

EXHIBIT 5

EXHIBIT 5

Case No. CV24539
Dept. 2P

2007 MAR 14 AM 10:23

NYE COUNTY CLERK
BY DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

Estate of MICHAEL DAVID
ADAMS, by and through his
mother JUDITH ADAMS,
individually and on behalf
of the Estate,

Plaintiffs,

vs.

**DEFENDANT SUSAN FALLINI's
ANSWER AND COUNTERCLAIM**

SUSAN FALLINI, DOES I-X
and ROE CORPORATIONS
I-X, inclusive,

Defendants,

COMES NOW Defendant SUSAN FALLINI above named, by and through
her attorney HAROLD KUEHN, Esq. of the law firm of EARNEST, GIBSON
& KUEHN, and for her answer to Plaintiffs' Complaint on file
herein, admits, denies and alleges as follows:

1. Answering Paragraphs 1 and 6, Defendant SUSAN FALLINI is
without sufficient information to form a belief as to the truth or
falsity of these allegations, and accordingly, Defendant SUSAN
FALLINI denies each and every allegation contained therein.

2. Answering Paragraphs 2, 3, 4, 5, 7, 8, 9 and 10,
Defendant SUSAN FALLINI denies each and every allegation contained
therein.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3

4
5
6
7

9
10

12
13
14
15
16
17
18

19
20
21

22

23
24
25

28

1 2. That on or about July 7, 2005, Defendant was the owner of
2 the "cow" referenced in Plaintiffs' complaint on file herein.

3 3. That on or about July 7, 2005, MICHAEL DAVID ADAMS was
4 operating a motor vehicle at or near State Route 375 near mile
5 marker Nye 33, which then collided with the "cow" mentioned in
6 Paragraph 2 above, killing said MICHAEL DAVID ADAMS and said
7 "cow."

8 4. That Plaintiff ESTATE OF MICHAEL DAVID ADAMS is the
9 lawful successor in interest to MICHAEL DAVID ADAMS.

10 5. That at all times relevant, the area at or near State
11 Route 375 near mile marker Nye 33 was "open range" as defined in
12 NRS 568.355.

13 5. That as a direct and proximate result of MICHAEL DAVID
14 ADAMS' actions and/or omissions, the ESTATE OF MICHAEL DAVID ADAMS
15 is liable to Defendant SUSAN FALLINI for the replacement value of
16 said "cow" and other incidental and general damages relating to
17 the disposal and replacement of said "cow," according to the proof
18 presented at time of trial.

19 6. That Defendant SUSAN FALLINI has been required to retain
20 the services of EARNEST, GIBSON & KUEHN to prosecute this action,
21 and accordingly, Defendant SUSAN FALLINI is entitled to her costs
22 and attorney fees incurred.

23 WHEREFORE, Defendant SUSAN FALLINI prays for judgment as
24 follows:
25

26 1. For a sum reflecting the replacement value of said "cow,"
27 and other incidental and general damages.

28 2. For an award of attorney fees and costs.

1 3. For such other and further relief as the Court may deem
2 just and proper in the premises.

3 DATED this 13th day of March, 2007.



HAROLD KUEHN, Esq.
Nevada Bar #284
EARNEST, GIBSON & KUEHN
921 So. Hwy. 160, Suite 203
Pahrump, NV 89048
775/751-9000
Attorney for Defendant
SUSAN FALLINI

CERTIFICATE OF SERVICE

I certify that I am an employee of EARNEST, GIBSON & KUEHN,
Attorneys at Law, and that on the 13th day of
March, 2007, I served the foregoing DEFENDANT SUSAN
FALLINI's ANSWER AND COUNTERCLAIM by depositing a copy in the U.S.
mail, first class postage prepaid, addressed to the following
person(s) at the following address(es):

James E. Smith, Esq.
EDWARD J. ACHREM & ASSOCIATES
512 So. Tonopah Drive, Suite 100
Las Vegas, NV 89106



an employee of EARNEST, GIBSON & KUEHN

EXHIBIT 4

EXHIBIT 4

Edward J. Achrem, 3 Associates
512 South Tonopah Dr., Suite 100 • Las Vegas, Nevada 89106
(702) 734-3936

COMP

EDWARD J. ACHREM & ASSOCIATES
Edward J. Achrem, Esq.
Nevada Bar No. 2281
James E. Smith, Esq.
Nevada Bar No. 0052
512 South Tonopah Dr., Ste. 100
Las Vegas, Nevada 89106
Phone: (702) 734-3936

FILED
FIFTH JUDICIAL DISTRICT

JAN 31 1987

Nye County Clerk

PC Deputy

Attorneys for Plaintiffs

DISTRICT COURT

NYE COUNTY, NEVADA

ESTATE OF MICHAEL DAVID ADAMS,)
by and through his mother)
JUDITH ADAMS, individually)
and on behalf of the ESTATE,)

Plaintiffs,)

vs)

SUSAN FALLINI, DOES I-X and)
ROE CORPORATIONS I-X,)
inclusive,)

Defendants.)

CASE NO. :
DEPT. NO. :

COMPLAINT

Plaintiffs, the Estate of MICHAEL DAVID ADAMS ("Michael"),
by and through his mother, JUDITH ADAMS ("Judith"), individually
and as Executrix for her son's Estate (hereinafter collectively
referred to as "Plaintiffs"), by and through the law firm of
EDWARD J. ACHREM & ASSOCIATES, LTD., for their claims and causes
of action against the Defendants, and each of them, hereby
allege as follows:

...
...
...

GENERAL ALLEGATIONS

1. At the time of his death, Michael was 33 years old and was a resident of Orange County, California. He was unmarried and had no natural or adopted children. His mother, Judith, is the administrator of her son's estate and also a resident of Orange County, California. Because the incident set forth below occurred in Nevada, Plaintiffs voluntarily subject themselves to, and will be bound by the jurisdiction of this Court.

2. Upon information and belief, Defendant SUSAN FALLINI ("Fallini") is the owner of a Hereford red cow. As more fully set forth below, this cow was wandering freely on SR 375 highway, at Nye mile marker 33, in Nye County, Nevada on or about July 7, 2005.

3. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as DOES I through X, and ROE CORPORATIONS I through X, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiffs are further informed and believe that one or more of the parties which may be responsible for some portion of the damages being sought by the Plaintiffs as a result of Michael's death on July 7, 2005 may include persons, partnerships, corporations, other owners, governmental subdivisions and/or other persons and entities, the identities of which have not yet been determined. Because such names are currently unknown, Plaintiffs have listed them collectively as DOE Defendants and ROE CORPORATION Defendants and will seek leave of Court to amend this Complaint to allege their true names and capacities when they have been ascertained.

...

Edward J. Achre, Jr. Associates
512 South Tonopah Dr., Suite 100 • Las Vegas, Nevada 89106
(702) 734-3936

Edward J. Achre, 3 Associates
512 South Tonopah Dr., Suite 100 • Las Vegas, Nevada 89106
(702) 734-3936

1 4. Plaintiffs are informed and believe, and thereon allege,
2 that each of the fictitiously named Defendants is responsible in
3 some manner for the occurrence described herein and that
4 Plaintiffs' damages, including Michael's death, were proximately
5 caused by such conduct.

6 5. Plaintiffs are informed and believe, and thereon allege,
7 that at all times herein mentioned, each of the Defendants was
8 the agent and/or employee of each of the remaining Defendants,
9 and in doing the things hereinafter alleged, were acting within
10 the course and scope of such agency, employment or contract.

11 6. On July 7, 2005, around 9:00 p.m., Michael was lawfully
12 driving his 1994 Jeep Wrangler on SR 375 highway in Nye County,
13 Nevada. At that time and place, a Hereford cow suddenly
14 appeared in the travel portion of the roadway, blocking
15 Michael's path. Although Michael was traveling at a lawful rate
16 of speed, it was not possible for him to avoid a head-on
17 collision with the cow. As a direct and proximate result of the
18 collision, Michael's Jeep rolled over and left the paved
19 highway. Michael died at the scene.

20 7. Plaintiffs contend that at all times herein mentioned,
21 Michael acted reasonably, had a right to use the highway, and
22 did nothing to cause or contribute to his death. Plaintiffs
23 further contend that Defendants, and each of them, owed a
24 continuing duty of care, which included without limitation, (a)
25 the duty to control the Hereford cow by providing boundary
26 fencing that would keep it away from passing motorists; (b) the
27 duty to monitor all of Defendants' cows, including the one that
28 caused Michael's death, and to take reasonable precautions to

Edward J. Achre & Associates
512 South Tonopah Dr., Suite 100 • Las Vegas, Nevada 89106
(702) 734-3936

1 prevent them from wandering many miles away; and (c) the duty to
2 warn drivers traveling along the highway that cattle would, or
3 could be present in the area in which they were driving.

4 In addition to the duties set forth above, Defendants and
5 each of them also had a separate and independent obligation to
6 illuminate the Hereford cow by marking it with an inexpensive
7 florescent tag, or similar device, so that the cow could be seen
8 more easily by persons who were driving on the highway at night,
9 such as Michael.

10 8. Plaintiffs contend that, despite constructive and/or actual
11 notice by the Defendants of the extreme hazard that was posed by
12 a wandering Hereford cow at night, the Defendants and each of
13 them, (a) failed to control the Hereford cow by providing
14 boundary fencing that would keep it away from passing motorists;
15 (b) failed to monitor all of Defendants' cows, including the one
16 that caused Michael's death, and to take reasonable precautions
17 to prevent them from wandering many miles away; and (c) failed
18 to warn drivers traveling along the highway that cattle would,
19 or could be present in the area in which they were driving.

20 In addition to the above, Defendants and each of them also
21 failed to illuminate the Hereford cow by marking it with an
22 inexpensive florescent tag, or similar device, so that the cow
23 could be seen more easily by persons who were driving on the
24 highway at night, such as Michael.

25 9. As a direct and proximate result of the Defendants'
26 negligent acts and omissions, in the manner described above,
27 Michael was killed. As a result, his Estate and heir(s) have
28 been generally and specially damaged in a sum well in excess of

Edward J. Achre, 7 Associates
512 South Tonopah Dr., Suite 100 • Las Vegas, Nevada 89106
(702) 734-3936

1 ten thousand dollars (\$10,000.00). These damages include,
2 without limitation, pain and suffering, as well as severe
3 emotional distress, from the time of the accident until the
4 moment of Michael's death, the loss of the quality and enjoyment
5 of Michael's life, and the loss of Michael's company,
6 companionship, society, comfort, attention, services and
7 support.

8 10. As a further direct and proximate result of the Defendants'
9 negligent acts and omissions, in the manner described above,
10 Michael's Estate has incurred incidental, funeral and burial
11 expenses in an amount not yet fully ascertained, but which will
12 be set forth in full at the time of trial.

13 WHEREFORE, Plaintiffs, expressly reserving their right to
14 amend this Complaint at the time of the trial of the actions
15 herein to include all items of damages not yet ascertained,
16 hereby pray for damages against Defendants, and each of them, as
17 follows:

- 18 1. For general damages in excess of \$10,000.00;
19 2. For special damages in excess of \$10,000.00;

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

Edward J. Achrem & Associates
512 South Tonopah Dr., Suite 100 • Las Vegas, Nevada 89106
(702) 734-3936

3. For prejudgment interests, costs of suit herein incurred
and reasonable attorney's fees; and

4. For such further relief as may appear just to the Court.

DATED this 29 day of January, 2007.

EDWARD J. ACHREM & ASSOCIATES



Edward J. Achrem, Esq.
Nevada Bar No. 2281
James E. Smith, Esq.
Nevada Bar No. 0052
512 South Tonopah Dr., Ste. 100
Las Vegas, NV 89106
Attorneys for Plaintiffs

docs\lg1\complaint.ma

EXHIBIT 3

EXHIBIT 3

ORIGINAL**ORDER**

John P. Aldrich, Esq.
Nevada Bar No. 6877
ALDRICH LAW FIRM, LTD.
1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
(702) 853-5490
(702) 227-1975 fax
Attorneys for Plaintiff

NOV 04 2009

MT

THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA, COUNTY OF NYE

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

Case No.: CV24539
Dept.: 2P

Plaintiffs,

vs.

SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

Defendants.

SUSAN FALLINI,

Counterclaimant,

vs.

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

Counterdefendants.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER STRIKING ANSWER
AND COUNTERCLAIM OF DEFENDANT SUSAN FALLINI AND HOLDING
DEFENDANT'S COUNSEL IN CONTEMPT OF COURT**

THIS MATTER having come on for hearing on Monday, September 28, 2009, a conference having been held in Chambers before the Honorable Robert W. Lane, and John P. Aldrich, Esq., of Aldrich Law Firm, Ltd., appearing on behalf of the Plaintiffs, with Harry Kuehn, Esq., appearing on behalf of Defendant, the Court hereby orders as follows:

FINDINGS OF FACT

The Court, having been presented the following facts by Plaintiff's counsel and having received no opposition to the facts by Defendant, makes the following findings of fact:

1. This lawsuit arises out of an incident that occurred on or about July 7, 2005. At approximately 9:00 p.m. on that day, MICHAEL DAVID ADAMS ("Adams") was driving his 1994 Jeep Wrangler on SR 375 highway in Nye County, when he collided with a Hereford cow ("cow") owned by Defendant SUSAN FALLINI ("Fallini"). Adams died at the scene as a result of the impact.

2. The decedent's mother, JUDITH ADAMS ("Judith"), filed a complaint on behalf of Adams' mother and his estate on November 29, 2006 and properly served Fallini with process. Fallini filed her Answer and Counterclaim on March 14, 2007.

3. On October 31, 2007, Plaintiff submitted interrogatories to Fallini. Those interrogatories were never answered. Adams also submitted requests for admissions and its first set of requests for production of documents on October 31, 2007. A second set of requests for production of documents were submitted to Fallini on July 2, 2008, requesting information as to Fallini's insurance policies and/or carriers that may provide coverage for damages that occurred as a result of the incident.

4. Fallini never responded to any of these requests. To this date, Fallini has not produced any responses of any kind to Plaintiff's written discovery requests. Despite an extension requested by Plaintiff and granted by the Court, the discovery period has lapsed without any responses being provided by Defendant.

5. On or about April 7, 2008 (and again on May 14, 2008 with a Certificate of Service), Plaintiff filed a Motion for Partial Summary Judgment. Defendant did not oppose that motion and the Court granted that Motion on July 30, 2008. Notice of entry of the Order Granting Plaintiff's Motion for Summary Judgment was served on Defendant on August 15, 2008.

6. Plaintiff attempted to amicably resolve the discovery dispute and obtain a copy of

1 Defendant's applicable insurance policies, but to no avail. On February 24, 2009, Plaintiff sent
2 letters to Defendant's counsel seeking responses to the discovery.

3 7. Plaintiff's counsel, Mr. Aldrich, attempted to discuss this discovery issue with
4 Defendant's counsel, Mr. Kuehn, as well. On or about March 6, 2009, Plaintiff's counsel contacted
5 the office of Defendant's counsel. Mr. Aldrich was informed that Mr. Kuehn was not available. Mr.
6 Aldrich left a message with Mr. Aldrich's phone number and asked that Mr. Kuehn return the call.
7 No return call ever came.

8 8. On March 18, 2009, Mr. Aldrich again contacted the office of Mr. Kuehn. Mr.
9 Aldrich was informed that Mr. Kuehn was not available. Mr. Aldrich left a message with Mr.
10 Aldrich's phone number and asked that Mr. Kuehn return the call. No return call ever came.
11 (Exhibit 1.)

12 9. On March 23, 2009, Plaintiff filed a Motion to Compel Defendant's Production of
13 Documents, including information regarding any insurance policies that may provide coverage for
14 the incident as contemplated in the Plaintiff's second request for documents. This motion was heard
15 on April 27, 2009. The Defendant's attorney, Mr. Kuehn, attended the hearing. Mr. Kuehn did not
16 oppose the motion to compel and agreed at the hearing it was warranted. Mr. Kuehn provided no
17 explanation as to why Defendant failed to respond to all discovery requests. Mr. Kuehn agreed
18 sanctions were warranted, however, he disputed the amount of sanctions.

19 10. At the hearing on April 27, 2009, this Court granted the Motion to Compel and
20 awarded John Aldrich, Esq., \$750.00 in sanctions for having to bring the motion. A Notice of Entry
21 of Order on the order granting the motion to compel was entered on May 18, 2009. It was served
22 by mail on Defendant on May 14, 2009. Defendant never complied with the Order.

23 11. On June 16, 2009 Plaintiff filed a Motion to Strike Defendant's Answer and
24 Counterclaim due to Defendants complete failure to comply with discovery requests and this Court's
25 Order. The Defendant's counsel again attended the hearing and again provided no explanation as
26 to why Defendant failed to respond to all discovery requests, but stated Defendant would comply
27

1 with discovery requests.

2 12. The Court denied Plaintiff's Motion to Strike based on Defendant's counsel's
3 promises to comply. This Court did, however, order Defendant to comply with the Order granting
4 Plaintiff's Motion to Compel and to respond to Plaintiff's discovery requests by August 12, 2009
5 or Defendant's Answer and Counterclaim would be stricken. The Court also ordered Defendant to
6 pay a \$1,000 sanction.

7 13. To date, Defendant has failed to comply with the order of this Honorable Court and
8 respond to Plaintiff's discovery requests. Defendant's counsel has paid the \$1,750.00 in sanctions
9 as ordered by the Court.

10 14. Plaintiff is entitled to the discovery responses, and in fact, Defendant has admitted
11 as much on more than one occasion. Nevertheless, Defendant refused and continues to refuse to
12 respond.

13 15. Because Defendant failed and refused to follow this Court's order and provide the
14 requested information, Plaintiff brought an Ex Parte Motion for Order to Show Cause Why
15 Defendant and Her Counsel Should Not Be Held in Contempt. The Order to Show Cause was
16 granted, and a hearing was scheduled on September 28, 2009. A conference was held in chambers,
17 so as to avoid embarrassment to Defendant's counsel. Following the conference, the Court ordered:

18 (A) That Defendant's counsel shall have until close of business on October 12,
19 2009, to comply with the Order Granting Plaintiff's Motion to Compel and
20 provide responses to Plaintiff's Request for Production of Documents,
21 including the requested insurance information.

22 (B) That if Defendant does not provide the above-described information by
23 October 12, 2009, Defendant's counsel will be held in contempt of court and
24 will be fined \$150.00 per day, beginning October 13, 2009, until said
25 information is provided. The days shall be calculated on a seven-day week.

26 (C) That if the above-described information is not provided by October 12, 2009,
27
28

the Court will strike defendant's pleadings in their entirety. Plaintiff will not need to renew any motion regarding its request to strike defendant's pleadings; Plaintiff will be able to simply submit an Order Striking the Pleadings for signature by the Court.

CONCLUSIONS OF LAW

Based on the Findings of Fact, as set forth above, the Court makes the following conclusions of law:

1. Pursuant to NRCP 34, Plaintiff has the right to request documents which are discoverable pursuant to NRCP 26. According to NRCP 34, Defendant has 30 days from receipt of the requests for production of documents to provide appropriate responses.

2. NRCP 34(b) permits a party to seek relief under NRCP 37(a) if the party who receives discovery requests fails to respond appropriately. NRCP 37(a) provides that the Court may enter an order compelling a non-responsive party to disclose the requested information.

3. This Court has at least three times entered an order compelling Defendant to respond to Discovery requests.

4. NRCP 37(b)(2)(c), permits "an order striking out pleadings or parts thereof," for discovery abuses. "Selection of a particular sanction for discovery abuses under NRCP 37 is generally a matter committed to the sound discretion of the district court." *Stubli v. Big Int'l Trucks, Inc.*, 107 Nev. 309, 312-313, 810 P.2d 785 (1991) (citing *Fire Ins. Exchange v. Zenith Radio Corp.*, 103 Nev. 648, 649, 747 P.2d 911, 912 (1987) and *Kelly Broadcasting v. Sovereign Broadcast*, 96 Nev. 188, 192, 606 P.2d 1089, 1092 (1980).))

5. The Nevada Supreme Court held that default judgments will be upheld where "the normal adversary process has been halted due to an unresponsive party, because diligent parties are entitled to be protected against interminable delay and uncertainty as to their legal rights." *Hamlett v. Reynolds*, 114 Nev. 863, 963 P.2d 457 (1998) (citing *Skeen v. Valley Bank of Nevada*, 89 Nev. 301, 303, 511 P.2d 1053, 1054 (1973)).

6. Defendant has provided no responses whatsoever, nor has Defendant objected to any request. Defendant has failed on at least three occasions to comply with this Court's Order.

7. Defendant has been given ample opportunity to comply with the Court's Orders, and striking Defendant's Answer and Counterclaim is appropriate under the circumstances.

ORDER

Based on the Findings of Fact and Conclusions of Law, as set forth above:

IT IS HEREBY ORDERED that Defendant's Answer and Counterclaim shall be stricken, and the Court Clerk is directed to enter Default against Defendant Susan Fallini.

IT IS FURTHER ORDERED that Defendant's Counterclaim, having been stricken, shall be dismissed with prejudice.

IT IS FURTHER ORDERED that Defendant's counsel, Harold Kuehn, Esq., is in contempt of Court and must pay to Plaintiff's counsel, John P. Aldrich, Esq., \$150.00 per day, beginning October 13, 2009, and continuing to accrue until the information described above is provided. The days shall be calculated on a seven-day week, and this Order shall constitute a judgment upon which Mr. Aldrich can execute. Interest on unpaid balances shall accrue at the statutory rate.

IT IS SO ORDERED.

DATED this 4 day of November, 2009


DISTRICT COURT JUDGE

Submitted by:

ALDRICH LAW FIRM, LTD.



John P. Aldrich, Esq.
Nevada Bar No.: 6877
1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
Attorneys for Plaintiff

EXHIBIT 2

EXHIBIT 2

1 **NEO**

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

6
7 **THE FIFTH JUDICIAL DISTRICT COURT**
8 **THE STATE OF NEVADA**
9 **COUNTY OF NYE**

10 Estate of MICHAEL DAVID ADAMS;
11 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

12 Plaintiffs,

13 vs.

14 SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

15 Defendants.

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

19 Estate of MICHAEL DAVID ADAMS,
20 by and through his mother JUDITH
ADAMS, individually and on behalf of the
21 Estate,

22 Counterdefendants.

Case No.: CV24539
Dept.: 2P

23 **NOTICE OF ENTRY OF ORDER**

24 ///


25 ///

26 ///

1 PLEASE TAKE NOTICE that an Order After Hearing was entered in the above-entitled
2 matter on August 12, 2010, a copy of which is attached hereto as Exhibit 1.

3 DATED this 17th day of August, 2010.

4 ALDRICH LAW FIRM, LTD.

5
6 
7 John P. Aldrich, Esq.
8 Nevada State Bar No. 6877
9 1601 S. Rainbow Blvd., Suite 160
10 Las Vegas, Nevada 89146
11 (702) 853-5490
12 (702) 227-1975
13 *Attorneys for Plaintiff*

14 **CERTIFICATE OF SERVICE**

15 I HEREBY CERTIFY that on the 17th day of August, 2010, I mailed a copy of the
16 NOTICE OF ENTRY OF ORDER, in a sealed envelope, to the following and that postage was fully
17 paid thereon:

18 John Ohlson, Esq.
19 275 Hill Street, Suite 230
20 Reno, Nevada 89501
21 *Attorney for Defendant/Counterclaimant*

22 Katherine M. Barker, Esq.
23 Law Office of Katherine M. Barker
24 823 S. Las Vegas Blvd., Ste. 300
25 Las Vegas, NV 89101
26 *Attorney for Counterdefendant*
27 *Estate of Michael David Adams*


28 
An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

EXHIBIT 1

FILED

Case No. CV 24539
Dept. 2P

2010 AUG 12 A 9:00

REBECCA BALLARD

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE CLERK
STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

ESTATE OF MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate

Plaintiff,

vs.

SUSAN FALLINI; DOES I-X, and ROE
CORPORATIONS I-X, inclusive

Defendants.

ORDER AFTER HEARING

This matter is regarding a motor vehicle accident involving Michael Adams and a Hereford Cow owned by the Defendant. On June 24, 2010, Plaintiff filed an Application for Default Judgment against Defendant Susan Fallini. Plaintiff requested \$2,500,000 for grief, sorrow, loss of support; \$1,640,696 for lost career earnings; \$5,000,000 for hedonic damages loss of life's pleasure and enjoyment; \$35,000 for Sanctions already levied against Defendants; \$50,000 for attorney's fees; and \$5,188.85 for funeral and other related expenses for a total of \$9,230,884.85. Defendants filed an Opposition on June 24, 2010. A hearing was held on this matter on July 19, 2010, in which Plaintiff and Defendants appeared with their counsels. After hearing arguments from both sides regarding the Defendant's violation of procedural rules, the Court denied Defendant's

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA, MINERAL AND NYE COUNTIES





1
2 Motion for Reconsideration and proceeded with the Prove Up Hearing and Canceled the
3 Trial scheduled for August 2010. Judith Adams, Anthony Adams, and Susan Fallini were
4 sworn in and testified. The parties' counsel gave their closing statements. The Court
5 heard testimony, counsels' statements and arguments, and reviewed the pleadings on file
6 herein. This Order follows.

7
8 **ORDER**

9 IT IS HEREBY ORDERED that the Defendant's Motion for Reconsideration is
10 DENIED.

11 IT IS FURTHER ORDERED that the Court grants the Plaintiff \$1,000,000 in
12 Damages for Grief, Sorrow, and loss of support.

13 IT IS FURTHER ORDERED that the Court grants the Plaintiff \$1,640,696 in
14 Damages for future lost earnings.

15 IT IS FURTHER ORDERED that the Court grants the Plaintiff \$50,000 in
16 Attorney's Fees.

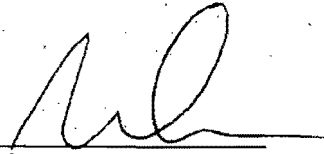
17 IT IS FURTHER ORDERED that the Court grants the Plaintiff \$35,000 in
18 sanctions levied against the Defendant.

19 IT IS FURTHER ORDERED that the Court grants the Plaintiff \$5,188.85 in
20 funeral and other related expenses.

21 IT IS FURTHER ORDERED that Plaintiff's request for Hedonic damages is
22 DENIED.
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED this 12th day of August 2010.



DISTRICT JUDGE

FIFTH JUDICIAL DISTRICT COURT
ESMERELDA, MINERAL AND NYE COUNTIES





CERTIFICATION OF MAILING

The undersigned hereby certifies that on the 12th day of August 2010, he mailed
copies of the foregoing ORDER AFTER HEARING to the following:

John P. Aldrich, Esq.
ALDRICH LAW FIRM, LTD.
1601 S. Rainbow Blvd., Suite 160
Las Vegas, NV 89146

John Ohlson, Esq.
BOWEN, HALL, OHLSON & OSBORNE
555 South Center Street
Reno, NV 89501

Katherine M. Barker, Esq.
LAW OFFICE OF KATHERINE M. BARKER
823 S. Las Vegas Blvd., Ste. 300
Las Vegas, NV 89101

C. PAUL TECHO
Law Clerk to
DISTRICT JUDGE

EXHIBIT 1

EXHIBIT 1

FILED

Case No. CV 24539
Dept. 2P

2010 AUG 12 A 9:00

REBECCA BALLARD

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

ESTATE OF MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate

Plaintiff,

vs.

SUSAN FALLINI; DOES I-X, and ROE
CORPORATIONS I-X, inclusive

Defendants.

ORDER AFTER HEARING

This matter is regarding a motor vehicle accident involving Michael Adams and a Hereford Cow owned by the Defendant. On June 24, 2010, Plaintiff filed an Application for Default Judgment against Defendant Susan Fallini. Plaintiff requested \$2,500,000 for grief, sorrow, loss of support; \$1,640,696 for lost career earnings; \$5,000,000 for hedonic damages loss of life's pleasure and enjoyment; \$35,000 for Sanctions already levied against Defendants; \$50,000 for attorney's fees; and \$5,188.85 for funeral and other related expenses for a total of \$9,230,884.85. Defendants filed an Opposition on June 24, 2010. A hearing was held on this matter on July 19, 2010, in which Plaintiff and Defendants appeared with their counsels. After hearing arguments from both sides regarding the Defendant's violation of procedural rules, the Court denied Defendant's

FIFTH JUDICIAL DISTRICT COURT
ESMERELDA, MINERAL AND NYE COUNTIES





1
2 Motion for Reconsideration and proceeded with the Prove Up Hearing and Canceled the
3 Trial scheduled for August 2010. Judith Adams, Anthony Adams, and Susan Fallini were
4 sworn in and testified. The parties' counsel gave their closing statements. The Court
5 heard testimony, counsels' statements and arguments, and reviewed the pleadings on file
6 herein. This Order follows.

7
8 **ORDER**

9 IT IS HEREBY ORDERED that the Defendant's Motion for Reconsideration is
10 DENIED.

11 IT IS FURTHER ORDERED that the Court grants the Plaintiff \$1,000,000 in
12 Damages for Grief, Sorrow, and loss of support.

13 IT IS FURTHER ORDERED that the Court grants the Plaintiff \$1,640,696 in
14 Damages for future lost earnings.

15 IT IS FURTHER ORDERED that the Court grants the Plaintiff \$50,000 in
16 Attorney's Fees.

17 IT IS FURTHER ORDERED that the Court grants the Plaintiff \$35,000 in
18 sanctions levied against the Defendant.

19 IT IS FURTHER ORDERED that the Court grants the Plaintiff \$5,188.85 in
20 funeral and other related expenses.

21 IT IS FURTHER ORDERED that Plaintiff's request for Hedonic damages is
22 DENIED.
23
24
25
26
27
28

Fifth Judicial District Court
ESMERELDA, MINERAL AND NYE COUNTIES



DATED this 12th day of August 2010.


DISTRICT JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



CERTIFICATION OF MAILING

The undersigned hereby certifies that on the 12th day of August 2010, he mailed
copies of the foregoing ORDER AFTER HEARING to the following:

John P. Aldrich, Esq.
ALDRICH LAW FIRM, LTD.
1601 S. Rainbow Blvd., Suite 160
Las Vegas, NV 89146

John Ohlson, Esq.
BOWEN, HALL, OHLSON & OSBORNE
555 South Center Street
Reno, NV 89501

Katherine M. Barker, Esq.
LAW OFFICE OF KATHERINE M. BARKER
823 S. Las Vegas Blvd., Ste. 300
Las Vegas, NV 89101

C. PAUL TECHO
Law Clerk to
DISTRICT JUDGE

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

Electronically Filed
Sep 29 2010 01:10 p.m.
Tracie K. Lindeman

SUSAN FALLINI,

Appellant(s),

No. 568440

vs.

ESTATE OF MICHAEL ADAMS,

DOCKETING STATEMENT

BY AND THROUGH HIS MOTHER JUDITH ADAMS,

CIVIL APPEALS

INDIVIDUALLY AND ON BEHALF OF THE ESTATE,

Respondent(s),

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. Id. Failure to attach documents as requested in this statement, completely fill out the statement, or to fail to file it in a timely manner, will constitute grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District FIFTH Department 2 County NYE.
Judge Robert W. Lane District Court Docket No. CV0024539

2. Attorney filing this docket statement:

Attorney John Ohlson, Esq. Telephone (775) 323-2700.
Firm John Ohlson.
Address 275 Hill Street, Suite 230, Reno, Nevada 89501.
Client(s) Susan Fallini.

If this is a joint statement completed on behalf of multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondent(s):

Attorney John Aldrich, Esq. Telephone (702) 853-5490.
Firm Aldrich Law Firm, Ltd.
Address 1601 S. Rainbow Blvd., Suite 160, Las Vegas, Nevada 89146.
Client(s) Estate of Michael Adams, By and Through his Mother Judith Adams, Individually and on Behalf of the Estate.

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Grant/Denial of injunction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Grant/Denial of declaratory relief |
| <input checked="" type="checkbox"/> Default Judgment | <input type="checkbox"/> Review of agency determination |
| <input type="checkbox"/> Dismissal | <input type="checkbox"/> Divorce decree: |
| <input type="checkbox"/> Lack of jurisdiction | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Failure to state a claim | <input type="checkbox"/> Other disposition (specify): |
| <hr/> | |
| <input type="checkbox"/> Failure to prosecute | |
| <hr/> | |
| <input type="checkbox"/> Other (specify) | |
| <hr/> | |

5. Does this appeal raise issues concerning any of the following: No.

- | | |
|--|--|
| <input type="checkbox"/> Child custody | <input type="checkbox"/> Termination of parental rights |
| <input type="checkbox"/> Venue | <input type="checkbox"/> Grant/Denial of injunction or TRO |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Juvenile matters |

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

This action arises out of damage claims for wrongful *death due to alleged negligence* asserted by Plaintiff Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH ADAMS, Individually and on behalf of the Estate against Defendant Susan Fallini, as a result of a July 7, 2005 automobile versus cow accident, wherein Michael Adams died. The action proceeded to default, including the granting of a partial summary judgment and the striking of Defendant Susan Fallini's Answer and Counterclaim. Further, the District Judge vacated the trial and returned an award in favor of Plaintiff and against Defendant Susan Fallini. An Order was entered on August 12, 2010 in the principal amount of \$1,000,000 for damages for grief, sorrow and loss of support together with damages for future lost earnings in the amount of \$1,640,696, attorney's fees in the amount of \$50,000, sanctions in the amount of \$35,000 and funeral expenses in the amount of \$5,188.85. This appeal is from the August 12, 2010 Order After Hearing.

9. Issues on appeal. State concisely the principal issue(s) in this appeal:

- (1) **Whether the district court committed a reversible error in denying Defendant's Motion for Reconsideration.**
- (2) **Whether the district court erred vacating the jury trial herein, and determining damages.**
- (3) **Whether damages awarded by the district court were excessive, and without a legal basis.**

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

The undersigned is not aware of any proceeding presently pending before this court which raise the

same or similar issues to those raised in the present appeal.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A X Yes No

If not, explain

12. Other issues. Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (on an attachment, identify the cases(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first-impression
- ☐ An issue of public policy
- ☐ An issue where an banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain

13. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial?

14. Judicial disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice?

 N/A

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from. August 12, 2010 (Attached as Exhibit 1).
Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which an appeal is taken.

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order served August 17, 2010 (Attached as Exhibit 2).
Attach a copy, including proof of service, for each order or judgment appealed from.

(a) Was service by delivery or by mail by United States Postal Service (specify).

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),

(a) Specify the type of motion, and the date and method of service of the motion, and date of filing.

NRCP 50(b)_____ Date served_____ By delivery_____ or by mail_____ Date of filing_____

NRCP 52(b)_____ Date served_____ By delivery_____ or by mail_____ Date of filing_____

NRCP 59_____ Date served_____ By delivery_____ or by mail_____ Date of filing_____

Attach copies of all post-trial tolling motions.

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal.

(b) Date of entry of written order resolving tolling motion_____. **Attach a copy.**

(c) Date written notice of entry of order resolving motion served._____. **Attach a copy, including proof of service.**

(i) Was service by delivery_____ or by mail_____ (specify).

18. Date notice of appeal was filed September 10, 2010.

(a) If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other:

NRAP 4(a), NRS155.190

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

NRAP 3A(b)(1) X NRS 155.190_____ (specify subsection)

NRAP 3A(b)(2)_____ NRS 38.205_____ (specify subsection)

NRAP 3A(b)(3)_____ NRS 703.376

Other (specify)

Explain how each authority provides a basis for appeal from the judgment or order:

The district court's order vacating a jury trial, denying defendant's motion for reconsideration and awarding damages to the plaintiff resolved, finally, the action below, was a final judgment against defendant, for which defendant has no recourse in district court.

21. List all parties involved in the action in the district court:

Plaintiff Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH ADAMS,
Individually and on behalf of the Estate

Defendant Susan Fallini

(a) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the trial court's disposition of each claim, and how each claim was resolved (i. e., order, judgment, stipulation), and the date of disposition of each claim. Attach a copy of each disposition.

Plaintiff's Claims: Wrongful Death.

Defendant's Cross-Claims: Destruction of Property.

See disposition of Plaintiff's claims in Order After Hearing, dated August 12, 2010 (Attached as Exhibit 1).

See disposition of Defendant's counterclaim in Findings of Fact, Conclusions of Law and Order Striking Answer and Counterclaim dated November 4, 2009 (Attached as Exhibit 3).

23. Attach copies of the last-filed version of all complaints, counterclaims, and/or cross-claims filed in the district court.

Complaint (Attached as Exhibit 4)

Answer and Counterclaim (Attached as Exhibit 5)

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:

Yes X No

25. If you answered "No" to the immediately previous question, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):

Yes _____ No _____ If "Yes," attach a copy of the certification or order, including any notice of entry and proof of service.

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:

Yes _____ No _____.

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

VERIFICATION

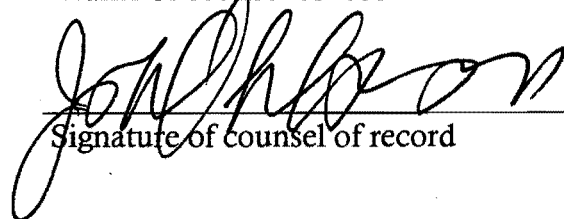
I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Susan Fallini
Name of Appellant

9/29/10
Date

Nevada, Washoe County
State and county where signed

John Ohlson, Esq. & Jeff Kump, Esq.
Name of counsel of record


Signature of counsel of record

CERTIFICATE OF SERVICE

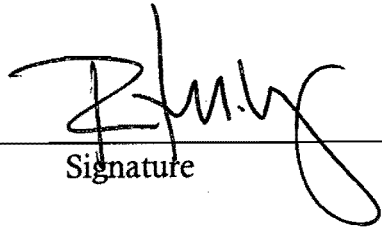
I certify that on the 29 day of SEPTEMBER, 2010, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

John Aldrich, Esq.
ALDRICH LAW FIRM
1601 S. Rainbow Rd., Suite 160
Las Vegas, NV 89146

Dated this 29 day of SEPTEMBER, 2010.



Signature

SCHEDULE OF EXHIBITS

EXHIBIT 1: Order After Hearing

EXHIBIT 2: Notice of Entry of Order

EXHIBIT 3: Findings of Fact, Conclusions of Law and Order Striking Answer and Counterclaim

EXHIBIT 4: Complaint

EXHIBIT 5: Answer and Counterclaim