No. 05-19-00075-CV

IN THE COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS IN DALLAS

TOYOTA MOTOR SALES, U.S.A., INC. and
TOYOTA MOTOR CORPORATION,

Appellants,

v.

BENJAMIN THOMAS REAVIS and KRISTI CAROL REAVIS,
Individually and as Next Friends of E.R. and O.R., Minor Children,

Appellees.

On Appeal from Cause No. DC-16-15296 in the
134th Judicial District Court, Dallas County, Texas

BRIEF OF *AMICUS CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

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INTEREST OF *AMICUS CURIAE*

This brief is submitted by the Chamber of Commerce of the United States of America ("Chamber") as *amicus curiae*.[1] The Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation's business community.

This is such a case. It is not uncommon for businesses to enter into deferred prosecution agreements like the one the district court admitted into evidence. As this case demonstrates, these agreements ordinarily should be excluded because of their prejudicial effect and lack of relevance to the issues at trial. The Chamber's members regularly are involved in civil litigation, including in Texas, and therefore have an interest in the correct interpretation and application of the rules of evidence.

[1] No counsel for a party authored this brief in whole or in part. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to fund the preparation or submission of this brief. *See* Tex. R. App. P. 11.

INTRODUCTION AND BACKGROUND

The proceedings below illustrate the importance of the trial judge's role as a gatekeeper: to confine the trial to the lawsuit before the jury and exclude *any* evidence that creates a substantial risk of shifting the jury's attention away from the specific factual issues it is sworn to decide. Over the objections of Appellants Toyota Motor Sales, U.S.A., Inc. and Toyota Motor Corporation (collectively, "Toyota"), the district court admitted into evidence Toyota Motor Corporation's deferred prosecution agreement and the $1.2 billion penalty it paid the federal government in connection with a 2014 criminal investigation related to unintended acceleration. *It is undisputed that unintended acceleration played no role in the car crash in this case.* The district court nonetheless permitted Plaintiffs to introduce the deferred prosecution agreement as probative of Toyota's "credibility" and "attitude toward safety" and the appropriate amount of punitive damages.[2] After Plaintiffs mentioned the deferred prosecution agreement and penalty more than twenty times throughout trial, the jury returned a $242 million verdict, including $144 million in punitive damages—an extreme result that is directly attributable to the admission of this distracting and inflammatory evidence of Toyota Motor Corporation's irrelevant past conduct.

[2] Although the deferred prosecution agreement was between the government and Toyota Motor Corporation, the district court admitted it against both Toyota entities. The fact that Toyota Motor Sales was not a signatory to the deferred prosecution agreement only exacerbates the concerns described *infra*.

The district court's admission of Toyota Motor Corporation's deferred prosecution agreement is problematic not only because of the obvious prejudice it caused in this case, but also because of its likely impact on future civil and criminal trials involving both businesses and individuals. Admitting deferred prosecution agreements will discourage future cooperation with government investigations because, when such agreements are admitted into evidence, the signatories are deprived of the agreement's core benefits. Permitting a jury to consider unrelated past conduct also flouts more than a century of Texas character evidence law and risks transforming jury trials into mudslinging exercises. Neither redaction nor limiting instructions can cure the significant prejudicial effects of this evidence—it must be excluded altogether. This Court should protect the jury system from manipulation in this manner and ensure that trials remain focused on the claims and defenses asserted.

ARGUMENT

I. The District Court's Admission of Toyota Motor Corporation's Deferred Prosecution Agreement Discourages Future Cooperation with Government Investigations by Depriving Signatories of the Benefits of the Agreement.

The government uses deferred prosecution agreements in two contexts in the criminal justice system: (1) prosecutions of individuals, especially those charged with non-violent crimes; and (2) prosecutions of business entities. *See United States v. Saena Tech Corp.*, 140 F. Supp. 3d 11, 22–23 (D.D.C. 2015). In the case of an

individual criminal defendant, the prosecutor agrees "to defer the prosecution of a criminal charge for an agreed term during which the criminal defendant must fulfill specified conditions." *Paxton v. Escamilla*, 590 S.W.3d 617, 619–20 (Tex. App.—Austin 2019, pet. filed). If the defendant complies with the agreement for its entire term, the prosecutor dismisses the charges without prosecuting. *See id.* at 620. These agreements therefore provide the individual "a chance at rehabilitation and avoid[] the collateral consequences that accompany a criminal conviction." *Saena Tech*, 140 F. Supp. 3d at 12. The government and the public likewise benefit from the court's supervision of the defendant, the defendant's "good conduct" pursuant to the agreement, and the prosecutor's ability to reallocate resources to other criminal matters. *Id.* at 23.

In the context of a government investigation of a business, a deferred prosecution agreement is a negotiated contract between a federal or state government agency and the entity accused of misconduct. *See Shell Oil Co. v. Writt*, 464 S.W.3d 650, 652 (Tex. 2015) (explaining that a deferred prosecution agreement is "a type of agreement used by the [Department of Justice] when a corporation cooperates with an . . . investigation"); *Saena Tech*, 140 F. Supp. 3d at 12–13. The entity typically cooperates with the government's investigation, admits to the misconduct, bolsters its compliance programs, and pays a civil fine or other financial penalty. *Shell Oil*, 464 S.W.3d at 652 (deferred prosecution agreement "required Shell to continue to

cooperate with the DOJ and other law enforcement agencies, pay a $30 million criminal fine, and implement an extensive [Foreign Corrupt Practices Act] compliance and reporting program"); *In re Grand Jury Subpoena*, 696 F.3d 428, 431 (5th Cir. 2012) (Swiss bank "admitted to conspiring to defraud the U.S. government" pursuant to deferred prosecution agreement with DOJ). As with a deferred prosecution agreement for an individual criminal defendant, if the entity complies with the terms of the agreement for a specified period of time, the government agrees to close its investigation without prosecuting. *Shell Oil*, 464 S.W.3d at 652; *Saena Tech*, 140 F. Supp. 3d at 13, 16.

The government (and thus, the public) secures significant benefits from deferred prosecution agreements with business entities, which foster cooperation between the target entity and government officials. *See Shell Oil*, 464 S.W.3d at 652 ("Shell's willingness to . . . admit misconduct[] and cooperate with the investigation was an important factor in the DOJ's decision to offer Shell the opportunity to enter into the Deferred Prosecution Agreement."). The government avoids the risk of losing at trial, and can devote prosecutorial resources to additional matters. The negotiating power associated with entering such an agreement also allows the government input into the improvements made to the entity's corporate compliance programs, allowing regulators to take a more active role in addressing corporate criminal activity. *See* Joel Androphy & Ashley Gargour, *The Intersection of the*

Dodd-Frank Act and the Foreign Corrupt Practices Act: What All Practitioners, Whistleblowers, Defendants, and Corporations Need to Know, 45-SPG Tex. J. Bus. L. 129, 137 (2013) (deferred prosecution agreements "often require the company to implement a compliance monitoring program"). As a result, government agencies have begun to offer businesses the option of deferred prosecution more frequently: "Over the last five years, [deferred prosecution agreements] . . . have been widely used by United States Attorneys, as they generally allow the government to achieve a number of important enforcement objectives without risking the collateral consequences resulting from a corporate prosecution." Robert J. Sussman & Gregory S. Saikin, *Corporate Crimes: The Penalties and the Pendulum*, 43 The Advoc. (Texas) 39, 41 (2008).

From the company's perspective, entering a negotiated agreement allows it to avoid the uncertainty of an eventual criminal trial, as well as the penalties that might be imposed at the government's or a judge's discretion if the company were convicted at trial. *See Shell Oil*, 464 S.W.3d at 652 (terms of deferred prosecution agreement were "more favorable than the criminal penalties that could have resulted from an FCPA prosecution"). Deferred prosecution agreements also permit the entity to efficiently resolve the government investigation "[r]ather than endure a lengthy, expensive trial and potentially suffer harm to their business and goodwill." Androphy & Gargour, *supra*, at 137.

The district court's admission of Toyota Motor Corporation's deferred prosecution agreement at trial eliminated these core benefits—benefits that individuals, the government, the public, and entities such as Toyota Motor Corporation anticipate when entering into these agreements. Because the jury was allowed to consider the deferred prosecution agreement, Toyota became subject to the uncertainty of a civil jury verdict resulting not from the car crash at issue, but from statements about an unrelated vehicle defect for which Toyota Motor Corporation had already been penalized. *Cf. Shell Oil*, 464 S.W.3d at 652. In addition, Toyota was forced to engage in lengthy discovery and a three-week jury trial defending, in part, the same conduct addressed in the deferred prosecution agreement. *Cf.* Androphy & Gargour, *supra*, at 137. This required Toyota to, for example, produce select executives who were questioned in depositions and at trial on the unrelated issue of unintended acceleration and expend additional resources defending actions for which Toyota Motor Corporation had already paid a $1.2 billion penalty.

As Toyota's circumstances illustrate, admitting deferred prosecution agreements likely will discourage businesses from entering those agreements in the first place due to the risk of later being deprived of the benefits they afford. In deciding whether to resolve government investigations via these negotiated contracts, entities will need to carefully consider whether their admissions will be

used against them in subsequent civil or criminal proceedings. And while use of a deferred prosecution agreement in later civil litigation regarding the subject of the agreement may be foreseeable, businesses entering these agreements rely on their general inadmissibility outside that context. *See* Court E. Golumbic & Albert D. Lichy, *The "Too Big to Jail" Effect and the Impact on the Justice Department's Corporate Charging Policy*, 65 Hastings L.J. 1293, 1311 (2014) (admissions of wrongdoing in deferred prosecutions may be used in "*collateral* civil proceedings" (emphasis added)). If the precedent here is upheld, many entities may decline to enter deferred prosecution agreements altogether given the risk that the agreement will be admitted in any number of unrelated proceedings for years in the future.

Without a willingness on the part of entities to enter deferred prosecution agreements, government agencies will likewise lose the advantages these agreements offer. Because businesses will have less reason to cooperate with government investigations, the government will have to devote more resources to some investigations, leaving it with fewer resources to pursue others, and the government's bargaining power to influence corporate compliance programs will decrease significantly. *Id.* at 1315 ("[Deferred prosecution agreements] often cite corporate cooperation and the undertaking of remedial measures as reason[s] for deferring prosecution."). The government may also have difficulty persuading entities to agree to the government's desired penalties if the entity could later be

subject to additional, unforeseen payments related to the same conduct. *See id.* at 1310 (penalties under deferred prosecution agreements have increased in recent years). Such a cost/benefit analysis risks at least one serious and negative impact—the general public will suffer from fewer deferred prosecution agreements being entered into, with all the benefits such agreements afford.

And because the use of deferred prosecution agreements is not limited to prosecutions of business entities, the implications of the district court's decision to admit Toyota Motor Corporation's deferred prosecution agreement may extend to prosecutions of individual criminal defendants as well. *See Escamilla*, 590 S.W.3d at 619–20. If the district court's decision here is applied by other courts to admit a defendant's deferred prosecution agreement in future unrelated civil and criminal proceedings, individuals accused of crimes will be likewise hesitant to enter these agreements. As a result, the individual will lose the opportunity to resolve criminal charges without a conviction or jail time, and the government (and, again, the general public) will lose the benefit of cooperation by the defendant and its ability to facilitate rehabilitation of non-violent criminal offenders. *See Saena Tech*, 140 F. Supp. 3d at 22–23.

Ultimately, the consequences of admitting deferred prosecution agreements in civil and criminal trials are far-reaching, especially given the increasing prevalence of these agreements in government regulation of corporate crimes. *See*

Sussman & Saikin, *supra*, at 39; Golumbic & Lichy, *supra*, at 1310. Permitting civil and criminal juries to consider deferred prosecution agreements that are irrelevant to the merits of the case undermines the purposes for which these agreements exist. Especially when applied to other cases and contexts, the district court's decision deprives signatories to deferred prosecution agreements of the benefits bargained for and could threaten to eliminate the deferred-prosecution option altogether.

II. The District Court's Admission of Toyota Motor Corporation's Deferred Prosecution Agreement Flouts More Than a Century of Texas Character Evidence Law and Risks Shifting the Jury's Focus Away from the Relevant Issues.

For more than a century, Texas courts have prohibited impeachment based on specific instances of conduct and prior bad acts, with limited exceptions. *See Boon v. Weathered's Adm'r*, 23 Tex. 675, 678 (1859) ("[T]he credit of a witness can be impeached by general evidence only, and not by evidence as to particular facts."). This rule originated in the 1859 case *Boon v. Weathered's Administrator*, where the Texas Supreme Court offered two reasons for the prohibition: (1) to prevent the unfair surprise inherent in being asked to "answer accusations which relate to particular facts"; and (2) to ensure that the "court cannot turn aside from a main inquiry to try collateral issues." *Id.* at 678–79.

Since *Boon*, "Texas civil courts have consistently rejected evidence of specific instances of conduct for impeachment purposes, no matter how probative of truthfulness." *TXI Transp. Co. v. Hughes*, 306 S.W.3d 230, 242 (Tex. 2010) (citation

omitted); *Peters v. Byrne*, No. 05-17-00004-CV, 2018 WL 1790059, at *4 (Tex. App.—Dallas Apr. 16, 2018, pet. denied) ("There is a general aversion in Texas to using specific instances of conduct for impeachment."). Indeed, the Texas Supreme Court has promulgated two Texas Rules of Evidence to address the issue: Rules 404(b) and 608(b). Under Rule 404(b), "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Tex. R. Evid. 404(b)(1). Rule 608(b)'s mandate is similar: "[A] party may not inquire into or offer extrinsic evidence to prove specific instances of the witness's conduct in order to attack or support the witness's character for truthfulness." Tex. R. Evid. 608(b).

Evidence related to Toyota Motor Corporation's deferred prosecution agreement regarding unintended acceleration is exactly the kind of character evidence that these rules seek to exclude. The district court admitted evidence of the agreement and $1.2 billion penalty as probative of Toyota's "credibility" and "attitude" toward safety, and Plaintiffs used this irrelevant prior-act evidence to argue that Toyota (1) acted consistently with the admissions of misconduct in the deferred prosecution agreement and (2) had a poor character for truthfulness. In addition to repeatedly questioning witnesses about the deferred prosecution agreement, Plaintiffs' closing argument specifically urged the jury not to believe Toyota because the agreement acknowledged Toyota Motor Corporation's past

misstatements about unintended acceleration. In other words, Plaintiffs asked the jury to conclude that because Toyota Motor Corporation had made misstatements about vehicle defects in the past, Toyota had made misstatements about the vehicle defects at issue in this case as well. *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Liab. Litig.*, 888 F.3d 753, 785 (5th Cir. 2018) (granting new trial based on admission of defendant's deferred prosecution agreement where plaintiffs' closing argument "tainted the result by inviting the jury to infer guilt based on no more than prior bad acts, in direct contravention of [Federal] Rule 404(b)(1)").[3]

The district court's admission of the deferred prosecution agreement at trial ran afoul of the *Boon* Court's concerns, requiring Toyota to defend "accusations which relate[d] to particular facts" and inviting the jury to "turn aside from a main inquiry" in favor of "collateral issues." *See* 23 Tex. at 678–79. As the Texas Rules of Evidence Handbook has recognized, this is likely to occur wherever prior bad acts

[3] On appeal, Plaintiffs insist that the deferred prosecution agreement and related evidence were instead offered to rebut Toyota's defense under the presumption of non-liability in Texas Civil Practice & Remedies Code § 82.008(a). Admission of the deferred prosecution agreement for this purpose would likewise have been improper for the reasons described in Toyota's reply brief: (1) the alleged misrepresentation—that Toyota "has a lengthy and robust safety culture"—is not actionable because it is a subjective opinion; (2) even if Toyota's statement were actionable, it is not relevant to the government's assessment of the specific safety standards at issue; and (3) offering the deferred prosecution agreement to disprove this general statement about Toyota's "robust safety culture" still violates Rules 404(b) and 608(b) by suggesting that Toyota has a bad "character" regarding safety and acted in conformity with the admissions in the agreement in this unrelated case. Reply Br. at 6–8, 19–20. If specific admissions in deferred prosecution agreements can be used to characterize general statements made to the government about company culture and policy as misrepresentations, businesses will be discouraged from entering these agreements for the same reasons described in *supra* Section I.

evidence is introduced: "This type of evidence tends to inject into a trial a dangerous baggage of prejudice, distraction from the issues, time consumption, and hazard of surprise." TX. Rules of Evid. Handbook R. 404–405 (2020 ed.) (internal quotation marks and citation omitted). When confronted with irrelevant past misconduct of a litigant or witness, "the trier of fact, whether consciously or not, may be tempted to penalize the [person] for past misdeeds and is likely to overvalue the evidence of prior misconduct." *Id.*; *see also* Linda L. Addison, 1 Tex. Prac. Guide Evid. § 4:117 (2019 ed.) ("[Character evidence] subtly permits the trier of fact to reward the good man to punish the bad man because of their respective characters despite what the evidence in the case shows actually happened.").

To be sure, the jury system is not to blame for the shift in focus that results from prior bad acts evidence—jurors may properly consider all of the evidence submitted to them. As a result, the trial court must carefully filter that evidence under applicable rules to protect the jury's vital role. Admitting evidence like Toyota Motor Corporation's deferred prosecution agreement threatens that role and risks transforming jury trials into something far different than a fair and impartial fact finding. Without the protections of Rules 404(b) and 608(b), this category of evidence will pervade all aspects of trial as the parties (plaintiffs and defendants) attempt to persuade jurors to make decisions not based on the issues presented, but on unrelated instances of conduct introduced to distract and inflame. *See* 1 Tex.

Prac. Guide Evid. § 4:117 (specific instances character evidence "tends to distract the trier of fact from the main question of what actually happened on the particular occasion"); *TXI Transp. Co.*, 306 S.W.3d at 244 (evidence of defendant's immigration conviction and deportation "was plainly calculated to inflame the jury against him" (citation omitted)).

Permitting prior bad acts evidence has implications for any litigant or third party in civil and criminal proceedings. Absent the proscriptions in Rules 404(b) and 608(b), one business in a joint venture could offer evidence of a fatal accident at the other member business's unrelated construction project to prove that the other business's president had a character for negligence. *See Lovelace v. Sabine Consol., Inc.*, 733 S.W.2d 648, 652, 654 (Tex. App.—Houston [14th Dist.] 1987, writ denied). Or in a criminal case involving the aggravated sexual assault of a child, the defendant could offer evidence of the nine-year-old victim's unrelated use of profanity with a teacher to impeach her credibility. *See Kelly v. State*, 828 S.W.2d 162, 165–66 (Tex. App.—Waco 1992, pet. ref'd). And as the San Antonio court of appeals has explained, without the important bar provided by Rule 404(b), parties could also introduce evidence of unrelated good deeds to improperly sway the jury:

> [G]ood lawyers everywhere would be eager to prove up their clients' good deeds and the evil deeds of their opponents, if the rules permitted it. Under such a system, trials would turn into contests about which party has the better charitable record. There might be no end to the evidence litigants would present about themselves and their opponents.

Bexar Cty. Appraisal Review Bd. v. First Baptist Church, 846 S.W.2d 554, 562 (Tex. App.—San Antonio 1993, writ denied).

The district court's admission of evidence about Toyota Motor Corporation's irrelevant past conduct as probative of its character sets a dangerous precedent for future cases. Allowing the introduction of this evidence in civil and criminal proceedings threatens to create a jury system based not on presenting relevant evidence to aid in a reasoned decision, but by introducing emotionally charged evidence without any rational relationship to the case being tried.

III. The Prejudice Caused by the Admission of Toyota Motor Corporation's Deferred Prosecution Agreement Cannot Be Cured by Redaction or Limiting Instructions.

"Beyond any doubt, it has become increasingly common for attorneys to use prejudice as a weapon in the modern-day lawsuit." *Bexar Cty.*, 846 S.W.2d at 562. By admitting evidence of Toyota Motor Corporation's deferred prosecution agreement and related $1.2 billion penalty, the district court permitted Plaintiffs to use the resulting prejudice to improperly influence the jury in this case. Plaintiffs' response brief suggests that this prejudice was instead caused by *Toyota's* failure to request redaction of the agreement or a limiting instruction from the trial judge. But this argument only heightens the concerns expressed by the *Bexar County* court: In Plaintiffs' view, not only can a party's prior bad conduct be used to prove liability

and increase punishment, but it is that party's responsibility to reduce or eliminate the prejudice resulting therefrom.

Given the likelihood that evidence of a deferred prosecution agreement that is irrelevant to the issues in the case will distract or inflame the jury, redaction is an insufficient cure. As Plaintiffs' authorities recognize, redaction is appropriate only where some portion of a document is admissible at trial. *See Benavides v. Cushman, Inc.*, 189 S.W.3d 875, 884–85 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (plaintiff "objected to three portions of [an] incident report," not the entire report); *Maxwell v. State*, No. 06-12-00194-CR, 2014 WL 556377, at *14 (Tex. App.—Texarkana Feb. 12, 2014, no pet.) ("A generalized hearsay objection to an exhibit may be properly overruled where it contains admissible evidence and there is no request to redact allegedly inadmissible portions."). But where a deferred prosecution agreement is offered in an unrelated case to attack the signatory entity's credibility, the entire agreement is inadmissible, as it is the very existence of that agreement that creates prejudice.

Redacting the amount of the penalty the entity paid does not prevent the opposing party from emphasizing the fact of the penalty or the entity's admission of wrongdoing. And even redacting the admission of wrongdoing does not cure the prejudice—the mere fact of compromising with the government indicates that there was something to compromise. *See Bracha v. Estate of Hanley*, 348 P.3d 671, 671

(Mont. 2015) ("The court's expressed concerns that the jury would want to know the context in which [defendant] signed a document accepting financial responsibility and would be confused by the injection of a criminal case document into the negligence case justified the use of discretion to exclude it.").

Nor does a limiting instruction remedy the prejudicial effect of allowing a jury to consider a deferred prosecution agreement in a case involving unrelated issues. Like a redaction, for a limiting instruction to be appropriate, the deferred prosecution agreement must be admissible for some purpose. *See* Tex. R. Evid. 105(a) ("If the court admits evidence that is admissible against a party or for a purpose—but not against another party or for another purpose—the court, on request, must restrict the evidence to its proper scope and instruct the jury accordingly."); *U-Haul Int'l, Inc. v. Waldrip*, 380 S.W.3d 118, 132 (Tex. 2012) ("Rule 105 does not apply when the evidence in question is not admissible against any party for any purpose."). Here, Plaintiffs did not offer a limited purpose for admission, and the one the district court eventually announced—showing Toyota's lack of credibility—was invalid under Rules 404(b) and 608(b) for the reasons explained. *See* Tex. R. Evid. 404(b)(1); Tex. R. Evid. 608(b). To suggest, as Plaintiffs do, that Toyota was required to propose a different limited basis for admission of evidence it believed should be excluded altogether makes no sense.

Moreover, the nature of deferred prosecution agreements is such that it would be very difficult for jurors to consider them only for a limited purpose. Golumbic & Lichy, *supra*, at 1310–11 (deferred prosecution agreements carry "stiff monetary penalties or restitution to victims," "detailed criminal charges," and an "admission or acknowledgement of responsibility on the company's part," which can have "devastating consequences" in later proceedings). Indeed, the jury's verdict here demonstrates that limiting instructions are insufficient: Although the district court limited the jury's consideration of the deferred prosecution agreement to Toyota's "credibility," "attitude" toward safety, and punitive damages, the jury reached an extreme result that was unwarranted by the liability and punishment evidence presented at trial.

* * *

Deferred prosecution agreements are important tools for businesses and government agencies to resolve criminal investigations cooperatively, bolster corporate compliance efforts, and avoid the uncertainty of lengthy litigation. But these benefits disappear if businesses are discouraged from entering deferred prosecution agreements due to the risk that adverse parties in unrelated future litigation will use them to disrupt the fact-finding role of the jury. Admitting this evidence of irrelevant past misconduct injects undue prejudice into jury trials and turns them into parades of the parties' and witnesses' respective misdeeds. To

protect our jury system and ensure all parties to a lawsuit a fair trial on the issues presented, this Court should correct the district court's error in admitting Toyota Motor Corporation's deferred prosecution agreement.

PRAYER

For the reasons described, the Chamber respectfully urges the Court to reverse the judgment of the district court.

Dated: April 1, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

As required by Texas Rule of Appellate Procedure 9.4(i)(3), I hereby certify that, according to the word count of the computer program used to prepare this document, this amicus brief contains 4,432 words. This brief also complies with the typeface requirements of Texas Rule of Appellate Procedure 9.4(e) because this brief was prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font for text and 12-point font for footnotes.

/s/ Thomas M. Melsheimer
Thomas M. Melsheimer

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this amicus brief was served on counsel of record for Appellants and Appellees electronically and/or by electronic mail, on April 1, 2020.

/s/ Thomas M. Melsheimer
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