

EXHIBIT 1

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1
2 **AFFIDAVIT OF JOHN OHLSON, ESQ.**

3 STATE OF NEVADA)
)ss.
4 COUNTY OF WASHOE)

5 I, John Ohlson, Esq., being first duly sworn, do hereby affirm under penalty of perjury
6 that the assertions of this affidavit are true, that I have personal knowledge of the matters stated in
7 this affidavit, except as to those matters stated on information and belief, and as to those matters,
8 I believe them to be true, and that if called as a witness, I could competently testify to the matters
9 contained herein.
10

- 11 1. Affiant is an attorney licensed to practice law, in good standing, in the State of Nevada.
- 12 2. Affiant has been a member in good standing of the bar of this Court since September,
13 1972, and makes this affidavit in support of the within motion and on behalf of appellant
14 herein.
- 15 3. Affiant succeeded Harry Kuehn as counsel for appellant in the district court proceedings.
16 In that capacity, affiant represented appellant in a hearing before the district court on July
17 19, 2010. The hearing was had on Respondents motion for default judgment.
- 18 4. Prior to the hearing, affiant approached the court reporter whom affiant had never before
19 met. I introduced myself and gave the court reporter a card, indicating that the transcript
20 and a bill should be sent to me. I then took my place in line for the motion calendar to
21 await the calling of this case.
- 22 5. During the hearing, I noticed the court reporter was not taking the matter down (or was
23 not present, I don't recall which), and remarked accordingly to the Court. Judge Lane
24 assured me that the proceedings were being video-taped, and I proceeded.
- 25 6. After the proceedings, my office contacted the court reporter and asked for a transcript.
26 My assistant was told that there was no transcript of the proceedings, and that one could
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1 not be produced because I had not specifically (in those words) asked the reporter to
2 report the hearing. Subsequently, this appeal was taken without the benefit of a transcript,
3 because of my belief that a transcript was unavailable.
4

5 7. On September 29, 2011, appellant sent a draft of a transcript to my office, saying that it
6 had been sent to her directly by a court reporter not even present at the hearing. My office
7 followed up and contacted the court reporter and asked her to prepare a final, original
8 transcript. Exhibit A hereto is a copy of the final sent to me by the court reporter.

9 8. I have never been given an explanation as to why I was misinformed about the ability of
10 the court reporter to prepare a transcript from video tapes or even that videos of the
11 proceeding existed. I have never been informed why the court reporter told my office that
12 a transcript of the default hearing could not be prepared. I have further not been informed
13 why the transcript appeared so suddenly now. I believe that the inclusion of the transcript
14 of the default hearing would be useful to the parties and the Court.
15

16
17
18 SUBSCRIBED and SWORN to me this
19 5 DAY OF OCTOBER, 2011.

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21 NOTARY PUBLIC

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JOHN OLSON, ESQ.



ROBERT M. MAY
NOTARY PUBLIC
STATE OF NEVADA
MY COMMISSION EXPIRES: 8-12-2012
COMMISSION NO: 04-01310-2

EXHIBIT A

EXHIBIT A

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CASE NO. CV 24539
DEPARTMENT 2P

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	*	APPLICATION FOR
of the Estate,	*	DEFAULT JUDGMENT
Plaintiff,	*	
-vs-	*	
SUSAN FALLINI; DOES I-X, and	*	
ROE CORPORATIONS I-X, inclusive,	*	
Defendants.	*	

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* * *

The above-entitled cause of action came on regularly
for hearing before the Honorable Judge Robert W. Lane at
Pahrump, Nevada on July 19, 2010.

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APPEARANCES

For the Plaintiff: JOHN P. ALDRICH, Esq.
 1601 S. Rainbow Blvd.
 Suite 160
 Las Vegas, Nevada 89146

For the Defendant: JOHN OHLSON, Esq.
 555 South Center Street
 Reno, Nevada 89501

* * * * *

1 THE COURT: All right, let's get started.
2 Prove up real quick and do what you need to do.

3 MR. ALDRICH: (Inaudible) I don't think I'll
4 take all that long. I have two witnesses. I know that
5 Mr. Ohlson has an issue he wanted to address before we
6 started.

7 MR. OHLSON: I'll reserve it for the
8 finish of the live testimony. It relates to the matters
9 that were filed.

10 THE COURT: Very good.

11 MR. OHLSON: And also relates to an issue I
12 want to raise and that is since the answer and counter
13 claim are stricken, can you still consider comparative
14 fault?

15 THE COURT: I probably would have unless
16 I now hear an argument that I can't because I like to
17 consider everything but you're not going to open a door
18 after we hear all the live testimony and have to reopen
19 up the live testimony again, are you?

20 MR. ALDRICH: So save the argument for
21 comparative fault now or later?

22 THE COURT: I'd probably do it now.

23 MR. ALDRICH: Comparative fault based on
24 what? An affirmative defense? (Inaudible.)

25 THE COURT: You should be aware that out

1 here in the rurals, cows run on highways.

2 MR. ALDRICH: Sure, but my position is,
3 based on what? An affirmative defense as asserted in
4 the case? I mean, what happens in these situations is a
5 prove up (inaudible). I'm here to prove up the damages.
6 We're going to hear from Mr. and Ms. Adams for a few
7 minutes. I've attached some other documents. We're going
8 to talk about those a little bit and then we're going to
9 ask the Court to enter a judgment.

10 If the Court's going to diminish that
11 judgment, it needs to be based on evidence. Well, what
12 evidence would that be? If affirmative defense that was
13 asserted, there aren't any, so --

14 THE COURT: Are you asserting right now that
15 at this prove up, the other side isn't allowed to present
16 evidence or argue or anything at this time? They have to
17 remain silent so you can ask for half a billion dollars
18 and that's the evidence, that you're asking for half a
19 billion right now, and they're not allowed to say a word
20 and I don't have anything in opposition so I have to give
21 you a half a billion?

22 MR. ALDRICH: Well, I certainly have taken
23 that position in my pleadings and I could ask for half a
24 billion dollars but --

25 THE COURT: How do I know that the half

1 a million you're going to ask for isn't any more
2 unreasonable than half a billion?

3 MR. ALDRICH: Just a couple of things to
4 touch on that I addressed in my -- I guess it was a
5 reply to their opposition to the application for default
6 judgment. Sort of losing track of --

7 THE COURT: Say that again. I'm kidding.

8 MR. ALDRICH: But the bottom line is that in
9 the -- I cited one case in the reply and I'll just read
10 the one sentence from it and it's Young versus Johnny
11 Robero Building, 106 Nevada 88, and it says that the
12 defaulting party gives up the right to object to all but
13 the most patent and fundamental defects in the accounting
14 in default judgment.

15 So -- and I go into here a little bit
16 about -- I think was this motion -- about whether or
17 not they're entitled to participate in hearing, to cross
18 examine, to do anything, and it's my position that they're
19 not.

20 Now the case that's cited in here talks about
21 a situation where there was an application for default
22 judgment that was going forward and the parties had agreed
23 that they would be able to cross examine, the defendant
24 would, but not present evidence and that type of thing,
25 and then apparently that stipulation didn't work out and

1 they weren't allowed to do that and they went forward,
2 but it talks about how the Court certainly has the
3 discretion to allow that to happen.

4 My position here is they haven't identified
5 witnesses in the case or anything like that. I've done
6 the proof that's necessary when there is no opposition
7 to the other side and in their opposition to my
8 application for default judgment, they didn't take any
9 issue at all (inaudible).

10 THE COURT: You cited a case a moment ago
11 that said the most patent and what?

12 MR. ALDRICH: Fundamental defects in the
13 accounting.

14 THE COURT: Okay. Now I'm not going to let
15 them get a windfall, right? Right?

16 MR. ALDRICH: Sure.

17 THE COURT: So there's naturally going to
18 be questions on my mind. When they say they want half
19 a million for such and such, I'm going to think to
20 myself, is that reasonable, and you're going to argue
21 it is.

22 Let's say hypothetically -- I don't know --
23 we have it written here -- loss of consortium or
24 something, I don't know, and you say, well, half a
25 million's -- you didn't bring in your experts, right?

1 MR. ALDRICH: I did not bring my experts
2 (inaudible).

3 THE COURT: Right.

4 And so let's say hypothetically you say
5 loss of education, or loss of -- let's do loss of income,
6 there we go. That's a good one. You've got lost
7 earnings, one-point-six million. Now --

8 MR. ALDRICH: I do have an expert for that
9 number.

10 THE COURT: Figures.

11 But, anyway, let's say hypothetically that
12 I'm sitting here saying to myself, wow, one-point-six,
13 that seems kind of high and I'm not sure that's the right
14 thing to give him or not. What am I going to base my
15 decision on, on whether to give it or not, unless I allow
16 the other side an opportunity to ask some questions about
17 it, which would help me, and that's why I'm inclined to
18 say, well, let's let them ask some questions to help me
19 so I'm not just picking figures out of the air and saying
20 one-point-six million, no, I think he would have lost his
21 job in three years, I'm going to give him a hundred
22 thousand and so forth.

23 MR. ALDRICH: Well, Your Honor is the finder
24 of fact and certainly the case law indicates --

25 THE COURT: Well, you were basically arguing

1 that they shouldn't really be allowed to ask, where I'm
2 more inclined to let them.

3 MR. ALDRICH: I understand.

4 THE COURT: Okay.

5 MR. ALDRICH: I'm simply conceding to the
6 Court that, yes, you're going to have to make that
7 difficult decision. My position is that they shouldn't
8 be able to present evidence.

9 THE COURT: Well, I don't know if they have
10 any evidence to present.

11 MR. ALDRICH: I don't know if they do either
12 because I haven't received any notice of any --

13 THE COURT: I doubt they're going to have
14 their own expert to tell us what his loss of income was
15 but they can ask reasonable questions of whoever it is
16 that's going to testify to loss of income.

17 MR. ALDRICH: And that's the Court's
18 discretion. I think that the case law says that we
19 present it to the Court. The Court certainly, on it's
20 own, can say, you know, my request for one-point-six
21 million in lost earnings is too high. Certainly, at
22 least on that one, I have an expert for. I asked for
23 five million in hedonic damages and the Court can take
24 a look at that and reduce or increase it if it felt like
25 that was what it need to do.

1 THE COURT: All right. I just feel funny
2 that sometimes on occasion I'm asked to pick numbers
3 out of the air. I'd prefer it would be based on evidence
4 but at the same time if somebody comes forward to me in a
5 civil action and they say, well, we think it's worth three
6 million -- here's what our expert said, it's worth three
7 million, and in my head I'm, no, it's more like seven
8 hundred and fifty thousand, and now I'm picking the thing
9 out of the air but I know three million's not reasonable
10 and so forth, but go ahead and present your evidence and
11 we'll figure it out as we go along.

12 MR. ALDRICH: Fair enough.

13 THE COURT: Go ahead.

14 MR. ALDRICH: All right. I want to start
15 with calling Judith Adams.

16 THE COURT: All right.

17 Ms. Adams, if you can come up here please
18 to this witness stand.

19 There's a little ramp. Be cautious walking
20 up it.

21
22 (Whereupon the witness was sworn by the
23 clerk.)
24

25 THE COURT: Thank you. Have a seat.

JUDITH ADAMS,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ALDRICH:

Q. All right, Ms. Adams, if you would just state your name please for the record.

A. Judith Adams.

Q. And are you married?

A. Yes, I am.

Q. And to whom are you married?

A. Anthony Adams.

Q. Okay. Is that the gentlemen next to me here?

A. Yes, it is.

Q. All right. And just a little bit of background for the Court, do you currently work?

A. Yes, I do.

Q. Where do you work?

A. I work for the Social Security Administration.

Q. And what do you do there?

A. I'm an operations supervisor.

Q. How long have you been employed in that capacity?

A. Forty years.

1 Q. I imagine you could tell us a little bit about
2 social security.

3 A. I could.

4 Q. And do you have any children?

5 A. I had one child, Michael Adams.

6 Q. Okay. And you know we're here to talk about the
7 case involving Michael's death, right?

8 A. Yes.

9 Q. Okay. What I would like to do is to have you
10 tell the Judge a little bit about Michael and I want to
11 help you. I know that's a broad question so what I'd
12 like for you to do is give him some information about
13 Michael and maybe start and go chronologically. Maybe
14 that would help.

15 MR. OHLSON: Your Honor, I object to the
16 form of the question. It is overly broad and we ought
17 to stick -- try to stick to admissible evidence.

18 THE COURT: And it's twenty to twelve, so
19 tell me about your son, well, he was born in this hospital
20 and on we go for the next few hours.

21 MR. ALDRICH: It certainly will be shorter
22 than that but I'm happy to narrow it down. I didn't want
23 to lead too much but (inaudible).

24 THE COURT: Thank you.

25 Q. (By Mr. Aldrich) What was Michael like as a

1 child?

2 A. He was a wonderful child. He was very good.
3 He was very loving. He had an enormous number of friends.
4 He was involved in a tremendous amount of activities.

5 Q. And what were his hobbies?

6 A. He liked sports. He liked reading. It would
7 be hard to kind of pinpoint hobbies as such. There was
8 hardly any aspect of daily life that he wasn't interested
9 in.

10 Q. And how was your relationship with Michael when
11 he was young?

12 A. Excellent.

13 Q. Tell me a little bit about Michael's education.

14 A. He went to high school. He graduated from high
15 school. He went to university. He took a break from
16 his university studies to go into the Marine Reserves.
17 He was in the Reserves for six months. When he left the
18 Reserves, he resumed his education. He graduated with a
19 degree in geology and started working in that field.

20 Q. And what was he doing for work at the time of
21 his death?

22 A. He was working as a staff geologist.

23 Q. And for what company, if you know?

24 A. Actually at the time that he died, he was
25 working for a company called Horizon Well Logging. He

1 had just previously worked for Southern California --
2 I think -- Geotechnical, and he went back to work for
3 Horizon Well Logging.

4 Q. And how was your relationship with Michael in
5 the, let's say, two or three years before his passing?

6 A. At that point in time he was not living at home
7 so we spoke on the phone frequently. I often said that
8 the cell phone must be an appendage of his. If we didn't
9 speak on the phone because he was working in an area that
10 was out of range, he would e-mail frequently.

11 Q. And did you communicate with him often?

12 A. Very often. Probably even -- he probably
13 communicated with my husband more frequently.

14 Q. And in -- let's just keep it at the two or
15 three years before his passing, did he help out around
16 your house?

17 A. He did, if needed, and there were probably things
18 to do in the house that might have been too difficult for
19 either my husband or I to accomplish so if we needed help
20 in terms, you know, say physical labor, he'd certainly
21 come over and helped us with that. He helped me with
22 some technical issues, you know. Every time I would get
23 on the cell phone, it was like, okay, show me how to use
24 this, so little things like that.

25 Q. And your son passed away approximately five

1 years ago. Is that correct?

2 A. It was five years ago the beginning of this
3 month.

4 Q. And is your need for his assistance at this time
5 greater than it was five years ago?

6 A. Well, as I see that both of us are getting
7 older, certainly there's more times that I would probably
8 think to call on him. There's probably less physical
9 things that neither one of us could accomplish now and
10 certainly he would have helped me. My husband's had
11 a number of illnesses. He certainly would have been
12 at my side, supportive, you know, as I was going through
13 those issues with my husband.

14 Q. And have you actually had times then in your
15 life when there were problems with your husband and
16 Michael would come and help you?

17 A. Absolutely.

18 Q. Tell us about that.

19 Q. My husband suffered a heart attack in 1992 and
20 at that time he came up from school to be with us. He
21 came to the hospital every day. He relieved me, you
22 know -- in intensive care, even though you get excellent
23 care, someone still needs to be there, so he would come
24 and relieve me, so we would take turns sitting next to
25 Tony in the hospital.

1 Q. Okay. How's your husband's health now?

2 A. His health has not improved since then. He's
3 had a second open heart surgery and, in November, he
4 suffered a cardiac arrest that he was in the hospital
5 for about two and a half weeks. At that time he needed
6 to have a defibrillator implant so this is always, you
7 know, something that's on my mind.

8 Q. I want to call your attention to the approximate
9 time that Michael passed away. How did you find out that
10 he had passed away?

11 MR. OHLSON: Objection. Relevance.

12 THE COURT: Overruled.

13 How old was he at the time he died?

14 MS. ADAMS: Thirty-three.

15 THE COURT: And no wife or kids?

16 MS. ADAMS: No.

17 THE COURT: And he didn't live at home with
18 you, right?

19 MS. ADAMS: No.

20 THE COURT: Okay.

21 All right. Go ahead. It's overruled.

22 A. (By Ms. Adams) Um, two policemen from the
23 police department in the city where we live came to
24 our door and, at first, you know, you wonder why are
25 policemen at your door, and as soon as he said, "Are

1 you the parents of Michael Adams," I immediately knew
2 that obviously they were telling me something about him
3 but this was later in the day. From what I understand,
4 he was pronounced dead in the morning and we did not find
5 out until the evening.

6 MR. ALDRICH: May I approach the witness?
7 I just want to show her the exhibits and authenticate
8 that.

9 THE COURT: That'll be fine.

10 Q. (By Mr. Aldrich) I'm showing you what we've
11 marked as Exhibit 1 to our application for default
12 judgment. And do you recognize this document?

13 A. Yes.

14 Q. Okay. And then I'm going to flip to the third
15 page on that document. Is that your signature?

16 A. Yes, it is.

17 Q. Okay. And is the information that you have
18 provided to the Court in this letter true and correct?

19 A. Yes, it is.

20 Q. And I also want to draw your attention to
21 Exhibit 4, and we'll let the Court know that Exhibit 3
22 has its own Exhibit 4, so I'm actually going to refer
23 to the Gunter's Funeral Home (inaudible). Do you know
24 what that is?

25 A. Yes.

1 Q. Can you tell us what that is?

2 A. That is the bill for the funeral arrangements
3 and cremation.

4 Q. And did you actually have to pay that bill?

5 A. Yes, I did.

6 Q. All right. Thank you.

7 Now I'd like for you to tell us how Michael's
8 death has affected your life.

9 A. Well, there isn't a day that goes by that I
10 don't think about him and even when thinking about him
11 or talking about him, it's exceedingly difficult. If
12 you would understand the medical terminology stress
13 cardiomyopathy, it's sort of called broken heart
14 syndrome, and, for me, it feels like -- when I think
15 about Michael -- like someone has their hands around
16 your heart and starts squeezing it and just tighter and
17 tighter. Just even sitting in the courtroom this morning,
18 you know, I'm overcome with this, and knowing how it
19 affects my husband is increasingly distressing for me,
20 and realizing that he was an only child and at some point
21 in time, you know, I may be facing, you know, widowhood
22 and realizing that I'm not going to have Michael to help
23 me, you know, as I get older is, you know -- it's
24 unimaginable.

25 Q. And just so we can understand a little bit about

1 Michael's relationships, I understand he had a fiancée
2 but he was not engaged at the time he passed away.

3 A. That is correct.

4 Q. Okay. And he did not have any children.

5 A. No.

6 Q. Okay. Did he have friends?

7 A. Many friends.

8 Q. Did anything happen today that indicates the
9 relationship he had with friends --

10 MR. OHLSON: Objection. Relevance.

11 THE COURT: What's the relevance of that?

12 MR. ALDRICH: For the Court to have an
13 understanding of what Michael was like.

14 THE COURT: I just -- when you say he had
15 a lot of friends, I believe you. Are you asking her
16 to talk about the kind of friendship or --

17 MR. ALDRICH: Maybe as an offer of proof,
18 she's indicated to me that he's had a big influence on
19 friends and that they do things still repeatedly to
20 remember him. I wanted to give her a chance to explain
21 that.

22 THE COURT: Do they?

23 MS. ADAMS: Yes.

24 Each year on his birthday, they all get
25 together. They invite my husband and I and we celebrate

1 Michael's life and we do this on a regular basis. His
2 friends, to this day, call me to see just, you know, how
3 I'm doing. His friends would -- in one of the documents
4 that I provided to you, one of his friends referred to
5 Michael as the glue that kept their group together. He
6 was the one that organized activities for them and it was
7 very hard for them afterwards to get together and organize
8 things because Michael wasn't there to do it for them.

9 Q. (By Mr. Aldrich) I think I've covered -- I'm
10 trying to remember if there was anything else you wanted
11 to let the Court know about Michael.

12 A. Well, I think most of, you know, what I covered
13 was in my statement. It's just -- it's very hard to
14 realize that you've lost your only child, to realize that
15 you'll never have grandchildren, how difficult it is when
16 people come up and ask, "Oh, do you have children," or
17 when my contemporaries are talking about their grand-
18 children, it's not a conversation that I can participate
19 in.

20 Q. All right.

21 MR. ALDRICH: Those are all the questions
22 I have, Your Honor.

23 THE COURT: Thank you very much.

24 Did you have any questions?

25 MR. OHLSON: I do.

1 THE COURT: Really? Okay.

2

3

CROSS EXAMINATION

4

5 BY MR. OHLSON:

6

7

Q. Ma'am, you brought this lawsuit on behalf of
the estate of your son. Is that correct?

8

A. Correct.

9

10

Q. Not on behalf of you and your husband
individually. I mean, that's what it says.

11

A. Okay.

12

13

14

MR. ALDRICH: I think I'm going to object
because it says -- the pleading says individually and on
behalf of the estate.

15

MR. OHLSON: All right. I stand corrected.

16

17

Q. (By Mr. Ohlson) When your son died, you were
living in what city and state?

18

A. Cyprus, California.

19

Q. And where was your son living?

20

A. He lived in Seal Beach, California.

21

22

Q. And what was he doing in this part of the country
when he died? Do you know?

23

24

A. He was working outside of Rachel for Horizon
Well Logging.

25

Q. And when your son died, you and your husband

1 were not financially dependent upon him, were you?
2 A. Financially dependent?
3 Q. Yes.
4 A. No, we are not.
5 MR. OHLSON: That's all I have.
6 THE COURT: Anything else?
7 MR. ALDRICH: No, Your Honor.
8 THE COURT: All right.
9 Thank you. You can step down.
10 MR. ALDRICH: And I would just like to call
11 Anthony Adams to testify.
12 THE COURT: All right.
13 If you can come up here to the witness
14 stand please.
15 You look like you're in pretty good shape
16 for all the medical problems you've had.
17 MR. ADAMS: That's what my doctor says too.
18 THE COURT: Raise your right hand.
19
20 (Whereupon the witness was sworn by the
21 clerk.)
22
23 THE COURT: Thank you, sir. Have a seat.
24
25

1 ANTHONY ADAMS,
2 called as a witness on behalf of the plaintiff, being
3 first duly sworn, testified as follows:
4

5 DIRECT EXAMINATION
6

7 BY MR. ALDRICH:

8 Q. Sir, would you please state your name?

9 A. Anthony Adams.

10 Q. And as -- we heard this before so I'll be really
11 quick, obviously you're married to Judith Adams. Correct?

12 A. Correct.

13 Q. And Michael Adams was your son?

14 A. Yes.

15 Q. Okay. And I just want to let the Court get to
16 know you a little bit. Do you currently work?

17 A. No, I retired now.

18 Q. Okay. Where did you work when you worked?

19 A. I had my own business. I manufactured shoes
20 and distribute them.

21 Q. Okay. Now obviously you know we're here to talk
22 about Michael and his death. I sort of want to short
23 circuit if I can. Is there anything about his childhood
24 or education that your wife mentioned that you wanted to
25 add to?

1 A. No. Michael played baseball. He played soccer.
2 His team won the championship when he played soccer. He
3 just was active. He took judo, was in the Marines, went
4 to England to play soccer, went to Hawaii to play soccer,
5 just everything. He was a reader. We'd discuss
6 astrophysics. We could discuss baseball. We could
7 discuss the Lakers. When they would win -- Lakers made
8 their draft, I'd have ten calls in the matter of an hour.

9 I mean, Michael was my son which -- he was
10 my friend. I can't add a lot to that.

11 Q. And I know this is difficult so I'll just --
12 tell us how your life is different without Michael.

13 A. Well, you'd have to lose a child to know what
14 it is to lose a child that you love. Okay?

15 If anyone wants to know what Michael was
16 like, go to michaeldavidadams.net. There you'll see all
17 his friends that have left comments and everything else.

18 He was just a remarkable person. That's all
19 you can say.

20 When we had a service for Michael, one of
21 the men said that they would actually bid lower just to
22 work with him.

23 MR. ALDRICH: May I approach the witness,
24 Your Honor?

25 THE COURT: Yes.

1 Q. (By Mr. Aldrich) I'm going to show you what
2 we've marked as Exhibit 2 to the application for default
3 judgment.

4 I can see you're getting some glasses out.

5 I'd ask you to take a look at that. Is
6 that your signature there at the end?

7 A. Yes, it is.

8 Q. Is everything in this letter true and correct?

9 A. Yes.

10 Q. Okay. And have you participated in the
11 celebrations that your wife talked about?

12 A. Yes. In fact, we have a chili cook off
13 Saturday where all of his friends will get together.
14 It was called Mike's (inaudible) chili and we've been
15 doing it every year since Michael died.

16 Q. Is there anything else that you would like the
17 Judge to know about Michael that we haven't talked about
18 here today?

19 A. I couldn't even describe Michael because he
20 was just -- he was just Michael. He was just -- there
21 are just no words. Okay?

22 Q. All right. Thank you.

23 MR. ALDRICH: Those are all the questions
24 that I have.

25 THE COURT: Anything?

1 MR. OHLSON: No, thank you, Your Honor.
2 THE COURT: All right.
3 Thank you for testifying. You can step down.
4 THE COURT: Anything else, Counsel?
5 MR. ALDRICH: No, Your Honor. Those are
6 the witnesses that I have. Obviously we can talk about
7 argument if the Court wants to hear. I don't know if you
8 want to address the issues in the (inaudible) that I
9 attached to my supplement now or do you want me just to
10 talk for a second.
11 THE COURT: We're going to read through them
12 very carefully, of course, when we sit down to figure out
13 how much damages.
14 Counsel?
15 MR. OHLSON: I have a witness, if you'll
16 permit me to call the defendant.
17 THE COURT: All right.
18 MR. OHLSON: Ms. Fallini, will you step
19 forward please?
20 And will you face the clerk and raise your
21 right hand?
22 Ma'am? Ms. Fallini? Will you raise your
23 right hand and be sworn?
24
25 (Whereupon the witness was sworn by the

1
2 clerk.)

3
4 SUSAN FALLINI,
5 called as a witness on behalf of the defense being first
6 duly sworn, testified as follows:

7
8 DIRECT EXAMINATION

9
10 BY MR. OHLSON:

11 Q. What is your name?

12 A. Susan Fallini.

13 Q. Are you the defendant in this case?

14 A. Yes, sir.

15 Q. Do you know the location at which the accident
16 in this case occurred?

17 A. Yes, I do.

18 Q. Where was it?

19 A. It's on Highway 375. I'm not aware of the
20 marker post but it's between two of our wells, water
21 wells, by a hard pan lake.

22 Q. If we asked you to, could you take us to the
23 very place right now?

24 A. Absolutely. There's a marker. They have planted
25 a marker there and we fenced it in so the cows wouldn't

1 knock it down.

2 Q. Do you know of your own personal knowledge
3 whether that stretch of highway is designated as open
4 range?

5 A. It is.

6 MR. ALDRICH: I object to relevance. It's
7 prove up.

8 THE COURT: It doesn't matter. I'm aware
9 that it is.

10 Go ahead.

11 MR. OHLSON: If you are, Your Honor, you'll
12 take judicial notice of that?

13 THE COURT: That'll be fine.

14 MR. OHLSON: That's all I have.

15 MS. FALLINI: That's it?

16 THE COURT: Thank you for testifying.

17 MS. FALLINI: Uh-huh.

18 THE COURT: Anything else?

19 MR. ALDRICH: I've got some argument if the
20 Court wants to hear it.

21 THE COURT: You're welcome to make argument.
22 We're going to read through your brief and I've got the
23 notes from the hearing today and you're welcome to add
24 anything you want to.

25 MR. ALDRICH: Thank you.

1 And I wanted to address some of the things
2 that the Court commented on earlier, especially sort of
3 pulling numbers out of the sky.

4 This is not your typical application for
5 default judgment. Normally you see it, it's a breach
6 of a copier lease or breach of a car lease or something
7 like that and you've got a document that says, you know,
8 you're supposed to make three-hundred-dollar-a-month
9 payments for five years and you didn't and here's the
10 number and there you go. This is different than that
11 and so it requires some extra care.

12 I wanted to just address each of the issues
13 that I raised in here briefly.

14 We've got -- we're asking for grief, sorrow,
15 loss of probable support, companionship, society, comfort,
16 consortium and so on the issues, I've put in here we've
17 asked for two and a half million dollars. I'll be the
18 first one to stand here and tell you that's a very
19 difficult number to define and really define.

20 But when you think about it, and you've
21 heard the testimony from them and what Michael meant
22 to them, two and a half million dollars is a fair
23 number in my opinion. Now obviously the Court's going
24 to do what the Court does but this is not a number that
25 I threw in so it would be a big number.

1 You sit down and you think about it because
2 a lot of times, you'll see those Visa commercials and it
3 ends with, you know, this much to do this and this much
4 to do that and this experience is priceless. That's
5 really what it comes down to. They're not going to have
6 grandchildren. There's literally an end to a family line
7 right there. What is that worth? I don't know but it's
8 at least two and a half million dollars.

9 I comment on the lost earnings. We've
10 attached the wage information and we have an expert
11 for that number and so I think we've got some hard
12 numbers there.

13 Hedonic damages. Hedonic damages are
14 monetary remedies awarded to compensate injured persons
15 for their non-economic loss of life's pleasures or loss
16 and enjoyment of life. All this information about what
17 Michael was and who he was and friends that still, in
18 his honor, hold chili cookoffs and all these different
19 things, that matters and it matters to the Court's
20 determination of hedonic damages.

21 Michael literally lost a life. He lost the
22 opportunity to be a father. He lost the opportunity to
23 be a grandfather. He lost the opportunity to help his
24 parents in their old age. He lost a lot of opportunities
25 that the rest of us are fortunate enough to have and so,

1 you know, we have -- the number we came up with for
2 hedonic damages was five million dollars.

3 Now the case law that I read on hedonic
4 damages talks about how you can have an expert to
5 testify to that but you don't have to. Obviously we're
6 relying on the Court. I cited the case that talked
7 about how different people have valued that. It comes
8 back to my comment before. What is the value of not
9 being able to do all these things and yet being killed?
10 I don't know the answer to that but, again, when you
11 consider the things that he lost, I believe five million
12 dollars is a number that is fair. Okay?

13 Obviously we've got the expenses in there
14 associated with his death and then I also have -- I want
15 to at least comment on it -- the sanction issue. You
16 know, I assume the Court will add that into the judgment.
17 I think it should be added into the judgment. It's my
18 position that because the discovery that's still
19 outstanding has not been responded to, that that number
20 just kicks up by five hundred dollars every day.

21 I certainly, in candor to the Court, will
22 advise the Court that I received that information in a
23 letter, that there was no insurance apparently for Ms.
24 Fallini, and that was sometime in early June but, again,
25 I believe that Foriter says that they're supposed to

1 respond to discovery and they have not.

2 And so, having made those comments, I'm
3 happy to entertain any questions the Court might have.

4 THE COURT: I don't have any.

5 Counsel, anything you want to say?

6 MR. OHLSON: There is, Your Honor.

7 Counsel's right. This is an unusual case.

8 First of all, when you are considering this
9 case for your ruling, and I'm assuming you're taking the
10 case under submission, please consider that the experts'
11 calculations and the documents at this point and made in
12 this forum are hearsay.

13 Counsel and plaintiff could have brought the
14 witnesses to this hearing. They knew it was a prove up
15 hearing and I assume they came here expecting to prevail
16 on the underlying issues. Right now they're not properly
17 before the Court but, be that as it may, I've been
18 practicing law as long as Mr. Chantiel has been.

19 I just noticed we don't have a court
20 reporter.

21 THE COURT: That's correct. The parties
22 have to request one but we are video taping and taping
23 the proceedings.

24 MR. OHLSON: We are otherwise recording the
25 proceedings.

1 THE COURT: Correct.

2 MR. OHLSON: But I was in practice in
3 September of '72 and (inaudible) criminal practice
4 like Mr. Chantiel. As a matter of fact, we're friends
5 with each other, and I've defended a number of murder
6 cases in which I've heard the parents of the deceased
7 speak to the courtroom at sentencing and the same things
8 always occur to me and that is, as powerful as a trial
9 level judge is, there's nothing in the world you can do
10 to bring back the deceased or to fix the pain on losing
11 a child.

12 Simple matter is we're not supposed to
13 survive our children. They're supposed to survive us.
14 This is a pain that the plaintiff and her husband are
15 going to bear until their last days and there's no amount
16 of money that's going to fix this pain, no amount of
17 money.

18 So what are we doing here? We're here
19 because the whole body of tort law has said that in
20 circumstances such as this, we -- the Court should make
21 a prevailing plaintiff whole. As a matter of fact, when
22 you instruct juries, you instruct them that if they find
23 personal issue of liability, then after that, they should
24 consider damages and then you tell them what damages they
25 can consider.

1 Well, in this case, there were no financial
2 dependents so the issue of the income and how many years
3 of income remains -- is not relevant to any issue in the
4 case because there are no financial dependents that are
5 deprived of the income. The plaintiffs were never
6 financially dependent upon the deceased, nor did he have
7 children or a spouse.

8 They ask funeral expenses. There were
9 apparently those last expenses and I acknowledge that
10 the -- there is emotional pain and suffering but, once
11 again, how do you make a person whole for that? I
12 suggest to you, Your Honor, that you don't. You don't.

13 If you give the plaintiffs ten million
14 dollars, are they going to feel any better? No, they're
15 not going to feel any better. Are they going to feel any
16 better than if you give them fifty thousand dollars?
17 They're not going to feel any better. They're devastated
18 and they're going to remain devastated and, for that, you
19 have my sincere condolences.

20 So what to decide. You have before you and
21 the Court's acknowledged that the area in which this
22 accident happened was open range. Well, the way a jury
23 would do it and the way you would instruct a jury would
24 be to first determine the amount of damages and then,
25 after that's determined, a percentage of which the

1 plaintiff was at fault, in this case considering open
2 range, who takes the percentage, and the Court would
3 apply that percentage to the amount of damages. If the
4 percentage exceeded fifty percent, the damages would be
5 zero. Less than fifty percent, well (inaudible).

6 Your Honor, the system has come under a lot
7 of scrutiny lately and a lot of criticism and a lot of
8 well-founded criticism, criticism from all parts about
9 outlandish results and outlandish verdicts and
10 outstanding amounts of money, and I think, in part,
11 because in many of these cases, the amounts of money
12 that are awarded don't rationally and reasonably relate
13 to the loss and to making whole.

14 Certainly you wouldn't replace the deceased's
15 income. Do you make him whole? Do you make anybody
16 whole? No, you're not.

17 We request that Your Honor consider a result
18 in this case that acknowledges the plaintiffs' loss.
19 Yes, we knew you lost and, yes, we know that no amount
20 of money can ever relieve the pain from you, no amount
21 of money. Take this amount of money as a recognition
22 on our part that you have lost and you've lost greatly
23 and deeply and then let the parties go their way.

24 THE COURT: Thank you.

25 Anything else?

1 MR. ALDRICH: I do. Just a couple of
2 comments.

3 First of all, the open range issue. There
4 are facts in this case that have been conclusively
5 determined and if the Court follows those facts as
6 they've been conclusively determined in this case,
7 there's not going to be a finding of any comparative
8 fault on the part of Michael Adams.

9 Secondly, comparative fault and affirmative
10 defense (inaudible) asserted and everyone's on notice of
11 when they come to trial. There is no affirmative defense
12 here. It is not appropriate for the Court to consider
13 comparative fault and I have seen no case law. Now in
14 the interest of candor to the Court, I haven't looked for
15 case law on that issue because today's the first day I
16 heard of it. I hadn't thought of that, quite frankly.

17 Obviously Mr. Ohlson is capable and has
18 brought that issue before the Court. I also suspect,
19 however, if there were actually case law to support that,
20 that would be here too, so having said that, I think that
21 those arguments do not hold water, so to speak.

22 The next comment that I have is about
23 Exhibit 3 which is the calculation of lost wages. I
24 would have brought the guy here to testify in person but
25 there was no objection to him in the first place and you

1 hate to pay somebody all that money to come all the way
2 out here when there's not an objection.

3 There was an opposition to my application,
4 no mention of an objection to the evidence or the state
5 of the evidence. Certainly there's no evidence in
6 opposition to that to say that he's wrong or anything
7 else, so we do ask the Court to consider that. And I
8 will note that our argument is that that is part of
9 special damages and is permitted to be recovered.

10 You know, the other issue, I guess, we run
11 into, as Mr. Ohlson was arguing today, is you can't make
12 them whole so don't give them very much or you can't make
13 them whole, so punt.

14 We've gone through and been very meticulous
15 about how we've reached the number that we're asking for
16 and, you know, I'm here to say, I admit it to the Court,
17 there's not a definitive number necessarily but you think
18 this stuff through and you think about what sons mean to
19 parents and things like that and it is worth a lot if
20 you're trying to do that.

21 To do anything but to try to compensate them
22 for their loss would be wrong and, of course, if the Court
23 awarded ten million dollars and there was ten million
24 dollars sitting on this table right here today and they
25 had a choice of ten million dollars or Michael walking

1 through that door over there, of course, they're going
2 to say have Michael walk through that door. They don't
3 want ten million dollars. They want Michael back but he
4 can't come back. We can't do that.

5 So what does the court system do? It
6 allows us to try to compensate people from a financial
7 perspective when you can't bring back their loved one,
8 so we would ask the court to take that into consideration
9 and award a substantial amount. We've got the numbers
10 that we've given to the Court and that's what we're
11 asking for.

12 THE COURT: Thank you, sir.

13 You don't have any more, do you?

14 MR. OHLSON: Just one point, if I might, so
15 that I'm clear on an argument. It's our position that
16 no plaintiff in this case has suffered the loss of the
17 deceased's income. He had no financial dependents.

18 THE COURT: Thank you.

19 All right, we'll have the decision for you
20 in a few days. Thank you for coming in.

21 MR. OHLSON: Thank you, Your Honor.

22 MR. ALDRICH: Thank you. We appreciate your
23 time.

24 THE COURT: Thank you.

25 Is there anything else we needed to do?

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THE CLERK: (Inaudible.)

THE COURT: All right, we'll go ahead and
recess then.

* * * * *

CERTIFICATE

I, DanRa Boscovich, certify that I am a
Certified Court Reporter in the State of Nevada; that
I reported and transcribed the above-entitled hearing
from an electronic recording; and that the foregoing
constitutes a transcript as full and correct as the
electronic recording would allow.

Dated: August 27, 2011.


DanRa Boscovich, CCR 218

Electronically Filed
Oct 05 2011 02:53 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

OFFICE OF THE CLERK

* * * * *

SUSAN FALLINI,

Supreme Court No.: 56840

Appellant,

vs.

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

Respondent.

**MOTION FOR ORDER ALLOWING SUPPLEMENTATION OF APPENDIX AND FOR
RE-OPENING OF BRIEFS**

COMES NOW, appellant, Susan Fallini, by and through her undersigned counsel of record and moves this Court for its orders allowing appellant to supplement the Appendix herein to include the newly produced transcript of proceedings in the district court, and to allow supplementation of appellant's briefs herein in relation to said transcripts. This motion is made and based upon the points and authorities and affidavit submitted herewith, and all the records files and pleadings on file herein.

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////

1 *Points and Authorities*

2 **I.**
3 **History**

4 As a result of the failure of her original counsel to represent her in the district court
5 proceedings, appellant suffered a \$2.75 million default judgment, after a hearing in the district
6 court.¹

7 Prior to the commencement of the hearing on plaintiff's motion for default judgment,
8 undersigned counsel (as is his custom) approached the Court reporter and introduced himself. He
9 gave the reporter a card and asked her to send a transcript and a bill to him. He then took his place
10 in line on the motion calendar and waited.²

11 The hearing was held in which both testimony and arguments were had. The matter was
12 submitted to the Court for decision. Judgment was eventually entered in favor of the plaintiffs and
13 against appellant and this appeal ensued.

14 During the process of assembling the record in this appeal, undersigned's office contacted
15 the court reporter present from Depo International to request a transcript of the default hearing.
16 My office was told that there would be no transcript because the hearing was not reported. This
17 appeal then proceeded to full briefing and submission to the Court without a transcript.

18 On September 29, 2011 appellant contacted my office and informed that she had received
19 a daft transcript of the default hearing in the mail. I caused an original to be prepared, a copy of
20 which is attached to my affidavit submitted herewith. Up until this time, I believed that no
21 transcript existed and none could exist.

22 Significantly, the transcript contains the testimony of Judith Adams, mother of the

23 ¹ For a complete recitation of events leading up to the default judgment, see Appellant's opening
24 brief. Those facts are not necessary here for the purposes of this motion.

25 ² For a full explanation, see counsel's affidavit with the transcript exhibit.
26
27
28

1 deceased, Anthony Adams, father of the deceased, and the appellant, Susan Fallini. Significantly,
2 Ms. Adams testified that neither she nor her husband was financially dependent on the deceased
3 at the time of his death. (tr. p.21, ll. 1-4).

4 Appellant testified that the area in which the accident occurred was "open range." (tr. p. 27, ll.
5 2-5)³
6

7 Because appellant operated on the belief that the hearing had not been reported, and that no
8 transcript could be produced, this appeal was prosecuted without the benefit of a transcript. If the
9 transcript had been available when this matter was briefed, significant arguments could have been
10 made relating to the district court's knowledge of the open range status of the accident site, and
11 the bearing that knowledge had on the district court's refusal to allow a re-opening of the
12 proceedings for an adjudication on the merits.
13

14 II. 15 Argument

16 Rule 10(a) NRAP provides:

17 The trial court record consists of the papers and exhibits filed in the district court,
18 the transcript of the proceedings, if any, the district court minutes, and the
docket entries made by the district court clerk. (emphasis added)

19 Rule 13 NRAP places the responsibility for the production of the transcript squarely on the court
20 reporters shoulders, and provides for sanctions against a court reporter who fails in that
21 responsibility. Here, the court reporter clearly failed in her responsibility. As a result this appeal
22 was required to go forward without the benefit of the entire proceedings below. Appellant has
23 been handicapped. Respondent has been handicapped. This Court has been restricted in its ability
24

25 ³ In response to objection, the court stated "It doesn't matter. I'm aware that it is." This is an
26 astonishing statement on behalf of the Court. Plaintiff's recovery on the merits of this case is
27 entirely dependent on the accident site **not** being open range. Underscored now is the fact that
28 appellant has suffered a ruinous, \$2.75 million judgment as a result of a completely meritless
lawsuit.

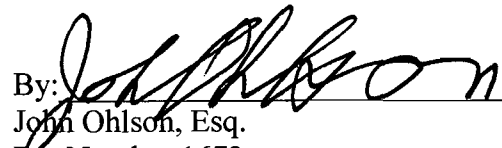
1 to render a just decision based on the entire record.

2
3 **III.**
4 **Conclusions**

5 This Court should enter its orders:

- 6 1. Allowing the record to be supplemented by the inclusion of the transcript in the appendix
7 herein;
8 2. Allowing appellant to supplement her opening brief (and reply brief as necessary) to
9 argue the transcript, as relevant;
10 3. Allowing Respondent the reciprocal privilege.

11 Dated this 5 day of October, 2011.

12
13
14 By: 
15 John Ohlson, Esq.
16 Bar Number 1672
17 275 Hill Street, Suite 230
18 Reno, Nevada 89501
19 (775) 323-2700

20 Jeff Kump, Esq.
21 Bar Number 5694
22 MARVEL & KUMP, LTD.
23 217 Idaho Street
24 Elko, Nevada 89801
25 (775) 777-1204
26
27
28

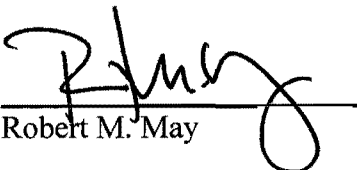
1
2 **CERTIFICATE OF SERVICE**
3

4 I hereby certify that I am an employee of JOHN OHLSON, and that on this date I
5 personally served a true copy of the foregoing **MOTION FOR ORDER ALLOWING**
6 **SUPPLEMENTATION OF APPENDIX AND FOR RE-OPENING OF BRIEFS**, by the
7 method indicated and addressed to the following:
8

9 John P. Aldrich, Esq.
10 Aldrich Law Firm, Ltd.
11 1601 S. Rainbow Blvd., Ste. 160
12 Las Vegas, NV 89146

___X___ Via U.S. Mail
___ Via Overnight Mail
___ Via Hand Delivery
___ Via Facsimile
___ Via ECF

13
14 DATED this 5 day of October, 2011.
15

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17 Robert M. May
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SCHEDULE OF EXHIBITS

EXHIBIT 1: Affidavit of John Ohlson, Esq.