

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND RIAD KHOURY,	)	Supreme Court No.: 64702	
	)	Supreme Court No.: 65007	
	)	Supreme Court No.: 65172	Electronically Filed
Appellant,	)		Jan 22 2016 11:23 a.m.
	)		Tracie K. Lindeman
vs.	)	District Court Case No.: A656515	Clerk of Supreme Court
	)		
MARGARET SEASTRAND,	)		
	)		
Respondent.	)		
	)		
	)		
	)		

**SUPPLEMENTAL AUTHORITIES**

Pursuant to NRAP 31(e), Respondent provides the following supplemental authorities.

1. **Magistrate Leen's Decision in *Langermann* — Excluding Treating Physician Testimony — Has Been/Will Be Overturned.**

On pages 4 and 22-26 of the opening brief and page 42 of the reply, appellant argues his position regarding requirements for designation of non-retained experts and adequate disclosure of their opinions. On pages 9-15 of the answering brief, respondent provides authorities in contradiction to appellant's argument and provides argument supporting the proper designation and disclosure of her non-retained experts.

On pages 2-3 of appellant's supplemental authorities, respondent cites to *Langermann v. Prop. & Cas. Ins. Co. of Hartford* for the proposition that a

“generic, unhelpful description of the subject matter on which each provider is expected to testify” was an insufficient expert designation and that “providing voluminous treating provider medical records is simply insufficient to enable [defendant] to determine what opinions the treating physician will offer.”

*Langermann v. Prop. & Cas. Ins. Co. of Hartford*, 2:14-CV-000982-RCJ, 2015 WL 4724512, at \*3, \*4 (D. Nev. Aug. 10, 2015). Appellant cites Magistrate Leen’s order in that matter.

On April 22, 2015, the defendant in *Langermann* filed a Motion for Summary Judgment regarding plaintiff’s damages, based in part on the argument that the plaintiff’s treating physicians were not properly disclosed, therefore, they were barred from testifying regarding the plaintiff’s injuries.<sup>1</sup> Plaintiff filed an opposition to the motion.

On October 27, 2015, the plaintiff’s new counsel in *Langermann*, A. J. Sharp, filed a Motion for Leave to File Objection to Magistrate Leen’s recommendation.<sup>2</sup>

On January 15, 2016, Judge Robert C. Jones heard argument regarding Defendant’s Motion for Summary Judgment.<sup>3</sup> During oral argument, defense

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<sup>1</sup> Defendant’s Motion for Summary Judgment, attached as Exhibit 1.

<sup>2</sup> Plaintiff’s Motion for Leave to Object to Magistrate Judge’s Order (Docket Filing #30), attached as Exhibit 2.

counsel argued that the plaintiff had no witnesses or admissible evidence to support her damages claims.<sup>4</sup> Judge Jones responded that the plaintiff's treating physicians could potentially proffer testimony regarding causation.<sup>5</sup> Defense counsel asserted that Magistrate Leen's prior order prohibited such testimony.<sup>6</sup> Judge Jones responded, "Oh, that Order is wrong. I'm going to reverse that."<sup>7</sup> Judge Jones subsequently denied Defendant's Motion for Summary Judgment and set a trial date.<sup>8</sup>

Plaintiff's counsel asked Judge Jones for clarification regarding his position on Magistrate Leen's order.<sup>9</sup> Judge Jones indicated that additional briefing or argument on the issue was unnecessary — and that **he would prepare a written**

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<sup>3</sup> Docket Report for *Langermann v. Prop. & Cas. Ins. Co. of Hartford*, 2:14-CV-000982-RCJ, attached as Exhibit 3.

<sup>4</sup> As of the time these supplement authorities are being submitted, Judge Jones has not yet issued his written order. The transcript of the January 15, 2016 hearing has been requested, but not yet received. Accordingly, an affidavit from counsel present at the hearing has been submitted in support of respondent's assertions. Affidavit A. J. Sharp, attached as Exhibit 4.

<sup>5</sup> *See id.*

<sup>6</sup> *See id.*

<sup>7</sup> *See id.*

<sup>8</sup> *See id.*; Exhibit 3.

<sup>9</sup> Exhibit 4.

order indicating that he was reversing Magistrate Leen's prior order.<sup>10</sup>

Accordingly, Magistrate Leen's order in *Langermann*, as cited in appellant's supplemental authorities at pages 2-3, has been/will be overruled and is no longer good case authority.

**2. Sanders v. Sears-Page Supports the Trial Court's Granting of Cause Challenges when a Potential Juror Provides Inconsistent Statements Regarding Bias.**

In appellant's opening brief pages 49-52 and appellant's reply brief pages 4-9, appellant attempts to argue that a higher standard must be met to establish juror bias during voir dire. On pages 41-44 of respondent's answering brief, respondent presents authority supporting her position that "a prospective juror who is anything less than unequivocal about his or her impartiality should be excused for cause."

On pages 4 of appellant's reply brief, he cites *Sanders v. Sears-Page* for the proposition that "a juror's opinions or view for or against a party do not, without more, establish bias." *Sanders v. Sears-Page*, 354 P.3d 201, 206 (Nev. 2015). On pages 5-6 of appellant's reply brief, he quotes from *Sanders* as follows: "A prior belief becomes 'bias only if it were irrational or unshakable.'" *Id.* (quoting *Thompson v. Altheimer & Gray*, 248 F.3d 621, 625 (7th Cir. 2001)).

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<sup>10</sup> See *id.*

A complete reading of *Sanders* provides additional authority and guidance as to the determination of whether or not a potential juror is biased and should be stricken for cause.

In *Sanders*, during trial one of the jurors indicated that he had previously treated with one of the same medical facilities as the plaintiff. The juror provided conflicting statements about whether or not this prior experience would bias him either way in the case. The trial court denied the plaintiff's challenge for cause to strike the juror based on his inconsistent statements regarding his potential bias. The Nevada Court of Appeals found that the trial court erred in failing to strike the juror for cause.

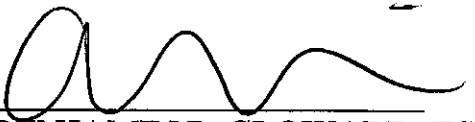
In its decision, the *Sanders* Court acknowledged the Nevada Supreme Court's recent affirmance that "a prospective juror who is anything less than unequivocal about his or her impartiality should be excused for cause. Thus, **if the juror's statements, taken as a whole, indicate bias, the juror must be struck.**" *Id.* (quoting *Preciado v. State*, 130 Nev. \_\_, \_\_, 318 P.3d 176, 177 (2014); citing *Whitlock v. Salmon*, 04 Nev. 24, 27, 752 P.2d 210, 212 (1988); *Jitnan v. Oliver*, 127 Nev. \_\_, \_\_, 254, P.3d 623, 629 (2011)). (Emphasis added). Thus, if a juror equivocates on his or her impartiality, "**reliance on a juror's promise of impartiality is insufficient when the record as a whole**

**demonstrate lingering bias.”** *Id.* (citing *Kirk v. Raymark Indus., Inc.*, 61 F.3d 147, 156 (3rd Cir. 1995)). (Emphasis added).

The *Sanders* Court further instructed that “the trial court should assess the actual facts of the juror’s experience rather than rely solely upon the juror’s assertions of impartiality” when the potential juror reveals facts and experience that “would call into question his ability to be fair.” *Id.* at 207 (quoting *Kirk*, 61 F.3d at 156).

DATED THIS 22nd day of January, 2016.

**CLOWARD HICKS & BRASIER, PLLC**

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## **CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of CLOWARD HICKS & BRASIER, PLLC, and that on this 22nd day of January, 2016, I served a copy of the foregoing **SUPPLEMENTAL AUTHORITIES** as follows:

- ☒ Via the court's electronic filing system; and/or
- ☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or
- ☐ Hand Delivery—By hand-delivery to the addresses listed below.

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# EXHIBIT 1



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IN THE UNITED STATES DISTRICT COURT  
FOR THE STATE OF NEVADA

ROBERT LANGERMANN, as Administrator of  
THE ESTATE OF MARIKA GREYSON, an  
individual,

Plaintiff,

v.

PROPERTY & CASUALTY INSURANCE  
COMPANY OF HARTFORD, a foreign  
corporation; DOE INDIVIDUALS I-X,  
inclusive, and ROE ENTITIES I-X, inclusive,

Defendants.

Case No.: 2:14-cv-00982-RJC-PAL

**DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

Defendant Property & Casualty Insurance Company of Hartford (**Hartford**) submits the following motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. As set forth below, plaintiff cannot establish any uncompensated bodily injury as a result of the September 25, 2012 accident and has not complied as required with the provisions of the applicable insurance policy.

**I. INTRODUCTION.**

Marika Greyson claimed she was injured in an accident with another motor vehicle sometime in September 2012. The police were not called to the scene, and Greyson never reported the accident to the police. Greyson never identified any witnesses, is unaware what particular day in

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1 September the accident allegedly occurred and has an inconsistent story to tell as to the  
2 circumstances of the accident. At the time of the alleged accident, Greyson suffered from breast  
3 cancer. Greyson subsequently died as a result of her cancer, and Langermann, the personal  
4 representative for her estate, was substituted as Greyson as plaintiff in this lawsuit.

5 Greyson was the named insured on a personal auto insurance policy issued by Hartford that  
6 included underinsured motorist limit of \$100,000.00 per person, and \$300,000.00 per accident.  
7 During the course of Greyson's UM claim, Hartford repeatedly—but unsuccessfully—sought  
8 information from Greyson about the facts and circumstances of her "accident" and the nature of her  
9 injuries. Despite her failure to cooperate, Greyson brought this suit against Hartford claiming it  
10 failed to pay Greyson for her injuries asserting breach of contract, bad faith, and violation of NRS  
11 686A.310.

12 Plaintiff's claim for breach of contract fails for multiple reasons. **First**, plaintiff's claim is  
13 barred because Greyson breached the policy's conditions precedent to coverage. Greyson repeatedly  
14 refused to provide information in support of her claim, including multiple requests from Hartford for  
15 a statement and information related to the accident. Greyson also failed to make a police report,  
16 which is an express requirement under the policy in order to present a claim based on a hit-and-run  
17 accident. **Second**, plaintiff has not disclosed an expert who can establish that she was in an accident  
18 or suffered any injury as a result And, the time for such disclosure has expired. Plaintiff's claims, as  
19 a matter of law, require expert support. The absence of that support is fatal to her lawsuit.

20 Not only do plaintiff's contractual claims fail, but extra-contractual claims fail as well. The  
21 absence of a valid contractual claim precludes plaintiff's derivative claims for bad faith and violation  
22 of NRS 686A.310. Even if plaintiff could overcome the violations of the conditions precedent to  
23 coverage and the lack of expert support, there is no evidence to support a claim for bad faith or  
24 violation of the unfair claims practices act. Similarly, plaintiff disclosed no damages for these  
25 alleged claims.

26 Finally, plaintiff's claim for punitive damages must also be disposed. Plaintiff has not  
27 demonstrated fraud, oppression, malice or any level of wrongful intent whatsoever.

28 For these reasons, summary judgment should be granted.

1 **II. STATEMENT OF FACTS.**

2 **A. The Claim.**

3 Greyson claims she was in an auto accident in September, 2012. Amd. Compl., ECF No. 12  
4 at ¶ 4. Greyson called Hartford on September 27, 2012 to report the claim to Hartford. **Ex. B** at  
5 H1203-04. On the call, Greyson reported that she could not remember the date of the accident.  
6 Summary of Call, **Ex. C.** Greyson claimed she was on Pecos going south when a big white truck  
7 struck her car. *Id.* She stated the driver was a man, and asked her if she was hurt, and then left the  
8 scene. *Id.* She did not call the police, and never filed a police report. *Id.*

9 Hartford contacted Greyson on October 1, 2012 to obtain further required information to  
10 process her claim. **Ex. D.** On this call, she provided a different account—no one stopped, and she  
11 never saw who hit her. *Id.*

12 On October 24, 2012, Hartford called Greyson to discuss the claim **Ex. E.** Hartford was  
13 unable to reach her, but left a message to call back. Having not received a return call, Hartford  
14 called back the next day, October 25, but that call went to an answering machine. *Id.* Hartford  
15 continued to follow up and Greyson picked up her phone when Hartford called back that afternoon,  
16 but was unwilling to talk. *Id.* As a result Hartford again followed up in a letter dated October 25,  
17 2012, Hartford mailed a letter to Greyson informing her of the difficulties in contacting her and  
18 requesting she contact Hartford to discuss the circumstances of her accident. **Ex. F.**

19 Hartford again called Greyson on October 26, 2012, but Greyson again refused to talk with  
20 Hartford. **Ex. G.** On the same date, Hartford send Greyson another letter indicating she had  
21 medical payment coverage of \$5,000.00, and requesting she submit medical bills related to the  
22 claim. **Ex. H.** Hartford also requested Greyson provide authorization to obtain her medical records.  
23 **Ex. I.**

24 Hartford called Greyson again on November 6, 2012, but again, Greyson said she did not  
25 have time to talk. **Ex. J.** On November 9, 2012, Hartford wrote Greyson advising she needed to  
26 return a signed medical authorization and medical bills. **Ex. K.** On December 7, 2012, Hartford  
27 spoke with Greyson, and she again declined to talk. **Ex. L.** On the same date Hartford again sent a  
28 letter to Greyson again requesting her medical bills. **Ex. M.** On the same date Hartford again

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1 requested in writing that Greyson return the executed medical authorization forms which were  
2 required for the adjustment of her claim. **Ex. N.**

3 On December 10, 2012, Hartford received a letter from the law office of Walsh & Friedman  
4 Ltd. dated December 4, 2012. (**W&F**) **Ex. O.** In the letter, W&F advised that it represented  
5 Greyson, and that payments should be submitted directly to them. **Ex. P.** On January 3, 2013,  
6 Hartford wrote W&F to advise that Hartford is still waiting for Greyson's excuted medical  
7 authorizations, bills and support for her claim. **Ex. Q.** On January 30, 2013, Hartford again sent  
8 W&F a letter informing said information and records had still not been received. **Ex. R.** On the  
9 same day Hartford called W&F, but was informed Greyson's attorney was not in the office. **Ex. S.**  
10 On February 26, 2013, Hartford again submitted a letter to W&F, again requesting the same  
11 information and records that it previously sought from Ms. Greyson before she was represented and  
12 now repeatedly from her counsel. **Ex. T.** On February 27, 2013, Hartford called W&F and left a  
13 message asking for a return call and sought the requested information and records. **Ex. U.** On the  
14 same day, Hartford also wrote W&F requesting any remaining medical bills after October 22, 2012.  
15 **Ex. V.** W&F's response dated March 4, 2013 was non-responsive and simply requested Hartford  
16 send all payments to their office. **Ex. W.** Hartford received this letter on March 5, 2013. **Ex. X.**

17 On March 22, 2013, W&F demanded Hartford pay the \$100,000 UM policy limit for  
18 Greyson's injuries. **Ex. Y** at H102-03. On March 26, 2013, Hartford spoke with W&F about the  
19 lack of a police report, and missing information required to handle the claim. **Ex. X.** Having  
20 received no further information, Hartford, on April 9, 2013, again wrote Greyson's counsel seeking  
21 this information. **Ex. Z.** Hartford still did not receive a response. Hartford then wrote W&F again  
22 on April 25, 2013 requesting a date and time to obtain a statement from Greyson. **Ex. AA.** Again,  
23 no response.

24 On May 13, 2013, Hartford wrote W&F again requesting a statement from Greyson on the  
25 facts of the accident and absence of a the police report. **Ex. AB.** On June 3, 2013, W&F finally  
26 responded to Hartford stating that Greyson would give a statement claiming "the time period to  
27 obtain a statement from Ms. Greyson has passed." W&F "further conceded that there was not a  
28 police report taken in this matter." **Ex. AC.** On June 5, 2013, Hartford wrote W&F advising that it

1 had no documentation that Greyson was involved in an accident and again sought Greyson's  
2 statement and information about the accident. **Ex. AD.**

3 On July 16, 2013, W&F wrote Hartford to request a status update on their settlement  
4 demand. **Ex. AE.** On July 18, 2013, Hartford reiterated that to present a claim for uninsured  
5 motorist benefits, Hartford needed to establish that an accident occurred and under the circumstances  
6 this required Greyson to provide a statement and other information regarding the accident. **Ex. AF.**

7 On January 14, 2014, W&F advised Hartford that Greyson had died. This suit is maintained  
8 by Robert Langermann, the personal representative of her estate. *See, generally,* Plaintiff's  
9 Amended Complaint, ECF No. 12.

#### 10 **B. Greyson's Medical History**

11 As discovery revealed, Greyson had a history of medical problems predating her claimed  
12 accident. Greyson was diagnosed with breast cancer in 2000. **Ex. AG** at GRE177. The same year  
13 she underwent a lumpectomy surgery for the cancer. *Id.* at GRE178. She decided not to undergo  
14 chemotherapy or radiation therapy, but instead chose to treat herself with "natural methods." *Id.* at  
15 GRE170. From at least 2008 onward she reported difficulty taking care of herself, headaches,  
16 dizziness, muscle weakness, vision changes, chest pain, shortness of breath, fatigue, back pain, leg  
17 cramps, anxiety, and depression. *See, e.g.,* Medical Records from Dr. Vance, **Ex. AH** at H 1358.  
18 She also suffers from hypothyroidism, and was noncompliant with her thyroid medicine. **Ex. AG** at  
19 GRE167. She reportedly suffered from an "old stroke" unrelated to the accident at issue. *Id.* at  
20 GRE168. In 2010 she was diagnosed with a metastatic tumor in the right parietal-occipital skull. *Id.*  
21 at GRE170.

22 Greyson was also in an prior automobile accident in January 14, 2010. **Ex. AI**, No. 7. The  
23 accident caused her head to strike the steering wheel, causing a fracture of her nose. **Ex. AH** at H  
24 1372.

25 On October 21, 2012, Greyson suffered a fall. **Ex. AJ** at H1352. On November 9, 2012,  
26 Greyson was transported to St. Rose Dominican Hospital by ambulance after suffering another fall.  
27 **Ex. AK** at GRE102-05. At the hospital, she reported her chief complaint as "falling," with a history  
28 of falls over the preceding six months. **Ex. AG** at GRE167. An MRI taken during this visit

1 indicated a large mass in her brain. *Id.* at GRE366-67. On November 14, 2012, Greyson was  
2 transported to Sunrise Hospital by ambulance after yet another fall. *Ex. AK*, at GRE106-08.  
3 Greyson died from her breast cancer in March of 2013. *Ex. AL*.

4 **C. Greyson's Alleged Accident Related Injuries.**

5 Greyson's medical history notwithstanding, plaintiff alleges that the accident caused her to  
6 have a stroke, which paralyzed her, rendered her unable to walk, and caused her to require 24-hour  
7 care. *Ex. AI*, No. 1. Plaintiff has not disclosed an expert to support any of these claims. Hartford's  
8 expert, on the other hand, refutes each of these claims.

9 **III. SUMMARY JUDGMENT STANDARD.**

10 Summary judgment allows a court to dispose of factually unsupported claims. *Bagdadi v.*  
11 *Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996). The purpose of summary judgment is to avoid an  
12 unnecessary trial when there is no dispute as to the facts before the court. *Nw. Motorcycle Ass'n v.*  
13 *U.S. Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when  
14 the evidence shows that there is no genuine issue as to any material fact, and that the moving party is  
15 entitled to a judgment as a matter of law. *Id.*; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322  
16 (1986); FED. R. CIV. P. 56(c).

17 An issue is "genuine" only if there is a sufficient evidentiary basis on which a reasonable fact  
18 finder could find for the nonmoving party, and a dispute is "material" only if it could affect the  
19 outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49  
20 (1986). When the nonmoving party bears the burden of proof at trial, such as here, summary  
21 judgment is warranted if the nonmovant fails to make a showing sufficient to establish the existence  
22 of an element essential to its case. *Celotex Corp.*, 477 U.S. at 322. The party opposing the motion  
23 may not rest on the mere allegations or denials of its pleadings, but must set forth specific facts  
24 showing that there is a genuine issue for trial. *Anderson*, 477 U.S. at 248. Federal Rule of Civil  
25 Procedure 56(c)(1)(B) authorizes the entry of summary judgment in favor of the moving party where  
26 the "adverse party cannot produce admissible evidence to support the fact."

IV. PLAINTIFF'S BREACH OF THE POLICY NEGATES COVERAGE AS A MATTER OF LAW.

The insurance policy is a contract that defines the duties and obligations owed between plaintiff and Hartford. The Hartford policy expressly provides:

*We have no duty to provide coverage* under this policy unless there has been full compliance with the following duties:

A. We must be notified promptly of how, when and where the accident or loss happened . . .

...

B. A person seeking any coverage must:

...

(1) Cooperate with us in the investigation, settlement or defense of any claim or suit.

...

(5) Submit a proof of loss when required by us.

...

C. A person seeking Uninsured Motorists Coverage must also:

(1) Promptly notify the police if a hit-and-run driver is involved.

...

**Ex. A** at H 44 (emphasis added). The policy further states: "No legal action may be brought against us until there has been full compliance with all the terms of this policy" *Id.* at 45.

When an insurance policy explicitly makes compliance with a term in the policy a condition precedent to coverage, the insured bears the burden of establishing compliance with that term. *Las Vegas Metro. Police Dep't v. Coregis Ins. Co.*, 25 P.3d 958 (Nev. 2011) (citing *Ins. Co. v. Cassinelli*, 216 P.2d 606, 615 (Nev. 1950)); *Lucini-Parish Ins. v. Buck*, 836 P.2d 627, 629 (Nev. 1992); *see also Brown v. State Farm Fire and Cas. Co.*, No. 59769, 2012 WL 4846490 (Nev. Oct. 9, 2012). The failure to comply with a condition precedent to coverage precludes coverage. *Holland v. State Farm Mut. Auto. Ins. Co.*, Case No. 2:12-cv-01058-LDG-GWF, 2014 WL 1268712 (D. Nev. Mar. 27, 2014); *Keys v. State Farm Mut. Auto. Ins. Co.*, No. 2:12-cv-1181-JCM-PAL, 2013 WL 3198397, \*3 (D. Nev. June 21, 2013); *Schwartz v. State Farm Mut. Auto. Ins. Co.*, No. 2:09-cv-00060-KJD-LRL, 2009 WL 2197370 (D. Nev. July 23, 2009); *Joseph v. Hartford Fire Ins. Co.*, 2014 WL 4829061, 4, 2:12-CV-798 (D.Nev.,2014).

Plaintiff violated the insurance policy in a number of ways. **First**, plaintiff did not promptly notify Hartford regarding the accident. When she did call days later she was not able to identify how

1 or when the accident occurred. **Second**, as a person seeking uninsured motorist coverage, plaintiff  
2 was required to notify the police if a hit-and-run driver is involved. It is undisputed Greyson never  
3 notified the police about the accident. **Third**, plaintiff was required to cooperate with the  
4 investigation, settlement or defense of any claim or suit. From the inception of this claim, plaintiff  
5 gave vague and contradictory statements, and was non-responsive to telephone calls and letters.

6 Hartford had the right to request a statement from Greyson, a police report, and other  
7 information necessary to evaluate the claim. This information is particularly important in alleged  
8 hit-and-run accidents, where Nevada law expressly recognizes the heightened potential for  
9 fraud. *See* NRS 690B.020(f); *see also Estate of Lomastro v. American Family Ins.*, 195 P.3d 339  
10 (Nev., 2008)(noting that a claimant is required to evidence "physical contact" with an alleged hit-  
11 and-run vehicle "to prevent fraudulent claims where the insured loses control of his or her car and  
12 claims a 'phantom driver' forced him or her off the road)." W&F refused to permit a statement,  
13 because "the time period to obtain a statement had passed." **Ex. AC.** W&F ignores the fact that  
14 Hartford had been attempting to obtain information since the inception of the claim, but was  
15 provided either conflicting or incomplete information from the beginning.

16 Plaintiff's failure to comply with Hartford's continuing and unanswered requests for relevant  
17 information and documentation about her claim precludes coverage and bars this suit under the legal  
18 action provision *Schwartz, supra*, is instructive. In *Schwartz*, the insured submitted a claim for UIM  
19 benefits. 2009 WL 2197370. Following the claim, the insured was asked to present to an  
20 independent medical examination. *Id.* Under the policy, the insured was required to cooperate with  
21 the insurer's request, and his failure to comply negated coverage. *Id.* Rather than submit to the  
22 insurer's request for the independent medical examination, the plaintiff filed suit. *Id.* On summary  
23 judgment, the court considered whether the insured's initial failure to present was a breach of the  
24 policy. The court found against the insured, opining that Nevada law clearly enforces coverage  
25 conditions and precludes coverage irrespective of whether there is any prejudice to the insurer, *Id.*  
26 Regardless, the court noted an insurer is prejudiced when forced to hire attorneys to respond to a  
27 lawsuit before it is able to complete an investigation. *Id.*



1        *Keys* is equally instructive. 2013 WL 3198397, at \*3. In *Keys*, the insurer questioned the  
 2        validity of the insured's UIM demand and sought additional information, including all medical  
 3        records. *Id.* After obtaining the medical records, the insurer made an offer, but advised that if the  
 4        insured declined the offer and sought additional benefits, it would be necessary to investigate further  
 5        with a utilization review. *Id.* In response, the insured filed a lawsuit alleging breach of contract and  
 6        bad faith. *Id.* The policy—much like the policy in this case—contained a cooperation provision and  
 7        prohibited suit absent compliance with the terms of the policy. *Id.* at \*1. The court found the  
 8        insured was required to comply with the insurer's request for medical information. *Id.* The act of  
 9        filing suit rather than complying was a breach of the "clear terms of the policy." *Id.* Consequently,  
 10       the insured was "precluded" from bringing suit against the insurer, and summary judgment was  
 11       granted in the insurer's favor. *Id.*

12       This court granted summary judgment for breach of the cooperation clause in *Holland v.*  
 13       *State Farm Mutual Automobile Insurance Co.*, when the plaintiff refused to provide his insurer with  
 14       an unqualified HIPAA authorization. No. 2:12-cv-01058-LDG-GWF, 2014 WL 1268712 (D. Nev.  
 15       Mar. 27, 2014). The insured breached the cooperation clause when he refused to provide all  
 16       information Hartford deemed necessary to evaluate the claim. *Id.* at \*4. The violation of the  
 17       cooperation clause is even more egregious in this case, because plaintiff explicitly agreed to provide  
 18       the information, and then repeatedly failed to produce it despite agreeing to do so.

19       The Nevada Supreme Court's opinion *Brown v. State Farm Fire and Casualty Company*, No.  
 20       59769, 2012 WL 4846490 (Nev. Oct. 9, 2012), albeit unpublished, "telegraphs how the high court  
 21       would rule on the instant issue." *Fernando v. MortgageIT*, 2:11-CV-1352-JCM-GWF, 2012 WL  
 22       1586015, at \*2 (D. Nev. 2012). As in this case, the policy made compliance a condition precedent to  
 23       coverage. *Brown*, 2012 WL 4846490 at \*2. When the insured failed to present, the insurer sought to  
 24       disclaim coverage on that basis. *Id.* The court found the insured violated the policy when he refused  
 25       to attend the IME, and the insurer "was not required to provide coverage for the accident to appellant  
 26       based on appellant's violation of the insurance contract." *Id.*

27       *Joseph* involves a similar violation. 2014 WL 4829061. In *Joseph*, the insured was involved  
 28       in an automobile accident, and sought UIM benefits. *Id.* at \*1. Hartford, his insurer, requested

information to support the claim. *Id.* Joseph, however, filed suit without providing the requested information. The Court held that Joseph's failure to provide information breached the cooperation clause, and was fatal to his claim. *Id.* at \*3.

Similar to *Schwartz, Keys, Holland, Brown, and Joseph*, the policy in this case plainly requires plaintiff to cooperate with Hartford's investigation and evaluation of her claim. Plaintiff refused to provide the requested statement from Greyson, a police report, or any other details regarding the accident. Additionally, plaintiff did not promptly notify Hartford of the accident, was not able to explain when or how the accident occurred, and did not notify the police as required. Accordingly, plaintiff breached the conditions precedent to coverage, and is precluded from bringing claims against Hartford.

**V. PLAINTIFF CANNOT DEMONSTRATE CAUSATION.**

**A. Plaintiff's Treating Physicians are Barred From Providing Expert Opinions.**

Plaintiff has not disclosed an expert. Although plaintiff disclosed a number of treating physicians as percipient witnesses, none of these providers will be allowed to proffer expert opinions at the time of trial. In order to rely on a treating physician to establish causation a plaintiff must make an expert disclosure that complies with Rule 26(a)(2)(C). This disclosure must disclose: "(i) the subject matter on which the witness is expected to present evidence," and "(ii) a summary of the facts and opinions to which the witness is expected to testify." Fed. R. Civ. P. 26(a)(2)(C). *See e.g., Skyeward Bound Ranch v. City of San Antonio*, No. SA-10-CV-0316 XR, 2011 WL 2162719 (W.D. Tex. June 1, 2011) (the court excluded experts for failure to comply with Rule 26),

Plaintiff did not make an expert disclosure, much less make a compliant expert disclosure. As explained more fully in Hartford's Motion to Preclude Treating Physicians from Testifying as Experts filed concurrently herewith, plaintiff's failure to comply with the expert disclosure rules precludes the use of experts at the time of trial.

**B. Without an Expert to Establish Causation, Plaintiff's Claims Fail.**

Because an injury is a subjective condition, an expert opinion is required to establish a causal connection between the incident or injury and disability. *Grover C. Dils Med. Ctr. v. Menditto*, 121 Nev. 278, 287-88, 112 P.3d 1093 (2005). And importantly, "[e]vidence that an injury merely

worsened is not sufficient to prove aggravation." *Id.* (quoting *Truck Ins. Exchange v. CNA*, 624 N.W.2d 705, 709 (S.D. 2001)). The rationale for the requirement of expert support is simple. Without expert testimony to support causation, the jury would be left to guess what portion, if any, of the alleged injuries were related to the incident. *See, e.g., Southern Pac. Co. v. Huyck*, 61 Nev. 365, 378, 128 P.2d 849 (1942). It is not the job for the jury to speculate. *Id.* A lay jury, by definition, does not possess the "special knowledge, skill, experience, training or education" to render a decision on medical causation. *See* NRS 50.275.

There are at least four scenarios where a lay jury lacks the ability to reach a conclusion on causation absent the aid of expert support. **First**, and most importantly for this case, expert testimony is required where there is evidence that an intervening or prior injury was the proximate cause of a plaintiff's pain and suffering. *Bushman v. Halm*, 798 F.2d 651, 661 (3d Cir. 1986). **Second**, expert testimony is required to establish the seriousness and duration of injuries. *Capello v. Maresca*, 921 F. Supp. 84, 86 (D. Conn. 1995); *Lewis v. Wash. Metro. Area Transit Auth.*, 19 F.3d 677, 680 (D.C.C. 1994). **Third**, expert testimony is required where the cause of injury is not readily apparent. *Lewis*, 19 F.3d at 679-80; *accord Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 562 n.37, 188 P.3d 1084, 1091 n.37 (2008). **Fourth**, expert testimony is required where complaints are subjective. *Lentz v. Mason*, 32 F. Supp. 2d 733, 742 (D.N.J. 1999). All of these scenarios are applicable here.

Expert testimony is *always* required unless the cause of an injury is so obvious as to be within the common knowledge of a lay juror. So while a bullet through the brain may not require expert testimony to establish causation to instant death, most injuries—in particularly, those claimed in this case by plaintiff—require expert medical support.

Here, plaintiff has a long history of pre-existing injuries, degenerative diseases and complaints of numerous falls. Simply alleging in a conclusory fashion that these injuries are accident-related is not sufficient. Plaintiff has the burden of presenting specific and supported evidence that the injuries are the result of the September 25, 2012 accident. *See Carey v. Piphus*, 435 U.S. 247, 263-64 n.20 (1978) (plaintiff must establish he has suffered an actual injury "supported by competent evidence concerning the injury").

1 *Schartz v. Abay* is instructive. 43 P.3d 831 (Kan. 2002). In *Abay*, the plaintiff sued his  
2 physician, alleging the doctor was negligent in the performance of a spinal fusion. *Id.* at 528. The  
3 Kansas court noted that the plaintiff did not provide any evidence that future medical treatment  
4 would be the result of an improper surgery rather than the result of the plaintiff's pre-existing disc  
5 disease. *Id.* at 530. The court acknowledged that, under Kansas law, while an expert was not *per se*  
6 required for a claim for damages, "when a case involves pre-existing conditions and other  
7 contributing factors that may complicate the question of damages, an expert is required to  
8 distinguish and attribute those damages that may have been caused by the pre-existing condition or  
9 other contributing factors. . . ." *Id.* at 530; *see also Merrell Dow Pharm., Inc. v. Havner*, 953 S.W.2d  
10 706, 720 (Tex. 1997) ("[I]f there are other plausible causes of the injury or condition that could be  
11 negated, the *plaintiff* must offer evidence excluding those causes with reasonable certainty"  
12 (emphasis added)

13 Similarly, plaintiff's medical history is replete with pre-existing injuries, accidents, disease and  
14 pain for the same body parts at issue in the September 25, 2012 accident. There are countless  
15 medical records indicating the reported problems arose out of non-accident related causes. That  
16 plaintiff may claim that the injuries worsened after the September 25, 2012 accident is not sufficient  
17 proof of causation in this case. *See Grover C. Dils Med. Ctr. v. Menditto*, 121 Nev. 278, 287-88, 112  
18 P.3d 1093 (2005).

19 This is not a situation where plaintiff fell off a ladder and broke her arm. Greyson suffered  
20 from progressive terminal cancer for over a decade and consistently refused treatment. Plaintiff is  
21 claiming a myriad of complaints that mirror those that existed prior to the accident. Further, plaintiff  
22 claims subjective injuries—such as pain and suffering. Subjective injuries require an expert to opine  
23 as to causation. *Grover C. Dils Med. Ctr. v. Menditto*, 121 Nev. 278, 287-88, 112 P.3d 1093 (2005).

24 "An award of compensation cannot be based solely upon possibilities and speculative  
25 testimony." *United Exposition Serv. Co. v. State Indus. Ins. Sys.*, 109 Nev. 421, 424-425, 851 P.2d  
26 423, 425 (1993). As recently stated by the Nevada Supreme Court in *Williams*, "To assist the trier  
27 of fact, medical expert testimony regarding causation must be 'made to a reasonable degree of  
28 medical probability.'" *Williams v. Eighth Judicial Dist. Court of State, ex rel. County of Clark*, 262

1 P.3d 360, 367 (Nev. 2011) (quoting *Morsicato v. Sav-On Drug Stores, Inc.*, 121 Nev. 153, 157, 111  
 2 P.3d 1112, 1115 (2005)). "Such specificity is required because 'if the . . . medical expert cannot  
 3 form an opinion with sufficient certainty so as to make a medical judgment, there is nothing on the  
 4 record with which a jury can make a decision with sufficient certainty so as to make a legal  
 5 judgment.'" *Williams*, 262 P.3d at 367 (quoting *Morsicato*, 121 Nev. at 158, 111 P.3d at 1116).

6 Here, the policy provides for "compensatory damages which an insured is legally entitled to  
 7 recover from the owner or operator of an uninsured motor vehicle because of bodily injury." Ex. A  
 8 at H38. An insured is legally entitled to recover benefits where an at fault driver is the legal cause of  
 9 the insured's injuries. See *Pemberton v. Farmers Ins. Exch.*, 109 Nev. 789, 858 P.2d 380, 382  
 10 (1993). See also *Ward v. State Farm Mut. Auto. Ins. Co.*, Case No. 2:12-cv-00835-APG-VCF, (D.  
 11 Nev., 2013). Causation, therefore, is an essentially element to plaintiff's claim. See *Morin v. U.S.*,  
 12 534 F.Supp.2d 1179 (D. Nev., 2005) (where causation is an element of a claim, a plaintiff is required  
 13 to produce evidence of causation during the case-in-chief). Given that plaintiff cannot establish  
 14 causation, plaintiff's breach of contract allegations fail.

# 15 **VI. SUMMARY JUDGMENT SHOULD BE GRANTED PLAINTIFF'S EXTRA-CONTRACTUAL CLAIMS.**

## 16 **A. Plaintiff's Bad Faith Claim Fails.**

17 In order to establish a claim for breach of the covenant of good faith and fair dealing (aka  
 18 "bad faith"), plaintiff must demonstrate that the claim was: (1) denied; (2) without any reasonable  
 19 basis; and (3) the insurer's knowledge or reckless disregard of the lack of a reasonable basis for its  
 20 claim denial. *Pioneer Chlor Alkali Co. v. Nat'l Union Fire Ins. Co.*, 863 F. Supp. 1237, 1242 (D.  
 21 Nev. 1994). Plaintiff's extra-contractual claims fail for multiple reasons.

22 **First**, there was no denial of any claim. This Court has previously held that, if an insurer  
 23 does not deny a claim, summary judgment in favor of the insurer on a bad faith claim is warranted.  
 24 *Joseph v. Hartford Fire Ins. Co.*, 2014 WL 4829061, 4, 2:12-CV-798 (D.Nev.,2014). In *Joseph*, the  
 25 Court found that there could be no bad faith claim where the plaintiff failed to comply with the  
 26 conditions precedent to coverage. *Id.* The same result is warranted here.

27 **Second**, plaintiff failed to timely disclose an expert that supported the bad faith claim.  
 28 Hartford cannot have acted "unreasonably" where plaintiff cannot, as a matter of law, evidence that

1 she sustained a compensable injury. *See, e.g., Drennan v. Maryland Cas. Co.*, 366 F.Supp.2d 1002,  
2 1008 (D.Nev.,2005)(stating: "If plaintiffs do not prevail on their breach of insurance contract claim,  
3 there can be no basis for concluding that Maryland Casualty acted in bad faith.").

4 **Third**, even if plaintiff can overcome the lack of cooperation, Hartford's expert supports the  
5 refusal. Hartford hired orthopedist Anthony Dr. Serfustini to opine as to whether plaintiff's injuries,  
6 if any, are attributable to the September 25, 2012 accident. **Ex. AM.** Per Dr. Serfustini, many of  
7 plaintiff's complained-of-injuries were unrelated to the accident. As stated by Dr. Serfustini:

- 8 • It is clear from the records that Greyson suffered a fall in October, 2012.
- 9 • It was after her fall that she began to have significant left sided symptomology with
- 10 weakness and gait abnormalities.
- 11 • The multiple hospital visits inclusive of the hospitalization at St. Rose Dominican and
- 12 Sunrise Hospital were all related to her unfortunately progressive and eventually fatal
- 13 breast cancer.

14 *Id.* Plaintiff has no expert to refute Dr. Serfustini's opinions. Because there is a reasonable dispute  
15 as to plaintiff's entitlement to benefits, Hartford did not act in bad faith. *See, e.g., Am. Family Mut.*  
16 *Ins. Co. v. Southwest Landscaping & Maintenance, Inc.*, 2011 WL 1343007 (D. Nev. Apr. 6, 2011)  
17 ("[T]here can be no bad faith when there is a reasonable dispute as to the legal or factual basis for  
18 coverage."); *Guebara v. Allstate Ins. Co.*, 237 F.3d 987, 995 (9th Cir. 2001) (the insurer's refusal to  
19 pay claim was reasonable where based on experts' opinions).

20 In *American Family*, the court determined the insurer was entitled to judgment as a matter of  
21 law because the insurer had a reasonable basis to deny coverage: the subject accident involved  
22 property that was not covered by the policies. 2011 WL 1343007 at \*5. The court reasoned: "The  
23 vital element . . . is the insurance company's wrongful conduct, not merely in denying a claim  
24 incorrectly and, therefore, without "proper" cause, but in denying the claim wrongfully, without any  
25 reasonable basis or with the knowledge that it is denying a rightful claim." *Id.* (quoting *Powers v.*  
26 *United Servs. Auto. Ass'n*, 114 Nev. 690, 962 P.2d 596, 603 (1998)). Similarly, because there is a  
27 reasonable dispute in this case based on Dr. Serfustini's opinions and plaintiff's medical history,  
28 Hartford did not act in bad faith.

1       **Fourth**, plaintiff has not proffered **any** evidence in support of her bad faith claim. When  
 2 asked for the evidence that supported its claim for breach of the covenant of good faith and fair  
 3 dealing, plaintiff could do nothing more than reference the allegations of her complaint. **Ex. AI**, No.  
 4 16. Allegations are insufficient to withstand a motion for summary judgment. *See* Fed. R. Civ. P.  
 5 56. Plaintiff must come forward with admissible evidence, and was required to disclose that  
 6 evidence under Rule 26 and in response to Hartford's discovery requests. *See id*; *see also* Fed. R.  
 7 Civ. P. 26(a)(1).

8       **Fifth**, plaintiff has not disclosed any damages for bad faith. Plaintiff's first supplemental  
 9 disclosure provide no calculation, beyond her alleged contractual damages. **Ex. AN**. Similarly,  
 10 when asked for a calculation, plaintiff did nothing more than blindly reference her initial  
 11 disclosures. *Id*. Damages are an essential element of any tort claim, and the failure to disclose  
 12 damages precludes recovery. *Hoffman v. Construction Protective Services, Inc.*, 541 F.3d 1175,  
 13 1180 (9th Cir.2008) (precluding claims of undisclosed damages); *Yeti by Molly, Ltd. v. Deckers*  
 14 *Outdoor Corp.*, 259 F.3d 1101, 1101 (9th Cir.2001) ("Courts have upheld the use of the [Rule 37]  
 15 sanction even when a litigant's entire cause of action or defense has been precluded").

16       **B. Plaintiff's Unfair Claims Practices Allegations Fail.**

17       Plaintiff also alleges that Hartford breached the unfair claims practices act by failing to  
 18 acknowledge her claim, and by not offering any settlement. These allegations fail for at least three  
 19 reasons.

20       **First**, plaintiff does not state which specific provisions of the act were violated. Courts in  
 21 this district routinely dispose of the plaintiff merely alleged its insurer violated the Act with alleging  
 22 which provisions were violated. *Winkler v. Hartford Fin. Servs. Group*, No. 2:10-cv-02222, 2011  
 23 U.S. Dist. LEXIS 47993 (D. Nev. May 3, 2011); *Tomkiel v. Hartford Cas. Ins. Co.*, No. 2:13-CV-  
 24 1888 JCM PAL, 2014 WL 1494248, at \*3 (D. Nev. Apr. 14, 2014).

25       **Second**, plaintiff has not, and cannot, provide facts or evidence that demonstrate Hartford  
 26 breached any provision of the unfair claims practices act. When asked in discovery what evidence  
 27 plaintiff had to support its claim, plaintiff was unable to identify any facts or documents in support  
 28 of his allegations, beyond the blind reference to plaintiff's disclosures.

1       **Third**, plaintiff has not identified any damages. The statute authorizes a claim only if  
2 damages exist. NRS 686A.310(2). In the absence of damages, plaintiffs' claim must be disposed.

3       **C. Plaintiff's punitive damages claim fails.**

4       Under Nevada law, punitive damages may be awarded upon clear and convincing evidence  
5 of fraud, oppression, or malice, express or implied. NRS 42.005(1). Plaintiff has failed to produce  
6 any evidence to establish fraud or oppression. Nor has plaintiff produced any evidence of malice.  
7 There is no evidence that Hartford acted to intentionally injure anyone, nor is there any evidence that  
8 Hartford with a conscious disregard of the rights or safety of others. Plaintiff has failed to meet the  
9 burden of producing clear and convincing evidence to support the request for punitive damages.

10       **VII. CONCLUSION.**

11       Hartford is entitled to summary judgment for all of the above reasons.

12       DATED this 22nd of April, 2015.

13                               **AKERMAN LLP**

14                               /s/ William S. Haldas

15                               **DARREN T. BRENNER, ESQ.**

16                               Nevada Bar No. 8386

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 22nd day of April, 2015 and pursuant to FRCP 5, I served the CM/ECF electronic filing system and/or deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**, postage prepaid and addressed to:

Robert J. Walsh, Esq.  
Matthew P. Pawlowski, Esq.  
WALSH & FRIEDMAN, LTD.  
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## **EXHIBIT 2**

1

1           **I. FACTUAL AND PROCEDURAL BACKGROUND**

2           Plaintiff Robert Langermann, who is acting in this matter as the Administrator on behalf  
3 of his late sister, Marika Greyson, seeks leave to object to Magistrate Judge Leen's Order dated  
4 August 10, 2015. That Order precludes Ms. Greyson's treating physicians from testifying at  
5 trial because of deficiencies in the disclosure of those physicians per FRCP 26. *Docket Filing*  
6 *#30*. By rule, such Objection to the Magistrate Judge's Order was due no later than August 27,  
7 2015 (14 days plus three days for electronic service per FRCP 6(d)). *See* D.Nev.R. IB 3-1(a).  
8

9           However, on or about August 26, 2015, Plaintiff learned that his then-counsel, Matthew  
10 Pawlowski, Esq. of Walsh & Freedman, LTD, did not correctly understand Judge Leen's Order  
11 and therefore did not intend to file an Objection to that Order. *See* Affidavit Of Robert  
12 Langermann, dated September 28, 2015 ("Aff. Langermann"), attached hereto as Exhibit 2, ¶¶  
13 5, 6; *see also* Affidavit Of A. J. Sharp, Esq., dated October 27, 2015 ("Aff. Sharp"), attached  
14 hereto as Exhibit 1, ¶ 3. True to this conversation, no Objection was filed by August 27, 2015.  
15

16           In part because of this dispute, Plaintiff terminated his then-counsel and retained his  
17 current counsel, A. J. Sharp, Esq. of the Richard Harris Law Firm. *See* Aff. Langermann, ¶¶ 8,  
18 10. On September 9, 2015, Plaintiff's intended new counsel filed a Motion To Substitute  
19 Attorney, and on September 21, 2015, this Court granted Plaintiff's Motion (*Docket Filing #30*,  
20 *#32*).  
21

22           Upon entering the case, Plaintiff's counsel immediately wrote to Defense counsel to  
23 request that Defendant stipulate to permit Plaintiff to file an Objection to Judge Leen's Order,  
24 explaining that Plaintiff's former counsel had declined to do so and had since been discharged  
25 in part on that basis. *See* Letter From A. J. Sharp, Esq. To Darren T. Brenner, Esq. and William  
26  
27  
28

1 S. Habdas, Esq., dated September 22, 2015, attached hereto as Exhibit 3; *see also* Aff. Sharp,  
2 ¶ 4.

3 Two days later, counsel for both parties conducted a telephone conference to discuss the  
4 situation, following which Plaintiff's counsel sent another letter to Defense counsel, enclosing  
5 the proposed Stipulation. *See* Letter From A. J. Sharp, Esq. To Darren T. Brenner, Esq. and  
6 William S. Habdas, Esq., dated October 1, 2015, attached hereto as Exhibit 4; *see also* Aff.  
7 Sharp, ¶ 5.  
8

9 On October 5, 2015, Defense counsel sent an email to Plaintiff's counsel, declining to  
10 stipulate to allow Plaintiff leave to object to the Order. *See* E-Mail From William S. Habdas,  
11 Esq. To A. J. Sharp, Esq., dated October 5, 2015, attached hereto as Exhibit 5; *see also* Aff.  
12 Sharp, ¶ 6. Therefore, Plaintiff must now file this Motion to obtain leave to file an Objection to  
13 Judge Leen's Order.  
14

15 **II. LEGAL ARGUMENT**  
16

17 Objections to a Magistrate Judge's Order must be filed no later than 14 days after that  
18 Order is issued. *See* D.Nev.R. IB 3-1(a). When, as here, the Order is served electronically,  
19 three days are added to this time, for a total of 17 days to file the Objection. *See* Fed. R. Civ. P.  
20 6(d). Thus, Plaintiff's Objection was due on or before August 27, 2015, 17 days after Judge  
21 Leen's August 10, 2015, Order. *Docket Filing #30*.  
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1 However, failure to meet this deadline may be excused by this Court as a matter of  
2 equity if the moving party demonstrates that the failure to act was the result of excusable  
3 neglect. *See* D.Nev.R. 6-1; *see also* D.Nev.R. 26-4.

4  
5 Excusable neglect is an equitable decision taking into account all relevant  
6 surrounding circumstances of the party's omission including at least four factors:  
7 "(1) the danger of prejudice to the opposing party; (2) the length of the delay and its  
8 potential impact on the proceedings; (3) the reason for the delay; and (4) whether  
9 the movant acted in good faith."

10 *Allied Prop. & Cas. Ins. Co. v. Beazer Homes Holdings Corp.*, No. 2:09-CV-626-JCM-PAL,  
11 2013 WL 638632, at \*2 (D. Nev. Feb. 19, 2013) (citing *Pioneer Investment Services Co. v.*  
12 *Brunswick Associates Limited Partnership*, 507 U.S. 380, 395 (1993) (creating the four-part  
13 equitable test for determining excusable neglect outlined above).

14 Here, Plaintiff's situation readily satisfies each of the four prongs of the *Pioneer* test,  
15 and equity requires that Plaintiff be granted leave to object to the Order.

16 **A. There Is No Danger Of Prejudice To Defendant Because Of The Delay In**  
17 **Objecting To Judge Leen's Order, And That Delay Is Unlikely To Have Any**  
18 **Impact On The Proceedings.**

19 The procedural footing of this matter renders the delay in filing the Objection harmless,  
20 both in terms of prejudice to Defendant and in terms of impact on the proceedings. Discovery  
21 in the matter closed months ago, and no trial date has yet been set. On April 22, 2015,  
22 Defendant filed a Motion For Summary Judgment. *Docket Filing* #22. Plaintiff timely filed an  
23 Opposition, and Defendant timely filed a Reply. *Docketing Filing* #27, #29. Briefing on the  
24 Motion For Summary Judgment was completed on June 5, 2015, more than two months before  
25 Judge Leen issued her Order. *Docket Filing* #29, #30. The Motion For Summary Judgment  
26 remains pending before this Court, and no Hearing has yet been calendared on that Motion.

27 //

28 //

//

1 Had Plaintiff been able to persuade his former counsel to file a timely Objection on  
2 August 17, 2015, Defendant's Opposition (if any) would have been due no more than 17 days  
3 later, on September 3, 2015. See D.Nev.R. 3-1(b) (opposition to Objection due 14 days after  
4 Objection is served; *see also* Fed. R. Civ. P. 6(d) (adding three days to response time for  
5 electronically served document). Thus, briefing of a timely Objection would have been  
6 concluded in early September, with the Motion For Summary Judgment still pending.  
7

8 If Plaintiff were now granted leave to file an untimely Objection, briefing on that  
9 Objection would presumably be completed within 34 days (17 days for the Objection and 17  
10 days for the Opposition, if any). During that time, either the pending Motion For Summary  
11 Judgment would be ruled on by the Court, or it would not be ruled on. If that Motion were  
12 denied or not ruled upon, briefing would continue on the Objection. If that Motion were  
13 granted, the pending Objection would be mooted. Because the parties' Pre-Trial Order has been  
14 suspended pending the disposition of the Motion For Summary Judgment, no trial date has yet  
15 been set in this matter. Thus, briefing an Objection to Judge Leen's Order, and this Court's  
16 consideration of that briefing, will have no effect on the proceedings and therefore cannot  
17 present any prejudice to Defendant.<sup>1</sup>  
18  
19  
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27  
28 <sup>1</sup> It is important to note that the "excusable neglect" standard considers prejudice and other potential effects of the delay in a filing, not the effects of the filing itself. Thus, although the outcome of the Objection itself could potentially have an adverse effect on Defendant, the delay in Plaintiff's filing of that Objection would not, in and of itself, cause any prejudice to Defendant.

**B. The Delay In Objecting Was Caused Entirely By The Inaction Of Plaintiff's Former Counsel, A Circumstance Entirely Beyond Plaintiff's Control And Subject To Remedy By Plaintiff Only After The Deadline For Filing An Objection Had Expired; Therefore, There Can Be No Question That Plaintiff Acted In Good Faith.**

It is clear that the failure to file a timely Objection was caused solely by the inaction of Plaintiff's prior counsel, despite Plaintiff's belief that an Objection was necessary. *See* Aff. Langermann, ¶¶ 5, 6. Plaintiff had no ability (and no time) to file an Objection once he learned his former counsel did not intend to do so. *Id.* Plaintiff's only reasonable remedy, when learning the day before that Objection was due that his counsel did not intend to Object because of counsel's failure to understand the import of Judge Leen's Order, was to dismiss his counsel and retain new counsel, which Plaintiff promptly did. *Id.* at ¶¶ 8-10; *see also* Docket Filing #31.

Upon this Court's granting of the Motion To Substitute Attorney, Plaintiff immediately began to meet and confer with Defendant to obtain a Stipulation for leave to object. *Exhibits 3, 4.* When Defendant finally confirmed that it would not so stipulate, Plaintiff brought the instant Motion. In short, there can be no doubt that Plaintiff acted in good faith and has been diligent in addressing the problem his prior counsel caused by the delay. Plaintiff's situation therefore satisfies all four prongs of the *Pioneer* test for Excusable neglect.

**C. "Excusable Neglect" Is An Equitable Standard, And Equity Requires That Plaintiff Not Be Penalized For The Inaction Of Is Prior Counsel, As Plaintiff Remedied That Inaction As Promptly As Possible And In The Only Manner Possible.**

This Court has defined a conclusion of "excusable neglect" as "an equitable decision," adopting the four-prong test created by the United States Supreme Court for guidance as to where the equities lie in a particular situation. *Allied*, No. 2:09-CV-626-JCM-PAL, 2013 WL 638632, at \*2 (citing *Pioneer*, 507 U.S. 380). Thus, the focus of this determination is reaching



1 an equitable conclusion under the circumstances permitted, using the four *Pioneer* factors as  
2 guideposts along the way. *Id.*

3 Here, it is indisputable that equity requires that Plaintiff be permitted to object to Judge  
4 Leen's Order. Plaintiff's failure to timely object was caused entirely by the inaction of  
5 Plaintiff's former counsel, and Plaintiff had no recourse other than to replace his counsel, which  
6 could not be done within the original deadline for the Objection. Plaintiff took every step  
7 available to him, and his new counsel diligently met and conferred with Defense counsel to  
8 obtain a Stipulation to enable prompt filing of the Objection, and brought this Motion only  
9 when Defense counsel declined to stipulate. As it would be unfair to Plaintiff to penalize him  
10 for the inaction of his former counsel, the only "equitable decision" under these circumstances  
11 is to allow Plaintiff leave to object to Judge Leen's decision.

12 **III. CONCLUSION**

13 Plaintiff was deprived of the opportunity to object to Judge Leen's Order by the inaction  
14 of his prior counsel. Plaintiff's only remedy was to discharge counsel, retain new counsel, and  
15 then file either a Stipulation or Motion for leave to object to the Order, all of which Plaintiff has  
16 promptly done. Because Plaintiff has acted in good faith, the reason for the delay in objecting  
17 was completely beyond his control, and the delay will not impact the proceedings nor prejudice  
18 the Defendant, Plaintiff's delay is the result of excusable neglect under the *Pioneer* standard.  
19 Equity therefore requires that Plaintiff be permitted to object to Judge Leen's Order.

20 //

21 //

22 //

1 Plaintiff therefore respectfully requests that this Court grant him leave to file, within 17  
2 calendar days (per Local Rule IB 3-1(a) and FRCP 6(d)), an Objection to Judge Leen's August  
3 10, 2015, Order.  
4

5 DATED THIS 27th day of October, 2015.

6 **RICHARD HARRIS LAW FIRM**

7 /s/ A. J. Sharp

8 RICHARD A. HARRIS, ESQ.

9 Nevada Bar No. 505

10 A. J. SHARP, ESQ.

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12 801 South Fourth Street

13 Las Vegas, NV 89101

14 *Attorneys for Plaintiff*

RICHARD HARRIS  
LAW FIRM

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the 27th day of October, 2015, I served a copy of the foregoing, **PLAINTIFF'S MOTION FOR LEAVE TO OBJECT TO MAGISTRATE JUDGE'S ORDER (Docket Filing #30)**, by the CM/ECF electronic filing system of the United States District Court for the District of Nevada, which is automatically sent to the following individuals, by electronic mail, and by placing said copy in a sealed envelope, first-class postage fully prepaid, and mailing it via United States Postal Service, first class, to the following:

**Darren T. Brenner, Esq.**  
**William S. Habdas, Esq.**  
**AKERMAN LLP**  
**1160 Town Center Drive, Suite 330**  
**Las Vegas, NV 89144**

/s/ A. J. Sharp

\_\_\_\_\_  
An employee of RICHARD HARRIS LAW FIRM



## **EXHIBIT 3**

**United States District Court  
District of Nevada (Las Vegas)  
CIVIL DOCKET FOR CASE #: 2:14-cv-00982-RCJ-PAL**

Langermann v. Property & Casualty Insurance Company of  
Hartford  
Assigned to: Judge Robert C. Jones  
Referred to: Magistrate Judge Peggy A. Leen  
Demand: \$75,000,000  
Case in other court: Eighth Judicial District Court, A-14-  
700248-C  
Cause: 28:1332 Diversity-Wrongful Death

Date Filed: 06/18/2014  
Jury Demand: None  
Nature of Suit: 110 Insurance  
Jurisdiction: Diversity

**Plaintiff**

**Robert Langermann**  
*as administrator*  
*on behalf of*  
Estate of Marika Greyson

represented by **Anthony Julian Sharp**  
Richard Harris Law Firm  
801 South Fourth Street  
Las Vegas, NV 89101  
702-444-4292  
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Email: aj@richardharrislaw.com  
**LEAD ATTORNEY**

**Richard A Harris**  
Richard Harris Law Firm  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

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Email: mpp@callister-reynolds.com  
**TERMINATED: 09/21/2015**

**Robert J Walsh**  
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Fax: (702) 474-4664  
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cmoreno@walshandfriedman.com  
*TERMINATED: 09/21/2015*

V.

**Defendant**

**Property & Casualty Insurance  
Company of Hartford**

represented by **Darren T Brenner**  
Akerman LLP  
1160 Town Center Drive, Suite 330  
Las Vegas, NV 89144  
702-634-5000  
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*ATTORNEY TO BE NOTICED*

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Email: william.habdas@akerman.com  
*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text

06/18/2014	<u>1</u>	PETITION FOR REMOVAL from Eighth Judicial District Court, Case Number A-14-700248-C, (Filing fee \$ 400 receipt number 0978-3280423), filed by Property & Casualty Insurance Company of Hartford. Certificate of Interested Parties due by 6/28/2014. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Civil Cover Sheet) (Hyson, Kimberley) (Entered: 06/18/2014)
06/18/2014		Case assigned to Judge Robert C. Jones and Magistrate Judge Peggy A. Leen. (ASB) (Entered: 06/18/2014)
06/18/2014	<u>2</u>	<p>NOTICE PURSUANT TO LOCAL RULE IB 2-2: In accordance with 28 USC § 636(c) and FRCP 73, the parties in this action are provided with a link to the "AO 85 Notice of Availability, Consent, and Order of Reference - Exercise of Jurisdiction by a U.S. Magistrate Judge" form on the Court's website - <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a>. <b>AO 85 Consent forms should NOT be electronically filed.</b> Upon consent of all parties, counsel are advised to manually file the form with the Clerk's Office. (A copy of form AO 85 has been mailed to parties not receiving electronic service.)</p> <p>NOTICE OF GENERAL ORDER 2013-1 AND OPPORTUNITY FOR EXPEDITED TRIAL SETTING: The parties in this action are provided with a link to General Order 2013-1 and the USDC Short Trial Rules on the Court's website - <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a>. If the parties agree that this action can be ready for trial within 180 days and that a trial of this matter would take three (3) days or less, the parties should consider participation in the USDC Short Trial Program. If the parties wish to be considered for entry into the Court's Short Trial Program, they should execute and electronically file with USDC Short Trial Form 4(a)(1) or Form 4(a)(2).</p> <p><b>(no image attached)</b> (ASB) (Entered: 06/18/2014)</p>
06/18/2014	<u>3</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Robert C. Jones, on 6/18/2014. By Deputy Clerk: Aaron Blazeovich. Statement regarding removed action is due by 7/6/2014. Joint Status Report regarding removed action is due by 7/21/2014. (Copies have been distributed pursuant to the NEF - ASB) (Entered: 06/18/2014)
06/25/2014	<u>4</u>	MOTION to Dismiss with Prejudice; filed by Defendant Property & Casualty Insurance Company of Hartford. Responses due by 7/12/2014. (Attachments: # <u>1</u> Exhibit A)(Hyson, Kimberley) (Entered: 06/25/2014)
06/27/2014	<u>5</u>	CERTIFICATE of Interested Parties filed by Property & Casualty Insurance Company of Hartford that identifies all parties that have an interest in the outcome of this case. Corporate Parent The Hartford Financial Services Group, Inc., Other Affiliate Property & Casualty Insurance Company of Hartford for Property & Casualty Insurance Company of Hartford added. . (Hyson, Kimberley) (Entered: 06/27/2014)
07/02/2014	<u>6</u>	RESPONSE to <u>4</u> MOTION to Dismiss with Prejudice; filed by Plaintiff Robert Langermann. Replies due by 7/12/2014. (Attachments: # <u>1</u> Exhibit 1)(Walsh, Robert) (Entered: 07/02/2014)

07/02/2014	<u>7</u>	STATEMENT RE: REMOVAL filed by Defendant Property & Casualty Insurance Company of Hartford. (Hyson, Kimberley) (Entered: 07/02/2014)
07/14/2014	<u>8</u>	REPLY to Response to <u>4</u> MOTION to Dismiss with Prejudice filed by Defendant Property & Casualty Insurance Company of Hartford. (Attachments: # <u>1</u> Exhibit A)(Hyson, Kimberley) (Entered: 07/14/2014)
07/16/2014	<u>9</u>	STATUS REPORT RE: REMOVAL <i>Joint Status Report</i> filed by Defendant Property & Casualty Insurance Company of Hartford. (Brenner, Darren) (Entered: 07/16/2014)
07/17/2014	<u>10</u>	NOTICE OF CASE CONFERENCE PURSUANT TO F.R.C.P. 26(f) by Robert Langermann. (Walsh, Robert) (Entered: 07/17/2014)
07/23/2014	<u>11</u>	ORDER Granting with leave to amend <u>4</u> Motion to Dismiss. Signed by Judge Robert C. Jones on 7/23/2014. (Copies have been distributed pursuant to the NEF - SLR) (Entered: 07/23/2014)
08/07/2014	<u>12</u>	AMENDED COMPLAINT against All Plaintiffs, filed by Robert Langermann. No changes to parties. Proof of service due by 12/5/2014. (Walsh, Robert) (Entered: 08/07/2014)
08/12/2014	<u>13</u>	PROPOSED Discovery Plan/Scheduling Order filed by Defendant Property & Casualty Insurance Company of Hartford . (Brenner, Darren) (Entered: 08/12/2014)
08/21/2014	<u>14</u>	ANSWER to <u>12</u> Amended Complaint filed by Property & Casualty Insurance Company of Hartford. Certificate of Interested Parties due by 8/31/2014. Discovery Plan/Scheduling Order due by 10/5/2014.(Winslow, Natalie) <b>Corrected image <u>17</u> attached on 8/27/2014 (RFJ).</b> (Entered: 08/21/2014)
08/21/2014	<u>15</u>	SCHEDULING ORDER re <u>13</u> Proposed Discovery Plan/Scheduling Order. Interim Status Report due by 1/22/2015. Discovery due by 3/23/2015. Dispositive Motions due by 4/22/2015. Joint Pretrial Order due by 5/22/2015. Signed by Magistrate Judge Peggy A. Leen on 8/21/2014. (Copies have been distributed pursuant to the NEF - DKJ) (Entered: 08/22/2014)
08/27/2014	<u>16</u>	<b>NOTICE: Attorney Action Required to <u>14</u> Answer to Amended Complaint : ERROR: Document missing pages and not properly signed.</b>  <b>CORRECTION : Attorney Natalie L Winslow</b> advised to download a complete and properly signed " <u>ANSWER</u> " and refile using "Notice of Corrected Image/Document" event under the Notices category and properly link to Answer <u>14</u> . <b>(no image attached)</b> (RFJ) (Entered: 08/27/2014)
08/27/2014	<u>17</u>	NOTICE of Corrected Image/Document re <u>14</u> Answer to Amended Complaint by Defendant Property & Casualty Insurance Company of Hartford. (Service of corrected image is attached). (Winslow, Natalie) (Entered: 08/27/2014)
09/10/2014	<u>18</u>	ORDER that Plaintiff shall file his Certificate as to Interested Parties, which fully complies with LR 7.1-1 no later than 4:00 p.m., September 23, 2014. Signed by Magistrate Judge Peggy A. Leen on 9/9/2014. (Copies have been distributed pursuant to the NEF - SLR) (Entered: 09/10/2014)



09/12/2014	<u>19</u>	CERTIFICATE of Interested Parties filed by Robert Langermann. There are no known interested parties other than those participating in the case . (Walsh, Robert) (Entered: 09/12/2014)
01/22/2015	<u>20</u>	Interim STATUS REPORT <i>Joint</i> by Defendant Property & Casualty Insurance Company of Hartford. (Habdas, William) (Entered: 01/22/2015)
04/22/2015	<u>21</u>	MOTION Preclude Plaintiff from Offering Expert Testimony by Defendant Property & Casualty Insurance Company of Hartford. Responses due by 5/9/2015. (Habdas, William) (Entered: 04/22/2015)
04/22/2015	<u>22</u>	MOTION for Summary Judgment by Defendant Property & Casualty Insurance Company of Hartford. Responses due by 5/16/2015. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P, # <u>17</u> Exhibit Q, # <u>18</u> Exhibit R, # <u>19</u> Exhibit S, # <u>20</u> Exhibit T, # <u>21</u> Exhibit U, # <u>22</u> Exhibit V, # <u>23</u> Exhibit W, # <u>24</u> Exhibit X, # <u>25</u> Exhibit Y, # <u>26</u> Exhibit Z) (Habdas, William) (Entered: 04/22/2015)
04/22/2015	<u>23</u>	EXHIBIT(s) <i>AA - AN</i> to <u>22</u> Motion for Summary Judgment,, ; filed by Defendant Property & Casualty Insurance Company of Hartford. (Attachments: # <u>1</u> Exhibit AA, # <u>2</u> Exhibit AB, # <u>3</u> Exhibit AC, # <u>4</u> Exhibit AD, # <u>5</u> Exhibit AE, # <u>6</u> Exhibit AF, # <u>7</u> Exhibit AG, # <u>8</u> Exhibit AH, # <u>9</u> Exhibit AI, # <u>10</u> Exhibit AJ, # <u>11</u> Exhibit AK, # <u>12</u> Exhibit AL, # <u>13</u> Exhibit AM, # <u>14</u> Exhibit AN)(Habdas, William) (Entered: 04/22/2015)
04/22/2015	<u>24</u>	AFFIDAVIT of Janice Mirtich re <u>23</u> Exhibit, <u>22</u> Motion for Summary Judgment,, ; by Defendant Property & Casualty Insurance Company of Hartford. (Habdas, William) (Entered: 04/22/2015)
04/22/2015	<u>25</u>	AFFIDAVIT of William S. Habdas re <u>23</u> Exhibit, <u>22</u> Motion for Summary Judgment,, ; by Defendant Property & Casualty Insurance Company of Hartford. (Habdas, William) (Entered: 04/22/2015)
05/13/2015	<u>26</u>	RESPONSE to <u>21</u> Motion to Exclude Expert Testimony filed by Plaintiff Robert Langermann. Replies due by 5/23/2015. (Attachments: # <u>1</u> Exhibit 1)(Walsh, Robert) (Entered: 05/13/2015)
05/19/2015	<u>27</u>	RESPONSE to <u>22</u> Motion for Summary Judgment,, , filed by Plaintiff Robert Langermann. Replies due by 6/5/2015. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Walsh, Robert) (Entered: 05/19/2015)
05/22/2015	<u>28</u>	REPLY to Response to <u>21</u> Motion to Preclude Plaintiff from Offering Expert Testimony filed by Defendant Property & Casualty Insurance Company of Hartford. (Habdas, William) (Entered: 05/22/2015)
06/05/2015	<u>29</u>	REPLY to Response to <u>22</u> Motion for Summary Judgment,, , filed by Defendant Property & Casualty Insurance Company of Hartford. (Habdas, William) (Entered: 06/05/2015)
08/10/2015	<u>30</u>	ORDER Granting <u>21</u> Motion to Preclude Plaintiff from Offering Expert Testimony. Signed by Magistrate Judge Peggy A. Leen on 8/10/2015. (Copies have been distributed pursuant to the NEF - DC) (Entered: 08/10/2015)

09/09/2015	<u>31</u>	MOTION to Substitute Attorney by Plaintiff Robert Langermann. (Sharp, Anthony) (Entered: 09/09/2015)
09/21/2015	<u>32</u>	ORDER Granting <u>31</u> Motion to Substitute Attorney. Attorney's A.J. Sharp and Richard A Harris for Robert Langermann substituted for Attorney Matthew P. Pawlowski and Robert J Walsh. Signed by Magistrate Judge Peggy A. Leen on 9/21/15. (Copies have been distributed pursuant to the NEF - TR) (Entered: 09/21/2015)
10/27/2015	<u>33</u>	MOTION for Leave to File Objection re:30] ORDER; filed by Plaintiff Robert Langermann. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5)(Sharp, Anthony) (Entered: 10/27/2015)
11/13/2015	<u>34</u>	RESPONSE to <u>33</u> Motion for Leave to File, filed by Defendant Property & Casualty Insurance Company of Hartford. Replies due by 11/23/2015. (Habdas, William) (Entered: 11/13/2015)
11/13/2015	<u>35</u>	AFFIDAVIT of William S. Habdas, Esq. re <u>34</u> Response to Motion; filed by Defendant Property & Casualty Insurance Company of Hartford. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Habdas, William) (Entered: 11/13/2015)
11/15/2015	<u>36</u>	REPLY to Response to <u>33</u> Motion for Leave to File filed by Plaintiff Robert Langermann. (Sharp, Anthony) (Entered: 11/15/2015)
12/08/2015	<u>37</u>	ORDER Setting Hearing on Defendants' <u>22</u> Motion for Summary Judgment. Motion Hearing set for 1/15/2016 at 10:00 AM in Las Vegas Courtroom to be determined before Judge Robert C. Jones. Signed by Judge Robert C. Jones on 12/08/2015. (Copies have been distributed pursuant to the NEF - NEV) (Entered: 12/08/2015)
01/06/2016	38	NOTICE of Hearing Location RE: <u>22</u> MOTION for Summary Judgment . Motion Hearing set for 1/15/2016 10:00 AM in LV Courtroom 4A before Judge Robert C. Jones. <b>(no image attached)</b> (LE) (Entered: 01/06/2016)
01/08/2016	39	NOTICE of Change in Hearing Location: Motion Hearing RE: <u>22</u> MOTION for Summary Judgment set for 1/15/2016 10:00 AM in LV Courtroom 4B before Judge Robert C. Jones. <b>(no image attached)</b> (LE) (Entered: 01/08/2016)
01/15/2016	40	MINUTES OF PROCEEDINGS - Motion Hearing RE: <u>22</u> Motion for Summary Judgment held on 1/15/2016 before Judge Robert C. Jones. Crtrm Administrator: <i>Lesa Ettinger</i> ; Pla Counsel: <i>Anthony Sharp</i> ; Def Counsel: <i>Darren Brenner</i> ; Court Reporter/FTR #: <i>Margaret Griener</i> ; Time of Hearing: <i>10:17 a.m. - 10:52 a.m.</i> ; Courtroom: <i>4B</i> ;  Arguments of counsel are heard. The Court takes this matter under submission. Written ruling of the Court will issue.  Discussion is then held in relation to trial setting in this matter.  IT IS ORDERED, Calendar Call is scheduled for Friday, 4/15/2016 10:00 AM in LV Courtroom 4B before Judge Robert C. Jones. Jury Trial is scheduled for

		Monday, 4/25/2016 09:00 AM in LV Courtroom 4B before Judge Robert C. Jones.  (no image attached) (Copies have been distributed pursuant to the NEF - LE) (Entered: 01/21/2016)
01/21/2016	<u>41</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Robert C. Jones, on 1/21/2016. By Deputy Clerk: Lesa Ettinger.  This case is currently scheduled for jury trial on the stacked calendar of Monday, 4/25/2016. Calendar Call is scheduled for Friday, 4/15/2016.  IT IS ORDERED this case is referred to Magistrate Judge Peggy A. Leen for a settlement conference.  (no image attached) (Copies have been distributed pursuant to the NEF - LE) (Entered: 01/21/2016)
01/21/2016	<u>42</u>	ORDER REGARDING TRIAL. Jury Trial set for 4/25/2016 09:00 AM in LV Courtroom 4B before Judge Robert C. Jones. Calendar Call set for 4/15/2016 10:00 AM in LV Courtroom 4B before Judge Robert C. Jones. Exhibit List due by 4/15/2016. Witness List due by 4/15/2016. Proposed Findings of Fact and Conclusions of Law due by 4/15/2016. Proposed Voir Dire due by 4/15/2016. Proposed Jury Instructions due by 4/15/2016. Trial Briefs due by 4/15/2016. Signed by Judge Robert C. Jones on 01/21/2016. (Copies have been distributed pursuant to the NEF - LE) (Entered: 01/21/2016)

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**EXHIBIT 4**

**AFFIDAVIT OF A. J. SHARP, ESQ.**

STATE OF NEVADA       )  
                                      )  
COUNTY OF CLARK     )       ss.

I, A. J. SHARP, ESQ., being first duly sworn, depose and say:


1. That I am an attorney licensed to practice law in the State of Nevada and am an Associate with the Richard Harris Law Firm, counsel for Plaintiff Robert Langermann in the matter of *Robert Langermann v. Property & Casualty Insurance Company of Hartford*, Case No. 2:14-cv-00982-RCJ-PAL, venued in the United States District Court for the District of Nevada.
2. That my client, Mr. Langermann, is the Administrator of the Estate of his late sister, Marika Greyson, whose hit-and-run motor vehicle accident, injuries, and damages are at issue in that matter.
3. That on April 22, 2015, Defendant Property & Casualty Insurance Company of Hartford ("Hartford") filed a Motion pursuant to FRCP 37(c) to preclude Ms. Greyson's treating physicians from testifying at trial, on the grounds that the FRCP 26(a) disclosures served by Plaintiff's counsel included a description of the physicians' testimony that was insufficient to satisfy FRCP 26(a)(2)(C), in that it did not include "a summary of the facts and opinions to which the witness is expected to testify", but simply included a statement that the physician "will testify to his/her knowledge regarding the medical treatment provided to Marika Greyson resulting from the subject accident." *Docket Filing #21*.
2. That on August 10, 2015, United States Magistrate Judge Peggy A. Leen issued an Order granting Hartford's Motion and precluding Ms. Greyson's treating physicians from testifying at trial. *Docket Filing #30*. Per Local Rule IB 3-1(a) and FRCP 6, Plaintiff had until August 27, 2015, to file an Objection with the District Judge regarding Judge Leen's Order.
4. That on September 21, 2015, Magistrate Judge Leen granted my Motion For Substitution Of Counsel. *Docket Filing #31, #32*.
5. That on October 27, 2015, having attempted without success to meet and confer with Defense counsel to obtain a Stipulation permitting Plaintiff to file an Objection to Judge Leen's Order despite the fact that the deadline for doing so had passed, I filed Plaintiff's Motion For Leave To File Objection. *Docket Filing #33*. Defendant timely filed an Opposition (*Docket Filing #34*), and I timely file Plaintiff's Reply (*Docket Filing #36*).

6. That on January 15, 2016, United States District Judge Robert C. Jones heard oral argument regarding Defendant's Motion For Summary Judgment. I appeared with my client, Robert Langermann, and Darren T. Brenner, Esq. appeared on behalf of Hartford.
7. That during oral argument, Mr. Brenner argued that Plaintiff had no witnesses or admissible evidence to establish the necessary element of causation between the hit-and-run accident and Ms. Greyson's injuries.
8. That Judge Jones responded that Ms. Greyson's treating physicians could potentially proffer testimony regarding causation.
9. That Mr. Brenner then stated that, in this case, the treating physicians would not be permitted to testify. He referenced Judge Leen's Order.
10. That Judge Jones responded, "Oh, that Order is wrong. I'm going to reverse that."
11. That at the conclusion of the Hearing, Judge Jones denied Defendant's Motion For Summary Judgment and set a trial date.
12. That I then asked for clarification regarding Judge Jones's earlier statement that he would reverse Judge Leen's Order. I inquired as to whether he would request additional briefing or input from the parties, and he replied, "No, I'll take care of it in my Order."
13. That, as of January 22, 2016, Judge Jones has not yet issued his written Order regarding the Motion For Summary Judgment, which, per his in-court statement, will also include an Order reversing Judge Leen's Order precluding Ms. Greyson's treating physicians from testifying at trial.

FURTHER, AFFIANT SAYETH NAUGHT.

  
A.J. SHARP, ESQ.

SUBSCRIBED and SWORN to before  
me this 22nd day of January, 2016.

  
Notary Public, In and For  
Said County and State

