

Adam E. Brigman, Esq.  
Nevada Bar No. 11926  
**CRAM VALDEZ BRIGMAN & NELSON**  
8831 W. Sahara Avenue  
Las Vegas, Nevada 89117  
Telephone: (702) 255-0700  
Facsimile: (702) 255-2159

Electronically Filed  
Apr 02 2015 11:33 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JA CYNTA McCLENDON,

Appellant,

vs.

DIANE COLLINS and; ROE CORPORATIONS  
I through X, inclusive; and DOES I through X,  
inclusive,

Respondent.

Supreme Court No. 66473

District Court Case No. A-13-680935  
Dept. No. XXX

**APPELLANT'S APPENDIX**

**ATTORNEY FOR THE APPELLANT**

ADAM E. BRIGMAN, ESQ.  
Nevada Bar No. 11926  
**CRAM VALDEZ BRIGMAN & NELSON**  
8831 W. Sahara Avenue  
Las Vegas, Nevada 89117  
Telephone: (702) 255-0700  
Facsimile: (702) 255-2159

**ATTORNEY FOR THE RESPONDENT**

BYRON F. BROWNE, ESQ.  
Nevada Bar No. 9769  
WILSON ELSER MOSKOWITZ EDELMAN &  
DICKER LLP  
300 South Fourth Street, 11<sup>th</sup> Floor  
Las Vegas, NV 89101  
Telephone: (702) 727-1400  
Facsimile: (702) 727-1401

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# Exhibit 1



CLERK OF THE COURT

1 **COMP**  
2 ROGER M. CRAM, ESQ.  
3 Nevada Bar No.: 006612  
4 **CRAM VALDEZ BRIGMAN & NELSON**  
5 8831 W. Sahara  
6 Las Vegas, Nevada 89117  
7 Telephone (702) 255-0700  
8 *Attorney for Plaintiff*

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 --o0o--

12 JA CYNTA McCLENDON,

13 Plaintiff,

14 vs.

15 DIANE COLLINS and RICHARD COLLINS;  
16 ROE CORPORATIONS I through X, inclusive;  
17 and DOES I through X, inclusive,

A-13-680935-C

CASE NO.:

DEPT NO.:

XXX

**COMPLAINT**

18 Plaintiff JA CYNTA McCLENDON (Plaintiff), by and through her undersigned counsel,  
19 ROGER M. CRAM, ESQ., of CRAM VALDEZ BRIGMAN & NELSON, and for her action against  
20 Defendants, complains and alleges as follows:

21 **I.**

**IDENTIFICATION OF THE PARTIES**

22 1. At all times mentioned and relevant herein Plaintiff was and is a resident of Clark County,  
23 Nevada.

24 2. Plaintiff is informed and believes, and thereon alleges, that, at all times relevant herein,  
25 Defendants DIANE COLLINS and RICHARD COLLINS (Defendants), were, and are, residents of  
26 Clark County, Nevada.

27 3. The true names of DOES I through X, their citizenship and capacities, whether individual,  
28 corporate, associate, partnership or otherwise, are unknown to Plaintiff, who therefore sues the

1 Defendants by such fictitious names. Plaintiff is informed and believes, and therefore alleges, that  
2 each of the Defendants, designated as DOES I through X, are, or may be, legally responsible for the  
3 events referred to in this action, and caused damages to Plaintiff, as herein alleged, and Plaintiff will  
4 ask leave of this Court to amend the Complaint to insert the true names and capacities of such  
5 Defendants, when the same have been ascertained, and to join them in this action, together with the  
6 proper charges and allegations.

7  
8 4. DOES I through V and/or ROE Corporations XI through XV are Defendants and/or  
9 employers of named and/or unnamed Defendants who may be liable in negligence generally, or  
10 pursuant to N.R.S. 41.130, which states:

11 [e]xcept as otherwise provided in N.R.S. 41.745, whenever any person  
12 shall suffer personal injury by wrongful act, neglect or default of another,  
13 the person causing the injury is liable to the person injured for damages;  
14 and where the person causing the injury is employed by another person or  
15 corporation responsible for her conduct, that person or corporation so  
16 responsible is liable to the person injured for damages.

17  
18 5. DOES VI through X may be immediate family members of Defendants, who may be  
19 liable for Defendants' negligence, pursuant to NRS 41.440, which states:

20 any liability imposed upon a wife, husband, son, daughter, father,  
21 mother, brother, sister or other immediate member of a family  
22 arising out of her or her driving and operating a motor vehicle upon a  
23 highway with the permission, express or implied, of such owner is  
24 hereby imposed upon the owner of the motor vehicle, and such  
25 owner shall be jointly and severally liable with her or her wife,  
26 husband, son, daughter, father, mother, brother, sister, or other  
27 immediate member of the family for any damages proximately  
28 resulting from such negligence or willful misconduct, and such  
negligent or willful misconduct shall be imputed to the owner of the  
motor vehicle for all purposes of civil damages.

## 24 II.

### 25 GENERAL ALLEGATIONS

26 6. Plaintiff hereby repeats, and realleges, Paragraphs 1 through 5 of this Complaint as though  
27 fully set forth herein.  
28

IV.

**SECOND CLAIM FOR RELIEF**  
**(Negligence *Per Se* Against DEFENDANTS)**

21. Plaintiff hereby repeats, and realleges, Paragraphs 1 through 20 of this Complaint as though fully set forth herein.

22. Plaintiff is informed, and believes, and thereupon alleges that Defendants operated a motor vehicle in a manner which violates State of Nevada, County of Clark, and City of Las Vegas statutes, laws, and ordinances, including, but not limited to, failure to use due care in the operation of her vehicle and her failure to avoid the collision with Plaintiff.

23. Plaintiff is within the class of persons intended to be protected by the statutes, laws, and ordinances of the State of Nevada, County of Clark, and City of Las Vegas, which were violated by Defendants.

24. The injuries suffered by Plaintiff were of the type against which the statutes, laws, and ordinances of the State of Nevada, County of Clark, and City of Las Vegas were intended to protect.

25. That, as a direct, and proximate, result of the negligence of Defendants, Plaintiff sustained severe bodily trauma, all or some of which may be permanent and disabling in nature, all to her general and compensatory damage, in an amount in excess of \$10,000.00. In addition, Plaintiff was required to incur expenses for medical care, treatment and expenses incidental thereto, all to her detriment, in an amount unknown at this time, and may be required in the future to incur expenses for medical care and treatment, including surgery, physicians, nurses, physical therapists, hospitalization, x-rays, medicine and general medical care in an amount not yet ascertained, and in this regard Plaintiff prays leave of the Court to insert all said damages herein when the same have been fully ascertained or proven at the time of trial herein.

26. As a direct, and proximate, result of the negligence of Defendants, Plaintiff has endured pain and suffering, worry, anxiety, emotional distress, loss of enjoyment of life, and will continue to endure said losses for an indefinite period of time in the future, in an amount in excess of

1 \$10,000.00, and in this regard Plaintiff prays leave of the Court to insert all said damages herein when  
2 the same have been fully ascertained or proven at the time of trial herein.

3 27. That as a further direct, and proximate, result of the aforesaid negligence of Defendants,  
4 Plaintiff has incurred additional damages, such as lost income, loss of earning capacity, and other  
5 incidental damages in a sum to be determined at the time of trial.

6 28. It has been necessary for Plaintiff to retain the services of counsel to represent her interests  
7 in the above-entitled matter, and that he should be awarded reasonable attorney's fees and costs.  
8

9  
10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff prays for relief and judgment as against Defendants, and each of them, as  
12 follows:

- 13 1. General and special damages in excess of \$10,000.00, according to proof at trial;  
14 2. Pre-judgment and post-judgment interest, as allowed by law;  
15 3. Costs of suit and attorney fees; and,  
16 4. For such other and further relief as the court may deem appropriate.  
17

18 DATED this 29th day of April 2013.

19  
20 CRAM VALDEZ BRIGMAN & NELSON

21  
22 By: 

23 ROGER M. CRAM, ESQ.  
24 Nevada Bar No. 006612  
25 8831 W. Sahara  
26 Las Vegas, Nevada 89117  
27 Telephone (702) 255-0700  
28 *Attorney for Plaintiff*

# Exhibit 2



**REQT**

Leonard J. Root, Esq.  
Nevada Bar No.: 002460  
P.O. Box 73058  
Las Vegas, NV 89170-9998  
Telephone No: (702) 597-1999  
Fax No: (702) 736-1449  
Attorney - Arbitrator

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JA Cynta McClendon,

Plaintiff,

Diane Collins and Richard  
Collins; ROE Corporations  
I thought X, inclusive; and does  
I thought X inclusive,

Defendants.

CASE NO. A-12-680935-C  
DEPT NO. XXX

ARBITRATION  
ADR# 13-1744

**Arbitration Award**

The arbitration hearing in this matter came up for a hearing in due course on January 9, 2014. Plaintiff was represented by Adam E. Brigman, Esq., or the law firm of Cram, Valdez, Brigman & Nelson. The defendants were represented by Daniel Aquino, Esq., of the law firm of McCormick, Barstow, Sheppard, Wayte & Carruth, LLP. Both attorneys submitted well-prepared briefs and cocent arguments at the hearing. The arbitrator awards as follows:

**Statement of Focus:**

This is your typical rear-ending, where the defendant conceded liability. This accident occurred on May 15, 2012.

**Issue:**

**Damages:** What is the plaintiff entitled to in overall damages for this basically a "minor" rear-ender. In spite of the fact that the plaintiff denies ever calling this accident as a "low-impact" collision.

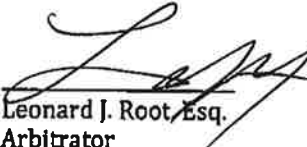
Medical Specials:

Plaintiff, JA Cynta McClendon, ASRS. This arbitration for \$23,500.00 based on the fact that she had \$17,574.00 of total medical specials; however, the defendant argues that her medical specials should only be for treatment incurred up until June 5, 2012 because there were two large gaps in treatment namely from June 5, 2012 to July 3, 2012 and from September 27, 2012 to October 18, 2012. The defendant alleges that these two (2) gaps in treatment are not consistent with someone who has sustained an injury and is in significant pain. The plaintiff stated in her deposition and in her brief that she had to go see her father in Wisconsin and could not treat her injury. I disagree with this explanation because the plaintiff could have treated in Wisconsin had she been in real pain. Therefore, I agree with the defendant's assertion that the treatment ended June 5, 2012. I calculate that medical specials totaled \$9,706.00 not the \$17,500.00 as the plaintiff has calculated.

Conclusion:

Based on the above analysis of the plaintiff's case, I award a medical specials total of \$9,706.00 and award pain and suffering in the amount of \$4,000.00 which totals \$13,706.00 award for the plaintiff, JA Cynta McClendon.

Dated this 12 day of February 2014.

  
Leonard J. Root, Esq.  
Arbitrator

1

2

3

NOTICE

4

Pursuant to Nevada Arbitration Rule 1A A, You are notified that you  
have thirty (30) days from the date you are served with this document within which to  
file a written request for a trial de novo with the Clerk of the Court and serve the  
Commissioner and all other parties.

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**CERTIFICATE OF MAILING**

I hereby certify that on the 11 day of February, 2014 I mailed a copy of the foregoing Arbitration Award in a sealed envelope addressed to the following counsels of record, and to plaintiff and that postage thereon was fully prepaid:

Adam E. Brigman, Esq.

Cram, Valdez, Brigman & Nelson

8831 W. Sahara Avenue

Las Vegas, NV 89117

Attorney for Plaintiff

Fax: (702) 255-2159

Daniel Aquino, *Esq.*


McCormick, Barstow, Sheppard, Wayte & Carruth, LLP

8337 West Sunset Road, Suite #350

Las Vegas, NV 89113

Attorney for Defendants

Fax: (702) 949-1101

  
Leonard J. Root, Esq.

# Exhibit 3

1 **ORDR**  
 2 **PATRICK N. CHAPIN, ESQ.**  
 3 Nevada Bar No. 004946  
 4 Patrick N. Chapin, Ltd.  
 5 129 Cassia Way  
 6 Henderson, Nevada 89014  
 7 (702) 433-7295  
 8 Judge Pro Tempore

6 **DISTRICT COURT**  
 7 **CLARK COUNTY, NEVADA**

8 JA CYNTA McCLENDON,

9 Plaintiff,

10 v.

11 DIANE COLLINS and RICHARD COLLINS;  
 12 ROE CORPORATIONS I through X, inclusive,  
 13 and DOES I through X, inclusive,

14 Defendants.

) Case No. A-13-680935-C  
 ) Dept. No. XXX  
 ) STP No. 13-1744

) **DISCOVERY SCHEDULING**  
 ) **ORDER AND TRIAL NOTICE**

) Trial Date: August 22, 2014  
 ) Trial Time: 8:00 a.m.

15 TO: ADAM E. BRIGMAN, ESQ., CRAM VALDEZ BRIGMAN & NELSON,  
 16 Attorney for Plaintiff; and

17 TO: Byron F.L. Browne, Esq., Buckley King, Attorney for Defendants.

18 The parties met for the NSTR 8 Conference on May 13, 2014, with the Judge Pro  
 19 Tempore (Court) herein. Present via teleconference were Adam E. Brigman, Esq. with the  
 20 law firm of Cram Valdez Brigman & Nelson on behalf of Plaintiff, and Byron F.L. Browne,  
 21 Esq. with the law firm of Buckley King on behalf of Defendants.

22 The parties attempted settlement during the conference but reached an impasse. The  
 23 Court urged the parties to continue in their attempts at settlement.

24 IT IS HEREBY ORDERED that discovery shall be completed on or before Wednesday,  
 25 July 30, 2014.

26 IT IS FURTHER ORDERED that the parties may each serve ten (10) interrogatories, ten  
 27 (10) requests for production of documents and ten (10) requests for admissions on any other  
 28 party.

**PATRICK N. CHAPIN, LTD.**  
129 Cassia Way, Henderson, NV 89014  
Telephone: (702) 433-7295 Facsimile: (702) 403-1919

1 IT IS FURTHER ORDERED that the Defendant reserves the right to take the deposition  
2 of Plaintiff's treating physicians. Plaintiff does not require any depositions to be taken.

3 IT IS FURTHER ORDERED that the Joint Pre-Trial Memorandum with Joint  
4 Evidentiary Book, consistent with NSTR Rules 9 and 18, are due in the law offices of the  
5 Court by a date no later than **Thursday, August 7, 2014**. Counsel for Defendant has agreed  
6 to prepare the initial Joint Evidentiary Book.

7 IT IS FURTHER ORDERED that Motions in Limine are due in the law offices of the  
8 Court by a date no later than **Friday, August 1, 2014**.

9 IT IS FURTHER ORDERED that Oppositions to Motions in Limine are due in the law  
10 offices of the Court by a date no later than **Friday, August 8, 2014**.

11 IT IS FURTHER ORDERED the Pre-Trial Conference, pursuant to NSTR 10, will  
12 take place on **Wednesday, August 13, 2014 at the hour of 9:00 a.m.** Counsel for the parties  
13 must personally appear for the Pre-Trial Conference at the law offices of the Court, 129  
14 Cassia Way, Henderson, NV 89014.

15 IT IS FURTHER ORDERED that, per the agreement of both counsel, six jurors will  
16 be impaneled for the short trial.

17 IT IS FURTHER ORDERED that the bench trial is scheduled for **Friday, August 22,**  
18 **2014** beginning at the hour of **8:00 a.m.** at the Regional Justice Center located at 200 Lewis  
19 Avenue, Las Vegas, NV 89155.

20 DATED this 14<sup>th</sup> day of May, 2014.

21 PATRICK N. CHAPIN, LTD.

22   
23  
24 PATRICK N. CHAPIN, ESQ.  
25 Nevada Bar No. 004946  
26 129 Cassia Way  
27 Henderson, Nevada 89014  
28 Judge Pro Tempore

**PATRICK N. CHAPIN, LTD.**

129 Cassia Way, Henderson, NV 89014


Telephone: (702) 433-7295 Facsimile: (702) 403-1919

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of May, 2014, I served a copy of the foregoing  
**DISCOVERY SCHEDULING ORDER AND TRIAL NOTICE** by depositing a true and  
correct copy with the United States Postal Service, first-class postage prepaid, addressed as  
follows:

Adam E. Brigman, Esq.  
Cram Valdez Brigman & Nelson  
8831 West Sahara Avenue  
Las Vegas, NV 89117  
Attorney for Plaintiff

Byron F.L. Browne, Esq.  
Buckley King  
10191 Park Run Drive #110  
Las Vegas, NV 89145  
Attorney for Defendant



An Employee of Patrick N. Chapin, Esq.  
Judge Pro Tempore



# Exhibit 4

1 **NOTC**

2 **BYRON F. BROWNE, ESQ.**

3 Nevada Bar No. 9769

4 **BUCKLEY KING, LPA**

5 10191 Park Run Drive, Suite 110

6 Las Vegas, Nevada 89145

7 702-727-2930/F: 702-240-5900

8 E-mail: [bbrowne@buckleyking.com](mailto:bbrowne@buckleyking.com)

9 Attorneys for Defendants, *DIANE COLLINS*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 JACYNTA McCLENDON,

13 Plaintiff,

14 -vs-

15 DIANE COLLINS, et al.,

16 Defendants.

Case No.: A-13-680935

17 **DEFENDANT, DIANE COLLINS', DESIGNATION OF EXPERT WITNESSES**

18 COMES now Defendant, DIANE COLLINS, by and through her counsel, Byron Browne,  
19 Esq. of the law offices of Buckley King, LPA and hereby submits her Designation of Expert  
20 Witnesses.

21 **I.**

22 **EXPERT WITNESSES**

23 1. Eugene L. Appel, M.D.  
24 8008 Frost Street #400  
25 San Diego, CA 92123

26 (a) Dr. Appel is a board certified surgery. Dr. Appel is expected to testify with respect  
to his evaluation of Plaintiff, JACYNTA McCLENDON's medical records and render opinions  
regarding Plaintiff's alleged injuries and the reasonable necessity of Plaintiff's medical treatment.

1 (b) Attached here to as Exhibit "A" is a copy of Dr. Appel's Curriculum Vitae, fee  
2 schedule and deposition/trial testimony.

3 Defendant reserves the right to add, amend or delete any of the above, and further reserves  
4 the right to call any witness identified and elected under the provisions of NRCP 26(b)(4-5) by any  
5 party to this action whether or not such party remains a party at the time of Trial.

6 Defendant further reserves the right to add additional experts as such need arises during the  
7 course of discovery and investigation in preparation of this case.

8 DATED: June 3, 2014

BUCKLEY KING, LPA

Byron E. Browne  
Nevada Bar No. 9769

10191 Park Run Dr., Suite 110

Las Vegas, NV 89145

P: 702-242-5282/F: 702-243-5282

Attorneys for Defendants, DIANE COLLINS

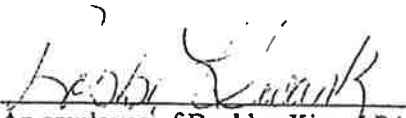
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**CERTIFICATE OF SERVICE**

I hereby certify that on June 4, 2014, I served the foregoing **DEFENDANT, DIANE COLLINS' DESIGNATION OF EXPERT WITNESSES** by depositing true and correct copies of the same in the U.S. Mail, first-class postage prepaid to the parties listed below:

**Attorneys for Plaintiff**

Roger M. Cram, Esq.  
Adam E. Birgman, Esq.  
CRAM VALDEZ BRIGMAN & NELSON  
8831 W. Sahara Ave.  
Las Vegas, NV 89117  
Telephone: (702) 255-0700  
Facsimile: (702) 255-2159

  
An employee of Buckley King, LPA

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## EXHIBIT "A"

**EUGENE L. APPEL**  
**B.M.E., M.M.E. (Eq), M.D., F.A.C.S.**

**CURRICULUM VITAE**

<b>FORMAL EDUCATION</b>	Cornell University of Mechanical Engineering, BME degree, finished 4 <sup>th</sup> in the class; Dean's list 10 consecutive terms; Honorary Societies: Tau Beta Pi, Pi Tau Sigma
<b>MEDICAL SCHOOL</b>	Harvard University, Boston, Massachusetts. M.D. 1966
<b>INTERNSHIP</b>	Columbia Presbyterian Hospital, July 1, 1966-June 30, 1967
<b>RESIDENCY</b>	Massachusetts General Hospital, 1966-1971
<b>MILITARY SERVICE</b>	Major, United States Army Post Surgeon, Fort Knox, Kentucky, 1971-1973
<b>PRIVATE PRACTICE</b>	Dr. Sam Karlin, 1973-1974 Louisiana State University (part-time), 1973-1974 Partnership with Dr. Alvin Cotlar and Dr. Julius Levy, 1974-1975 Private practice, 1976-present
<b>PROFESSIONAL WORK</b>	Executive Medical Board, Sharp Memorial Hospital, 1986-1995 Chief of Surgery, Sharp Memorial Hospital, 1986-1989 Vice-Chief of Surgery, Sharp Memorial Hospital, 1990-1992 Chief of Surgery, Sharp Memorial Hospital, 1993-1995 Sharp Health Care Foundation Member Harvard Medical School President's Club Member Medical Board of California, Expert Reviewer Sharp Memorial Hospital's Disaster Preparedness Director
<b>SPECIALITY BOARD</b>	Diplomat, American Board of Surgeons, 1978
<b>FELLOWSHIP</b>	American College of Surgeons, 1978
<b>PROFESSIONAL SOCIETIES</b>	San Diego County Medical Society (past member) Society of General Surgeons (past member)
<b>COMMUNITY WORK</b>	Board of Directors, La Jolla County Day School (past member) Temple Beth Israel (past board member) Harvard University Fund Raiser Board Member, Seacrest Village

Eugene L. Appel, M.D.  
8008 Frost Street, Suite 406  
San Diego CA 92123

TAX ID# 95-3070989

#### **FEE SCHEDULE**

<b>Chart Review:</b>	<b>\$450.00 per hour</b>
<b>Prep for Deposition</b>	<b>\$450.00 per hour</b>
<b>Deposition:</b>	<b>\$700.00 per hour (2 hour minimum)</b>
<b>Court Day</b>	<b>\$4,500.00 per half or whole day</b>

Eugene L. Appel, M.D., F.A.C.S.

N.B.S. (000) 270 6079

General Surgery  
8000 Frost Street, Suite 406  
San Diego, CA 92123

## List of Depositions and Trials

Date:	Attorney or Firm	Name of Plaintiff or Defendant	Place Depo or Trial
6 3 99	Underwood, Wilson, Berry Stein & Johnson (Texas)	Re: Thompson v. Snider	Depo San Diego
6 23 00	Attorney Holly (Nevada)	Re: Simon v. Martin	Depo San Diego
10 17 00	Attorney Richard H. Lee	Re: Olukhin (Plaintiff)	Trial San Diego
1 22 00	Attorney Riggs	Re: Lopez	Trial Las Vegas
2 9 00	Attorney R. Christopher Houten	Re: Olukhin (Plaintiff)	Depo, San Diego
3 1 00	Attorney - Riggs	Re: Curran v. Leonard	Trial Las Vegas
3 20 00	Attorney Burn	Re: Bankson v. Sidenford	Depo San Diego
3 22 00	Attorney Purdy	Re: Jones v. Wilson	Trial Las Vegas
3 30 00	Attorney Riggs	Re: Jameson	Trial Reno
4 19 00	Attorney Py	Re: Blausey v. Jacobs (Ohio)	Depo San Diego
4 20 00	Attorney Box	Re: Anthony v. Holland (Plaintiff)	Depo San Diego



4 28 00	Attorney Purdy	Re: Edminson	Trial Las Vegas
5 2 00	Attorney Peterson	Re: Bates	Depo San Diego
5 19 00	Attorney Mallard	Re: Deacon	Trial New Jersey
5 24 00	Attorney Kolias	Re: Clifton v. Zappanti	Trial Las Vegas
5 26 00	Attorney Hanlon	Re: Nordacci	Trial Las Vegas
8 28 00	Attorney Blazer	Re: Miramon (Plaintiff)	Depo San Diego
10 06 00	Attorney Lee Roistacher	Re: Kinder (Plaintiff)	Depo San Diego
10 13 00	Attorney Tate	Re: Chavez	Depo San Diego
10 25 00	Attorney Home	Re: Schofield	Depo Costa Mesa
11 03 00	Attorney Mallard	Re: Somerville	Depo San Diego
01 31 01	Attorney Hillers	Re: Rizzo	Trial Las Vegas
03 01 01	Attorney Frazier	Re: Walker	Depo Orange County
03 12 01	Attorney Purdy	Re: Laythorpe	Trial Las Vegas
3 23 01	Attorney Marm...	Re: Martensen	Depo San Diego
4 4 01	Attorney Tate	Re: Preciado	Depo San Diego

6 16 03	Attorney Tindall	Re: Cason/MGM	Trial Las Vegas
9 18 03	Attorney Pehr	Re: Coppedge/Buckley	Trial Las Vegas
10 29 03	Attorney Pehr	Re: Mattson	Trial Las Vegas
11 7 03	Attorney Moody	Re: Moore v. Longsine	Trial Las Vegas
11 20 03	Attorney Nelson	Re: Nelson (Plaintiff)	Depo San Diego
1 16 04	Attorney Harrison	Re: Gomez	Depo San Diego
1 27 04	Attorney Cooney	Re: Tellez	Depo San Diego
2 9 04	Attorney Harner	Re: Hastings (Plaintiff)	Depo Florida
3 5 04	Attorney Mills	Re: Cabrera/Porn	Depo San Diego
3 30 04	Attorney Lyles	Re: Cannon	Depo San Diego
6 21 04	Attorney Carter	Re: Kondrup	Depo San Diego
6 22 04	Attorney Moody	Re: Santor	Trial Las Vegas
10 04 04	Attorney Nielson	Re: Briggs	Depo San Diego
10 26 04	Attorney Heos	Re: Oliver (Plaintiff)	Depo San Diego

List of Depositions and Trials

Date:	Attorney or Firm:	Name of Plaintiff or Defendant	Place Depo or Trial
01 10 05	Attorney Simon	Re: Howlin (Plaintiff)	Depo San Diego
02 08 05	Attorney Heos	Re: Oliver (Plaintiff)	Depo San Diego
02 22 05	Attorney Purdy	Re: Brit	Trial Las Vegas
3 8 05	Attorney Galvez	Re: Buxbaum	Phone depo San Diego
4 4 05	Attorney Moriarty	Re: Allen	Depo San Diego
4 14 05	Attorney Lyles	Re: Cannon	Trial Las Vegas
4 20 05	Attorney Gardner	Re: Murphy	Depo San Diego
5 12 05	Attorney Tobler	Re: David	Depo San Diego
6 2 05	Attorney Goodman	Re: Yates (Plaintiff)	Depo San Diego
6 2 05	Attorney Goodman	Re: Jones (Plaintiff)	Depo San Diego
6 17 05	Attorney Grost	Re: Martinez (Plaintiff)	Depo San Diego

7 5 05	Attorney Herbolsheimer	Re: Nootbar	Trial Reno
7 18 05	Attorney Damiani	Re: Loibl	Depo San Diego
8 3 05	Attorney Flinders	Re: Rothen	Trial Las Vegas
8 7 05	Attorney Rowe	Re: Farners	Trial Las Vegas
11 30 05	Attorney Gardner	Re: Facher	Trial Las Vegas
1 27 06	Attorney Pulu	Re: Gomez	Trial Las Vegas
2 10 06	Attorney Gardner	Re: Long	Depo San Diego
3 21 06	Attorney Watson	Re: Rodriguez	Trial Reno
4 5 06	Attorney Pehr	Re: Feske	Trial Las Vegas
8 10 06	Attorney Mittleman	Re: Hanson	Depo San Diego
8 22 06	Attorney Warwick	Re: Heck	Trial Vista, CA
8 25 06	Attorney Smith	Re: Cozad	Depo San Diego
8 30 06	Attorney Stuberski	Re: Molvhom	Depo Las Vegas
9 15 06	Attorney Riley	Re: Hoffman	Depo San Diego
11 03 06	Attorney Hughes	Re: Howard	Trial Reno

4 17 07	Attorney Pehr	Re: Herrera	Trial Las Vegas
5 10 07	Attorney Pehr	Re: Haifley	Trial Las Vegas
5 30 07	Attorney Pehr	Re: Orellano	Depo San Diego
7 6 07	Attorney Jenkins	Re: Doyle	Depo San Diego
7 11 07	Attorney Emerson	Re: Garcia	Depo Las Vegas
8 3 07	Attorney Cannon	Re: Dahlstrom	Depo San Diego
8 10 07	Attorney Pehr	Re: Geyer	Trial Las Vegas
8 22 07	Attorney Pehr	Re: Allen	Trial Las Vegas
11 27 07	Attorney Schwartz	Re: Mendoza	Depo San Diego
12 3 07	Attorney Cass	Re: Norberg	Depo San Diego
12 10 07	Attorney Smith	Re: Parks	Depo San Diego
1 9 08	Attorney Phillips	Re: Nicklos	Depo San Diego
1 17 08	Attorney Gibson	Re: Fredrickson	Trial Las Vegas
2 8 08	Attorney Gibson	Re: Price	Trial Las Vegas
2 15 08	Attorney Nielson	Re: Hickenloper	Depo San Diego

2 29 08	Attorney Gibson	Re: Ratcliff	Depo San Diego
3 14 08	Attorney Pehr	Re: Crea-Rodriguez	Trial Las Vegas
3 28 08	Attorney Gibson	Re: Meister	Trial Las Vegas
4 1 08	Attorney Pehr	Re: Baker	Trial Las Vegas
4 20 08	Attorney Emerson	Re: Dolden	Depo San Diego
8 20 08	Attorney Kershaw	Re: Lopez-Celedon	Depo San Diego
10 6 08	Attorney Gibson	Re: Lloyd	Depo San Diego
10 17 08	Attorney Pehr	Re: Larson	Depo San Diego
12 30 08	Attorney Schuetze	Re: Cabrera	Depo San Diego
1 12 09	Attorney Rogers	Re: Benevides vs. Superior Ambulance	Depo San Diego
4 3 09	Attorney Gibson	Re: Sheehan vs. Gordon	Depo San Diego
7 17 09	Attorney Pehr	Re: Lively vs. Beddo	Depo San Diego
1 03 10	Attorney Amerson	Re: Lehto	Depo San Diego
2 19 10	Attorney Pehr	Re: Anderson vs. Rodriguez	Depo San Diego (Video)
3 11 10	Attorney Purdy	Re: Howard Hernandez-Aguirre	Trial Las Vegas

5 20 10	Attorney Wallace	Re: Mohammad vs. Kaiser	Trial San Diego
8 2 10	Attorney Brunn	Re: Khalil	Depo (phone) San Diego
9 14 10	Attorney Hawley	Re: Ayala vs. Garcia-Kobles	Trial Las Vegas
10 15 10	Attorney Thronson	Re: Friedli	Depo San Diego
3 9 11	Attorney McCormick	Re: Valderama	Trial Las Vegas
8 29 11	Attorney Zimmerman	Re: Farrar (Plaintiff)	Depo (1/2) San Diego
9 6 11	Attorney Zimmerman	Re: Farrar (Plaintiff)	Depo (1/2) San Francisco
7 12 12	Attorney Todd	Re: Garcia	Depo (phone) San Diego
9/7/12	Attorney Holmes	Re: Salazar	Trial (phone) San Diego

# Exhibit 5



1 **SUPP**  
2 BYRON F. BROWNE, ESQ.  
3 Nevada Bar No. 9769  
4 **BUCKLEY KING, LPA**  
5 10191 Park Run Drive, Suite 110  
6 Las Vegas, Nevada 89145  
7 702-727-2930/F: 702-240-5900  
8 E-mail: [bbrowne@buckleyking.com](mailto:bbrowne@buckleyking.com)  
9 *Attorneys for Defendants, DIANE COLLINS*

6  
7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 JACYNTA McCLENDON,

10 Plaintiff,

11 -vs-

12 DIANE COLLINS, et al.,

13 Defendants.

Case No.: A-13-680935

14  
15 **DEFENDANT, DIANE COLLINS', SUPPLEMENT TO**  
16 **DESIGNATION OF EXPERT WITNESSES**

17 COMES now Defendant, DIANE COLLINS, by and through her counsel, Byron Browne,  
18 Esq. of the law offices of Buckley King, LPA and hereby supplements her Designation of Expert  
19 Witnesses.

20 **I.**

21 **EXPERT WITNESSES**

22 1. Eugene L. Appel, M.D.  
23 8008 Frost Street #400  
24 San Diego, CA 92123

25 (a) Dr. Appel is a board certified surgery. Dr. Appel is expected to testify with respect  
26 to his evaluation of Plaintiff, JACYNTA McCLENDON's medical records and render opinions  
regarding Plaintiff's alleged injuries and the reasonable necessity of Plaintiff's medical treatment.

1 (b) Attached hereto as Exhibit "A" is a copy of Dr. Appel's Curriculum Vitae, fee  
2 schedule and deposition/trial testimony.

3 (c) Attached hereto as Exhibit "B" is a copy of Dr. Appel's medical record review  
4 report.

5 Defendant reserves the right to add, amend or delete any of the above, and further reserves  
6 the right to call any witness identified and elected under the provisions of NRCP 26(b)(4-5) by any  
7 party to this action whether or not such party remains a party at the time of Trial.

8 Defendant further reserves the right to add additional experts as such need arises during the  
9 course of discovery and investigation in preparation of this case.

10 DATED: June 23, 2014

BUCKLEY KING LPA

11  
12  
13  
14 Byron F. Browne  
Nevada Bar No. 9769  
10191 Park Run Dr., Suite 110  
Las Vegas, NV 89145  
15 P: 702-242-5282/F: 702-243-5282  
16 Attorneys for Defendants, DIANE COLLINS  
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CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2014, I served the foregoing **DEFENDANT, DIANE COLLINS' SUPPLEMENT TO DESIGNATION OF EXPERT WITNESSES** by depositing true and correct copies of the same in the U.S. Mail, first-class postage prepaid to the parties listed below:

Attorneys for Plaintiff

Roger M. Cram, Esq.  
Adam E. Birgman, Esq.  
CRAM VALDEZ BRIGMAN & NELSON  
8831 W. Sahara Ave.  
Las Vegas, NV 89117  
Telephone: (702) 255-0700  
Facsimile: (702) 255-2159

  
An employee of Buckley King, LPA

## EXHIBIT “B”

Eugene L. Appel, M.D., F.A.C.S.

Phone (858) 279-5599

General Surgery  
8008 Frost Street, Suite 406  
San Diego, CA 92123

June 12, 2014

Buckley King  
10191 Park Run Drive, Suite 110  
Las Vegas NV. 89145

Re: McClendon v. Collins, et al.

Dear Mr. King,

The following is a report of the accident of Ja Cynta McClendon and her claimed injuries. I reviewed the records of Mountain View Hospital, Las Vegas Accident Care, Desert Radiology X-rays and reports and Radar Medical Group/University Urgent Care.

Two X-ray DVD's were reviewed from Desert Radiology. They were from 7/25/12 and were a lumbar MRI and cervical MRI. A cervical spine CT dated 5/15/12 was also reviewed.

The physician's report from Mountain View Hospital was dated 5/16/12, but the date of the accident of record was 5/15/12 as the patient was there beyond midnight. At that time, Ms. McClendon was 23 years of age and complained of being in a motor vehicle accident. She claimed she was wearing a lap belt and shoulder harness and that her vehicle was at a complete stop when a vehicle rear-ended her vehicle. According to the medical report, this was a low impact velocity accident and resulted in "minor damage" to the patient's vehicle. The patient was ambulatory at the scene and the air bag did not deploy. No police report or accident repair estimate was reviewed. The patient's past medical history was non-contributory.

Ms. McClendon reported pain on motion and examination of her neck. She also reported pain and tenderness in the right and left lower thoracic spine. There was no muscle spasm or limited range of motion noted.

X-rays of the thoracic spine and lumbar spine were essentially negative. The lumbar spine showed some chronic disease but no evidence of acute trauma. The CT of the cervical spine showed no evidence of injury and was normal in appearance.

The clinical impression by Dr. Singh was motor vehicle accident with paresthesias and cervical strain. The patient was sent home with Ibuprofen, Motrin and Percocet. A follow up appointment was requested in two days.

Page 2

Re: McClendon

A nurse's report signed by "Figueroa" added additional history that the patient came in the hospital by private vehicle. Ms. McClendon said she had hit her head on the back of the seat and that she also hit her elbow.

The hospital report shows that the patient had only subjective pain in her neck and upper spine. The areas were cleared medically for any acute injury by X-ray and clinical exam.

The hospital bill from Mountain View Hospital totaled \$7,626. This included the emergency room visit and X-rays.

Ms. McClendon was seen by Dr. Shah, an internal medicine physician, on 5/30/12. He noted that the patient was a 23 year old female who had been in an automobile accident on 5/15/12 and that her car had been rear-ended while at a complete stop. She went to Mountain View Hospital. She was seeing Dr. Shah for neck pain radiating in her left arm and for tingling in her upper and mid back. She had no neurologic deficits noted. (She was also being seen by Las Vegas Accident Consultants, a chiropractic office, for chiropractic physiotherapy and massage four times per week. This will be reviewed later in this report.)

Dr. Shah's initial impression was status post motor vehicle accident, acute traumatic cervical strain, acute traumatic muscle spasm and traumatic cervical radiculopathy. She was referred by Dr. Shah back to the chiropractic doctor for further care. She was also to return to see Dr. Shah in two weeks.

A follow up visit on 8/1/12 is noted by Dr. Shah. He noted the same diagnosis. She was also seen on 8/30/12 and 9/27/12. She was feeling better but had intermittent neck and low back pain. She was under chiropractic care.

On 10/25/12, Dr. Shaw noted the same diagnoses. He noted that the patient's neck and low back were feeling significantly better and she had completed her chiropractic therapy. He notes that the lumbar MRI showed no fracture or spondylolisthesis - only mild chronic condition and unrelated to the accident of record.

The records of Dr. Shah are noted under University Urgent Care.

The chiropractic billing statement shows visits starting 5/22/12 through 10/18/12. She was seen approximately 32 times. Her visits included manipulation to 3-4 regions, massage, neuromuscular re-education and hydrotherapy and icing (later in her care). The total cost for chiropractic care was \$4,540.

The initial chiropractic report dated 5/22/12 discusses the accident of record. It also notes that Ms. McClendon claims pain in her lower back when she moves, headaches, neck pain, stiffness,

Page 3

Re: McClendon

dizziness, mid back tightness, low back pain, left arm pain, numbness and tingling, pins and needles sensation of her left pinky finger, pain in left knee and difficulty sleeping. She had pain and limitation of motion in her neck and pain and tenderness in her upper thoracic spine.

The chiropractor noted that the patient had whiplash associated disorder and multiple other diagnoses including cervical strain, thoracic strain, lumbar strain, injury to the knee and strain to the ribs.

A treatment protocol was outlined for strengthening and stretching techniques. These included trigger point therapy, heat therapy, myofascial release and home exercises. This was signed by Laura Jaget, chiropractic physician.

The daily notes are brief with check marks and circled items with minimal notes by the chiropractor.

The final report by Dr. Jaget from 10/18/12 noted that the objective findings were limited to the neck. The X-rays from Mountain View Hospital were essentially negative. Again, it was noted she had a whiplash associated disorder. She was released from care by the chiropractor.

Therefore, in summary, Ms. McClendon was a 23 year old female involved in a very minor rear end accident. Her car was not moving when she was hit. She got out of the car and walked around after the accident. No paramedics were needed at the scene. She took herself to the hospital where a complete work up of her neck and upper back were done. These areas were essentially cleared. There were no objective findings of her neck or back.

She had chiropractic care which was, in my opinion, excessive and prolonged. She also saw an internist for multiple visits for chiropractic back up care.

I see no record of loss of work for Ms. McClendon. She was taking minimal medications only initially.

In view of the work up by Mountain View Hospital of her neck and back, I feel that Ms. McClendon would be entitled to only minimal follow up care including 1-2 visits to a physical therapist to teach her heat therapy, stretching exercises and range of motion exercises that could be done at home. I see no reason for the excessive radiology tests in this young lady involved in a very minor accident. I am puzzled that a CT scan and MRI were both ordered for the cervical spine and both were cleared.

I believe patients should be checked even after a minor accident such as this but see no reason for the excessive X-rays, prolonged chiropractic care and multiple internal medicine consults.

Page 4


Re: McClendon

For a minor accident such as this, only the neck is at risk as the thoracic spine and lumbar spine are supported by the seat back. Minor whiplash injuries are self-limited and heal in one or two weeks.

Therefore, I feel this patient's care was excessive. I would allow the emergency room visit and one or two physical therapy sessions as mentioned above.

I would be happy to issue an addendum report if further information is sent to me.

Sincerely,

  
Eugene L. Appel, M.D.

ELA:dp



# Exhibit 6

**SUPP**

BYRON F. BROWNE, ESQ.  
Nevada Bar No. 9769  
**BARSKI DRAKE BROWNE, PLC**  
10191 Park Run Drive, Suite 110  
Las Vegas, Nevada 89145  
702-463-1221/F: 702-920-8420  
E-mail: [bbrowne@bdbattorneys.com](mailto:bbrowne@bdbattorneys.com)  
*Attorneys for Defendants, DIANE COLLINS*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

JACYNTA McCLENDON,

Plaintiff,

-vs-

DIANE COLLINS, et al.,

Defendants.

Case No.: A-13-680935

**DEFENDANT, DIANE COLLINS', SECOND SUPPLEMENT TO**  
**DESIGNATION OF EXPERT WITNESSES**

COMES now Defendant, DIANE COLLINS, by and through her counsel, Byron Browne, Esq. of the law offices of Buckley King, LPA and hereby supplements her Designation of Expert Witnesses.

**I.**

**EXPERT WITNESSES**

1. Eugene L. Appel, M.D.  
8008 Frost Street #400  
San Diego, CA 92123

(a) Dr. Appel is a board certified surgery. Dr. Appel is expected to testify with respect to his evaluation of Plaintiff, JACYNTA McCLENDON's medical records and render opinions regarding Plaintiff's alleged injuries and the reasonable necessity of Plaintiff's medical treatment.

1 (b) Attached hereto as Exhibit "A" is a copy of Dr. Appel's Curriculum Vitae, fee  
2 schedule and deposition/trial testimony.

3 (c) Attached hereto as Exhibit "B" is a copy of Dr. Appel's medical record review  
4 report.

5 (d) Attached hereto as Exhibit "C" is a copy of Dr. Appel's rebuttal report dated  
6 August 4, 2014.

7 Defendant reserves the right to add, amend or delete any of the above, and further reserves  
8 the right to call any witness identified and elected under the provisions of NRCP 26(b)(4-5) by any  
9 party to this action whether or not such party remains a party at the time of Trial.

10 Defendant further reserves the right to add additional experts as such need arises during the  
11 course of discovery and investigation in preparation of this case.

12 DATED: August 5, 2014

13 BARSKI DRAKE BROWNE, PLC

14  
15 /s/ Byron Browne

16 Byron F. Browne  
17 Nevada Bar No. 9769  
18 10191 Park Run Dr., Suite 110  
19 Las Vegas, NV 89145  
20 P: 702-463-1221/F: 702-920-8420  
21 Attorneys for Defendants, DIANE COLLINS  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on August 5, 2014, I served the foregoing **DEFENDANT,**  
3 **DIANE COLLINS' SECOND SUPPLEMENT TO DESIGNATION OF EXPERT**  
4 **WITNESSES** by depositing true and correct copies of the same in the U.S. Mail, first-class  
5 postage prepaid to the parties listed below:

6  
7 **VIA FACSIMILE (702) 255-2159**  
8 **AND U.S. MAIL**

9 **Attorneys for Plaintiff**

10 Roger M. Cram, Esq.

11 Adam E. Birgman, Esq.


12 CRAM VALDEZ BRIGMAN & NELSON

13 8831 W. Sahara Ave.

14 Las Vegas, NV 89117

15 Telephone: (702) 255-0700

16 Facsimile: (702) 255-2159

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An employee of Buckley King, LPA

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## EXHIBIT "C"

Aug. 4. 2014 11:12AM GENERAL SURGERY

No. 8157 P. 1

Eugene L. Appel, M.D., F.A.C.S.

Phone (858) 279-5599

General Surgery  
8008 Frost Street, Suite 406  
San Diego, CA 92128

August 4, 2014

Byron Brown  
10191 Park Run Drive, Suite 110  
Las Vegas, NV 89145

Re: McClendon v. Collins, et al.

Dear Mr. Brown,

The following is a rebuttal report regarding the above mentioned case. I have received the report of Dr. David Oliveri and I would offer my opinions.

I will preface my opinions on this specific case with my background and experience that have enabled me to review this case. I received a 5 year mechanic engineering degree from Cornell University and went directly to Harvard Medical School from there. I did a surgical residency at Massachusetts General Hospital (Harvard's main teaching hospital). I then went into the U.S. Army for two years. At Fort Knox Kentucky, I did general surgery and trauma surgery and then went to New Orleans after the Army for an academic position. Shortly thereafter, I moved to San Diego where I now remain. In San Diego, in addition to doing general surgery, I was a member of a very busy trauma team for 25 years. I was on call for this trauma team at least twice per week. I saw over 1,000 back injuries, some independent and some related to other injuries. I feel very confident that I can analyze and review back injuries as well as other trauma injuries based on this experience.

I apparently differ with Dr. Oliveri on the extent of treatment needed for this type of patient and injury. Ms. McClendon was a healthy 23 year old with no prior medical problems. The accident was low impact and, in fact, her car was not moving at all. The patient went to the emergency room later in the day on the accident of record. She had an excellent work up by Mountain View Hospital emergency room including a CT scan of her neck. X-rays of her back were done and the reports show that she was safe for discharge and asked to follow up. It was felt that she had a minor whiplash of her neck and upper thoracic spine. This is common in a minor accident such as this. The low back is well supported by the seat back and is rarely injured.

Of the thousands of accidents that happen in this manner in the U.S. every day, the vast majority require no treatment at all and within a week or two, the soreness in the neck is gone.

I find it hard to discount the emergency room exam because Ms. McClendon went there on her own volition and it is imperative that the emergency room physician and staff "clear" her for any serious injury before discharging her to home.

After the back was "cleared" I feel that only a minimum treatment would be necessary including one or two visits to the physician of her choice as well as one or two physical therapy sessions.

Aug. 4. 2014 11:13AM GENERAL SURGERY

No. 8157 P. 2

Page 2

Re: McClendon

As I noted in my report, I was surprised that the CT scan of the neck was done but it is hard to criticize an ER physician for being very complete and avoiding future legal issues.

Ms. McClendon went on to have one visit to the urgent care and then sought chiropractic care which lasted for 30 sessions. There was also a medical referral and opinion by Dr. Shah which I feel was not needed. In my experience, I feel that 30 sessions by a chiropractor for basically subjective sore neck and back is over-kill and this ran up a large bill without real indication.

When I would examine a patient in the office after a minor accident like this, I would make sure there was no radiculitis, neurologic deficit such as loss of strength or reflex or sensation.

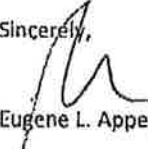
I strongly feel that Ms. McClendon would have gotten better if she had received no treatment at all. I see no reason for 30 chiropractic sessions and the visits to the internist. I respectfully disagree with Dr. Oliveri that the chiropractic care, further follow up by a medical doctor and the MRIs that were done after several months were indicated. If that were my patient, I would follow the patient conservatively and encourage stretching and range of motion exercises at home.

The entire back was treated with standard chiropractic care and I feel that, at most, only the neck would be vulnerable to injury.

I would conclude this report by saying that I live in San Diego and do not know the doctors involved. I can remain truly neutral and don't need to account for my opinions to physicians who may refer to me. This allows me to report as I see necessary.

I will be happy to issue an addendum report if any further information is provided.

Sincerely,

  
Eugene L. Appel, M.D.

ELA:dp

# Exhibit 7



Eugene L. Appel, M.D., F.A.C.S.

Phone (858) 279-5599

General Surgery  
8008 Frost Street, Suite 406  
San Diego, CA 92123

June 12, 2014

Buckley King  
10191 Park Run Drive, Suite 110  
Las Vegas NV. 89145

Re: McClendon v. Collins, et al.

Dear Mr. King,

The following is a report of the accident of Ja Cynta McClendon and her claimed injuries. I reviewed the records of Mountain View Hospital, Las Vegas Accident Care, Desert Radiology X-rays and reports and Radar Medical Group/University Urgent Care.

Two X-ray DVD's were reviewed from Desert Radiology. They were from 7/25/12 and were a lumbar MRI and cervical MRI. A cervical spine CT dated 5/15/12 was also reviewed.

The physician's report from Mountain View Hospital was dated 5/16/12, but the date of the accident of record was 5/15/12 as the patient was there beyond midnight. At that time, Ms. McClendon was 23 years of age and complained of being in a motor vehicle accident. She claimed she was wearing a lap belt and shoulder harness and that her vehicle was at a complete stop when a vehicle rear-ended her vehicle. According to the medical report, this was a low impact velocity accident and resulted in "minor damage" to the patient's vehicle. The patient was ambulatory at the scene and the air bag did not deploy. No police report or accident repair estimate was reviewed. The patient's past medical history was non-contributory.

Ms. McClendon reported pain on motion and examination of her neck. She also reported pain and tenderness in the right and left lower thoracic spine. There was no muscle spasm or limited range of motion noted.

X-rays of the thoracic spine and lumbar spine were essentially negative. The lumbar spine showed some chronic disease but no evidence of acute trauma. The CT of the cervical spine showed no evidence of injury and was normal in appearance.

The clinical impression by Dr. Singh was motor vehicle accident with paresthesias and cervical strain. The patient was sent home with Ibuprofen, Motrin and Percocet. A follow up appointment was requested in two days.

Page 3

Re: McClendon

dizziness, mid back tightness, low back pain, left arm pain, numbness and tingling, pins and needles sensation of her left pinky finger, pain in left knee and difficulty sleeping. She had pain and limitation of motion in her neck and pain and tenderness in her upper thoracic spine.

The chiropractor noted that the patient had whiplash associated disorder and multiple other diagnoses including cervical strain, thoracic strain, lumbar strain, injury to the knee and strain to the ribs.

A treatment protocol was outlined for strengthening and stretching techniques. These included trigger point therapy, heat therapy, myofascial release and home exercises. This was signed by Laura Jaget, chiropractic physician.

The daily notes are brief with check marks and circled items with minimal notes by the chiropractor.

The final report by Dr. Jaget from 10/18/12 noted that the objective findings were limited to the neck. The X-rays from Mountain View Hospital were essentially negative. Again, it was noted she had a whiplash associated disorder. She was released from care by the chiropractor.

Therefore, in summary, Ms. McClendon was a 23 year old female involved in a very minor rear end accident. Her car was not moving when she was hit. She got out of the car and walked around after the accident. No paramedics were needed at the scene. She took herself to the hospital where a complete work up of her neck and upper back were done. These areas were essentially cleared. There were no objective findings of her neck or back.

She had chiropractic care which was, in my opinion, excessive and prolonged. She also saw an internist for multiple visits for chiropractic back up care.

I see no record of loss of work for Ms. McClendon. She was taking minimal medications only initially.

In view of the work up by Mountain View Hospital of her neck and back, I feel that Ms. McClendon would be entitled to only minimal follow up care including 1-2 visits to a physical therapist to teach her heat therapy, stretching exercises and range of motion exercises that could be done at home. I see no reason for the excessive radiology tests in this young lady involved in a very minor accident. I am puzzled that a CT scan and MRI were both ordered for the cervical spine and both were cleared.

I believe patients should be checked even after a minor accident such as this but see no reason for the excessive X-rays, prolonged chiropractic care and multiple internal medicine consults.

Page 4


Re: McClendon

For a minor accident such as this, only the neck is at risk as the thoracic spine and lumbar spine are supported by the seat back. Minor whiplash injuries are self-limited and heal in one or two weeks.

Therefore, I feel this patient's care was excessive. I would allow the emergency room visit and one or two physical therapy sessions as mentioned above.

I would be happy to issue an addendum report if further information is sent to me.

Sincerely,

  
Eugene L. Appel, M.D.

ELA:dp

# Exhibit 8

**DORW**

ADAM E. BRIGMAN, ESQ.  
Nevada Bar No. 11926  
**CRAM VALDEZ BRIGMAN & NELSON**  
8831 W. Sahara Avenue  
Las Vegas, Nevada 89117  
Telephone: (702) 255-0700  
Facsimile: (702) 255-2159  
*Attorneys for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JA CYNTA McCLENDON,  
  
Plaintiff,

Case No.: **A-13-680935**  
Dept. **XXX**

vs.

**PLAINTIFF'S DESIGNATION OF  
EXPERT REBUTTAL WITNESS**

DIANE COLLINS and RICHARD COLLINS;  
ROE CORPORATIONS I through X, inclusive;  
and DOES I through X, inclusive,

Defendants,

COMES NOW, Plaintiff JA CYNTA McCLENDON, by and through her attorney, ADAM E. BRIGMAN, Esq., and hereby designates the following expert rebuttal witness:

**LIST OF WITNESSES**

1. David J. Oliveri, M.D.  
851 S. Rampart Boulevard, Suite 115  
Las Vegas, NV 89145

David J. Oliveri, M.D., is a board certified physician. He will testify regarding the reasonableness and necessity of the medical treatment and care rendered to Plaintiff and the charges associated therewith, his prognosis regarding Plaintiff's medical condition and the limitations Plaintiff's medical condition imposes upon Plaintiff's occupational and living activities presently, and in the future.

In addition, Dr. Oliveri is expected to give expert opinion testimony regarding the nature, extent and cause of Plaintiff's injuries; the reasonableness and necessity of past medical treatment rendered to Plaintiff; the reasonable future medical care that has been necessitated by the subject


1 accident; the amount, reasonableness and necessity of the charges for medical treatment rendered  
2 to Plaintiff; the amount, reasonableness and necessity of future medical treatment caused by  
3 Plaintiff's accident related injuries, including lifetime medical, surgical, rehabilitative and  
4 associated medical expenses; the charges for past and future medical care as being customary for  
5 physicians and/or health care providers in the Las Vegas medical community; the nature, extent,  
6 and manner in which Plaintiff's accident related injuries have affected her ability to continue to  
7 perform her current occupations and activities of daily living; and, the nature, extent and manner  
8 in which Plaintiff's accident related injuries have diminished Plaintiff's work life expectancy and  
9 restrict his future daily living activities.

10 In rendering his expert opinions, Dr. Oliveri will rely upon the records of all physicians  
11 and health care providers who have rendered medical care and treatment to Plaintiff, and their  
12 respective expert opinions regarding the nature, extent and cause of Plaintiff's injuries; the  
13 reasonableness and necessity of her past medical treatment; the reasonable future medical care that  
14 has been necessitated by the subject accident; the amount, reasonableness and necessity of the  
15 charges for medical treatment rendered to Plaintiff; the amount, reasonableness and necessity of  
16 future medical treatment caused by Plaintiff's accident related injuries, including lifetime medical,  
17 surgical, rehabilitative and associated medical expenses; the charges for Plaintiff's past and future  
18 medical care as being customary for physicians and/or health care providers in the Las Vegas  
19 medical community; the nature, extent, and manner in which Plaintiff's accident related injuries  
20 have affected her ability to continue to perform her current occupations and activities of daily  
21 living; and, the nature, extent and manner in which Plaintiff's accident related injuries have  
22 diminished Plaintiff's work life expectancy and restricted her future daily living activities. Dr.  
23 Oliveri will also render opinions and respond to opinions regarding the findings of any/all medical  
24 experts retained by Defendant.

25 Dr. Oliveri's expert report is attached hereto as Exhibit 1. Dr. Oliveri's list of cases,  
26 curriculum vitae, and fee sheet are attached as Exhibit 2.

27 Dated this 29<sup>th</sup> day of July 2014.

28  
CRAM VALDEZ BRIGMAN & NELSON

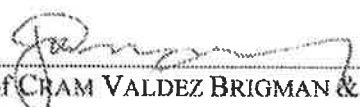
  
Adam E. Brigman, Esq.  
Nevada Bar No. 011926  
8831 W. Sahara Ave.  
Las Vegas, NV 89117

**CRAM VALDEZ BRIGMAN & NELSON**  
8831 W. SABARA AVENUE  
LAS VEGAS, NEVADA 89117  
Tel: (702) 255-0700 Fax: (702) 255-2159

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 21<sup>st</sup> day of July 2014 that I served a copy of **PLAINTIFF'S**  
**DESIGNATION OF EXPERT REBUTTAL WITNESS** via e-service and US mail, first class,  
to the following person(s):

**Byron F. Browne, Esq.**  
10191 Park Run Drive, Suite 110  
Las Vegas, Nevada 89145  
Fax: 702-240-5900  
*Attorney for Defendant*

  
Employee of **CRAM VALDEZ BRIGMAN & NELSON**

# Exhibit 9



  
CLERK OF THE COURT

1 **ORDER**  
2 **PATRICK N. CHAPIN, ESQ.**  
3 Nevada Bar No. 004946  
4 Patrick N. Chapin, Ltd.  
5 129 Cassia Way  
6 Henderson, Nevada 89014  
7 (702) 433-7295  
8 Judge Pro Tempore

6 **DISTRICT COURT**  
7 **CLARK COUNTY, NEVADA**

8 JA CYNTA McCLENDON, )  
9 )  
10 Plaintiff, )  
11 v. )  
12 )  
13 DIANE COLLINS; ROE CORPORATIONS )  
14 I through X, inclusive, and DOES I through X, )  
15 inclusive, )  
16 )  
17 Defendants. )  
18 )

Case No. A-13-680935-C  
Dept. No. XXX  
STP No. 13-1744

**ORDER**

15 TO: ADAM E. BRIGMAN, ESQ., CRAM VALDEZ BRIGMAN & NELSON,  
Attorney for Plaintiff; and  
16 TO: BYRON F.L. BROWNE, ESQ., BARSKI DRAKE BROWNE, Attorney for Defendant.

17 This matter came on for a telephonic hearing regarding a discovery dispute as it  
18 pertains to depositions of the parties' respective and recently disclosed expert witnesses.  
19 Having heard the arguments on behalf of each counsel of record herein, the Court rules as  
20 follows:

21 **IT IS HEREBY ORDERED** that discovery in this matter shall be extended until 5:00  
22 pm (PST) on **Monday, August 18, 2014** for the sole purpose of deposing those expert  
23 witnesses, telephonically or otherwise, who have been disclosed on or before July 30, 2014.

24 **IT IS FURTHER ORDERED** that all Motions in Limine shall be filed with the Court  
25 by **Tuesday, August 19, 2014**. Also, Motions in Limine may be presented to the Court in the  
26 form of emailed bullet points and the Court will allow for oral argument and supplementation  
27 by oral argument as it pertains to all pending Motions in Limine at the time of the Pre-Trial  
28 Conference.

**PATRICK N. CHAPIN, LTD.**

129 Cassia Way, Henderson, NV 89014

Telephone: (702) 433-7295 Facsimile: (702) 403-1919

1           **IT IS FURTHER ORDERED** that payment for the deposition time of the expert  
2 witnesses is to be governed by N.S.T.R. 19, et seq.

3           **IT IS FURTHER ORDERED** that the Joint Pre-Trial Memorandum, Jury  
4 Instructions and Evidentiary Books are due in the law office of the Court, 129 Cassia Way,  
5 Henderson, NV 89014, by a date no later than **Tuesday, August 19, 2014.**

6           **IT IS FURTHER ORDERED** that the Pre-Trial Conference, pursuant to N.S.T.R. 10,  
7 will take place on **Wednesday, August 20, 2014 at 4:00 pm.** Counsel for the parties must  
8 personally appear for the Pre-Trial Conference at the law offices of the Court, 129 Cassia  
9 Way, Henderson, NV 89014. At the Pre-Trial Conference the Court will hear oral argument  
10 and rule on all Motions in Limine, settle Jury Instructions, and review and rule on any  
11 evidentiary issues.

12           **IT IS FURTHER ORDERED** that the Jury Trial in this case will begin on **Friday,**  
13 **August 22, 2014 at 8:00 a.m.** at the Regional Justice Center located at 200 Lewis Avenue,  
14 Las Vegas, NV 89155.

15           **IT IS SO ORDERED.**

16           DATED this 30<sup>th</sup> day of July, 2014.

17           PATRICK N. CHAPIN, LTD.

18  
19  
20  
21           

21           PATRICK N. CHAPIN, ESQ.

22           Nevada Bar No. 004946

23           129 Cassia Way

24           Henderson, Nevada 89014

25           Judge Pro Tempore  
26  
27  
28

**PATRICK N. CHAPIN, LTD.**

129 Cassia Way, Henderson, NV 89014

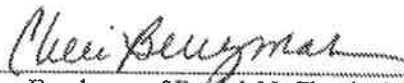
Telephone: (702) 433-7295 Facsimile: (702) 403-1919

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on the 30<sup>th</sup> day of July, 2014, I served a copy of the foregoing **ORDER** by electronic service via the Odyssey File and Serve system within the Eighth Judicial District Court and pursuant to Administrative Order 14-02 to the following:

Adam E. Brigman, Esq.  
Cram Valdez Brigman & Nelson  
8831 West Sahara Avenue  
Las Vegas, NV 89117  
Attorney for Plaintiff

Byron F.L. Browne, Esq.  
Barski Drake Browne, PLC  
10191 Park Run Drive #110  
Las Vegas, NV 89145  
Attorney for Defendant

  
An Employee of Patrick N. Chapin, Esq.  
Judge Pro Tempore

# Exhibit 10

**DOEW**

BYRON F. BROWNE, ESQ.

Nevada Bar No. 9769

**BARSKI DRAKE BROWNE, PLC**

10191 Park Run Drive, Suite 110

Las Vegas, Nevada 89145

702-463-1221/F: 702-920-8420

E-mail: [bbrowne@bdbattorneys.com](mailto:bbrowne@bdbattorneys.com)*Attorneys for Defendant,***DIANE COLLINS****DISTRICT COURT****CLARK COUNTY, NEVADA**

JACYNTA McCLENDON,

Plaintiff,

-vs-

DIANE COLLINS, et al.,

Defendants.

Case No.: A-13-680935

Dept No.: XXX

**DE-DESIGNATION OF DEFENDANT, DIANE COLLINS' EXPERT,****EUGENE APPEL, M.D.**

PLEASE TAKE NOTICE Defendant, DIANE COLLINS, de-designates as her expert  
Eugene Appel, M.D.

DATED: August 12, 2014

BARSKI DRAKE BROWNE, PLC

Byron F. Browne  
Nevada Bar No. 9769  
10191 Park Run Dr., Suite 110  
Las Vegas, NV 89145  
P: 702-463-1221/F: 702-920-8420  
*Attorneys for Defendant,*  
**DIANE COLLINS**

**CERTIFICATE OF SERVICE**

I hereby certify that on August 12, 2014, I served the foregoing **DE-DESIGNATION OF DEFENDANT, DIANE COLLINS' EXPERT, EUGENE APPEL, M.D.** by depositing true and correct copies of the same in the U.S. Mail, first-class postage prepaid to the parties listed below:

**Attorneys for Plaintiff**

Roger M. Cram, Esq.  
CRAM VALDEZ BIRGMAN & NELSON  
8831 W. Sahara Ave.  
Las Vegas, NV 89117  
Telephone: (702) 255-0700  
Facsimile: (702) 255-2159

**Short Trial Judge**

Patrick Chapin, Esq.  
129 Cassia Way  
Henderson, NV 89014  
Telephone: (702) 433-7295

  
An employee of Barski Drake Browne, PLC

# Exhibit 11

**SUPP**

ADAM E. BRIGMAN, Esq.  
Nevada Bar No. 11926  
**CRAM VALDEZ BRIGMAN & NELSON**  
8831 W. Sahara Avenue  
Las Vegas, Nevada 89117  
Telephone: (702) 255-0700  
Facsimile: (702) 255-2159  
*Attorneys for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JA CYNTA McCLENDON,  
  
Plaintiff,

Case No.: **A-13-680935**  
Dept. **XXX**

vs.

**PLAINTIFF'S FIRST SUPPLEMENT  
TO DESIGNATION OF EXPERT  
WITNESSES**

DIANE COLLINS and RICHARD COLLINS;  
ROE CORPORATIONS I through X, inclusive;  
and DOES I through X, inclusive,

Defendants,

COMES NOW, Plaintiff JA CYNTA McCLENDON, by and through her attorney, ADAM E. BRIGMAN, Esq., and hereby designates the following expert witnesses, with supplemental information indicated in **bold**:

**LIST OF WITNESSES**

1. David J. Oliveri, M.D.  
851 S. Rampart Boulevard, Suite 115  
Las Vegas, NV 89145

David J. Oliveri, M.D., is a board certified physician. He will testify regarding the reasonableness and necessity of the medical treatment and care rendered to Plaintiff and the charges associated therewith, his prognosis regarding Plaintiff's medical condition and the limitations Plaintiff's medical condition imposes upon Plaintiff's occupational and living activities presently, and in the future.




1 future medical care as being customary for physicians and/or health care providers in the  
2 Las Vegas medical community; the nature, extent, and manner in which Plaintiff's accident  
3 related injuries have affected her ability to continue to perform her current occupations and  
4 activities of daily living; and, the nature, extent and manner in which Plaintiff's accident  
5 related injuries have diminished Plaintiff's work life expectancy and restrict his future daily  
6 living activities.

7 In rendering his expert opinions, Dr. Appel will rely upon the records of all  
8 physicians and health care providers who have rendered medical care and treatment to  
9 Plaintiff, and their respective expert opinions regarding the nature, extent and cause of  
10 Plaintiff's injuries; the reasonableness and necessity of her past medical treatment; the  
11 reasonable future medical care that has been necessitated by the subject accident; the  
12 amount, reasonableness and necessity of the charges for medical treatment rendered to  
13 Plaintiff; the amount, reasonableness and necessity of future medical treatment caused by  
14 Plaintiff's accident related injuries, including lifetime medical, surgical, rehabilitative and  
15 associated medical expenses; the charges for Plaintiff's past and future medical care as being  
16 customary for physicians and/or health care providers in the Las Vegas medical community;  
17 the nature, extent, and manner in which Plaintiff's accident related injuries have affected  
18 her ability to continue to perform her current occupations and activities of daily living; and,  
19 the nature, extent and manner in which Plaintiff's accident related injuries have diminished  
20 Plaintiff's work life expectancy and restricted her future daily living activities. Dr. Appel  
21 will also render opinions and respond to opinions regarding the findings of any/all medical  
22 experts retained by any party in this case.

23 Dr. Appel's first expert report is attached hereto as Exhibit 3. Dr. Appel's second  
24 expert report is attached hereto as Exhibit 4. Dr. Appels list of cases, curriculum vitae, and  
25 fee sheet are attached as Exhibit 5.

26 Dated this 13<sup>th</sup> day of August 2014.

27 CRAM VALDEZ BRIGMAN & NELSON

28  
  
Adam E. Brigman, Esq.  
Nevada Bar No. 011926  
8831 W. Sahara Ave.  
Las Vegas, NV 89117

CRAM VALDEZ BRIGMAN & NELSON

8831 W. SAHARA AVENUE

LAS VEGAS, NEVADA 89117

Tel: (702) 255-0700 Fax: (702) 255-2159

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 13<sup>th</sup> day of August 2014 that I served a copy of  
**PLAINTIFF'S FIRST SUPPLEMENT TO DESIGNATION OF EXPERT REBUTTAL**  
**WITNESS** via e-service and <sup>and fax</sup> ~~US mail, first class~~, to the following person(s):

**Byron F. Browne, Esq.**  
10191 Park Run Drive, Suite 110  
Las Vegas, Nevada 89145  
Fax: 702-240-5900  
*Attorney for Defendant*

  
Employee of CRAM VALDEZ BRIGMAN & NELSON

# Exhibit 12

1 BYRON F. BROWNE, ESQ.  
Nevada Bar No. 9769  
2 **BARSKI DRAKE BROWNE, PLC**  
10191 Park Run Drive, Suite 110  
3 Las Vegas, Nevada 89145  
702-463-1221/F: 702-920-8420  
4 E-mail: [bbrowne@bdbattorneys.com](mailto:bbrowne@bdbattorneys.com)  
*Attorneys for Defendant,*  
5 *DIANE COLLINS*

6  
7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 JACYNTA McCLENDON,

10 Plaintiff,

Case No.: A-13-680935

11 -vs-

12 DIANE COLLINS, et al.,

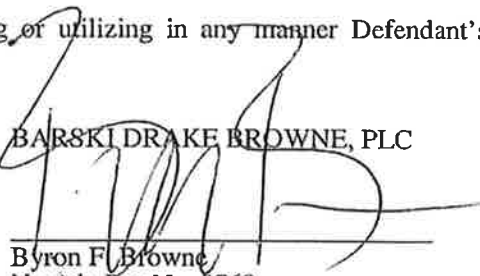
13 Defendants.

14  
15 **DEFENDANT'S MOTION FOR PROTECTIVE ORDER**

16 COMES NOW Defendant, DIANE COLLINS, (herein "Defendant") by and through her  
17 counsel of record, Barski Drake and Browne, PLC, and move for a protective order to bar Plaintiff,  
18 JACYNTA McCLENDON, from deposing or utilizing in any manner Defendant's withdrawn  
19 medical expert Eugene Appel, M.D.

20 DATED this 14 day of August, 2014

BARSKI DRAKE BROWNE, PLC

21  
22   
Byron F. Browne  
Nevada Bar No. 9769  
10191 Park Run Dr., Suite 110  
23 Las Vegas, NV 89145  
24 P: 702-463-1221/F: 702-920-8420  
25 *Attorneys for Defendant, DIANE COLLINS*  
26

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. RELEVANT FACTS**

3 This matter arises from a rear-end collision.

4 Defendant retained Eugene Appel, M.D., to analyze the medical records of plaintiff and  
5 provide his opinions as to causation and treatment. Defendant timely designated Dr. Appel. On  
6 August 12, 2014 Defendant de-designated Dr. Appel as an expert expected to testify at trial.  
7 Plaintiff has noticed Dr. Appel's deposition for August 15, 2014. Defendant objects to Plaintiff's  
8 deposing Dr. Appel or utilizing his testimony in any manner.

9 **II. DR. APPEL IS A NON-TESTIFYING EXPERT WHO MAY NOT BE DEPOSED**

10 This motion is governed by NRCP 26(b)(4)(B).

11 A party may, through interrogatories or by deposition, discover facts known or  
12 opinions held by an expert who has been retained or specially employed by another  
13 party in anticipation of litigation or preparation for trial and who is not expected to  
be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of  
exceptional circumstances under which it is impracticable for the party seeking  
discovery to obtain facts or opinions on the same subject by other means.

14 *Id.* NRCP 35(b) governs the reports of independent medical examiners and is inapplicable here as  
15 Dr. Appel did not perform an independent medical examination of the plaintiffs. Defendant has  
16 withdrawn its designation of Dr. Appel. Defendant cannot and will not call Dr. Appel to testify at  
17 trial.

18 Under these facts, Plaintiffs must demonstrate "exceptional circumstances under which it is  
19 impracticable for the party seeking discovery to obtain facts or opinions on the same subject by  
20 other means." NRCP 26(b)(4)(B). No exceptional circumstances are present. Plaintiff has  
21 designated David Oliveri, M.D., to testify as to treatment and causation. Plaintiff has already  
22 obtained from Dr. Oliveri the discovery facts and opinions they seek from Dr. Appel. There are no  
exceptional circumstances.

23 **a. Case Law Supports Request for Protective Order**

24 It does not appear the Supreme Court of Nevada has interpreted NRCP 26(b)(4)(B) in a  
25 published decision. As a result, it is permissible to consider the rulings of other courts with similar  
26 rules.

1 reversed absent an abuse of that discretion.” *General Motors Corp.* 636 So. 2d at 314. The court  
2 then analyzed the car dealer’s use of the engineer’s testimony against MRE 403, the equivalent of  
3 which is codified in Nevada. “Although relevant, evidence is not admissible if its probative value  
4 is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of  
5 misleading the jury.” NRS 48.035(1) “Although relevant, evidence may be excluded if its  
6 probative value is substantially outweighed by considerations of undue delay, waste of time or  
7 needless presentation of cumulative evidence.” NRS 48.035(2).

8 Applying this standard, the Court concluded the engineer’s testimony was properly  
9 excluded from trial.

10 Except for his hypothesis that the axle broke in mid-air during the rollover, [the  
11 engineer’s] theory of the accident was nearly identical to that articulated by General  
12 Motors’ own experts. It added nothing new to the evidence presented and thus,  
would have been cumulative. Having found that [the engineer’s] deposition was  
obtained in contravention of Rule 26(b)(4)(b), we cannot say that the circuit court  
erred in refusing to allow his testimony.

13 *General Motors Corp.* 636 So. 2d at 314.

14 The Court noted the car dealer’s position “create the anomaly that although a party cannot  
15 depose an adversary’s non-testifying expert, a court can compel the witness to testify at trial.” *Id.*  
16 at 314-15. (quotation omitted)

17 Allowing General Motors to call Marcosky as a trial witness and to allude to the  
18 fact that he had been retained and later dismissed by the Jacksons would be highly  
19 prejudicial. Generally, when an expert formerly retained by a party is allowed to  
testify for an adverse party, he is restricted from mentioning the prior affiliation.

20 *General Motors Corp.* 636 So. 2d at 315.

21 Federal courts have ruled similarly and the Supreme Court of Nevada has ruled “federal  
22 decisions involving the Federal Rules of Civil Procedure provide persuasive authority when this  
23 court examines its rules.” *Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005).

24 In *Ross v. Burlington Northern R.R.*, 136 F.R.D. 638 (N.D. III. 1991) a defendant sought to  
25 depose a plaintiff’s expert witness who had been disclosed but subsequently withdrawn.

26 Although plaintiff may have originally designated the witness as a testifying expert,  
plaintiff has the prerogative of changing his mind. Since plaintiff changed his mind

1 before any expert testimony was given in this case, the witness never actually acted  
2 as a testifying expert witness. The court cannot find, then, that the shift in  
3 designation affects the witness's current status as a non-testifying expert witness  
4 and denies him the protection afforded such a witness. *See Durflinger v. Artiles*,  
5 727 F.2d 888, 891 (10th Cir. 1984) (special showing needed to obtain testimony of  
6 witness once denoted a probable testifying witness, now a consulting witness);  
7 *Bailey v. Meister Brau, Inc.*, 57 F.R.D. 11, 13-14 (N.D. Ill. 1972) (expert originally  
8 designated as testifying witness on issue cannot be deposed on issue once plaintiff  
9 decides that expert will not testify on that issue).

10 *Id.* at 638-39. Other courts have followed *Ross*.

11 One limited exception has been recognized, however the reasons for this exception render  
12 it inapplicable to this case. In *House v. Combined Ins. Co.*, 168 F.R.D. 236 (N.D. Iowa 1996) the  
13 plaintiff submitted to an independent medical examination. After the examination, however,  
14 defendant objected to the plaintiff's efforts to depose the examiner and obtain a copy of her report.  
15 The court ruled the deposition could go forward due to the nature of a Rule 35 examination.  
16 *House* is inapplicable here as Dr. Appel did not perform a Rule 35 examination.

17 *FMC Corp. v. Vendo Co.*, 196 F. Supp.2d 1023 (E.D. Cal. 2002) also concerned the issue  
18 of an opposing party calling another party's dedesignated expert. The court applied the  
19 exceptional circumstances test identical to that in NRCP 26(b)(4)(B) and did not let the deposition  
20 proceed. It distinguished from *House*, noting the experts at issue "did not perform a Rule 35  
21 examination." *Id.* at 1046. *House* was even rejected where a Rule 35 examination was performed,  
22 the defendant listed the examiner in its pretrial disclosure of witnesses and then withdrew the  
23 designation. *Lehan v. Ambassador Programs, Inc.*, 190 F.R.D. 670 (E.D. Wash. 2000). Instead,  
24 the exceptional circumstances test of Rule 26(b)(4)(B) applied. *Id.* at 672.

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DATED this 1 day of August, 2014

Byron F. Browne  
Nevada Bar No. 9769  
10191 Park Run Dr., Suite 110  
Las Vegas, NV 89145  
P: 702-463-1221/F: 702-920-8420  
*Attorneys for Defendant, DIANE COLLINS*



# Exhibit 13

**MOT**

ADAM E. BRIGMAN, ESQ.  
Nevada Bar No. 11926  
**CRAM VALDEZ BRIGMAN & NELSON**  
8831 W. Sahara Avenue  
Las Vegas, Nevada 89117  
Telephone: (702) 255-0700  
Facsimile: (702) 255-2159  
*Attorney for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JA CYNTA McCLENDON,  
  
Plaintiff,

vs.

DIANE COLLINS,  
  
Defendant.

Case No.: A-13-680935-C  
Dept. XXX

**PLAINTIFF'S MOTION TO  
DESIGNATE EUGEN L. APPEL, M.D.,  
AS AN EXPERT WITNESS, TAKE HIS  
DEPOSITION, AND USE HIS WRITTEN  
OPINIONS AND DEPOSITION  
TESTIMONY AT TRIAL**

**PLAINTIFF'S MOTIOIN TO DESIGNATE EUGEN L. APPEL, M.D., AS AN EXPERT  
WITNESS, TAKE HIS DEPOSITION, AND USE HIS WRITTEN OPINIONS AND  
DEPOSITION TESTIMONY AT TRIAL**

COMES NOW, Plaintiff Ja Cynta McClendon, by and through her attorney of record,  
Adam E. Brigman, Esq., and submits her motion to designate Eugene L. Appel, M.D. as an expert  
witness, take his deposition, and use his written opinions and deposition testimony at trial:

**I. FACTS/PROCEDURAL HISTORY**

The NSTR Conference in this matter was held on May 13, 2014. The Scheduling Order  
was issued on May 14, 2014, wherein trial was set for August 22, 2014, with a discovery deadline  
of July 30, 2014, inclusive of any/all expert designation and disclosures. Defendant designated  
Eugene L. Appel, M.D., on June 24, 2014, and Plaintiff designated David J. Oliveri, M.D., with a  
medical records review and rebuttal opinion to Dr. Appel's report. Immediately thereafter,  
defense counsel demanded a discovery dispute conference. The discovery dispute conference was

1 held on July 30, 2014, telephonically with the court, with counsel for both parties present. During  
2 that conference, defense counsel demanded that the discovery deadline be extended to  
3 accommodate a deposition of Dr. Oliveri, and demanded that the court grant defense counsel leave  
4 to have Dr. Appel author a report in response to Dr. Oliveri's report. Plaintiff's counsel argued  
5 under NSTR 19, that the intent of the drafters was clear; that the parties should rely on reports, in  
6 lieu of live testimony, and by extension – deposition; all of which serves as cost saving measures,  
7 and thereby serves to promote the utility of the Short Trial Program. Defense counsel argued that  
8 costs should have no bearing on his right to take Dr. Oliveri's deposition. The court agreed with  
9 defense counsel and extended the discovery deadline from July 30, 2014, to August 19, 2014. The  
10 court granted defense counsel the right to take Dr. Oliveri's deposition, and granted plaintiff's  
11 counsel the mutual right to take Dr. Appel's deposition. The court also granted defense counsel  
12 leave to provide an additional report in response to Dr. Oliveri's opinions. Thereafter, both  
13 counsel were able to set the deposition of the doctors, with Dr. Oliveri's deposition being noticed  
14 for 7:15 a.m. on August 14, 2014, and Dr. Appel's deposition being noticed for August 15, 2014 at  
15 9:00 a.m., to be conducted telephonically. Dr. Appel authored another expert report on August 4,  
16 2014, and defense counsel properly disclosed it on August 5, 2014.

17  
18  
19 Mid-morning on August 12, 2014, ten days prior to trial, and seven days prior to the close  
20 of discovery, defense counsel emailed and later called plaintiff's counsel to state that he was de-  
21 signating Dr. Appel, and did not want to use his report or even mention his name at trial.  
22 Plaintiff's counsel was taken aback by Defendant's 11<sup>th</sup> hour patently unfair actions and the  
23 parties discussed the matter. Defense counsel at that time proposed a compromise: to just submit  
24 on the reports and not conduct any depositions, which would also save costs and time. Plaintiff's  
25 counsel pointed out that this was his original proposal at the July 30, 2014 discovery dispute  
26 conference – which defense counsel would not agree to. Nonetheless, due to the lateness of  
27 defense counsel's action, with depositions having been set, with deposition funds already having  
28

1 been sent and received by the doctors, and all of the time and effort expended by both parties  
2 based on defense counsel's demands at the July 30, 2014 dispute conference, plaintiff's counsel  
3 stated that he needed time to consider the situation. Around the close of business on August 12,  
4 2014, plaintiff's counsel received Defendant's unadorned de-designation of Eugene Appel, M.D,  
5 and plaintiff's counsel was advised that defense counsel requested another discovery dispute for  
6 the morning of August 13, 2014, with the court.

7  
8 That conference was held. The 11<sup>th</sup> hour issue of de-designation was addressed by all  
9 parties. Defense counsel insisted that he could de-designate. Plaintiff's counsel disputed the  
10 propriety and fairness of defense counsel's 11<sup>th</sup> hour action, and argued as to the repercussions  
11 defense counsel's action would have upon Plaintiff's case, and that Plaintiff should then be  
12 allowed designate Dr. Appel as her own expert. Counsel for both parties indicated possession of  
13 case law to address the issue. The court asked the parties to provide the same via email by 10:00  
14 am, August 14, 2014. This motion follows that request.

## 15 II. ARGUMENT

16 "Discovery is a truth-seeking process"

### 17 A. Dr. Appel Was Disclosed As A Trial Expert By Defendant In This Matter.

18  
19 The Nevada Supreme Court has not directly addressed the issue of a Defendant attempting  
20 to strike their own expert witness following his timely disclosure and production of his reports, on  
21 the very eve of his properly noticed deposition. Fortunately, other courts around the country have  
22 dealt with this issue. Legal authority from the coast of California to the panhandle of Florida  
23 weighs in favor of allowing Dr. Appel's report to remain the case. District Court Judge George  
24 Marovich, in a memorandum opinion and order regarding The Hartford Fire Insurance Company,  
25 Inc. v Transgroup Express, Inc., discusses The Hartford Fire Insurance Company, Inc.'s petition to  
26 quash a subpoena issued by Transgroup Express, Inc., served on one of Hartford's disclosed  
27 testifying experts. Hartford's expert had already produced two expert reports in the matter. Upon  
28

1 notice of that expert's deposition, Hartford withdrew the expert as a testifying expert and refused  
2 to produce him for deposition. Judge Marovich found that Transgroup was entitled to the expert's  
3 deposition, even though Hartford had re-designated the expert as a non-testifying expert. Judge  
4 Marovich opined, in relevant part, as follows:

5  
6 **Discovery is a truth-seeking process, and it does not serve that**  
7 **process to allow a party to avoid the deposition of an expert whose**  
8 **report has been produced by changing that expert's designation to**  
9 **that of a trial-preparation expert.** The Court anticipates that the  
10 Seventh Circuit would agree that parties cannot protect an expert from a  
11 deposition by changing an expert's designation from testifying expert to  
12 trial-preparation expert after that expert's report has been produced to the  
13 opposing party.

14 [Magistrate] Judge Denlow properly relied on SEC v. Koenig, 557 F.3d  
15 736, 744 (7th Cir. 2009). In Koenig, the Seventh Circuit considered  
16 whether it was proper for the SEC to call Koenig's expert witness,  
17 Dunbar, at trial even though Koenig had decided not to call Dunbar. The  
18 Seventh Circuit concluded that the SEC was not required to list Dunbar  
19 as its own witness during discovery in order to call him at trial. The  
20 Seventh Circuit went on to say:

21 Suppose this is wrong, however, and that the SEC should have identified  
22 Dunbar during discovery as its own witness .... Delay in alerting Koenig  
23 that Dunbar might testify was as harmless as they come, given Dunbar's  
24 status as Koenig's expert .... Koenig maintains that with more advance  
25 notice from the SEC he would have withdrawn Dunbar as an expert. But  
26 how could that have helped? **A witness identified as a testimonial**  
27 **expert is available to either side; such a person can't be transformed**  
28 **after the report has been disclosed, and a deposition conducted, to**

1 the status of trial-preparation expert whose identity and views may  
2 be concealed. See Fed. R.Civ.P. 26(b)(4)(B). Disclosure of the report  
3 ends the opportunity to invoke confidentiality. SEC v. Koenig, 557 F.3d  
4 at 744 (emphasis added). This Court is aware, as Hartford points out, that  
5 the quoted portion is dicta. Still, the Seventh Circuit considered (albeit  
6 quickly) whether a party could redesignate an expert as a trial-preparation  
7 expert after an expert report has been issued. The Seventh Circuit  
8 concluded, albeit in dicta, that the "[ d]isclosure of the report ends the  
9 opportunity to invoke confidentiality." This Court reads that to mean that  
10 a party cannot invoke the protections of Rule 26(b)(4)(B) after the party  
11 has issued an expert report with respect to a particular expert. Emphasis  
12 added.

13  
14 Similar to Hartford above, Defendant in this matter is seeking to preclude her own expert  
15 from testifying via his written and disclosed opinions, due to what she perceives as unfavorable  
16 opinions. Like Hartford, Defendant now seeks desperately to preclude Dr. Appel's deposition  
17 from going forward, despite agree to the deposition two weeks ago. Also like Hartford, Defendant  
18 here is attempting to preclude her expert's two written report from going before the jury, by  
19 attempting to inappropriately invoke the work product privilege by de-designating him, or re-  
20 designating him as not-testifying "consultant." Here, Dr. Appel completed not just one report, but  
21 also a second report pursuant to Defendant's demand to extend discovery deadlines, all of which  
22 was properly disclosed by Defendant pursuant to NRCP 16.1.

23  
24 Plaintiff designated and disclosed Dr. Appel properly under NRCP 16.1, on August 13,  
25 2014, approximately twenty-four hours after Defendant notice her de-designation. However, SEC  
26 v. Koenig indicates that even if Plaintiff did not list Dr. Appel as an expert, that he would still be  
27  
28

1 allowed to testify at trial for Plaintiff. Discovery is a truth seeking process, and Defendant's  
2 attempt to hide the truth from the Jury in this matter would be manifestly unfair and improper.

3 Other cases echo Judge Marovich's Order and SEC v. Koenig. In Peterson v. Willie, 81  
4 F.3d 1033 (1996), the United States Court of Appeals, Eleventh Circuit, dealt with a similar issue.  
5 In that case, a Plaintiff appealed a judgment entered on a jury verdict, based in part on the district  
6 court's purported error in allowing the testimony of a doctor retained by Plaintiff - but later  
7 discharged - to testify on behalf of Defendants. Id. at 103. The doctor in Peterson was designated  
8 as an expert witness expected to testify at trial pursuant to Federal Rule of Civil Procedure  
9 26(b)(4)(A)(i), the analogue to Nevada Rule of Civil Procedure 26(b)(4)(A). Following that  
10 doctor's unfavorable deposition testimony, the Plaintiff in Peterson withdrew said doctor's  
11 designation as a trial expert and filed a motion in limine seeking to preclude him from testifying in  
12 the trial. Id. The Plaintiff in Peterson argued, like Defendant in this case, that the testimony from  
13 that doctor would be cumulative and duplicative of Defendants' other experts. Id. The district court  
14 permitted the doctor to not only testify at trial on behalf of the defendants, **but also allowed the**  
15 **doctor to testify that he was originally retained by the plaintiff's counsel.** Id. Emphasis added.  
16 The Eleventh Circuit ruled that there was no error in allowing defendants to call plaintiff's expert  
17 at trial, and that, the opposing party could call that expert at trial, notwithstanding his de-  
18 designation like Defendant has done here Id. The analogues to the present case are clear. An  
19 expert is retained by a party, in Peterson by the Plaintiff, in the present case by Defendant. The  
20 party, following disclosure of the expert as a trial witness, finds that the testimony no longer  
21 benefits their case.  
22  
23  
24

25 The paucity of case law directly on point is indicative of Defendant's audacity at this  
26 attempt to hide properly disclosed admissible evidence from the jury that she deems unfavorable  
27 to her case. The vast majority of cases discuss a party's withdrawal of their expert before the  
28 expert produces a report, or is deposed, and whether "hiding" such an expert's unfavorable

1 opinions by de-designation is proper. In *Kennedy v. Superior Court*, 64 Cal.App.4th 674 (Cal.:  
2 Court of App. 1st App. Dist. 5th Div. 1998), the Court of Appeals of California found that a party  
3 who submits to a medical examination pursuant to the California Code of Civil Procedure, the  
4 analogue to NRCP 35(b)(2), is entitled to a report of that examination, and that such a party has a  
5 right to depose the examining physician even if the party requesting the examination has  
6 withdrawn the physician as an expert witness. In *Codgell v. Brown*, 220 N.J.Super. 330, 531 A2d  
7 1379 (1997), [the New Jersey Superior Court of Law noted that "a trial is essentially a search  
8 for the truth," and found that the Plaintiff in that matter could call as their witness an  
9 examining doctor who was initially consulted by one of the defendants and who prepared a  
10 report on behalf of a defendant. *Codgell* at 332, emphasis added. Nevada Rule of Civil  
11 Procedure 26(b)(4)(A) states that a party may depose any person who has been identified as an  
12 expert whose opinions may be presented at trial. Dr. Appel falls within that classification, as  
13 Defendant disclosed him as a trial witness following his Medical Records Review of Plaintiff's  
14 medical records, and his preparing a report thereto on June 24, 2014, and August 4, 2014.  
15

16  
17 Simply because Dr. Appel believes that some of Plaintiff's medical treatment was  
18 reasonable and causally related to the subject motor vehicle, accident does not mandate his  
19 exclusion from testifying at trial.

20 **B. Plaintiff Reserved The Right To Call Dr. Appel As An Expert Within All**  
21 **Applicable Discovery Deadlines.**

22 In her Initial Early Case Conference Production of Documents and Witness List Pursuant  
23 to NRCP 16.1, disclosed on May 13, 2014, Plaintiff expressly reserved the right to call, or cross-  
24 examine, experts Defendant disclosed in this matter. *See Exhibit 1*, at page 4, line 25. Nevada  
25 Rule of Civil Procedure 16.1(a)(2) provides that expert disclosures must be timely and that they  
26 need to include written reports from those retained experts. Defendants disclosed Dr. Appel as an  
27 expert on June 24, 2014, which was timely as per the May 14, 2014 Scheduling Order in this  
28



1 matter. Only now, after Dr. Appel has authored not one, but two reports, and Dr. Appel's  
2 deposition is set and properly noticed for less than twenty-four hours from the time of this hearing,  
3 and approximately forty-eight hours from Defendant's 11<sup>th</sup> hour decision to de-designate Dr.  
4 Appel as a witness, despite Plaintiff expressly reserving the right to call him as her own witness on  
5 May 13, 2014. Plaintiff has reserved the right to use him as her own expert. At no point in the  
6 three months from that time, until the recent de-designation of Eugen Appel, M.D. has Defendant  
7 objected to Plaintiff's reservation of the right to call Dr. Appel in her case in chief, or the  
8 reservation of the right to use Dr. Appel as an expert for the Plaintiff. In an abundance of caution,  
9 Plaintiff specifically designated Dr. Appel as an expert on Plaintiff's behalf. See Exhibit 2,  
10 Plaintiff's First Supplement to Designation of Expert Witnesses, dated August 13, 2014, and  
11 Plaintiff's Second Supplement to Early Case Conference List of Witnesses & Exhibits, dated  
12 August 13, 2014, on file herein. With the close of discovery in this matter currently set for August,  
13 19, 2014, six days from the time of Plaintiff's most recent disclosure, Plaintiff has properly  
14 disclosed and designated Dr. Appel.  
15

16  
17 Defendants will suffer no prejudice from Dr. Appel's reports and deposition being  
18 published to the jury during trial in this matter. Indeed, it was Defendant who timely produced and  
19 properly disclosed the two expert reports from Dr. Appel, and, at the July 30, 2014 conference, it  
20 was defense counsel who agreed that plaintiff's counsel's has a mutual right to take Dr. Appel's  
21 deposition in this matter, which the court ordered, and which is currently noticed to occur  
22 approximately twenty-four hours from the time of this hearing.  
23

24 ///

25  
26  
27 ///

CRAM VALDEZ BRIGMAN & NELSON  
8831 W. SAHARA AVENUE  
LAS VEGAS, NEVADA 89117  
Tel: (702) 255-0700 Fax: (702) 255-2159


### III. CONCLUSION

Defendants timely and properly disclosed Dr. Appel, and his report, following a medical records review of Plaintiff's medical records and billing associated with this case, and following a review of Dr. Oliveri's report. Defendant even insisted that the court permit Dr. Appel to provide a second report in this case. Defendant also agreed, before the court, to Plaintiff's request to take Dr. Appel's deposition. Defendant cannot now seek to hide the truth of Dr. Appel's medical opinions and testimony from the jury in this matter. As such, Plaintiff requests that this honorable court order that she be allowed to: publish Dr. Appel's two written reports to the jury; take Dr. Appel's deposition, and publish the deposition testimony at trial. Plaintiff respectfully requests the court to grant Plaintiff that which she has requested herein, based on the points and authorities, and any oral argument the court may deem necessary.

\*\*Plaintiff's counsel received this morning, Defendant's Motion for Protective Order. Plaintiff believes that her instant motion, with points and authorities listed above, serves also as an appropriate opposition to Defendant's Motion for Protective Order, and therefore submits this motion for that purpose as well.

Dated this 14<sup>th</sup> day of August, 2014

CRAM VALDEZ BRIGMAN & NELSON

  
ADAM E. BRIGMAN, ESQ.  
Nevada Bar No. 11926  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
Telephone: (702) 255-0700  
Fax: (702) 255-2159  
Attorney for Plaintiff

CRAM VALDEZ BRIGMAN & NELSON  
8831 W. SAHARA AVENUE  
LAS VEGAS, NEVADA 89117  
Tel: (702) 255-4700 Fax: (702) 255-2159

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 14<sup>th</sup> day of August 2014 that I served a copy of  
**PLAINTIFF'S MOTIOIN TO DESIGNATE EUGEN L. APPEL, M.D., AS AN EXPERT  
WITNESS, TAKE HIS DEPOSTION, AND USE HIS WRITTEN OPINIONS AND  
DEPOSITION TESTIMONY AT TRIAL** via e-service and e mail to the following person(s):

Byron F. Browne, Esq.  
BARKSI DRAKE BROWNE, PLC.  
10191 Park Run Drive, Suite 110  
Las Vegas, Nevada 89145  
bbrowne@bdbattorneys.com  
*Attorney for Defendant*

Patrick N. Chapin, Esq.  
PATRICK N. CHAPIN, LTD.  
129 Cassia Way  
Henderson, Nevada 89014  
pat@chapinlaw.net  
Judge Pro Tem

  
Employee of CRAM VALDEZ BRIGMAN & NELSON

# Exhibit 14

  
CLERK OF THE COURT

**ORDER**  
**PATRICK N. CHAPIN, ESQ.**  
Nevada Bar No. 004946  
Patrick N. Chapin, Ltd.  
129 Cassia Way  
Henderson, Nevada 89014  
(702) 433-7295  
Judge Pro Tempore

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

JA CYNTA McCLENDON,	)	Case No. A-13-680935-C
	)	Dept. No. XXX
Plaintiff,	)	STP No. 13-1744
	)	
v.	)	
	)	<b><u>ORDER</u></b>
DIANE COLLINS and RICHARD COLLINS;	)	
ROE CORPORATIONS I through X, inclusive,	)	
and DOES I through X, inclusive,	)	
	)	
Defendants.	)	

TO: ADAM E. BRIGMAN, ESQ., CRAM VALDEZ BRIGMAN & NELSON,  
Attorney for Plaintiff; and

TO: BYRON F.L. BROWN BARSKI DRAKE BROWN, Attorney for Defendants.

This matter came on for "chambers hearing" on two separate motions that were recently filed. Defendant has filed a Motion for Protective Order. Plaintiff filed a Motion to Designate Eugene L. Appel, M.D., as an expert witness, take his deposition, and use his written opinions and deposition testimony at trial. Moreover, Plaintiff has requested in her instant motion that those legal arguments contained within also serve as an Opposition to Defendant's Motion for Protective Order. The Court having reviewed, in detail, the respective and instant motions filed by Plaintiff and Defendant, and considering all legal arguments within, rules as follows:

**IT IS HEREBY ORDERED** that Defendant's Motion for Protective Order is hereby **GRANTED**, in full, whereby Plaintiff is barred from taking the deposition of Defendant's designated expert witness, Eugene L. Appel, M.D. The Court's decision to grant Defendant's

**PATRICK N. CHAPIN, LTD.**  
129 Cassia Way, Henderson, NV 89014  
Telephone: (702) 433-7295 Facsimile: (702) 403-1919

**PATRICK N. CHAPIN, LTD.**  
129 Cassia Way, Henderson, NV 89014  
Telephone: (702) 433-7295 Facsimile: (702) 403-1919


1 Motion for Protective Order is based significantly on the fact that Dr. Appel, prior to Defendant  
2 de-designating him as an expert witness, had not performed a Rule 35 examination on the  
3 Plaintiff.

4 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Designate Eugene L. Appel,  
5 M.D. as an expert witness, take his deposition, and use his written opinions and deposition  
6 testimony at trial is hereby **DENIED** in full.

7 **IT IS SO ORDERED.**

8 DATED this 14<sup>th</sup> day of August, 2014.

9 PATRICK N. CHAPIN, LTD.

10   
11 **PATRICK N. CHAPIN, ESQ.**  
12 Nevada Bar No. 004946  
13 129 Cassia Way  
14 Henderson, Nevada 89014  
15 Judge Pro Tempore  
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**PATRICK N. CHAPIN, LTD.**

129 Cassia Way, Henderson, NV 89014

Telephone: (702) 433-7295 Facsimile: (702) 403-1919

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of August, 2014, I served a copy of the foregoing  
**ORDER** by electronic service via the Odyssey File and Serve system within the Eighth Judicial  
District Court addressed to the following:

Adam E. Brigman, Esq.  
Cram Valdez Brigman & Nelson  
8831 West Sahara Avenue  
Las Vegas, NV 89117  
abrigman@cvbnlaw.com  
Attorney for Plaintiff

Byron F.L. Browne, Esq.  
Barks Drake Brown  
10191 Park Run Drive #110  
Las Vegas, NV 89145  
bbrowne@bdbattorneys.com  
Attorney for Defendant



An Employee of Patrick N. Chapin, Esq.  
Judge Pro Tempore