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| DISTRICT COURT, ADAMS COUNTY, COLORADO1100 Judicial Center Drive Brighton, CO 80601**Plaintiff :**American Family Mutual Insurance Company, As Subrogee of Kathryn Windt, | DATE FILED: January 23, 2017 7:32 P FILING ID: 88D7822E84C29CASE NUMBER: 2015CV31808* COURT USE ONLY 
 |
| v. |  |
| **Defendants/Third Party Plaintiffs:**Jvonne Becerril and Aurelio Meza-Cuevas, | Case Number: 2015CV31808 |
| v. | Div.: W Ctrm.: |
| **Third Party Defendant/Counterclaimant:** |  |
| Kathryn Windt |  |
| **Attorneys for Defendants Becerril and Meza-Cuevas:**Jeffrey Clay Ruebel Katherine L. Brim Ruebel & Quillen, LLC8501 Turnpike Drive, Ste 106Westminster, Colorado 80031Phone Number: (888) 989-1777FAX Number: (303) 362-5724E-mail: Jeffrey@rq-law.com |  |
| **MOTION IN LIMINE TO PRECLUDE WINDT FROM PRESENTING “PROTECTING COMMUNITY SAFETY” OR “GOLDEN RULE” ARGUMENTS** |

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DEFENDANTS JVONNE BECERRIL and AURELIO MEZA-CUEVAS (“Mrs.

Becceril” and “Mr. Meza-Cuevas”), by and through counsel, RUEBEL & QUILLEN, LLC, hereby submit their Motion in Limine seeking to exclude any statements, arguments, or inferences at trial regarding “personal safety” and “community safety.”

# CERTIFICATE OF RULE 121 CONFERRAL:

Counsel for Defendants has conferred with Conrsel for Mrs. Windt as to this Motion. Mrs. Windt opposes the Motion.

# BACKGROUND

This matter arises out of an October 3, 2014 motor vehicle accident (“the accident”). Liability for the accident is disputed; both Mrs. Becerril and Mrs. Windt have testified that they entered the intersection immediately prior to the accident on a green light, and both allege that the other ran a red light thereby causing the accident. The investigating police officer was unable to determine fault. Mrs. Windt claims that she incurred physical injuries and lost wages due to the accident. She has filed a Motion to Amend her Counterclaim Complaint to add a claim for exemplary damages based on Mrs. Becerril’s use of a cell phone at the time of the accident. The Motion is currently pending.

# STANDARD OF REVIEW

Rule 104(a) of the Colorado Rules of Evidence provides that “[p]reliminary questions concerning the qualifications of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court…” The purpose of a motion *in limine* is to allow the court to rule in advance of trial on the admissibility and relevance of certain anticipated evidence. *Uptain v. Huntington Lab, Inc.,* 723 P.2d 1322, 1330 (Colo. 1986). A motion *in limine* provides the court with the opportunity to rule on the admissibility of evidence to shorten trial time, simplify the issues, and reduce the possibility of mistrial. *Id.* Motions *in limine* allow the Court to thoughtfully consider evidentiary issues, expedite trials, eliminate bench conferences,

avoid juror annoyance and permit more accurate rulings. *Uptain v. Huntington Lab, Inc.*, 723 P.2d 1322, 1333 (Colo. 1986). A party’s motion *in limine* is adequate to preserve that party’s objection to the evidence that is the subject of the motion *in limine* without the need for contemporaneous objections. *Id.*

# ARGUMENT

Mrs. Becerril and Mr. Meza-Cuevas anticipate that Mrs. Windt may attempt to make “protecting community safety” or “golden rule” type arguments to the jury, particularly in light of their allegations as to Mrs. Becerril’s cell phone use. *See* Windt’s Motion to Amend Counterclaim Complaint to Add Claim for Punitive Damages. Such arguments encourage the jury to make a decision on an improper basis and are therefore improper.

Golden rule arguments seek to destroy the impartiality with which jurors are intended to view the evidence at trial. *Blevins v. Cessna Aircraft Co*., 728 F.2d 1576, 1580 (10th Cir. 1984). They encourage jurors to step into the shoes of a litigant and award the verdict they would wish for were they in the litigant’s place. *See People v. Dunlap*, 124 P.3d 780, 809 (Colo. App. 2004). Such arguments are categorically

improper. *See, e.g., Dunlap*, 124 P.3d at 809; *Blevins,* 728 F.2d at 1580.

The danger of golden rule arguments is that they have the potential to incite jurors to reach a verdict on the basis of bias or prejudice, or personal interest and emotion, rather than on a rational assessment of the evidence presented. *See, e.g., Dunlap*, 124 P.3d at 809 (citations omitted); *Blevins,* 728 F.2d at 1580; *People v. Munsey*, 232 P.3d 113, 123 (Colo. App. 2009). “Reptile” arguments carry the same danger, and, hence, the same impropriety. Reptile arguments assert that jurors have the power to improve the

safety of themselves and members of their community by awarding an amount which will reduce the number of instances of dangerous behavior like that of which the defendant is allegedly guilty.

David Ball, Don Keenan, Gary Johnson, and James Fitzgerald; Reptile: The 2009 Manual

of the Plaintiff’s Revolution (2009). The authors of *Reptile* teach that when a Reptile [ie,

juror] sees a survival danger [ie, the defendant’s conduct] she is impelled to protect herself and the community. Protecting community safety arguments thus seek to appeal to jurors’ personal sense of self-preservation and protection in order to influence the verdict. They seek a verdict based not on logic or the evidence presented but on protective instincts. Any such argument undermines Colorado Jury Instructions. *See* CJI-Civ. 3:14, 4:1, 4:1A. It is also irrelevant and unfairly prejudicial and hence disallowed by C.R.E. 402 and 403, as it is intended to trigger “mainsprings of human action” which improperly motivate the verdict. *See People v. Hulsing*, 825 P.2d 1027, 1031 (Colo. App. 1991).

The jurors in this case must be instructed to render their verdict based on the evidence presented. Any argument which asks jurors, either directly or indirectly, to render a verdict based on their own fear of future injury and desire to decrease a perceived danger within the community must be prohibited.

WHEREFORE, Defendants seek an Order prohibiting “golden rule” or “protecting community safety” arguments.

**DATED** this 23rd day of January, 2017.

Respectfully submitted, RUEBEL & QUILLEN, LLC



Katherine L. Brim, No. 46532

# CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing Motion in Limine was E-Served by the Court-authorized E-System provider, to the following on this 23rd day of January, 2017:

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 */s/ Katherine L. Brim*

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