducting of, **9:5**

DRAFTING SUGGESTIONS

Motion in limine law. 1:12 to 1:17

DRIVING UNDER INFLUENCE (DUI)

Negligence, DUI as proof of, **10:105**, **10:106**

Prior DUI, exclusion of evidence of Generally, 10:108 to 10:120
For detailed treatment see index heading PRIOR DUI

DRUG USE

Character evidence, 7:14, 7:77

ECONOMIC LOSS RULE

Improper damage evidence, 10:197

EDUCATING JURY ON THE LAW

Voir dire, motion to prevent improper conducting of, **9:6**

ELECTRONIC PENILE PLETHYSMOGRAPH TEST

Tests and scientific evidence, 5:30

EMINENT DOMAIN PROCEEDINGS

Improper damage evidence, 10:198

EMOTIONAL BIAS

Generally, 2:17 to 2:23

For detailed treatment see index heading PREJUDICIAL EVIDENCE

EMPLOYMENT, PROOF OF

Liability insurance, 10:29

ENLARGED PHOTOGRAPHS

Gruesome or inflammatory photographs, **4:47**

ESTOPPEL

See index heading waiver and estoppel

EVIDENCE

Motion to exclude, speculative, 3:27

EVIDENTIARY SANCTIONS, MOTION FOR

Generally, 6:1 to 6:22

Admit, failure to, **6:4**

Answer to interrogatories, failure to serve, **6:5**

Appearance at party's own deposition, failure as to, **6:5**

Available sanctions, **6:3 to 6:15**

Discretion of court, 6:18

Evidence sanction, 6:8

Identity of witnesses, failure to disclose, **6:13**, **6:14**

Inspection request, failure to respond to, **6:5**

Issue sanction, 6:9

Justified noncompliance, 6:19

Level of misconduct, sanctions appropriate to, **6:17 to 6:19**

Matters deemed admitted, 6:11, 6:21

Medical malpractice discovery conferences, **6:7**

Mental examinations of persons, **6:12** No prior order, **6:22**

Opposing authorities, generally, **6:16** to **6:22**

Physical and mental examinations of persons, **6:12**

Suggested motion text, 6:1

Summary, 6:2

Supplement, failure as to, 6:6, 6:14

Supporting authorities, generally, **6:3 to 6:15**

Terminating sanctions, 6:10, 6:20

EXAMPLES

Writings. See index heading writings AND PHYSICAL EVIDENCE

EXCEEDING PERMISSIBLE SCOPE OF INQUIRY

Prior crime evidence, 7:52

EXCEPTIONS

Collateral source payments, **10:12** Hearsay evidence, generally, **8:118**, **8:119**

Letters. 4:87 to 4:89

Other accidents, claims or lawsuits, **10:62**

EXHIBITS

Generally, 4:92 to 4:109

For detailed treatment see index heading maps, models, charts, exhibits and demonstrative evidence

EXPENSES

Liability or fault evidence, 10:186

EXPERIMENTS

Generally, **5:1 to 5:19**

For detailed treatment see index heading TESTS AND EXPERIMENTS

EXPERT WITNESS DISCLOSURE AND DEPOSITIONS, MOTIONS REGARDING

Generally, 6:34 to 6:47

Depositions, 6:47

Discretion of trial court, 6:42

Improper discovery methods, **6:40**

Inadmissible materials reviewed but not relied on, **6:41**

"Interest of justice," 6:43

Medical malpractice cases, **6:39**, **6:44**, **6:45**

Non expert, treating physician as, **6:45**

"Opening the door," 6:46

Opposing authorities, 6:42

Sample motion to exclude testimony of supplemental expert witness, **6:50**

Sample motions, **6:48**, **6:52**, **6:56**

Suggested motion text, **6:34**

Summary, **6:35**

Supplementing expert witnesses, **6:38, 6:50**

Supporting authorities, 6:36 to 6:41

Undisclosed witness, 6:36

Untimely disclosure, 6:37

EXPERT WITNESSES

Disclosure and depositions, motions regarding

Generally, **6:34 to 6:47**

For detailed treatment see index heading expert witness DISCLOSURE AND DEPOSITIONS, MOTIONS REGARDING

EXPERT WITNESSES—Cont'd

Foundation evidence lacking, **4:12** Improper expert testimony

Generally, 8:1 to 8:40

For detailed treatment see index heading improper expert TESTIMONY

Medical doctors, generally, 8:129

Non-qualified experts

Generally, 8:41 to 8:50

For detailed treatment see index heading NON-QUALIFIED EXPERT, TESTIMONY OF

Other accidents, claims or lawsuits, 10:53

Tests and scientific evidence Generally, **5:3 to 5:11**

For detailed treatment see index heading TESTS AND EXPERIMENTS

FAILURE TO FILE RETURN

Tax evidence, 10:174

FAULT

Evidence of.See index heading LIABILITY OR FAULT EVIDENCE

FILM OR MOTION PICTURES

Foundation, evidence lacking, **4:11** Prejudicial film or videotapes

Generally, 4:52 to 4:60

For detailed treatment see index heading prejudicial film or VIDEOTAPES

FINANCIAL STATUS OF PARTY

Generally, 10:158 to 10:168

Irrelevant evidence, exclusion of, 10:161

Opposing authorities, 10:166 to 10:168

Prejudicial evidence, exclusion of, 10:160

Punitive damages, **10:164**, **10:167** Relevant to issues, **10:166**

Sample motion to exclude evidence

of, **10:223**, **10:229**, **10:230**

Suggested motion text, 10:158

Summary, 10:159

Supporting authorities, 10:160 to 10:165

FINANCIAL STATUS OF PARTY —Cont'd

Waiver of rights, 10:168

"FINITE ELEMENT ANALYSIS" TEST

Accident reconstruction and biomechanic evidence, **10:140**

FIREARM RESIDUE

Laboratory testing regarding, 10:216

FORMS

Character evidence

Alcoholism of percipient witness, 7:71

Intemperance, witness' habit of, 7:73

Prior conviction, 7:72

Chiropractic treatment, motion to preclude non-chiropractor from giving evidence on, **8:127**

Computerized valuations of business, evidence of, **8:128**

Irrelevant evidence

Collateral evidence, 3:25

Immigration status, irrelevant evidence, **3:22**

Insurance case, irrelevant evidence in, **3:24**

Physical conditions not in issue, 3:23

Medical doctor, testimony and opinions of, **8:129**

Non-called witness, reference to, **8:126**

Speculative expert opinion, 8:125

FOUNDATION, EVIDENCE LACKING

Generally, 4:1 to 4:20, 4:24

Accident reconstruction and biomechanic evidence, 10:134, 10:150

Alcohol consumption, 10:98, 10:99

Conditional admissibility, 4:18

Definitions, 4:4

Experiments, 4:10, 5:10

Expert witness testimony, improper foundation, **4:12**

Improper expert testimony, 8:5

FOUNDATION, EVIDENCE LACKING—Cont'd

Improper foundation, generally, **4:8 to 4:16**

Inadmissibility of evidence, **4:6**Jury presence, determination of preliminary questions out of, **4:5**

Lay witness testimony, improper foundation, **4:13**

Letters, 4:84

Medical records, reports or bills, **4:15**, **4:113**, **4:118**

Motion pictures, improper foundation, **4:11**

Objects or things, improper foundation, **4:16**

Opposing authorities, 4:17

Photographic evidence, improper foundation, **4:8**

Prejudicial film or videotapes, **4:60** Preliminary questions, **4:4 to 4:7**

Presence of jury, outside of, **4:19** Social media, **4:131**, **4:135**

Suggested motion text, **4:1**

Suggested motion text,

Summary, **4:2**

Supporting authorities, generally, **4:3 to 4:16**

Tape recordings, improper foundation, **4:9**

Tests and experiments, **4:10**, **5:10** Videotapes, improper foundation, **4:11**

Weight vs admissibility, **4:20**Writings, improper foundation, **4:14**

FRAUDULENT ACTS

Impeachment, character evidence used for, **7:16**

Motion to exclude evidence for purpose of impeachment, **7:81**

FRYE REQUIREMENTS

Tests and scientific evidence, 5:18

GENERAL ACCEPTANCE

Tests and scientific evidence, **5:14**, **5:15**, **5:43**

GOLDEN RULE ARGUMENT

Motion to preclude, 9:43 to 9:47, 9:61

GOLDEN RULE ARGUMENT

—Cont'd

Prejudicial evidence, 2:22

GRATUITOUS PAYMENTS

Collateral source payments, 10:6

GRUESOME OR INFLAMMATORY PHOTOGRAPHS

Generally, 4:35 to 4:51

Accident scene photographs, **4:43**, **4:50**

Adequate foundation, **4:46**

Discretion, 4:51

Enlarged photographs, 4:47

Irrelevant evidence, exclusion of, 4:38

Opposing authorities, 4:45 to 4:51

Penalty phase, less discretion to exclude at. **4:51**

Photographs, exclusion of, generally, **4:41**

Purpose to inflame emotions, **4:40**

Sample motion to exclude gruesome or inflammatory photographs,

4:136, 4:142

Suggested motion text, 4:35

Summary, **4:36**

Supporting authorities, generally,

4:37 to 4:44

X-rays, 4:42, 4:49

HABIT OF GENERAL INTEMPERANCE

Alcohol consumption, 7:73, 10:101, 10:107

HEALTH OR INJURIES OF PARTY NOT AT ISSUE

Generally, 10:121 to 10:128

Demonstrations, 10:127, 10:128

Irrelevant evidence, exclusion of, 10:124

Opposing authorities, 10:126 to 10:128

Prejudicial evidence, exclusion of, 10:123

Relevant to issues, 10:127

Suggested motion text, 10:121

Summary, 10:122

HEALTH OR INJURIES OF PARTY NOT AT ISSUE—Cont'd

Supporting authorities, 10:123 to 10:126

HEARSAY EVIDENCE

Generally, 8:110 to 8:124

Accident reconstruction and biomechanic evidence, **10:133**

Accident reports, 4:76, 4:77

Discretion of court, 8:124

Examples, **8:116**

Exceptions to hearsay rule, generally, **8:118, 8:119**

Expert testimony, 8:7 to 8:10, 8:28 to 8:30

General authority for exclusion, 8:113, 8:115

Impeachment of witness, hearsay used for, **8:123**

Improper expert testimony, **8:7 to 8:10, 8:28 to 8:30**

Letters, 4:82, 4:87 to 4:89

Medical records, reports or bills, 4:114, 4:117, 4:122, 4:123

Multiple hearsay, 8:117, 8:122

Non-hearsay evidence, 8:120

Nonassertive conduct, 8:121

Opposing authorities, 8:118 to 8:124

Other crime evidence, 7:61

Purpose of exceptions to hearsay rule, **8:119**

Purpose of rule, 8:114

Social media, 4:130, 4:134

Suggested motion text, 8:111

Summary, 8:112

Supporting authorities, **8:113 to 8:117**

Written hearsay, 8:115 to 8:117

HEDONIC DAMAGE

Tests and scientific evidence, 5:23

HORIZONTAL GAZE NYSTAGMUS TEST

Alcohol consumption, **10:103**Improper expert testimony, **8:37**Non-qualified expert, testimony of, **8:49**

Tests and scientific evidence, 5:36

HOWERTON DECISION

Tests and scientific evidence, 5:5

"HUMAN CRASH TEST DUMMY" TESTIMONY

Accident reconstruction and biomechanic evidence, 10:145

HYPNOSIS EVIDENCE

Tests and scientific evidence, **5:31**, **5:41**, **5:49**

HYPOTHETICAL QUESTIONS

Improper expert testimony, 8:6, 8:31

IDENTICAL CONDITIONS REQUIREMENT

Tests and scientific evidence, 5:13

IDENTITY OF WITNESSES

Evidentiary sanctions, motion for, **6:13, 6:14**

ILLUSTRATIONS OR ILLUSTRATIVE PURPOSES

Maps, models, charts, exhibits and demonstrative evidence, **4:99**, **4:101**

IMMIGRATION STATUS OF PARTY

Generally, 10:207 to 10:213

Form of motion to exclude irrelevant evidence, **3:22**

Opposing authorities, 10:213

Prejudicial evidence, exclusion of, **10:209**

Relevance or irrelevance, generally, 10:210 to 10:213

Suggested motion text, 10:207

Summary, 10:208

Supporting authorities, 10:209 to 10:212

Unpleaded issues, 10:211

IMPEACHMENT

Generally, 7:7 to 7:32

Acquitted conduct, 7:13

Admissible character evidence, 7:4

Alcoholic beverages, 7:12, 7:29,

10:107

Arrests, 7:13

IMPEACHMENT—Cont'd

Biased or prejudicial evidence, exclusion of, generally, 7:9 to 7:22, 7:27

Character evidence used for, generally, **7:7 to 7:32**

Collateral issues, 7:20, 7:28

Convictions, 7:15

Criminal charges, 7:13

Drug use, 7:14

Exclusion of evidence, generally, 7:6

Facts at issue, 7:23

Fraudulent acts, 7:16

Good character, 7:17, 7:32

Hearsay evidence, 8:123

Improper impeachment evidence, exclusion of, generally, 7:11 to 7:21

Irrelevant evidence, exclusion of, generally, **7:10**

Opening the door doctrine, 7:32

Opposing authorities, generally, 7:23 to 7:32

Other accidents, claims or lawsuits, 10:62

Perceptions of witness, 7:24

Prejudicial evidence, exclusion of, generally, **7:9 to 7:22, 7:27**

Prior crime evidence, 7:63

Prior DUI, 10:112 to 10:115, 10:119

Religious belief, 7:18, 7:30

Sexual preference or behavior, 7:19, 7:31

Statute violation, 10:84

Subsequent repairs, 10:72

Suggested motion text, 7:7

Summary, 7:8

Supporting authorities, generally, 7:9 to 7:22

Veracity of witness, 7:26

IMPROPER DAMAGE EVIDENCE

Generally, 10:190 to 10:206

Amounts in excess of stated damages, 10:195

Condemnation proceedings, 10:198

Economic loss rule, 10:197

Estoppel, 10:202

Lost profits, 10:199, 10:226

IMPROPER DAMAGE EVIDENCE

-Cont'd

Opposing authorities, 10:201 to 10:206

Punitive damages, 10:200, 10:206

"Reasonably" certain damages, 10:205

Sample motion, 10:226

Speculative damages, generally, **10:196, 10:203**

Suggested motion text, 10:190

Summary, 10:191

Supporting authorities, **10:192 to 10:200**

Surprise claims, 10:194

Undisputed matters, 10:193

Unpleaded matters, 10:192 to

10:195, 10:201, 10:202Weight vs admissibility, **10:204**

IMPROPER DISCOVERY METHODS

Expert witness disclosure and depositions, motions regarding, **6:40**

IMPROPER EXPERT TESTIMONY

Generally, **8:1 to 8:40**

Common experience, matters of, 8:13

Conjecture, 8:17

Cumulative testimony, 8:25, 8:36

Documents and texts as hearsay, 8:10, 8:30

Foundation, inadequacy of, 8:5

Hearsay, 8:7 to 8:10, 8:28 to 8:30

Horizontal gaze nystagmus results, **8:37**

Hypothetical questions, 8:6, 8:31

Inadmissible hearsay, 8:7 to 8:10

Irrelevant matters, 8:21

Jury functions, usurpation of, 8:20

Legal questions, 8:11, 8:12, 8:32

Medical malpractice cases, 8:24,

8:34, 8:35

Multiple variables, 8:18

Opposing authorities, 8:27 to 8:40

Other grounds, 8:26

Others, opinions or statements of, 8:8, 8:9, 8:29

Outside area of specialty or expertise, 8:23, 8:24

IMPROPER EXPERT TESTIMONY —Cont'd

Perceptions of experts, **8:33**Precluded by law, matters as, **8:16**Profile evidence, impropriety of, **8:22, 8:39**

Reasonable reliance by experts, lack of, **8:14**

Speculation or conjecture, **8:17** Speed of vehicle, **8:38**

Suggested motion text, 8:1

Summary, 8:2

Supporting authorities, 8:3 to 8:26

Treatises as hearsay, 8:10, 8:30

Ultimate issues, **8:12**, **8:32**

Uncooperative witness, 8:19

Unfair prejudice, 8:4

Unperceived or unknown matters, **8:15**

Usurping jury functions, **8:20** Victim credibility, **8:40**

IMPROPER FOUNDATION

See index heading FOUNDATION

IMPROPER IMPEACHMENT EVIDENCE

Impeachment, character evidence used for, 7:11 to 7:21

IMPROPER TERMINOLOGY

Generally, 9:48 to 9:57

Confusing evidence, 9:50

Legal conclusions, terms containing, 9:51

Opposing authorities, 9:57

Preconditioning jury, 9:55

Suggested motion text, 9:48

Summary, **9:49**

Supporting authorities, 9:50 to 9:56

Ultimate issues, 9:52 to 9:54

Usurping function of judge, 9:56

IMPROPER VOIR DIRE

Generally, 9:1 to 9:10

For detailed treatment see index heading voir dire, improper CONDUCTING OF

INABILITY TO EXPRESS SELF OR TELL TRUTH

Incompetent witness, testimony of, 8:64, 8:65

INCOMPETENT WITNESS TESTIMONY

Generally, 8:62 to 8:74

Children, 8:65, 8:71

Dead man's statute, **8:68**, **8:74**

Inability to express self or tell truth, **8:64, 8:65**

Insanity, **8:66**, **8:72**

Mental competence, 8:66, 8:72

Opposing authorities, 8:70 to 8:74

Other grounds, 8:69

Personal knowledge of subject matter, lack of, **8:67**, **8:73**

Suggested motion text, 8:62

Summary, **8:63**

Supporting authorities, 8:64 to 8:69

INCONSISTENT STATEMENT

Letters, **4:91**

INFLAMMATORY MATTERS

Character evidence, 7:79

Juror's emotions, inflaming of, 2:20

Photographs

Generally, **4:35 to 4:51**

For detailed treatment see index heading gruesome and inflammatory photographs

INSANITY

Incompetent witness, testimony of, 8:66, 8:72

INSPECTION REQUEST

Evidentiary sanctions, motion for, **6:5**

INSURANCE

Generally, 10:17 to 10:29

Collateral source payments, 10:7

Cross-examination, 10:25

Employment, proof of, 10:29

Form of motion to exclude irrelevant evidence. **3:24**

Incidental reference to insurance, 10:27

INSURANCE—Cont'd

Irrelevant evidence, exclusion of, 10:20, 10:23

Lack of insurance, evidence of, **10:22** Non-prejudicial references to insurance, **10:28**

Opposing authorities, **10:25 to 10:29** Ownership, proof of, **10:29**

Prejudicial evidence, exclusion of, **10:19**

Relevance to issues, 10:26

Sample motion to exclude liability insurance evidence, **10:222**

Suggested motion text, 10:17

Summary, 10:18

Supporting authorities, 10:19 to 10:24

INTENTIONAL DESTRUCTION

Lost or destroyed evidence, reference to, 9:27

"INTEREST OF JUSTICE"

Expert witness disclosure and depositions, motions regarding, **6:43**

INTOXICATING LIQUOR

See index heading Alcohol Consumption

IRRELEVANT EVIDENCE

Generally, 3:1 to 3:27

For detailed treatment see index heading RELEVANCY

ISSUE SANCTION

Evidentiary sanctions, motion for, 6:9

JUDGE, MOTION TO EXCLUDE TESTIMONY OF

Generally, 8:75

Prior proceedings, judge's testimony regarding, **8:90**

Suggested motion text, 8:75

Supporting authorities, 8:77

JUDICIAL NOTICE

Tests and scientific evidence, 5:45

JUNK SCIENCE AND RELATED EVIDENCE

Generally, 5:20 to 5:46

JUNK SCIENCE AND RELATED EVIDENCE—Cont'd

For detailed treatment see index heading TESTS AND EXPERIMENTS

JURY AND JURY TRIAL

Foundation, evidence lacking, **4:5**Missing evidence instruction, opposition to motion for, **9:63**

Prejudicial evidence, limiting instructions, **2:16**

Questionnaire of jurors, motion to submit, **9:58**

Testimony of juror

Generally, 8:75

Motion summary, 8:76

Opposing authorities, 8:91

Suggested motion text, 8:75

Supporting authorities, 8:81

Usurpation of functions of jury by improper expert testimony, **8:20**

JUSTIFIED NONCOMPLIANCE

Evidentiary sanctions, motion for, **6:19**

JUVENILE ADJUDICATIONS

Character evidence, 7:53, 7:76

LEGAL CONCLUSIONS

Improper terminology, 9:51

LEGAL OPINIONS

Lay witness testimony, 8:55

LEGAL QUESTIONS

Improper expert testimony, 8:11, 8:12, 8:32

LETTERS

Generally, 4:78 to 4:91

Business records exception to hearsay rule, **4:88**

Exceptions to hearsay rule, 4:87 to

4:89

Foundation, lack of, 4:84

Hearsay, **4:82**, **4:87** to **4:89** Inconsistent statement, **4:91**

Irrelevant, 4:83

Opposing authorities, generally, **4:86** to **4:91**

Prejudicial evidence, 2:28, 2:41

LETTERS—Cont'd

Public records exception to hearsay rule, **4:89**

Relevancy, 4:90

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

Suggested motion text, 4:78

Summary, 4:79

Supporting authorities, generally, **4:80 to 496**

LEVEL OF MISCONDUCT

Evidentiary sanctions, motion for, **6:17 to 6:19**

LIABILITY OR FAULT EVIDENCE

Generally, 10:179 to 10:189

Admissions and admitted matters, **10:183, 10:184, 10:189**

Expenses, offers or promises to pay, **10:186**

Irrelevant evidence, exclusion of, 10:182

Lay witnesses, inadmissible legal opinions by, **10:185**

Opposition authorities, 10:188, 10:189

Prejudicial evidence, exclusion of, 10:181

Relevance, 10:188

Summary, 10:180

Settlement evidence, 10:34 to 10:38, 10:40

Suggested motion text, 10:179

Supporting authorities, 10:181 to 10:187

LIE DETECTOR EVIDENCE

Tests and scientific evidence, **5:25**, **5:26**, **5:38**

LIMITATIONS AND RESTRICTIONS

Arbitration evidence, 9:33 Motion in limine law, 1:4

LIMITING INSTRUCTIONS

Prejudicial evidence, 2:16

LISTS

Maps, models, charts, exhibits and demonstrative evidence, **4:105**

LISTS—Cont'd

Writings and physical evidence, **4:34**

LOCAL RULES

Motion in limine law, 1:9

LOST OR DESTROYED EVIDENCE

Generally, 9:22 to 9:30

Accidental destruction of evidence, **9:26**

Adverse interest, **9:28**

Intentional destruction of evidence, **9:27**

Opposition citations, 9:30

Prejudicial evidence, exclusion of, 9:24 to 9:27

Sample motion to exclude reference to lost or destroyed evidence, 9:59

Spoliation of evidence, tort of, 9:27 Suggested motion text, 9:22

Summary, 9:23

Supporting authorities, 9:24 to 9:27 Suppression of evidence, 9:27

LOST PROFITS

Improper damage evidence, **10:199**, **10:226**

LOW SPEED IMPACT CASES

Accident reconstruction and biomechanic evidence, 10:142 to 10:147, 10:157

MALINGERING

Collateral source payments, 10:15

MAPS, MODELS, CHARTS, EXHIBITS AND DEMONSTRATIVE EVIDENCE

As to physical evidence, generally, see index heading writings and PHYSICAL EVIDENCE

Generally, **4:92 to 4:109**

Accuracy not in dispute, **4:102**

Demonstrations, 4:98, 4:108, 4:109, 4:138

Diagrams and illustrations, 4:99, 4:107

Discretion of court, 4:94, 4:104

MAPS, MODELS, CHARTS, EXHIBITS AND DEMONSTRATIVE EVIDENCE—Cont'd

Exhibits, 4:97

Health or injury of party where not at issue, **10:127**, **10:128**

Illustrations or illustrative purposes, 4:99, 4:101

Injury, demonstration of, 4:109

Lists, **4:105**

Opposing authorities, 4:106

Opposing authorities, generally,

4:101 to 4:109

Relevancy, 4:103

Sample motion to exclude, 4:147

Suggested motion text, 4:92

Summary, **4:93**

Supporting authorities, 4:96

Supporting authorities, 4.70
Supporting authorities, generally,
4:94 to 4:100

MARITAL COUNSELOR

Motion to exclude testimony of, 8:82

MARITAL INFIDELITY

Character evidence, 7:74

MATTERS DEEMED ADMITTED

Evidentiary sanctions, motion for, **6:11, 6:21**

MEDIATION EVIDENCE

Generally, 8:75

Motin to exclude testimony of, 8:135

Motion summary, 8:76

Opposing authorities, 8:89

Sample motion to exclude, 9:60

Suggested motion text, 8:75

Supporting authorities, 8:79

MEDICAL BILLS

Motion to exclude, 4:151

MEDICAL MALPRACTICE

Evidentiary sanctions, motion for, **6:7** Expert witness disclosure and depositions, motions regarding, **6:39**, **6:44**, **6:45**

Improper expert testimony, **8:24**, **8:34**, **8:35**

MEDICAL MALPRACTICE

-Cont'd

Non-qualified expert, testimony of, 8:45, 8:48

MEDICAL POLICY LIMITS

Collateral source payments, 10:7

MEDICAL RECORDS, REPORTS OR BILLS

Generally, **4:110 to 4:125**

Billing records, generally, **4:118**, **4:124**, **4:125**

Business records exception, 4:122

Discovery, 6:51

Foundation, lack or absence of, **4:15**, **4:113**, **4:118**

Hearsay, 4:114, 4:117, 4:122, 4:123

Improper foundation, 4:113

Opinions, 4:114, 4:115

Opposition citations, **4:120**, **4:121**

Patient medical history, 4:116, 4:117

Personal knowledge, lack of, **4:115**

Public records exception, 4:123

Reasonableness of medical charges, 4:125

Sample motion to exclude plaintiff's medical history, **4:140**

Suggested motion text, **4:110**

Summary, **4:111**

Supporting authorities, generally, 4:112 to 4:119

MENTAL COMPETENCE

Incompetent witness, testimony of, 8:66, 8:72

MENTAL EXAMINATIONS OF PERSONS

Evidentiary sanctions, motion for, **6:12**

MENTAL HEALTH

Motion to exclude evidence regarding witness8217s, **7:80**

MITIGATION OF DAMAGES

Seat belt, evidence of failure to wear, 10:91

MODELS

Generally, 4:92 to 4:109

MODELS—Cont'd

For detailed treatment see index heading MAPS, MODELS, CHARTS, EXHIBITS AND DEMONSTRATIVE EVI-DENCE

MOTION IN LIMINE LAW

Generally, 1:2 to 1:17

Authority for motion, 1:2

Brief, samples of, 1:16

Court record of ruling, 1:10

Description of motion, 1:1

Drafting suggestions, generally, 1:12 to 1:17

File motions supported by fact, 1:13

Limitations on use of motion, **1:4**

Local rules, caution regarding, 1:9

Objections, 1:5, 1:11

Order, samples of, 1:17

Preservation of objections, 1:5

Purpose of motion, 1:1

Record of ruling, 1:10

Samples, 1:15 to 1:17

Scope of motion, 1:7

Special procedural requirements, **1:8**, **1:9**

Succinctness, 1:14

Timing of motion, 1:6

Use of motion, 1:3 to 1:5

MOTION PICTURES

See index heading film or motions pictures

MOTOR CARRIERS

Accident reports, 4:72

MOTOR VEHICLES

See index heading automobiles and motor vehicles

MULTIPLE HEARSAY

Hearsay evidence, 8:117, 8:122

MULTIPLE VARIABLES

Improper expert testimony, 8:18

NEGLIGENCE

Alcohol consumption, **10:105**, **10:106**

Conduct, character evidence used to prove, **7:38**

NEGLIGENCE—Cont'd

Other accidents, claims or lawsuits, 10:51

Subsequent repairs, motion to exclude evidence of, 10:69, 10:228, 10:229

NEGLIGENCE PER SE

Statute violation, 10:79, 10:86

NEGOTIATIONS FOR PRIOR SETTLEMENT

Settlement evidence, 10:36

NEW SCIENTIFIC EVIDENCE

Tests and scientific evidence, **5:22 to 5:36**

NEWSPAPER ARTICLES

Generally, 4:61 to 4:68

For detailed treatment see index heading PUBLISHED ARTICLES

NOLO CONTENDERE PLEAS

Prior crime evidence, 7:64

NON-CALLED WITNESSES

Form of motion to exclude reference to, 8:126

Motion to exclude evidence of, 8:106 to 8:109

NON-QUALIFIED EXPERT, MOTION TO EXCLUDE TESTIMONY OF

Generally, 8:41 to 8:50

Examples of improper qualifications, **8:44**

Horizontal gaze nystagmus test, **8:49**

Medical malpractice actions, **8:45**, **8:48**

Opposing authorities, 8:47 to 8:50

Other grounds, 8:46

Sample motion to oppose exclusion, 8:134

Speed of vehicle, 8:50

Suggested motion text, 8:41

Summary, **8:42**

Supporting authorities, 8:43 to 8:46

NONASSERTIVE CONDUCT

Hearsay evidence, 8:121

NOTICE

Other accidents, claims or lawsuits, 10:60

Personal knowledge. See index heading Personal knowledge

NUMBER OF WITNESSES

Prejudicial evidence, 2:29, 2:37

OBJECTIONS

Motion in limine law, 1:5, 1:11

OBSTRUCTION

Subsequent repairs, 10:74

OFFER TO COMPROMISE

Settlement evidence, 10:38

OPENING STATEMENT, IMPROPER ARGUMENT IN

Generally, **9:11 to 9:16** Opposing authorities, **9:16**

Prejudicial evidence, exclusion of, 9:13, 9:14

Suggested motion text, 9:11

Summary, 9:12

Supporting authorities, 9:13 to 9:15

OPENING THE DOOR DOCTRINE

Expert witness disclosure and depositions, motions regarding, **6:46**

Impeachment, character evidence used for, **7:32**

Prior crime evidence, 7:66 Settlement evidence, 10:42

OPINIONS

Expert witnesses. See index heading EXPERT WITNESSES

Medical records, reports or bills, 4:114, 4:115

ORDER OF PROOF

Trial presentation, 9:20

OTHER ACCIDENTS, CLAIMS OR LAWSUITS

Generally, 10:46 to 10:64 Absence of accidents, 10:58 to 10:62 Dangerous condition, 10:52, 10:59 Defective product, 10:52, 10:59 Exceptions, 10:62 Expert opinion, 10:53

OTHER ACCIDENTS, CLAIMS OR LAWSUITS—Cont'd

Impeachment, 10:62

Irrelevant evidence, exclusion of, **10:49**

Negligence, prior accident evidence used to prove, **10:51**

Notice, 10:60

Opposing authorities, 10:58 to 10:64

Other claims or lawsuits, generally, 10:56, 10:64

Prejudicial evidence, exclusion of, 10:48

Prior accident evidence, exclusion of, 10:50 to 10:54

Relevant to issues, 10:61

Similarity, 10:52, 10:59

Speculative evidence, 10:54

Subsequent accidents, evidence of, 10:55, 10:63

Suggested motion text, 10:46

Summary, 10:47

Supporting authorities, 10:48 to 10:64

Unreliable evidence, 10:54

OTHER CRIMES OR WRONGS

Generally, 7:3, 7:47 to 7:70

Acquitted conduct, 7:54, 7:60

Arrests, 7:54

Close in time, 7:58, 7:67

Conduct, character evidence used to prove, **7:39**

Criminal charges, 7:54

Drug abuse, 7:14, 7:77

DUI

Generally, 10:108 to 10:120

For detailed treatment see index heading PRIOR DUI

Exceeding permissible scope of inquiry, **7:52**

Form, motion to exclude evidence of prior conviction, 7:72

Hearsay, 7:61

Impeachment purposes, 7:63

Improper character evidence, generally, **7:55 to 7:61**

OTHER CRIMES OR WRONGS

-Cont'd

Improper impeachment evidence, exclusion of, generally, **7:52 to 7:54**

Improper purpose, 7:56

Juvenile adjudications, 7:53, 7:76

More probative than prejudicial, 7:57

Nolo contendere pleas, 7:64

Opening the door, 7:66

Opposing authorities, generally, 7:63 to 7:70

Other jurisdictions, convictions from, **7:68**

Probative value not outweighed by danger of prejudice, **7:69**

Proper character evidence, generally, **7:65 to 7:70**

Proper purposes, 7:59, 7:65

Sufficiently similar, 7:58, 7:67

Suggested motion text, 7:47

Summary, 7:48

Supporting authorities, generally, 7:49 to 7:62

Traffic citations, evidence of prior, 10:225

Uncharged conduct, 7:70

OTHER JURISDICTIONS

Other crime evidence, 7:68

OUTSIDE PLEADINGS

Irrelevant evidence, 3:5

OWNERSHIP, PROOF OF

Liability insurance, 10:29

PARTIES

Courtroom, motion for exclusion of witness prior to testifying, **8:97**

PATIENT MEDICAL HISTORY

Medical records, reports or bills, 4:116, 4:117

"PATTERN OF INJURY" TESTS

Accident reconstruction and biomechanic evidence, **10:141**

PENALTY PHASE

Gruesome or inflammatory photographs, **4:51**

PERCEPTIONS

Impeachment, character evidence used for, **7:24**

Improper expert testimony, **8:33** Lay witness testimony, **8:58**

PERSONAL INJURY MOTIONS

Generally, 10:1 to 10:228

Accident reconstruction and biomechanic evidence

Generally, 10:129 to 10:157

For detailed treatment s index heading ACCIDENT RECONSTRUCTION AND BIOMECHANIC EVIDENCE

Alcohol consumption

Generally, 10:93 to 10:107

For detailed treatment s index heading ALCOHOL CONSUMPTION

Collateral source payments

Generally, 10:1 to 10:16

For detailed treatment s index heading collateral source PAYMENTS

Financial status of party

Generally, 10:158 to 10:168

For detailed treatment s index heading financial status of PARTY

Firearm residue, laboratory testing regarding, **10:216**

Health or injuries of party where not at issue

Generally, 10:121 to 10:128

For detailed treatment s index heading health or injuries of PARTY WHERE NOT AT ISSUE

Immigration status of party

Generally, **10:207 to 10:213**

For detailed treatment s index heading immigration status of Party

Improper damage evidence

Generally, 10:190 to 10:206

For detailed treatment s index heading improper damage evidence

Liability insurance

Generally, **10:17 to 10:29**

PERSONAL INJURY MOTIONS —Cont'd

Liability insurance—Cont'd

For detailed treatment s index
heading INSURANCE

Liability or fault evidence

Generally, 10:179 to 10:189

For detailed treatment s index heading Liability or fault evidence

Other accidents, claims or lawsuits

Generally, 10:46 to 10:64

For detailed treatment s index heading other accidents, CLAIMS OR LAWSUITS

Prior accident, motion to exclude evidence regarding, **10:227**

Prior DUI, evidence of

Generally, **10:108 to 10:120**

For detailed treatment s index heading PRIOR DUI

Sample motions to exclude

Collateral source payments, **10:214**

Driver was unlicensed, **10:231** DWI, evidence of defendant's prior, **10:224**

Financial status of party, evidence of, **10:223**, **10:229**, **10:230**

Firearm residue, laboratory testing regarding, 10:216

Liability insurance evidence, 10:222

Liability of defendant, **10:215**

Prior accident, motion to exclude evidence regarding, **10:227**

Settlement evidence, 10:221

Statute violation, 10:219

Subsequent remedial measures, 10:218

Subsequent repairs, **10:228**, **10:229**

Surveillance videos, 10:217

Taxes, failure to pay, 10:220

Traffic citations, evidence of prior, 10:225

Sample motions to exclude evidence Partys prior injuries, **10:228**

PERSONAL INJURY MOTIONS —Cont'd

Seat belts

Generally, 10:87 to 10:92

For detailed treatment s index heading seat belt, evidence of failure to wear

Settlement evidence

Generally, 10:30 to 10:45

For detailed treatment s index heading SETTLEMENT EVIDENCE

Statute violation

Generally, 10:75 to 10:86

For detailed treatment s index heading STATUTE VIOLATION

Subsequent remedial measures, 10:218

Subsequent repairs

Generally, 10:65 to 10:74

For detailed treatment s index heading Subsequent Repairs

Surveillance videos, 10:217

Tax evidence

Generally, 10:169 to 10:178

For detailed treatment s index heading TAX EVIDENCE

Traffic citations, evidence of prior, 10:225

PERSONAL KNOWLEDGE

Incompetent witness, testimony of, **8:67, 8:73**

Medical records, reports or bills, 4:115

PERTINENT TRAIT

Conduct, character evidence used to prove, **7:44 to 7:46**

PHOTOGRAPHS AND PHOTOGRAPHIC EVIDENCE

Accident reconstruction and biomechanic evidence, 10:146, 10:155

Foundation, evidence lacking, **4:8** Gruesome and inflammatory

photographs

Generally, 4:35 to 4:51

For detailed treatment see index heading GRUESOME AND INFLAM-

PHOTOGRAPHS AND PHOTOGRAPHIC EVIDENCE

—Cont'd

Gruesome and inflammatory photographs—Cont'd MATORY PHOTOGRAPHS
Prejudicial evidence, generally, 2:30, 2:40, 4:146

PHYSICAL AND MENTAL EXAMINATIONS

Evidentiary sanctions, motion for, **6:12**

PHYSICAL CONDITIONS

Irrelevant evidence, 3:23

PHYSICAL EVIDENCE

Generally, **4:1 to 4:150, 4:1 to 4:151**For detailed treatment see index heading writings and physical EVIDENCE

"PLOPPING INTO CHAIR" TESTIMONY

Accident reconstruction and biomechanic evidence, **10:144**

POINT OF IMPACT

Accident reconstruction and biomechanic evidence, 10:135, 10:154

POLYGRAPH EVIDENCE

Tests and scientific evidence, 5:25, 5:26, 5:38

POVERTY

Prejudicial evidence, excluding evidence of defendant's poverty, 2:47

PRECAUTIONARY MEASURES

Subsequent repairs, 10:73

PRECONDITIONING

Improper terminology, **9:55**Voir dire, motion to prevent improper conducting of, **9:4**, **9:5**

PREJUDICIAL EVIDENCE

Generally, **2:1 to 2:48**Alcohol consumption, **10:95**

PREJUDICIAL EVIDENCE

-Cont'd

Broad discretion of opposing authorities, 2:7

Collateral source payments, 10:3

Confusing or misleading evidence, exclusion of

Generally, 2:12 to 2:16

Limiting instruction, 2:16

Opposing authorities, 2:15, 2:16

Sample motion, 2:42, 2:48

Summary, 2:13

Supporting authorities, 2:14

Cumulative evidence, motion to exclude or limit

Generally, 2:24 to 2:35

Examples from other jurisdictions, supporting authorities, 2:33

Letters

Opposing authorities, **2:41** Supporting authorities, **2:28**

Number of witnesses, 2:29, 2:37

Opposing authorities, generally, **2:36 to 2:41**

Photographs, 2:30, 2:40

Rebuttal testimony, supporting authorities, 2:35

Repetitive testimony, 2:34, 2:39

Sample motion, 2:43, 2:46

Summary, 2:25

Supporting authorities, generally, 2:26 to 2:35

Testimony of witness, supporting authorities, 2:31

Videotape evidence, 2:32, 2:38

Definition of prejudice, 2:4

Discretion of opposing authorities, **2:7**

Emotional bias, motion to exclude evidence used to create

Generally, 2:17 to 2:23

"Golden rule" argument, 2:22

Inflaming juror's emotions, 2:20

Opposing authorities, 2:23

Prejudicial evidence, 2:5

Self-interest of jurors as taxpayers, **2:21**

Summary, 2:18

PREJUDICIAL EVIDENCE —Cont'd

Emotional bias, motion to exclude evidence used to create—Cont'd Supporting authorities, 2:19 to 2:22

Examples of cumulative evidence from other jurisdictions, supporting authorities, **2:33**

Exclusion of prejudicial evidence, motions for

Generally, 2:1 to 2:7

Broad discretion of opposing authorities, 2:7

Confusing evidence. See "Confusing or misleading evidence, exclusion of" under this heading

Cumulative evidence. See
"Cumulative evidence,
motion to exclude or limit"
under this heading

Definition of prejudice, 2:4

Emotional bias. See "Emotional bias, exclusion of evidence used to promote" under this heading

Misleading evidence. See "Confusing or Misleading evidence, exclusion of" under this heading

Opposing authorities, **2:6**, **2:7**, **2:11**

Summaries, 2:2, 2:9

Supporting authorities, 2:3 to 2:5, 2:10

Time, exclusion for wasting of, 2:8 to 2:11

Waste of court's time, exclusion on ground of, **2:8 to 2:11**

Expert testimony, improper, unfair prejudice, **8:4**

Film or videotapes

Generally, 4:52 to 4:60

For detailed treatment see index heading prejudicial film or VIDEOTAPES

Financial status of party, **10:160** "Golden rule" argument, **2:22**

PREJUDICIAL EVIDENCE —Cont'd

Health or injuries of party where not at issue, **10:123**

Immigration status of party, **10:209**Impeachment. See index heading
IMPEACHMENT

Inflaming juror's emotions, **2:20** Irrelevant evidence, **3:6**

Letters

Opposing authorities, 2:41
Supporting authorities, 2:28
Liability insurance, 10:19
Liability or fault evidence, 10:181
Limiting instructions, 2:16
Lost or destroyed evidence, reference

to, 9:24 to 9:27
Non-called witness, 8:107 to 8:109

Number of witnesses, 2:29, 2:37 Opening statement, improper argument in, 9:13, 9:14

Opposing authorities

Confusing or misleading evidence, exclusion of, **2:15, 2:16**

Cumulative evidence, motion to exclude or limit, 2:36 to 2:41

Cumulative witness testimony, motion to exclude, **2:46**

Emotional bias, evidence used to create, **2:23**

Exclusion of prejudicial evidence, motions for, **2:6**, **2:7**, **2:11**

Prejudicial evidence, motion to exclude, **2:45**

Other accidents, claims or lawsuits, 10:48

Photographs

Generally, 2:30, 2:40, 4:146

For detailed treatment see index heading photographs and photographic evidence

Poverty of defendant, 2:47 Prior DUI, 10:110

Rebuttal testimony, supporting authorities, 2:35

Repetitive testimony, 2:34, 2:39

Sample motions Generally, **2:44**, **2:45**

Confusing evidence, **2:42**, **2:48**

PREJUDICIAL EVIDENCE —Cont'd

Sample motions—Cont'd
Cumulative evidence, **2:43**, **2:46**Film or videotapes, **4:137**Poverty of defendant, **2:47**Self-interest of jurors as taxpayers, **2:21**

Settlement evidence. 10:32

Social media evidence. See index heading social media evidence

Statute violation, 10:77

Subsequent repairs, 10:67

Suggested motion text, 2:1

Summaries

Confusing or misleading evidence, exclusion of, **2:13**

Cumulative evidence, motion to exclude or limit, 2:25

Emotional bias, evidence used to create, **2:18**

Exclusion of prejudicial evidence, motions for, **2:2, 2:9**

Supporting authorities

Confusing or misleading evidence, exclusion of, **2:14**

Cumulative evidence, motion to exclude or limit, 2:26 to 2:35

Emotional bias, motion to exclude evidence used to create, **2:19** to **2:22**

Exclusion of prejudicial evidence, motions for, **2:3 to 2:5, 2:10**

Tax evidence, 10:171

Testimony of witness, supporting authorities, 2:31

Time, exclusion for wasting of, **2:8 to 2:11**

Trial presentation, 9:45

Videotapes

Generally, 4:52 to 4:60

For detailed treatment see index heading prejudicial film or Videotapes

Waste of court's time, exclusion on ground of, **2:8 to 2:11**

PREJUDICIAL FILM OR VIDEOTAPES

Generally, 2:32, 2:38, 4:52 to 4:60

PREJUDICIAL FILM OR VIDEOTAPES—Cont'd

Cautionary admonition, **4:59**Foundation, adequacy of, **4:60**Opposing authorities, generally, **4:57**to **4:60**

Relevance, 4:58

Sample motion to admit videotape evidence, **4:137**

Sample motion to exclude unauthenticated videotape evidence, **4:148**

Suggested motion text, 4:52

Summary, **4:53**

Supporting authorities, generally, **4:54 to 4:56**

PRELIMINARY QUESTIONS

Foundation, evidence lacking, **4:4 to 4:7**

PREMATURE REBUTTAL TO AFFIRMATIVE DEFENSES

Motion to bar, 9.66

Motion to bar, generally, 9:17 to 9:21

PRESENCE OR ABSENCE

Courtroom, motion for exclusion of witness prior to testifying, **8:98** Foundation, evidence lacking, **4:19** Other accidents, claims or lawsuits, **10:58 to 10:62**

PRESERVATION OF OBJECTIONS

Motion in limine law, 1:5

PRESUMPTION OF NEGLIGENCE

Statute violation, 10:86

PREVENTION OF CRIME OR INJURY

Judge, arbitrator, mediator, attorney or juror, motion to exclude testimony of, **8:87**

PRIOR ACCIDENT EVIDENCE

Motion to exclude evidence regarding prior accident, **10:227**

Other accidents, claims or lawsuits, 10:50 to 10:54

PRIOR CRIMES

Generally, 7:3, 7:47 to 7:70

PRIOR CRIMES—Cont'd

For detailed treatment see index heading other crimes or wrongs

PRIOR DUI

Generally, 10:108 to 10:120 Arrests, 10:112 Criminal charges, 10:113 Impeachment, 10:112 to 10:115, 10:119

Improper conduct, DUI evidence used to prove, **10:116**

Irrelevant evidence, exclusion of, 10:111

Opposing authorities, 10:118 to 10:120

Prejudicial evidence, exclusion of, 10:110

Relevant to issues, 10:120

Risk of undue prejudice, probative value outweighed by, **10:115**

Sample motion to exclude evidence of, 10:224

Stale convictions, 10:114
Suggested motion text, 10:108
Summary, 10:109

Supporting authorities, 10:110 to 10:117

PRIOR INCONSISTENT STATEMENTS

Arbitration evidence, 9:35

PRIOR SETTLEMENTS

Settlement evidence, 10:35

PRIVILEGE NOT TO TESTIFY

Comment on exercise of, 8:100 to 8:105

PROBATIVE VALUE

Prior crime evidence, 7:69

PROFILE EVIDENCE

Improper expert testimony, 8:22, 8:39

PROSECUTOR TESTIMONY

Judge, arbitrator, mediator, attorney or juror, motion to exclude testimony of, **8:88**

PROTECTED CLASSES

Statute violation, 10:81

PROXIMATE CAUSE

Statute violation, 10:80, 10:81, 10:85

PSYCHOLOGICAL TESTS AND SYNDROMES

Tests and scientific evidence, **5:27 to 5:30**, **5:39**, **5:40**

PUBLIC RECORDS

Accident reports, **4:77**Letters, **4:89**Medical records, reports, or bills, **4:123**

PUBLISHED ARTICLES

Generally, 4:61 to 4:68

Cumulative, exclusion of published articles, **4:64**

Opposition authorities, 4:68

Prejudicial, exclusion of published articles, **4:66**

Sample motion to exclude newspaper article, **4:141**

Speculative, exclusion of published articles, **4:65**

Suggested motion text, 4:61

Summary, **4:62**

Supporting authorities, 4:63 to 4:67

PUBLISHED PRECEDENT

Tests and scientific evidence, **5:14**, **5:15**

PUNITIVE DAMAGES

Bifurcated trial, evidence in, **9:40** Financial status of party, **10:164**, **10:167**

Improper damage evidence, 10:200, 10:206

RAPE TRAUMA SYNDROME

Tests and scientific evidence, **5:28**, **5:39**

REACTION TIME DETERMINATIONS

Accident reconstruction and biomechanic evidence, 10:136

REASONABLE RELIANCE RELEVANCY—Cont'd Improper expert testimony, 8:14 Matters not in controversy—Cont'd Supporting authorities, generally, "REASONABLY" CERTAIN 3:14 to 3:17 **DAMAGES** Uncontroverted matters, 3:15 Improper damage evidence, 10:205 Unpleaded issues, **3:17**, **3:19** Motion summary REBUTTAL TESTIMONY Generally, 3:2 Prejudicial evidence, 2:35 Matters not in controversy, 3:13 RECORD OF RULING Motion to exclude Motion in limine law, 1:10 Speculative evidence, 3:27 RELEVANCY Nonlimited inquiry, **3:4** Opposing authorities Generally, 3:1 to 3:27 Generally, 3:10, 3:11 Admissibility of evidence despite uncontested issue, 3:21 Matters not in controversy, 3:18 to 3:21 Admitted matters, 3:15 Outside pleadings, 3:5 Collateral issues, **3:16**, **3:18**, **3:25** Conduct, character evidence used to Personal injury cases. See index heading relevancy in Personal prove, 7:36, 7:42 Discretion of court, 3:8 INJURY CASES Estoppel, 3:19 Physical conditions not in issue, form Forms, 3:22 to 3:25 of motion to exclude evidence of, 3:23 Gruesome or inflammatory Prejudicial evidence, 3:6, 4:58 photographs, 4:38 Immigration status, form of motion to Relevancy to other issues, 3:20 exclude irrelevant evidence. Remoteness of evidence, 3:9 3:22 Sample motions Impeachment, character evidence Collateral evidence, 3:25 used for, 7:10 Immigration status, 3:22 Improper expert testimony, 8:21 Insurance, 3:24 Insurance case, form of motion to Physical conditions not in issue. exclude irrelevant evidence in, 3:23 3:24 Upleaded issues, 3:26 Irrelevant evidence, generally, 3:1 to Speculative evidence, 3:7 3:27 Suggested motion text, 3:1 Letters, **4:83**, **4:90** Supporting authorities Maps, models, charts, exhibits and Irrelevant evidence, 3:3 to 3:9 demonstrative evidence, 4:103 Matters not in controversy, 3:14 to Matters not in controversy 3:17 Generally, 3:12 to 3:21 Uncontroverted matters, 3:15 Admissibility of evidence despite Undisputed opposing authorities, uncontested issue, 3:21 3:11 Admitted matters, 3:15 Unpleaded issues, **3:17**, **3:19** Collateral issues, 3:16, 3:18 Upleaded issues, 3:26 Estoppel, 3:19 Opposing authorities, 3:18 to 3:21 RELEVANCY IN PERSONAL **INJURY CASES** Relevancy to other issues, 3:20 **Summary**, **3:13** Alcohol consumption, 10:96

RELEVANCY IN PERSONAL INJURY CASES—Cont'd

Collateral source payments, 10:4, 10:14, 10:15

Financial status of party, **10:161**, **10:166**

Health or injuries of party where not at issue, **10:124**, **10:127**

Immigration status of party, 10:210 to 10:213

Liability insurance, 10:20, 10:23, 10:26

Liability or fault evidence, **10:182**, **10:188**

Other accidents, claims or lawsuits, 10:49, 10:61

Prior DUI, **10:111**, **10:120** Settlement evidence. **10:33**

Statute violation, 10:78

Subsequent repairs, 10:68

Tax evidence, 10:172, 10:178

RELIANCE ON OBSERVATIONS OF OTHERS

Accident reconstruction and biomechanic evidence, **10:133**

RELIGIOUS BELIEF

Character evidence, 7:18, 7:30, 7:75

REMOTENESS

Irrelevant evidence, **3:9** Other crime evidence, **7:58, 7:67**

REPAIRS OR IMPROVEMENTS

Subsequent repairs

Generally, 10:65 to 10:74

For detailed treatment see index heading Subsequent Repairs

REPETITIVE TESTIMONY

Prejudicial evidence, 2:34, 2:39

SAMPLE BRIEF

Generally, 1:16

SAMPLE MOTIONS

Generally, 1:15

Character evidence. See index heading Character evidence

Discovery motions. See index heading discovery motions

SAMPLE MOTIONS—Cont'd

Irrelevant evidence. See index heading RELEVANCY

Personal injuries. See index heading PERSONAL INJURY MOTIONS

Physical evidence. See index heading WRITINGS AND PHYSICAL EVIDENCE

Prejudicial evidence. See index heading Prejudicial EVIDENCE

Tests and scientific evidence. See index heading Tests and Experi-MENTS

Trial presentation. See index heading TRIAL PRESENTATION

Witness evidence. See index heading WITNESS EVIDENCE

Writings. See index heading writings AND PHYSICAL EVIDENCE

SAMPLE ORDER

Generally, 1:17

SANCTIONS

Generally, 6:1 to 6:22

For detailed treatment see index heading evidentiary sanctions, MOTIONS FOR

SANITY

Lay witness testimony, 8:59

SCIENTIFIC EVIDENCE

Generally, **5:1 to 5:53**

For detailed treatment see index heading TESTS AND EXPERIMENTS

SEAT BELT, FAILURE TO WEAR

Generally, **10:87 to 10:92**

Mitigation of damages, 10:91

Opposing authorities, 10:92

Suggested motion text, 10:87

Summary, 10:88

Supporting authorities, 10:89 to 10:91

SECONDARY EVIDENCE

Writings and physical evidence, **4:29**, **4:33**

SELF-INTEREST OF JURORS AS TAXPAYERS

Prejudicial evidence, 2:21

SETTLEMENT EVIDENCE

Generally, **10:30 to 10:45**Admission of liability, **10:43**Credibility of witness, **10:45**Independent fact, **10:44**Irrelevant evidence, exclusion of, **10:33**

Liability, generally, **10:34 to 10:38**, **10:40**

Negotiations for prior settlement, 10:36

Offer to compromise, 10:38

Opening door, 10:42
Opposing authorities, 10:40 to 10:45

Otherwise discoverable, **10:41**Otherwise discoverable, **10:41**

Prejudicial evidence, exclusion of, 10:32

Prior settlements, 10:35
Sample motion to exclude, 10:221
Suggested motion text, 10:30
Summary, 10:31
Supporting authorities, 10:32 to
10:39

Third person, settlement with, 10:37

SEXUAL PREFERENCE OR BEHAVIOR

Impeachment, character evidence used for, **7:19**, **7:31**

"SHORTHAND STATEMENTS OF FACT"

Lay witness testimony, 8:60

SILENCE OF WITNESS

Civil consequences of, 8:104

SIMILARITY

Other accidents, claims or lawsuits, 10:52, 10:59

SKID MARK ANALYSIS

Accident reconstruction and biomechanic evidence, **10:152**

SOCIAL MEDIA EVIDENCE

Generally, **4:126 to 4:135**Authentication, **4:131, 4:135**Foundation, **4:131, 4:135**Hearsay, **4:130, 4:134**

SOCIAL MEDIA EVIDENCE

-Cont'd

Motion to exclude medical bills, **4:151**

Opposing authorities, 4:133 to 4:135
Prejudicial evidence, generally, 4:128
Sample motions, 4:144, 4:145
Suggested motion text, 4:126
Summary of motion, 4:127
Supporting authorities, 4:128 to
4:132

SPECIAL PROCEDURAL REQUIREMENTS

Motion in limine law, 1:8, 1:9

SPECULATION AND CONJECTURE

Accident reconstruction and biomechanic evidence, 10:132
Form of motion to exclude, 8:125
Improper damage evidence, 10:196, 10:203

Improper expert testimony, **8:17** Irrelevant evidence, **3:7**

Lost profits, 10:226

Other accidents, claims or lawsuits, 10:54

Published articles, **4:65**

Tests and scientific evidence, 5:8

SPEED

Accident reconstruction. See index heading accident reconstruction and biomechanic evidence

Improper expert testimony, **8:38**Non-qualified expert, testimony of, **8:50**

SPOLIATION OF EVIDENCE

Lost or destroyed evidence, reference to, **9:27**

"STAKING OUT" JURORS

Voir dire, motion to prevent improper conducting of, **9:7**

STALE CONVICTIONS

Prior DUI, **10:114**

STATISTICAL EVIDENCE

Tests and scientific evidence, 5:33, 5:34, 5:42 to 5:45

STATUTE VIOLATION

Generally, 10:75 to 10:86
Impeachment, 10:84
Irrelevant evidence exclusion of

Irrelevant evidence, exclusion of, 10:78

Negligence per se, **10:79**, **10:86**Opposing authorities, **10:83** to **10:86**Prejudicial evidence, exclusion of, **10:77**

Presumption of negligence, **10:86**Protected class, party not within, **10:81**

Proximate cause, 10:80, 10:81, 10:85 Sample motion, 10:219 Suggested motion text, 10:75 Summary, 10:76 Supporting authorities, 10:77 to 10:82

STATUTORY AUTHORITY

Bifurcated trial, evidence in, 9:38

STOPPING DISTANCES

Accident reconstruction and biomechanic evidence, 10:153

SUBSEQUENT ACCIDENTS

Other accidents, claims or lawsuits, 10:55, 10:63

SUBSEQUENT REMEDIAL MEASURES

Personal injury motions, 10:218

SUBSEQUENT REPAIRS

Generally, 10:65 to 10:74

Impeachment, 10:72

Irrelevant evidence, exclusion of, 10:68

Negligence, inadmissibility of subsequent repair evidence to show, **10:69**

Obstruction, 10:74

Opposing authorities, 10:71 to 10:74

Precautionary measures, feasibility of, 10:73

Prejudicial evidence, exclusion of, **10:67**

SUBSEQUENT REPAIRS—Cont'd

Sample motion, **10:228**, **10:229** Suggested motion text, **10:65** Summary, **10:66**

Supporting authorities, 10:67 to 10:70

Tampering, 10:74

SUBSTANTIAL HARDSHIP

Judge, arbitrator, mediator, attorney or juror, testimony of, **8:85**

SUBSTANTIALLY IDENTICAL CONDITIONS

Tests and scientific evidence, 5:6

SUCCINCTNESS

Motion in limine law, 1:14

SUPPLEMENT AND SUPPLEMENTAL

Evidentiary sanctions, motion for, **6:6, 6:14**

Expert witness disclosure and depositions, motions regarding, **6:38**, **6:50**

SURPRISE CLAIMS

Improper damage evidence, 10:194

SURVEILLANCE VIDEOS

Personal injury motions, 10:217

TAMPERING

Subsequent repairs, 10:74

TAPE RECORDINGS

Foundation, evidence lacking, **4:9**Videotapes. See index heading
VIDEOTAPES

TATTOO

Sample motion to exclude, 4:143

TAX EVIDENCE

Generally, 10:169 to 10:178

Appeal to jurors as taxpayers, **10:176** Collateral source payments, **10:10**

Damages, tax implications on,

10:173, 10:174

Failure to file return, 10:174

Failure to pay taxes, 10:220

INDEX TAX EVIDENCE—Cont'd TESTS AND EXPERIMENTS Irrelevant evidence, exclusion of, —Cont'd Hypnosis evidence, 5:31, 5:41, 5:49 10:172 Opposing authorities, 10:178 Identical conditions requirement, Prejudicial evidence, exclusion of, 5:13 10:171 Judicial notice, 5:45 Relevant to issue, 10:178 Junk science and related evidence. Suggested motion text, 10:169 motions to exclude, generally, Summary, 10:170 5:20 to 5:46 Supporting authorities, 10:171 to Lack of qualifications of expert, 10:177 motions to exclude on ground of, generally, **5:3 to 5:11** Wrongful death cases, 10:175 Lay witness testimony, **8:56** TERMINATING SANCTIONS Legitimate matters, opinion based on, Evidentiary sanctions, motion for, 5:19 6:10, 6:20 Level of acceptance in scientific com-TESTS AND EXPERIMENTS munity, **5:15** Generally, **5:1 to 5:53** Lie detector evidence, 5:25, 5:26, Accident reconstruction evidence, 5:38, 5:48 5:32, 5:46 New scientific evidence, exclusion Accident report diagram, 5:53 of, generally, 5:22 to 5:36 Battered child syndrome, 5:40 Nonacceptance of expert generally, Battered woman's syndrome, 5:35 motions to exclude on ground of, 5:4 Biomechanic evidence, 5:52 Careless testing, 5:17 Opposing authorities Child molest syndromes (CSAAS), 5:29 Confusing statistical evidence, exclusion of, **5:33** Conjectural matters, expert testifying on, **5:8** Disapproved statistical evidence,

5:34

test, 5:30

5:1 to 5:19

of, 5:18

Howerton decision, 5:5

5:11, 5:50, 5:51

Discretion of court, opposing authori-

ties, generally, **5:11 to 5:19**

Electronic penile plethysmograph

Experiments and related testimony,

Expert testimony, generally, **5:3** to

Foundation, necessity for, **4:10**, **5:10**

Frye requirements, outside the realm

General acceptance, **5:14**, **5:15**, **5:43**

Horizontal gaze nystagmus test, 5:36

Hedonic damage evidence, 5:23

motions to exclude, generally,

Junk science and related evidence, motions to exclude, generally, 5:37 to 5:46 Tests, experiments and related testimony, motions to exclude, generally, 5:12 to 19 Polygraph evidence, 5:25, 5:26, 5:38 Polygraph examination, 5:25, 5:26, 5:38, 5:48 Psychological tests and syndromes, 5:27 to 5:30, 5:39, 5:40 Published precedent, 5:14, 5:15 Rape trauma syndrome, 5:28, 5:39 Refusal to take lie detector test, 5:26 Sample motions to exclude Accident report diagram, 5:53 Biomechanic evidence, 5:52 Expert testimony, **5:50**, **5:51** Hypnosis evidence, **5:49** Polygraph examination, 5:48 Statistical analysis, 5:47 Speculative matters, expert testifying on. 5:8

TESTS AND EXPERIMENTS

-Cont'd

Statistical evidence, **5:33**, **5:34**, **5:42 to 5:45**

"Substantially identical conditions," test not made under, **5:6**

Suggested motion text

Junk science and related evidence, motions to exclude, **5:20**

Tests, experiments and related testimony, motions to exclude, **5:1**

Summary

Junk science and related evidence, motions to exclude, **5:21**

Tests, experiments and related testimony, motions to exclude, **5:2**

Supporting authorities

Junk science and related evidence, motions to exclude, generally, 5:22 to 5:36

Tests, experiments and related testimony, motions to exclude, generally, **5:3 to 11**

Tests, experiments and related testimony, motions to exclude, generally, **5:1 to 5:19**

Too many variables in expert testimony, **5:9**

"Truth serum" evidence, **5:24** Unreliability of expert, **5:7**

Variables in expert testimony, **5:9**

Weight vs admissibility, **5:16**, **5:17**, **5:44**

TEXT MESSAGE

Motion to exclude, **4:149**Opposition to motion to exclude, **4:150**

THIRD PERSONS

Settlement evidence, 10:37

TIME OR DATE

Discovery deadline, motion to exclude evidence produced beyond, **6:53**

Motion in limine law, **1:6**Other crime evidence, **7:58, 7:67**Prejudicial evidence, **2:8 to 2:11**

TIME OR DATE—Cont'd

Reaction time determinations, 10:136

TITLE AND OWNERSHIP

Liability insurance, 10:29

TREATISES AS HEARSAY

Improper expert testimony, 8:10, 8:30

TRIAL PRESENTATION

Generally, **9:1 to 9:66**

Affirmative defenses, motion to bar premature rebuttal to, generally, 9:17 to 9:21

Arbitration evidence and findings, 9:31 to 9:35

Bifurcated trial

Generally, 9:36 to 9:42

For detailed treatment see index heading BIFURCATED TRIAL,
MOTION TO EXCLUDE EVIDENCE IN

Bifurcated trial, motion to exclude evidence of damages in, 9:62

Damages in bifurcated trial, motion to exclude evidence of, **9:62**

Golden rule argument, motion to preclude, 9:43 to 9:47, 9:61

Improper terminology

Generally, 9:48 to 9:57

For detailed treatment see index heading IMPROPER TERMINOLOGY

Instruction, opposition to motion for missing evidence instruction, 9:63

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

Limitations on arbitration evidence, **9:33**

Lost or destroyed evidence

Generally, 9:22 to 9:30

For detailed treatment see index heading lost or destroyed EVIDENCE

Mediation evidence, sample motion to exclude, **9:60**

Missing evidence instruction, opposition to motion for, **9:63**

Motion to bar premature rebuttal to affirmative defense, **9:66**

TRIAL PRESENTATION—Cont'd

Motion to exclude improper argument during opening statement, 9:65

Opening statement

Generally, 9:11 to 9:16

For detailed treatment see index heading opening statement, improper argument in

Order of proof, 9:20

Prior inconsistent statements, arbitration evidence, **9:35**

Sample motions

Bifurcated trial, motion to exclude evidence of damages in, 9:62

Damages in bifurcated trial, motion to exclude evidence of, 9:62

Golden rule argument, motion to preclude, **9:61**

Lost or destroyed evidence, sample motion to exclude reference to, 9:59

Mediation evidence, sample motion to exclude reference to, 9:60

Missing evidence instruction, **9:63**Voir dire, motion to prevent, **9:64**Voir dire

Generally, 9:1 to 9:10

For detailed treatment see index heading improper voir dire, MOTION TO PREVENT

Voir dire, motion to prevent, 9:64

"TRUTH SERUM" EVIDENCE

Tests and scientific evidence, 5:24

ULTIMATE ISSUES

Improper expert testimony, 8:12, 8:32

Improper terminology, 9:52 to 9:54

UNAUTHENTICATED EVIDENCE

Writings and physical evidence, **4:25**, **4:26**, **4:148**

UNCHARGED CONDUCT

Other crime evidence, 7:70

UNCONTESTED ISSUE

Judge, arbitrator, mediator, attorney or juror, testimony of, **8:83**

UNCONTROVERTED MATTERS

Irrelevant evidence, 3:15

UNCOOPERATIVE WITNESS

Improper expert testimony, 8:19

UNDISCLOSED WITNESS

Expert witness disclosure and depositions, motions regarding, **6:36**

UNDISPUTED MATTERS

Improper damage evidence, 10:193

UNPERCEIVED OR UNKNOWN MATTERS

Improper expert testimony, 8:15

UNPLEADED MATTERS

Immigration status of party, 10:211
Improper damage evidence, 10:192
to 10:195, 10:201, 10:202
Irrelevant evidence, 3:17, 3:19

UNRELIABLE EVIDENCE

Other accidents, claims or lawsuits, 10:54

Tests and scientific evidence, 5:7

UNTIMELY DISCLOSURE

Expert witness disclosure and depositions, motions regarding, **6:37**

USE OF MOTION

Motion in limine law. 1:3 to 1:5

USURPING

Judge, usurping function of, **9:56** Jury functions, usurping of, **8:20**

VALUE OF BUSINESS

Witness evidence of computerized valuations of business, **8:128**

VALUE OF LEGAL SERVICES

Judge, arbitrator, mediator, attorney or juror, testimony of, **8:84**

VARIABLES IN EXPERT TESTIMONY

Tests and scientific evidence, 5:9

VERACITY OF WITNESS

Impeachment, character evidence used for, **7:26**

VICTIMS

Character evidence used to prove conduct, motion to exclude, 7:46

Credibility of victim, improper expert testimony, **8:40**

VIDEOTAPES

Foundation, evidence lacking, **4:11** Prejudicial film or videotapes

Generally, 4:52 to 4:60

For detailed treatment see index heading PREJUDICIAL FILM OR VIDEOTAPES

Surveillance videos, personal injury motions, **10:217**

VOIR DIRE, IMPROPER CONDUCTING OF

Generally, 9:1 to 9:10

Confusing, 9:8

Dollar amount of damages, preconditioning regarding, **9:5**

Educating jury on the law, 9:6

Misleading, 9:8

Motion to prevent, 9:64

Opposing authorities, 9:10

Other grounds, 9:9

Preconditioning, 9:4, 9:5

"Staking out" jurors, 9:7

Suggested motion text, 9:1

Summary, 9:2

Supporting authorities, 9:3 to 9:9

WAGE PAYMENTS

Collateral source payments, 10:9

WAIVER AND ESTOPPEL

Financial status of party, 10:168
Improper damage evidence, 10:202
Irrelevant evidence, 3:19
Privilege not to testify, waiver of, 8:105

WASTE OF COURT'S TIME

Prejudicial evidence, 2:8 to 2:11

WEIGHT VS ADMISSIBILITY

Foundation, evidence lacking, **4:20** Improper damage evidence, **10:204** Tests and scientific evidence, **5:16**, **5:17**, **5:44**

WITNESS EVIDENCE

Generally, 8:1 to 8:135

Arbitrator as witness

Generally, 8:75 to 8:91

For detailed treatment see index heading Arbitrator, MOTION TO EXCLUDE TESTIMONY OF

Attorney as witness

Generally, 8:75 to 8:91

For detailed treatment see index heading attorney, motion to exclude testimony of

Causation, 8:54, 8:130

Character of witness. See index heading Character EVIDENCE

Computerized valuations of business, evidence of, **8:128**

Courtroom, exclusion of witness prior to testifying

Generally, 8:92 to 8:99

For detailed treatment see index heading courtroom, motion for exclusion of witness prior to testifying

Exclude witness or testimony

Lack of personal knowledge of subject matter, motion to exclude testimony of witness for, 8:132

Prior to testifying, motion to exclude witness from courtroom, 8:131

Exercise of privilege not to testify, comment on, **8:100 to 8:105**

Experiments, 8:56

Experts. See index heading EXPERT WITNESSES

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

Generally, 8:110 to 5 to 8:121

For detailed treatment see index heading HEARSAY EVIDENCE

Helpful to clear understanding, 8:61

WITNESS EVIDENCE—Cont'd

Sample motions—Cont'd Incompetent witness Generally, 8:62 to 8:74 Exclude witness or testimony -Cont'd For detailed treatment see index heading incompetent witness exclude testimony of witness for, 8:132 Judge as witness Prior to testifying, motion to Generally, **8:75 to 8:91** exclude witness from For detailed treatment see index courtroom, 8:131 heading JUDGE, MOTION TO Mediator, exclusion of testimony, EXCLUDE TESTIMONY OF Juror as witness 8:135 Medical doctor, testimony and Generally, 8:75 to 8:91 opinions of, 8:129 For detailed treatment see index Non-called witness, reference to, heading JUROR, MOTION TO 8:126 EXCLUDE TESTIMONY OF Lay witness testimony, generally, Opposition to motion to exclude 8:51 to 8:61, 8:130, 8:133 expert witness evidence, 8:134 Legal opinions of lay witnesses, **8:55** Liability or fault evidence, 10:185 Opposition to motion to exclude lay witness evidence, 8:133 Marital counselor, testimony of, **8:82** Speculative expert opinion, 8:125 Mediator, exclusion of testimony, 8:135 Sanity, **8:59** Mediator as witness "Shorthand statements of fact," 8:60 Generally, 8:75 to 8:91 Silence, civil consequences of, 8:104 For detailed treatment see index Suggested motion text, 8:51 heading MEDIATION EVIDENCE Supporting authorities, 8:53 to 8:57 Medical doctor, testimony and Victim credibility, improper expert opinions of, 8:129 testimony, 8:40 Motion summary, 8:52 Waiver of privilege not to testify, Non-called witness, 8:106 to 8:109 8:105 Opposition to exclusion, 8:58 to 8:61, 8:133, 8:134 WORKERS' COMPENSATION Other grounds, 8:57 BENEFITS Perceptions of witness, 8:58 Collateral source payments, 10:8 Prejudicial evidence of non-called witness, 8:107 to 8:109 WRITINGS AND PHYSICAL **EVIDENCE** Privilege not to testify, comment on exercise of, **8:100 to 8:105** Generally, **4:1 to 4:151** Sample motions Accident reports Causation, 8:130 Generally, **4:69 to 4:77** Chiropractic treatment, motion to For detailed treatment see index preclude non-chiropractor heading ACCIDENT REPORTS from giving evidence on, Definitions, 4:23 8:127 Examples Computerized valuations of busi-Inadmissible written hearsay, **4:28** ness, evidence of, 8:128 Secondary evidence, 4:30 Exclude witness or testimony Film or videotapes Lack of personal knowledge of subject matter, motion to Generally, **4:52 to 4:60**

WITNESS EVIDENCE—Cont'd

WRITINGS AND PHYSICAL EVIDENCE—Cont'd

Film or videotapes—Cont'd

For detailed treatment see index
heading PREJUDICIAL FILM OR
VIDEOTAPES

Foundation, evidence lacking Generally, **4:1 to 4:20**

For detailed treatment see index heading foundation, evidence LACKING

Gruesome or inflammatory photographs

Generally, 4:35 to 4:51

For detailed treatment see index heading gruesome of Inflam-MATORY PHOTOGRAPHS

Hearsay, 4:27, 4:28, 4:32 Inadequate foundation, 4:24 Letters

Generally, **4:78 to 4:91**

For detailed treatment see index heading LETTERS

Lists, 4:34

Maps, models, charts, exhibits and demonstrative evidence

Generally, 4:92 to 4:109

For detailed treatment see index heading maps, models, charts, exhibits and demonstrative evidence

Medical records, reports or bills Generally, **4:110 to 4:125**

For detailed treatment see index heading MEDICAL RECORDS, REPORTS OR BILLS

Newspaper articles

Generally, 4:61 to 4:68

For detailed treatment see index heading Published Articles

Opposing authorities, generally, **4:31** to **4:34**

Photographs. See index heading PHOTOGRAPHS AND PHOTOGRAPHIC EVIDENCE

Prejudicial film or videotapes Generally, **4:52 to 4:60**

For detailed treatment see index heading prejudicial film or VIDEOTAPES

WRITINGS AND PHYSICAL EVIDENCE—Cont'd

Published articles

Generally, 4:61 to 4:68

For detailed treatment see index heading PUBLISHED ARTICLES

Sample motions

Demonstrations, 4:138

Gruesome photographs, 4:136

Letter, motion to exclude, 4:139

Map, 4:147

Medical history, motion to exclude, **4:140**

Newspaper article, motion to exclude, **4:141**

Photographs, 4:142, 4:146

Social media evidence, **4:144**, **4:145**

Tattoo, motion to exclude, 4:143

Videotape evidence, 4:137, 4:148

Secondary evidence, 4:29, 4:33

Social media evidence

Generally, 4:126 to 4:135

For detailed treatment see index heading SOCIAL MEDIA EVIDENCE

Suggested motion text, generally, **4:21**

Summary, **4:22**

Supporting authorities, generally, 4:23 to 4:30

Tattoo, motion to exclude, 4:143

Unauthenticated evidence, 4:25,

4:26, 4:148

Videotapes

Generally, 4:52 to 4:60

For detailed treatment see index heading PREJUDICIAL FILM OR VIDEOTAPES

WRITTEN HEARSAY

Hearsay evidence, 8:115 to 8:117

WRONGFUL DEATH CASES

Tax evidence, 10:175

X-RAYS

Gruesome or inflammatory photographs, **4:42**, **4:49**