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Journal

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OUR MISSION *We preserve and protect the constitutional right to a trial by jury guaranteed by the Seventh Amendment to the United States Constitution by ensuring that every person or business harmed or injured by the misconduct or negligence of others can hold wrongdoers accountable in the one room where everyone is equal - The Courtroom*

TIPS FROM THE TRENCHES

Opposing Defense Motions In Limine Concerning Reptile Theory

The latest *soup du jour* from our defense colleagues are motions in limine contending plaintiff's counsel will invoke improper Golden Rule arguments premised upon theories derived from David Ball's and Don Keenan's book *REPTILE: The 2009 Manual of the Plaintiff's Revolution*. These motions are now commonplace in Alabama civil litigation. While different law firms and lawyers advance different variations on the theme, the core contention is this:

Reptile arguments invite jurors to make decisions based on fears and instinct rather than on logic and reasoning. Typically, counsel will proceed with such an argument or invitation by encouraging the jurors to focus on danger or community safety. Such arguments are improper because they are misleading, they have no place in the trial of this action, and their use is barred by [Ala. R. Evid.] 402 and 403.¹

Some of the more recent motions have unfortunately become pretty strident, alleging, among other things,

“[s]uch questioning is a blatant effort to introduce manipulative and fear-based tactics that originate from the publication *REPTILE: The 2009 Manual of the Plaintiff's Revolution*.” ... “The ‘*Reptile*’ line of questioning does not seek to address the standard of care [for the defendant healthcare provider], but instead seeks to mislead the jury by implying that a guarantee of a good medical outcome can be achieved by following certain ‘safety rules.’” ... “The ‘*Reptile*’ doctrine seeks to intentionally inject ‘terror and anxiety’ into the courtroom and should not be allowed in this case.”²

So, how should the plaintiff's attorney respond to such motions? Concede your intention to mislead jurors, intentionally inject terror and anxiety into the courtroom, and violate Alabama law? Buy a copy of *Reptile*³ and hand it over to your trial judge with a request that he/she read its 300 pages and come to his/her own conclusion?

Keep reading.

There are no Reported Alabama Appellate Authorities Supporting Such Motions

For starters, when these motions allege that plaintiffs' counsel's conduct will violate Alabama law, they fail to cite any Alabama law that could actually be violated.^{4,5} This should make such motions immediately suspect as “canned” and copied from elsewhere. Moreover, as shown below, the overwhelming consensus of reported decisions from other jurisdictions reject these motions.

These Motions are Not Proper Uses of a Motion in Limine

According to McElroy's Alabama Evidence, “The Motion *in Limine* is a pre-trial motion designed to prevent the introduction of potentially prejudicial evidence until the court has ruled on its admissibility outside the presence of the jury.”⁶ McElroy's explains “[m]ost agree that [a motion *in limine*’s] scope – regarding the evidence at which it is directed – should be more like a rifle than a shotgun, pointing out the objectionable material and showing why the material is inadmissible and prejudicial.”⁷

The Reptile motions filed by defendants seek to prohibit “*tactics*,” not specific *evidence*. Defendants use a “shotgun” approach, requesting orders prohibiting plaintiffs' counsel from using reptile *tactics* when questioning witnesses or arguing to the jury during trial, rather than precluding specific items of evidence or particular categories of testimony. This is an impermissible and overbroad application of the process of objecting to “potentially prejudicial evidence” through a motion in limine. Simply put, any prohibition of trial strategy is beyond the purview of a motion in limine. Alabama law prohibit parties from discovering their opponents' trial strategies.⁸ If our defense friends are prohibited from discovering our strategies, how then can they credibly move to prevent us from using them?

The Conduct of Trials is Governed by the Alabama Rules of Civil Procedure and Alabama Rules of Evidence, and the Conduct of Alabama Attorneys is Governed by the Alabama Rules of Professional Conduct.

Trials are conducted in conformance with the Alabama Rules of Civil Procedure and the Alabama Rules of Evidence, not strategies suggested in continuing legal education seminars,

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books or journal articles. The conduct of counsel who participate in trials is governed by the Alabama Rules of Professional Conduct, not practice-pointers or tips or techniques learned at an American Association for Justice or Defense Research Institute trial college:

“The attorney who enters the courtroom is obligated to do so with a thorough knowledge of the rules of evidence and procedure which will guide his conduct while he is there.”⁹

Attorneys have the right to try their cases as they deem appropriate, so long as they stay within the governing rules.¹⁰ Alabama counsel are permitted “great latitude” in their choice of argument at trial.¹¹ When a trial court unduly restricts that latitude in how counsel phrase their arguments, it is an abuse of discretion.¹²

Defendants' Contentions are Premised Upon Speculation

A recurring theme of such motions is that by presenting arguments regarding personal or community safety, plaintiff's counsel intend to have jurors base their deliberations and verdict not on the evidence or law, but rather on the fear that they or other members of their family or community could be injured and to thereby view compensating the plaintiff as a means of diminishing that risk of harm to themselves and their community. *But*, unless and until plaintiff's counsel presents such improper evidence or arguments, any contention about what may or may not happen during the trial is pure *speculation*. Ample reported authority supports a ruling denying such motions as *speculative* or *hypothetical* or *premature*. One court reasoned:

“[t]his court denies defendant's motion as unnecessary. ... The parties will follow applicable law, and the court will act if it sees otherwise. ... This court will not rule on the extensive hypotheticals presented by defendant.”¹³

The time-tested method for safeguarding against improper evidence or arguments is by making a timely objection when it happens, not beforehand.

Apprehension of Non-specific and Potential Future Irrelevance or Prejudice Is Not Appropriate Ground for Granting a Motion in Limine

Reptile motions in limine also have failed because courts have expressly recognized that the rules of civil procedure and evidence adequately address how the parties may present their case, and vague and speculative arguments couched as motions in limine designed to prohibit future prejudice, irrelevance, or improper argument simply do not offer a proper or legitimate basis to grant such a motion. As one court ruled,

Defendant moves to exclude trial tactics described in *REPTILE: The 2009 Manual of the Plaintiff's Revolution* at trial.

Courtroom demeanor and/or presentation of evidence are governed by the Arkansas Rules of Civil Procedure, Rules of Evidence and Model Rules of Professional Conduct. The Arkansas Bar Association has admitted all of the attorneys involved in this matter, and this Court has no reason to believe that the aforementioned rules will be violated. It is well known that many attorneys study trial treatises and manuals in an attempt to hone their skills or understand their adversaries. While unfamiliar with the book at issue, this Court feels that to exclude a group of strategies contained in any one book would be to impose an unnecessary restraint on the practice of law, and declines to do so. Should any issues of conduct arise during the trial, they will be addressed at that time. Defendant's *Motion in Limine to Exclude the "Reptile"* should be and hereby is denied.¹⁴

The Alabama Legislature Has Specifically Stated a Primary Goal of the Practice of Medicine Is to Prioritize Patient Safety

Defendants in medical negligence actions regularly argue that use of any Reptile-like trial strategy, argument, or line of questioning implies to a jury that “the only acceptable form of medical treatment is that which presents the least (or *no*) risk of danger to patient safety” and that “a generalized notion of safety is not a pertinent factor – or any factor in determining whether a physician defendant met the standard of care.”¹⁵ Such arguments from defendants and their attorneys are directly contradicted by the Alabama Legislature's expressed position regarding the practice of medicine in Alabama. The Alabama Legislature has specifically stated that “[a] primary goal of the provision of health care is to prioritize patient safety and wellness.”¹⁶ “Patient safety” is unquestionably and inextricably tied to the practice of medicine in Alabama, as expressed by the Alabama Legislature. Therefore, trial strategies and arguments based on patient safety are consistent with the concept of duties and standards of care under Alabama law and do not in any way alter or abrogate those standards and do not ask jurors to do so.¹⁷

Conclusion

The Plaintiffs' trial bar should oppose any pre-trial motion *in limine* premised upon challenges to Reptile theory. Ample authority confirms these motions are ill-conceived.

(Endnotes)

(Endnotes)

- 1 See *Hood v. S.E. Funeral Homes of Alabama, LLC*, [Mobile County Civil Action No. 02-CV-2017-900635] 2019 WL 2156476 (Feb. 4, 2019, Defendant's Omnibus Motion in Limine regarding evidentiary issues, pp. 2-3, ¶ 4).
- 2 *Winkler v. University Surgical Associates, PC* [Tuscaloosa County Civil Action No. 63-CV-2014-900885] 2019 WL 803688 (Defendants' Aug. 20, 2019 Motion in Limine No. 29).
- 3 Presently available in paperback on www.amazon.com for \$999.99 (last reviewed March 22, 2022).
- 4 See, e.g., *Hood v. S.E. Funeral Homes of Alabama, LLC*, *supra*, citing *Bullock v. Mis-*

souri Baptist Hosp., 2018 WL 746302, *3 (E.D. Mo. Feb. 7, 2018); *Brooks v. Caterpillar Global Mining America, LLC*, 2017 WL 3401476, **8-9 (W.D. Ky. Aug. 8, 2017).

5 See, e.g., *Winkler v. University Surgical Associates, PC*, *supra*, citing no Alabama authorities.

6 C. Gamble, R. Goodwin, T. McCarthy, *McElroy's Alabama Evidence*, § 426.01(21)(a) (7th ed. 2020). See, also, *Ex parte Houston Cty.*, 435 So. 2d 1268, 1271 (Ala. 1983).

7 *McElroy's Alabama Evidence*, § 426.01(21)(b).

8 *Ex parte Flowers*, 991 So. 2d 218 (Ala. 2008).

9 A. Howell, *Trial Handbook for Ala. Law*, § 4:1 (3d ed. 2020 Cum. Supp.).

10 *Hinton & Sons v. Strahan*, 266 Ala. 307, 313, 96 So. 2d 426, 431 (Ala. 1957). Reported cases from outside Alabama also recognize this principle in the context of challenges to Reptile. See, *Colman v. Home Depot U.S.A., Inc.*, 2016 WL 4543119, *1 (S.D. Fla. Feb. 9, 2016) ("Beyond arguments that clearly fall under the 'straight golden rule' Defendant's Motion appears to be overbroad. In determining whether Defendant can be held liable for negligence, the jury will be asked to determine whether Defendant failed to use reasonable care, which is the 'degree of care that a reasonably careful person would use under like circumstances.' ... Arguments about community safety standards and the extent that Defendant failed to comply with such standards may be relevant to this inquiry. Accordingly, Defendant's Motion ... is **DENIED**").

11 *Ott v. Fox*, 362 So. 2d 836, 840 (Ala. 1978). See also, *Dorman v. Anne Arundel Med. Ctr.*, No. CV MJG-15-1102, 2018 WL 2431859, at *6 (D. Md. May 30, 2018), *aff'd sub nom. Dorman v. Annapolis OB-GYN Assocs., PA.*, 781 F. App'x 136 (4th Cir. 2019) ("The Court agrees that this motion is premature and presents vague challenges to Plaintiffs' style of argument rather than to any evidence that Plaintiffs intend to introduce. At this time, the Court does not find a need to classify any potential future argument as 'reptilian' or inappropriate, especially because counsel's arguments to the jury are permitted a significant degree of latitude.').

12 *RC Bottling Co. v. Sorrells*, 290 Ala. 187, 190, 275 So. 2d 131, 134 (1973).

13 See, *Lemperle v. Avis Rent-A-Car Sys.*, No. 218CV202JCMDJA, 2020 WL 4431502, at *2 (D. Nev. July 31, 2020). See also, *Goodell v. Soledad Unified School District*, 2021 WL 2635908, *5 (N.D. Cal. June 26, 2021) ("The District moves for an order precluding plaintiffs from presenting, referencing or otherwise communicating, arguing, or suggesting to the jury that jurors should reach a verdict by placing themselves in the position of either the defendant or the plaintiffs. Plaintiffs argue that the District's motion is both overbroad and premature, and fails to identify any specific evidence or argument that may be at issue. Additionally, plaintiffs contend that arguments directing the jury to consider safety as the reasonable standard of conduct is well within the scope of permissible advocacy. As discussed at the hearing on this motion, the Court expects counsel for all parties to refrain from engaging in improper closing argument, and it will not categorically prohibit the particular trial strategy or form of argument that the District refers to as 'reptile theory'; *McNally v. Riis*, 2020 WL 209141, *7 (S.D. Cal. Jan. 14, 2020) ("Defendant's request to preclude arguments concerning the 'reptile theory' and the sweeping range of categories related to public safety ... are far too broad and nebulous to rule on at this time. The Court can, and will, consider the permissibility of specific statements at trial and exclude them if they are impermissible. But as most Federal courts have done, the Court declines to make such a 'broad prospective order untethered to any specific statements the other side will make.'") (quoting *Aidini v. Costco Wholesale Corp.*, 2017 WL 10775082, *1 (D. Nev. Apr. 12, 2017)); *In re Ford Motor Co. DPS6 Powershift Transmission Products Liability Litigation*, 2019 WL 7185548, *4 (C.D. Cal. Dec. 9, 2019) ("Ford also seeks to bar Plaintiffs from employing the 'Reptile Theory' to invite the jury to impermissibly judge the case based on their own desire for safety. It is not clear whether Plaintiffs will try to employ that approach. The Court declines to rule out of context so this part of the Motion is **DENIED** without prejudice."); *Locke v. Swift Transportation Co. of Arizona, LLC*, 2019 WL 6037666, *1-2 (W.D. Ky. Nov. 14, 2019) ("Defendants ask this Court to prevent Locke from using the 'Reptile Theory' during trial. This theory encourages attorneys to play to the jurors' survival instincts and protect themselves and the community from the actions of the tortfeasor. Defendants argue that if Locke uses this strategy and is successful, the jurors will determine the case not based on the facts but based on a plea to their emotions. ... Defendants' request to exclude questions, evidence, and arguments on 'safety rules,' 'reckless behavior,' 'inherently dangerous or ultrahazardous activities,' and preventing 'danger' is **DENIED**"); *Dorman v. Anne Arundel Medical Center*, 2018 WL 2431859, *6-7 (D. Md. May 30, 2018) ("The court agrees that this motion is premature and presents vague challenges to plaintiffs' style of argument rather than to any evidence that plaintiffs intend to introduce. At this time, the Court does not find a need to classify any potential future argument as 'reptilian' or inappropriate, especially because counsel's arguments to the jury are permitted a significant degree of latitude."); *Norman v. Textron Inc.*, 2018 WL 3199496, *7 (W.D. Mo. May 17, 2018) ("The Court will reserve ruling on Defendants' concerns about Plaintiffs' use of 'Reptile Theory.' The Court will address any objections to 'Reptile Theory' as the evidence or arguments are introduced at trial."); *Shirrell v. Billing*, 2018 WL 7252824, *2 (S.D. Ill. May 11, 2018) ("Defendants' motion in limine to preclude reptile theory trial tactics by Plaintiffs and their counsel to which Plaintiffs responded in opposition ...: Motion is **DENIED** as unintelligible, unnecessary, speculative, overbroad, and downright bizarre. Rule 401 will govern the admissibility of evidence."); *Hockaday v. Aries Logistics, Inc.*, 2017 WL 10350605, *2 (D. Wyo. Nov. 16, 2017) ("Defendants' motion in limine regarding reptile tactics and veiled Golden Rule

arguments [is] **DENIED**. During trial, the Court will instruct the jury if necessary, should inappropriate arguments be made. Additionally, if the need arises, counsel may approach the Court out of the presence of the jury to address concerns or other objections that may arise in this regard."); *Botey v. Green*, No. 3:12-CV-1520, 2017 WL 2485231, at *2 (M.D. Pa. June 8, 2017) ("Defendants' motion is premature. Without proper context and having heard the specific question and/or testimony at issue, the Court is unable to determine whether that question and/or testimony is objectionable."); *Randolph v. QuiltTrip Corp.*, 2017 WL 2214932, *4-5 (D. Kan. May 18, 2017) ("Defendant's motion is denied, but without prejudice to Defendant making objections at trial based on specific questions and testimony offered."); *Aidini v. Costco Wholesale Corp.*, 2017 WL 10775082, *1 (D. Nev. April 12, 2017) ("Once shed of its skin, Costco's [Reptile] motion is little more than a request that I monitor Aidini's counsel to ensure that they stay within the strictures of the federal evidentiary and procedural rules. Of course, counsel must have an evidentiary or legal basis for any statements to the jury. And if some specific statements square with the evidence but also pose a risk of unfairly undermining the jury's reason, I will balance those scales when the time comes. But I will not issue a blanket pre-trial ruling based on nothing more than Costco's suspicion that there are snakes lurking in the grass."); *Cameron v. Werner Enterprises, Inc.*, 2016 WL 3030181, *5 (S.D. Miss. May 25, 2016) ("Defendants ask the Court to exclude any argument or reference that their actions could be a threat to the jurors' safety. Plaintiffs have not advanced such an argument and have given no indication that they would advance such an argument. The Court will therefore decline to issue a ruling on a hypothetical issue."); *Hutson v. Rooney*, No. 142045603, 2015 WL 3455867, at *8 (Wash. Super. April 14, 2015) ("The Court expects that arguments, while they can certainly be made persuasively and passionately, will be grounded in the law and facts. Other than this admonition, the Court will not attempt to make in limine rulings regarding particular language Defendants fear Plaintiffs might use. The Court will consider any legal objection made during trial").

14 *Upton v. N.W. Ark. Hosps., LLC*, No. CV-2010-270-4, 2012 WL 12055084, at *1 (Ark. Cir. March 8, 2012); see also, *Jenkins v. Corizon Health Inc.*, 2022 WL 390554, *8 (S.D. Ga. Feb. 8, 2022) ("Defendants ask the Court to prevent Plaintiffs from making so called 'reptile lawyer arguments' that are meant to elicit fear in the jurors by reframing issues of legal liability as issues of community safety. ... The Court has considered Defendants' arguments and finds that a blanket ruling on this issue would be inappropriate at this time. Defendants' motion is **DENIED WITHOUT PREJUDICE** on this issue."); *Kieffaber v. Ethicon, Inc., et al.*, Case No. 6:20-cv-01177-KHV-JPO (D. Kan. Mar. 25, 2021) (Doc. 232) ("Defendants ask the Court to prohibit plaintiff from trying to persuade the jury that it has the opportunity to improve the 'safety' of the community by rendering a verdict that will eliminate Ethicon's 'dangerous' or 'unsafe' conduct, and referring to generalized 'safety principles' that have no reliable connection to the legal principles which govern her claims. The Court has not read Reptile: The 2009 Manual of the Plaintiffs Revolution, by attorney Don Keenan and jury consultant David Ball, and it has no interest in patrolling the boundaries between reptilian and non-reptilian trial strategy. The Court has a lengthy code of evidentiary rules, civil procedure rules and ethical codes of conduct for counsel. If plaintiff's counsel fail to comply with those rules, defendants will make contemporaneous objections and the Court will sustain them—not because counsel's conduct is reptilian but because it violates the foregoing rules and codes of conduct. The authors of the so-called Reptile Manual have probably made a lot of money selling their book to the plaintiffs' bar but their work has resulted in tremendous waste of judicial time and resources on pointless motions like this."); *Walden v. Maryland Cas. Co.*, 2018 WL 6445549, *3 (D. Mont. Dec. 10, 2018) ("The Court denies the motion as to the so-called reptile theory. The Court will not categorically prohibit a form of trial strategy, particularly given the absence of any reason to believe that reptile theory is likely to rear its head here (or that the Court would be able to identify it if it did)."); *Gillis v. Murphy-Brown, LLC*, 2018 WL 5926605, *3 (E.D.N.C. Nov. 13, 2018) ("The court is not particularly impressed with this filing. It does not set the sort of tone appropriate for attorneys practicing before this court and any arguments contained within the motion could have been made in a more professional and specific manner. For example, defendant's argument regarding plaintiffs' expansive reading of the term 'community' was almost lost behind the unnecessarily inflammatory language surrounding the Reptile Theory. The motion in limine to exclude the use of 'Reptile' tactics is **DENIED**"); *Novotny v. Weatherford Int'l, LLC*, 2018 WL 4051596, *4-5 (D.N.D. Mar. 14, 2018) ("This motion seeks to exclude 'Reptile' trial strategies, but fails to clarify exactly what is encompassed by the same. ... There is no law supporting a ban on entire trial strategies. To the contrary, counsel are allowed broad latitude in making their closing arguments. ... As one court remarked in denying a 'Reptile' motion: 'This Court feels that to exclude a group of strategies contained in any one book would be to impose an unnecessary restraint on the practice of law, and declines to do so.' ... Federal courts are in accord. ... The Motion will be denied."); *Botey v. Green*, 2017 WL 2485231, *2 (M.D. Penn. June 8, 2017) ("Defendants' request that the Court preclude Plaintiffs' counsel from attempting to present 'Reptile Theory' evidence or arguments at trial, which is 'based on the popular 2009 manual created for Plaintiffs' attorneys across the nation.' ... Defendants' motion is premature. Without proper context and having heard the specific question and/or testimony at issue, the Court is unable to determine whether that question and/or testimony is objectionable. ... The motion will therefore be denied without prejudice to the ability of Defendants to raise this issue by timely

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and specific objection on each occasion where they believe that testimony is being offered for an improper purpose.”); *Jackson v. Asplundh Constr. Corp.*, 2016 WL 5941937, *1 (E.D. Mo. Oct. 13, 2016) (“In their motion, Defendants assert Plaintiff should not be permitted to present evidence or argument regarding the ‘Reptile Theory.’ According to Defendants, Plaintiff intends to use the ‘Reptile Theory’ to improperly raise questions of community protection. Defendants claim Plaintiff is attempting to spread the aroma of fear in the community which is improper, focuses on irrelevant evidence, and is intended to set up the jury as protector of the community. Defendants argue Plaintiff’s counsel intends to use the theory to improperly misdirect the jury on the proper standards of care. Finally, Defendants assert the ‘Reptile Theory’ is an impermissible ‘Golden Rule’ argument asking the jury to place itself in Plaintiff’s position. The Court will not issue a ruling on this motion at this time. The Court will address any objections as the evidence is introduced.”); *Hensley v. Methodist Healthcare Hospitals*, 2015 WL 5076982, *4-5 (W.D. Tenn. Aug. 27, 2015) (“Defendants seek an order prohibiting Plaintiffs from offering testimony concerning violations of guidelines or safety rules or any or any other ‘scare tactics’ in order to establish the standard of care. Defendants reference the ‘Reptile Theory,’ which appears to be in use by the plaintiff’s bar in some states as a way of engaging the jury that the defendant’s conduct represents a danger to the survival of the jurors and their families. The Reptile Theory encourages plaintiffs to appeal to the passion, prejudice, and sentiment of the jury. ... Defendants have again not identified the specific evidence that is sought to be excluded. The Court will be cognizant of appeals to the jurors’ prejudice, and any attempt by either party to appeal to the prejudice or sympathy of the jury will not be condoned. The motion is DENIED.”); *Bunch v. Pacific Cycle, Inc.*, 2015 WL 11622952, *1-3 (N.D. Ga. Apr. 27, 2015) (“To the extent that Defendant seeks to preclude Plaintiffs from engaging in the ‘Reptile’ tactics, this request is unnecessary and overly broad. Certainly, if Plaintiffs veer into those tactics at trial, the Court can and will address the issue at the appropriate time. ... The Court, however, declines to enter an Order preventing Plaintiff’s counsel from stating that the product is unsafe. Certainly, it will be hard for Plaintiff’s to prove the product is defective if they cannot say it was unsafe or dangerous.”).

15 *Jacobs v. Henderson & Walton Women’s Center, PC, et al.*, Jefferson County Civil Action No. 01-CV-2012-902048, (Defendants’ Feb. 13, 2019 Motion in Limine No. 2, p. 3).

16 Ala. Code § 34-24-53.1(a)(2) (1975).

17 *Castleberry v. DeBrot*, 424 P.3d 495, 509 (Kan. 2018) (“... we hold the panel correctly concluded any error was harmless. ... [Defendant] argues the comment about

patient safety ‘represented the lynchpin of Plaintiffs’ entire litigation theory.’ He argues this theme was the ‘final step in a ‘Reptile Litigations’ strategy,’ which he argues is designed to encourage juries to decide cases ‘based upon fear, generated by plaintiff’s [sic] counsel, that a verdict in favor of the Defendant will harm the safety of the community, and thus the juror.’ ... “we conclude there is no reasonable probability this error affected the trial’s outcome in light of the entire record.”); *Bryson v. Genesys Reg’l Medical Center*, 2018 WL 1611438, *18 (Mich. Ct. App. April 3, 2018) (“... We conclude that any error regarding Plaintiff’s use of ‘reptile theory’ was harmless. The references by Plaintiff’s counsel to ‘safety’ and whether it was appropriate for a physician to ‘needlessly endanger’ a patient in the context of [witnesses’ testimony] were limited and fleeting, particularly considering the length of the trial. Regarding the statements of Plaintiff’s counsel during closing argument, the trial court instructed the jury that the attorney’s questions and statements were not evidence...”); *Bostick v. State Farm Mut. Auto. Ins. Co.*, 2017 WL 3123636, *2 (M.D. Fla. July 21, 2017) (“State Farm moves to preclude [Plaintiff] from utilizing ‘Reptile Strategy’ or making ‘Golden Rule’ arguments. ... As explained by State Farm, “[t]he premise of the Reptile Strategy is rooted in psychology – that jurors, as humans, have brains consisting of various parts, one of which the strategy proponents referred to as the ‘reptilian brain.’ The belief is that the reptilian brain instinctively overpowers the cognitive and emotional parts of the brain when life and safety become threatened.” ... State Farm alleges that [Plaintiff] will argue to jurors ‘that they have the power to improve the safety of themselves, their family members, and their community by holding the Defendant accountable and responsible, and by rendering a verdict that will reduce or eliminate a dangerous conduct in the community.’ Instead of focusing on legal duties and generally accepted standards of care, the Reptile Strategy seeks to influence jurors by passion and emotion.’ ... [Plaintiff] ‘agrees’ that reptiles do not belong in court’ ... and contends that State Farm, in advancing the Reptile Strategy argument, is unfairly attempting to undermine the efficacy of her advocacy. ... The Court finds that [Plaintiff] should be permitted to ‘discuss applicable legal remedies and their purpose in a way that lay jurors will understand.’ ... The Court therefore denies the Motion in Limine to the extent it seeks to limit [Plaintiff’s] counsel from making community and safety arguments that may trigger an emotional response from jurors.”); *Bonander v. Breg, Inc.*, Civ. No. 09-2795, 2012 WL 4128386, at *5 (D. Minn. Sept. 18, 2012) (“[T]he Court finds that excluding such broad categories of information as part of a pre-trial order is not appropriate in this case.”).



David Wirtes, Jr.

Dave Wirtes is a member of Cunningham Bounds, LLC in Mobile, Alabama. He is licensed to practice law in all state and federal courts serving Alabama and Mississippi. Dave is a Sustaining Member of the Alabama Association for Justice and has served in numerous capacities, including as Member, Executive Committee (1997-present), Co-editor, the Alabama Association for Justice Journal (1996-present); and Member, Chair or Co-chair of ALAJ’s Amicus Curiae Committee from 1990 to present. Dave is a Trustee and the Secretary of the Pound Civil Justice Foundation. Dave is also a long-time member of the Alabama Supreme Court’s Standing Committee on the Rules of Appellate Procedure, a Senior Fellow of Litigation Counsel of America and he is the only Alabama/Mississippi lawyer certified as an appellate specialist by the American Institute of Appellate Practice.



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Steadman, Sr., joined Cunningham Bounds in 2016. His practice focuses on appellate practice and motion practice in the firm’s personal injury and wrongful death litigation, class actions, general negligence, product liability, medical negligence, admiralty and maritime law, and consumer fraud actions. Joe received his undergraduate degree summa cum laude from the University of South Alabama in 1985 and his J.D., summa cum laude from the University of Alabama School of Law in 1988, where he served on the Editorial Board of the Alabama Law Review. Joe is a member of the American Bar



Justin C. Owen

Justin C. Owen is a founding partner of Bodewell, LLP, a multi-specialty litigation and transactional firm based in Birmingham, Alabama with a primary focus on representing plaintiffs in personal injury and wrongful death cases. Mr. Owen’s practice includes all aspects of litigation, including both trial and appellate work. He leads the firm’s appellate and motion practices in addition to working up and trying cases before judges and juries. Mr. Owen is licensed in all state and federal courts in Alabama and has worked cases in state and federal courts in venues throughout Alabama and also in other states. He serves as a Co-Chair of the Alabama Association for Justice appellate committee and is a member in good standing of the Birmingham Bar Association, Alabama State Bar, and American Bar Association. Mr. Owen has tried numerous cases to verdict and has won many appellate matters during his 13-year career as a litigator and appellate advocate.