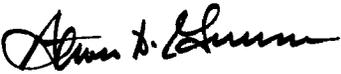


1 SUPP
2 ROBERT L. EISENBERG (Nevada Bar No. 950)
3 Lemons, Grundy & Eisenberg
4 6005 Plumas Street, Third Floor
5 Reno, Nevada 89509
6 775-786-6868
7 775-786-9756
8 Email: rle@lge.net
9 ATTORNEYS FOR DEFENDANT


CLERK OF THE COURT

Electronically Filed
Aug 04 2016 10:34 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

7 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF CLARK

9 BEAU R. ORTH,
10 Plaintiff,

Case No. A-11-648041
Dept. No. III

11 vs.

**SECOND
SUPPLEMENTAL NOTICE
OF APPEAL**

12 ALBERT H. CAPANNA, M.D.
13 Defendant.

14 _____ /
15 **SECOND**
16 **SUPPLEMENTAL NOTICE OF APPEAL**

17 Notice is hereby given that defendant Albert H. Capanna, M.D., appeals to the
18 Nevada Supreme Court from the Order Regarding Defendant's Motion to Retax and
19 Settle the Costs, entered on April 21, 2016 (attached as Exhibit 1). This notice is
20 intended to supplement the notices of appeal already filed by defendant on March 7 and
21 April 18, 2016, presently docketed in the Nevada Supreme Court as appeal Nos. 69935
22 and 70227.

24 DATED: May 2, 2016

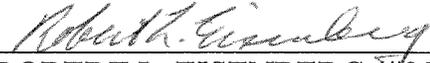
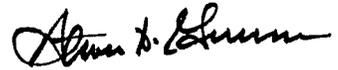
25 
26 ROBERT L. EISENBERG (#950)
27 Lemons, Grundy & Eisenberg
28 6005 Plumas Street, Third Floor
Reno, Nevada 89519
Phone: 775-786-6868
Email: rle@lge.net

EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

EGLET PRINCE

1 **ORDER**
2 **DENNIS M. PRINCE, ESQ.**
3 Nevada Bar No.: 5092
4 **TRACY A. EGLET, ESQ.**
5 Nevada Bar No.: 6419
6 **DANIELLE TARMU, ESQ.**
7 Nevada Bar No.: 11727
8 **EGLET PRINCE**
9 400 South Seventh Street, #400
10 Las Vegas, Nevada 89101
11 *eservice@egletlaw.com*
12 (702) 450-5400 phone
13 (702) 450-5451 facsimile
14 Attorneys for Plaintiff
15 *Beau R. Orth*

DISTRICT COURT
CLARK COUNTY, NEVADA

16 **BEAU R. ORTH,**
17 Plaintiff,

CASE NO. : A-11-648041-C
DEPT. NO. : III

18 vs.

ORDER REGARDING DEFENDANT'S
MOTION TO RETAX AND SETTLE
THE COSTS

19 **ALBERT H. CAPANNA, M.D.;**
20 **DOES I through X; ROE BUSINESS**
21 **ENTITIES I through X, inclusive,**
22 Defendants.

23 Plaintiff **BEAU ORTH**, after prevailing at trial, filed Memorandum of Costs and
24 Disbursements, and Defendant **ALBERT H. CAPANNA, M.D.** filed a Motion to Retax and
25 Settle the Costs, which was heard in Chambers on November 9, 2015. The Court, having read
26 the papers and pleadings on file herein, hereby **GRANTS IN PART AND DENIES IN PART**
27 Defendant's Motion to Retax and Settle the Costs, awarding total costs of \$123,322.20 as
28 follows:

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This Court finds that a party who prevails in an action is entitled to move for its costs. See Nev. Rev. Stat. 18.020. Here, having prevailed at the conclusion of a jury trial, Plaintiff is a prevailing party and is entitled to statutory costs per NRS 18.005 and 18.020. Having reviewed the Memorandum of Costs and accompanying documentation on file, and having evaluated the requested costs in light of *Berosini v. PETA*, 114 Nev. 1348 (1998), the Court **HEREBY ORDERS** that utilizing the eight categories in Plaintiff's memorandum of costs, costs will be awarded in full as requested for the following categories of costs:

Category (1) In House Expenses (which includes copies, postage, courier and long distance costs) - \$5,026.53;

Category (3) Expert Fees - \$69,975.95. The Court specifically finds that all named experts were necessary to Plaintiff's case, and exceeding the statutory amounts is justified and reasonable for Dr. Yoo and Dr. Cash based on their roles in the litigation;

Category (4) Express Mail - \$172.31;

Category (5) Investigation/Service - \$528.48;

Category (6) Medical/Financial Records - \$2,055.90; and

Category (8) Travel Expenses - \$488.00.

Regarding Category (2) Deposition Expenses, the Court finds that the TrialSmith charge of \$868.00 and the Turner Reporting charge of \$372.25 are unjustified and the total amount awarded for that category will be \$4,679.75.

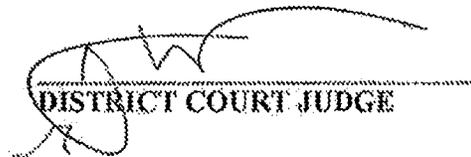
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Regarding Category (7) Misc. Expenses/Court Fees, the Court notes that Plaintiff withdrew its meal cost request so that category will be reduced to a total award of \$40,395.28.

The Court **HEREBY GRANTS IN PART AND DENIES IN PART** Defendant's Motion to Retax and Settle the Costs and **ORDERS** that the total costs allowed to Plaintiff, as prevailing party, be reduced to \$123,322.20.

Dated this 18 day of ~~March~~^{April}, 2016.


DISTRICT COURT JUDGE

DATED this 8 day of ~~March~~^{April}, 2016.

Respectfully Submitted By:

EGLET PRINCE


DENNIS M. PRINCE, ESQ.
Nevada Bar No. 5092
TRACY A. EGLET, ESQ.
Nevada Bar No. 6419
DANIELLE TARMU, ESQ.
Nevada Bar No. 11727
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
Attorneys for Plaintiff

DATED this 3 day of March, 2016.

Approved as to Form and ~~Content~~ 

LAURIA TOKUNAGA GATES & LINN


ANTHONY D. LAURIA, ESQ.
Nevada Bar No. 4114
PAUL A. CARDINALE, ESQ.
Nevada Bar No.: 8394
601 South Seventh Street, 2nd Floor
Las Vegas, Nevada 89101
Attorneys for Defendant

CERTIFICATE OF SERVICE

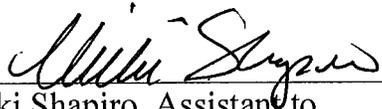
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Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg, and that on this date the foregoing was filed electronically with the Clerk of the 8th Judicial District Court, Clark County, Nevada, and therefore electronic service was made in accordance with the master service list as follows:

Anthony Lauria – Email: Alauria@ltglaw.net

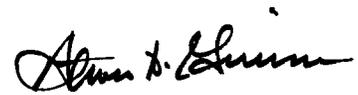
Dennis Prince – Email: dprince@egletlaw.com

Dated: 5/2/16



Vicki Shapiro, Assistant to
Robert L. Eisenberg

1 SUPP
2 ROBERT L. EISENBERG (Nevada Bar No. 950)
3 Lemons, Grundy & Eisenberg
4 6005 Plumas Street, Third Floor
5 Reno, Nevada 89509
6 775-786-6868
7 775-786-9756
8 Email: rle@lge.net
9 ATTORNEYS FOR DEFENDANT


CLERK OF THE COURT

7 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF CLARK

9 BEAU R. ORTH, Case No. A-11-648041
10 Plaintiff, Dept. No. III

11 vs.

**SECOND
SUPPLEMENTAL
CASE APPEAL
STATEMENT**

12
13 ALBERT H. CAPANNA, M.D.
14 Defendant.

15 _____ /
16 Pursuant to NRAP 3(f), Defendant ALBERT H. CAPANNA, M.D. hereby
17 submits the following supplemental case appeal statement:

18 A. District court case number and caption, showing names of all parties to
19 the proceedings (without using *et al.*): The full case numbers and captions, showing
20 names of all parties, are shown above; the parties are as follows:

21 Beau R. Orth, Plaintiff
22 Albert H. Capanna, M.D., Defendant
23 Case No. A-11-648041, Dept. No. III

24 B. Name of judge who entered order or judgment being appealed: Honorable
25 Douglas Herndon.

26 C. Name of each appellant, and name and address of counsel for each
27 appellant:

28 ALBERT H. CAPANNA, M.D., is represented by the following counsel:
Robert L. Eisenberg
Lemons, Grundy & Eisenberg

1 6005 Plumas Street, Third Floor
2 Reno, Nevada 89519; and

3 Anthony D. Laura
4 Lauria, Tokanaga, Gates & Linn
5 601 S. Seventh Avenue
6 Las Vegas, Nevada 89101

7 D. Name of each respondent, and name and address of each respondent's
8 appellate counsel, if known:

9 Respondent BEAU R. ORTH is represented by the following counsel:

10 Dennis Prince
11 Eglet Prince
12 400 S. Seventh Street #400
13 Las Vegas, Nevada 89101

14 E. Whether attorneys identified in subparagraph D are not licensed to
15 practice law in Nevada; and if so, whether the district court granted permission to
16 appear under SCR 42 (include copy of district court order granting permission): All are
17 licensed in Nevada

18 F. Whether appellant was represented by appointed counsel in the district
19 court or on appeal: No appointed counsel; retained counsel only.

20 G. Whether any appellant was granted leave to proceed *in forma pauperis*:
21 No.

22 H. Date proceedings were commenced in district court: September 8, 2011

23 I. Brief description of nature of the action and result in district court,
24 including type of judgment or order being appealed and relief granted by district court:
25 Medical malpractice action resulting in money judgment and awards of
26 attorneys' fees and costs in favor of plaintiff/respondent. This supplemental case appeal
27 statement relates to the supplemental appeal from the costs award.

28 J. Whether case was previously subject of appeal or writ proceeding in
Nevada Supreme Court or Court of Appeals, and if so, caption and docket number of
prior proceeding: Yes. ALBERT H. CAPANNA, M.D., Appellant, vs. BEAU ORTH,
Respondent; Nos. 69935 and 70227.

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K. Whether appeal involves child custody or visitation: No.

L. Whether appeal involves possibility of settlement: Yes.

DATED: May 2, 2016


ROBERT L. EISENBERG (#950)
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
Phone: 775-786-6868
Fax: 775-786-9716
Email: rle@lge.net
Counsel for Defendant

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg, and that on this date the foregoing was filed electronically with the Clerk of the 8th Judicial District Court, Clark County, Nevada, and therefore electronic service was made in accordance with the master service list as follows:

Anthony Lauria – Email: Alauria@ltglaw.net

Dennis Prince – Email: dprince@egletlaw.com

Dated: 5/2/16



Vicki Shapiro, Assistant to
Robert L. Eisenberg

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DEPARTMENT 3
CASE SUMMARY
CASE NO. A-11-648041-C

Beau Orth, Plaintiff(s)
 vs.
Albert Capanna, MD, Defendant(s)

§
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§

Location: **Department 3**
 Judicial Officer: **Herndon, Douglas W.**
 Filed on: **09/08/2011**
 Case Number History:
 Cross-Reference Case Number: **A648041**
 Supreme Court No.: **69935**
70227

CASE INFORMATION

Statistical Closures
 04/28/2016 Verdict Reached

Case Type: **Malpractice - Medical/Dental**
 Case Flags: **Appealed to Supreme Court**
Jury Demand Filed
Automatically Exempt from Arbitration
Commissioner Bulla Recused
Med Mal Case

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-11-648041-C
Court	Department 3
Date Assigned	08/07/2013
Judicial Officer	Herndon, Douglas W.

PARTY INFORMATION

Plaintiff

Orth, Beau R

Lead Attorneys

Prince, Dennis M
Retained
 7022286800(W)

Defendant

Capanna, MD, Albert H

Lauria, Anthony D
Retained
 702-387-8633(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

09/08/2011

 **Complaint**
 Filed By: Plaintiff Orth, Beau R
Complaint

09/08/2011

Case Opened

09/08/2011

Med Mal Case

11/16/2011

 **Affidavit of Due Diligence**
 Filed By: Plaintiff Orth, Beau R
Affidavit of Due Diligence

11/29/2011

 **Ex Parte Application**
 Party: Plaintiff Orth, Beau R
Ex Parte Application to Effecutate Service of Process on Defendant by Certified Mail Pursuant to NRS 14.090(b)

12/07/2011

 **Order Granting**

DEPARTMENT 3
CASE SUMMARY
CASE NO. A-11-648041-C

Filed By: Plaintiff Orth, Beau R
Order Granting Ex Parte Application to Effectuate Service of Process on Defendant by Certified Mail Pursuant to NRS 14.090(b)

12/13/2011  Notice of Service
Party: Plaintiff Orth, Beau R
Notice of Service of Summons and Complaint By Certified Mail Pursuant to NRS 14.090(b)

01/11/2012  Initial Appearance Fee Disclosure
Filed By: Defendant Capanna, MD, Albert H
Initial Appearance Fee Disclosure

01/11/2012  Demand for Jury Trial
Filed By: Defendant Capanna, MD, Albert H
Defendant Albert H. Capanna, M.D.'s Demand for Jury Trial

01/11/2012  Answer to Complaint
Filed by: Defendant Capanna, MD, Albert H
Defendant Albert H. Capanna, M.D.'s Answer to Plaintiff's Complaint

01/25/2012  Notice of Early Case Conference
Filed By: Plaintiff Orth, Beau R
Notice of NRCP 16.1 Early Case Conference

02/16/2012  Peremptory Challenge
Filed by: Defendant Capanna, MD, Albert H
Peremptory Challenge of Judge

02/16/2012  Notice of Department Reassignment

03/16/2012  Joint Case Conference Report
Filed By: Plaintiff Orth, Beau R
Joint Case Conference Report

03/27/2012  Scheduling Order
Scheduling Order

07/06/2012  Order Setting Medical/Dental Malpractice Status Check
Filed By: Plaintiff Orth, Beau R
Order Setting Medical/Dental Malpractice Status Check and Trial Setting Conference

08/08/2012  **Status Check: Medical/Dental Malpractice** (9:00 AM) (Judicial Officer: Cory, Kenneth)

09/12/2012  Peremptory Challenge
Filed by: Plaintiff Orth, Beau R
Peremptory Challenge

09/12/2012  Notice of Department Reassignment

02/05/2013  **Status Check: Medical/Dental Malpractice** (1:00 PM) (Judicial Officer: Wiese, Jerry A.)

02/22/2013  Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call
Order Setting Civil Jury Trial (Med Mal Firm Setting)

DEPARTMENT 3
CASE SUMMARY
CASE NO. A-11-648041-C

06/25/2013  Stipulation and Order to Extend Discovery Deadlines
Filed By: Defendant Capanna, MD, Albert H
Stipulation and Order to Extend Discovery Deadlines (First Request)

06/25/2013  Notice of Entry of Order
Filed By: Defendant Capanna, MD, Albert H
Notice of Entry of Order

08/06/2013  **Status Check: Medical/Dental Malpractice** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

08/08/2013  Amended Order Setting Jury Trial
Amended Order Setting Civil Jury Trial

08/09/2013  Designation of Expert Witness
Filed By: Plaintiff Orth, Beau R
Plaintiff's Designation of Expert Witnesses

12/03/2013  Stipulation and Order to Extend Discovery Deadlines
Filed By: Plaintiff Orth, Beau R
Stipulation and Order to Extend Discovery (Second Request)

12/04/2013  Notice of Entry of Stipulation and Order
Filed By: Plaintiff Orth, Beau R
Notice of Entry of Stipulation and Order

12/12/2013 **CANCELED Pre Trial Conference** (9:00 AM) (Judicial Officer: Sturman, Gloria)
Vacated - per Judge

12/18/2013 **CANCELED Calendar Call** (9:00 AM) (Judicial Officer: Herndon, Douglas W.)
Vacated - per Commissioner

01/02/2014 **CANCELED Calendar Call** (9:00 AM) (Judicial Officer: Sturman, Gloria)
Vacated - per Judge

01/06/2014 **CANCELED Jury Trial** (10:00 AM) (Judicial Officer: Herndon, Douglas W.)
Vacated - per Commissioner

02/03/2014 **CANCELED Jury Trial** (10:00 AM) (Judicial Officer: Sturman, Gloria)
Vacated - per Judge

02/04/2014  **Status Check: Medical/Dental Malpractice** (8:30 AM) (Judicial Officer: Wiese, Jerry A.)

02/14/2014  Amended Order Setting Jury Trial
2nd Amended Order Setting Civil Jury Trial

07/08/2014  Substitution of Attorney
Filed by: Defendant Capanna, MD, Albert H
Substitution of Attorneys

08/12/2014  **Status Check: Medical/Dental Malpractice** (8:30 AM) (Judicial Officer: Wiese, Jerry A.)

08/12/2014  **Status Check: Discovery** (8:30 AM) (Judicial Officer: Bulla, Bonnie)

DEPARTMENT 3
CASE SUMMARY
CASE NO. A-11-648041-C

08/13/2014	 Amended Order Setting Jury Trial <i>Amended Order Setting Civil Jury Trial (Med Mal Firm Set)</i>
08/20/2014	 Notice of Change of Address Filed By: Plaintiff Orth, Beau R <i>Notice of Change of Address</i>
09/12/2014	CANCELED Status Check: Compliance (11:00 AM) (Judicial Officer: Bulla, Bonnie) <i>Vacated - per Commissioner</i>
09/19/2014	 Discovery Commissioners Report and Recommendations Filed By: Defendant Capanna, MD, Albert H <i>Discovery Commissioner's Report and Recommendations</i>
09/22/2014	 Notice of Entry of Order Filed By: Defendant Capanna, MD, Albert H <i>Notice of Entry of Order</i>
10/01/2014	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Herndon, Douglas W.) <i>Vacated - per Judge</i>
10/13/2014	CANCELED Jury Trial (10:00 AM) (Judicial Officer: Herndon, Douglas W.) <i>Vacated - per Judge</i>
11/14/2014	 Designation of Expert Witness Filed By: Defendant Capanna, MD, Albert H <i>Initial Expert Witness Disclosure Statement of Defendant Albert H. Capanna, M.D.</i>
11/14/2014	 Designation of Expert Witness Filed By: Plaintiff Orth, Beau R <i>Plaintiff's Designation of Expert Witnesses</i>
11/19/2014	 Designation of Expert Witness Filed By: Plaintiff Orth, Beau R <i>Plaintiff's First Supplement to Designation of Expert Witnesses</i>
02/03/2015	 Status Check: Medical/Dental Malpractice (8:30 AM) (Judicial Officer: Wiese, Jerry A.)
02/03/2015	 Status Check: Discovery (8:30 AM) (Judicial Officer: Bulla, Bonnie)
02/04/2015	 Amended Order Setting Jury Trial <i>Amended Order Setting Civil Jury Trial (Medical Malpractice)</i>
02/11/2015	 Notice of Change of Hearing <i>Notice of Change of Hearing</i>
03/04/2015	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Herndon, Douglas W.) <i>Vacated - Superseding Order</i>
03/09/2015	CANCELED Status Check: Compliance (2:00 PM) (Judicial Officer: Bulla, Bonnie) <i>Vacated - Per Setting Slip</i>
03/18/2015	 Deposition Filed By: Defendant Capanna, MD, Albert H

DEPARTMENT 3
CASE SUMMARY
CASE NO. A-11-648041-C

Notice of taking Deposition of the Custodian of Records-Person Most Knowledgeable for Desert Institute of Spine Care Billing and Payment Information

03/18/2015

 Deposition

Filed By: Defendant Capanna, MD, Albert H
Notice of Taking Deposition of the Custodian of Records-Person Most Knowledgeable for McKenna and Ruggeroli Pain Specialists Billing and Payment Information

03/18/2015

 Deposition

Filed By: Defendant Capanna, MD, Albert H
Notice of Taking Deposition of the Custodian of Records-Person Most Knowledgeable for Surgical Arts Center Billing and Payment Information

03/23/2015

 Discovery Commissioners Report and Recommendations

Filed By: Defendant Capanna, MD, Albert H
Discovery Commissioner's Report and Recommendations

03/25/2015

 Notice of Deposition

Filed By: Defendant Capanna, MD, Albert H
Notice of Taking Deposition of Plaintiff, Beau R. Orth

03/30/2015

 Notice of Vacating Deposition

Filed By: Defendant Capanna, MD, Albert H
Notice Vacating Deposition of the Custodian of Records-Person Most Knowledgeable for Desert Institute of Spine Care Billing and Payment Information

03/30/2015

CANCELED Jury Trial (10:00 AM) (Judicial Officer: Herndon, Douglas W.)
Vacated - Superseding Order
Jury Trial Medical Malpractice (set during sweeps)

04/02/2015

 Deposition

Filed By: Defendant Capanna, MD, Albert H
First Amended Notice of Taking Deposition of the Custodian of Records-Person Most Knowledgeable for McKenna and Ruggeroli Pain Specialists billing and Payment Information (change of location & date)

04/02/2015

 Deposition

Filed By: Defendant Capanna, MD, Albert H
First Amended Notice of Taking deposition of the Custodian of Records-Person Most Knowledgeable for Surgical Arts Center Billing and Payment Information

04/08/2015

 Designation of Expert Witness

Filed By: Plaintiff Orth, Beau R
Plaintiff's Second Supplement to Designation of Expert Witnesses

04/15/2015

 Deposition

Filed By: Defendant Capanna, MD, Albert H
First Amended Notice of Taking Deposition of the Custodian of Records-Person Most Knowledgeable for Desert Institute of Spine Care Billing and Payment Information

04/15/2015

 Notice of Association of Counsel

Filed By: Plaintiff Orth, Beau R
Notice of Association of Counsel

05/05/2015

 Notice of Deposition

Filed By: Defendant Capanna, MD, Albert H

DEPARTMENT 3
CASE SUMMARY
CASE NO. A-11-648041-C

Notice of Taking Deposition of Anthony C. Ruggeroli, M.D.

- 05/08/2015  Notice to Vacate Deposition
Filed by: Defendant Capanna, MD, Albert H
Notice Vacating Deposition of the Custodian of Records-Person Most Knowledgeable for Desert Institute of Spine Care Billing and Payment Information.
- 05/15/2015  Deposition
Filed By: Defendant Capanna, MD, Albert H
Second Amended Notice of Taking Deposition of the Custodian of Records-Person Most Knowledgeable for Desert Institute of Spine Care Billing and Payment Information.
- 05/28/2015  Deposition
Filed By: Defendant Capanna, MD, Albert H
Second Amended Notice of Taking Deposition of the Custodian of Records-Person Most Knowledgeable for Desert Institute of Spine Care Billing and Payment Information
- 05/29/2015  Designation of Expert Witness
Filed By: Defendant Capanna, MD, Albert H
Supplemental Expert Witness Disclosure Statement of Defendant Albert H. Capanna, M.D.
- 06/01/2015  Amended Notice of Taking Deposition
Filed By: Defendant Capanna, MD, Albert H
Amended Notice of Taking Deposition of Andrew Cash, M.D.
- 06/02/2015  Amended Notice of Taking Deposition
Filed By: Defendant Capanna, MD, Albert H
Second Amended Notice of Taking Deposition of Andrew Cash, M.D.
- 06/03/2015  Deposition
Filed By: Defendant Capanna, MD, Albert H
Third Amended Notice of Taking Deposition of the Custodian of Records-Person Most Knowledgeable for Desert Institute of Spine Care Billing and Payment Information
- 06/15/2015  Designation of Expert Witness
Filed By: Defendant Capanna, MD, Albert H
Supplemental Expert Witness Disclosure Statement of Defendant Albert H. Capanna, M.D.
- 06/18/2015  Designation of Expert Witness
Filed By: Defendant Capanna, MD, Albert H
Supplemental Expert Witness Disclosure Statement of Defendant Albert H. Capanna, M.D.
- 06/19/2015  Amended Notice of Taking Deposition
Filed By: Defendant Capanna, MD, Albert H
Third Amended Notice of Taking Deposition of Andrew Cash, M.D.
- 06/19/2015  Designation of Expert Witness
Filed By: Defendant Capanna, MD, Albert H
Supplemental Expert Witness Disclosure Statement of Defendant Albert H. Capanna, M.D.
- 06/22/2015  Motion in Limine
Filed By: Defendant Capanna, MD, Albert H
Defendant's Motions in Limine
- 06/22/2015

DEPARTMENT 3
CASE SUMMARY
CASE NO. A-11-648041-C

-  Notice of Hearing
Filed By: Defendant Capanna, MD, Albert H
Notice of Hearing
- 06/22/2015  Omnibus Motion In Limine
Filed by: Plaintiff Orth, Beau R
Plaintiff's Omnibus Motion in Limine No. 1
- 06/22/2015  Motion in Limine
Filed By: Plaintiff Orth, Beau R
Plaintiff's Motion in Limine No. 2: to Exclude Irrelevant and/or Unduly Prejudicial Information
- 06/22/2015  Motion in Limine
Filed By: Plaintiff Orth, Beau R
Plaintiff's Motion in Limine No. 3: to Exclude Prior Unrelated Medical Conditions
- 06/22/2015  Motion in Limine
Filed By: Plaintiff Orth, Beau R
Plaintiff's Motion in Limine No. 4: Permit Treating Physicians to Testify as to Causation, Diagnosis, Prognosis, Future Treatment, and Extent of Disability Without a Formal Expert Report
- 06/22/2015  Motion
Filed By: Plaintiff Orth, Beau R
Plaintiff's Motion No. 5 to Allow Parties to Present a Jury Questionnaire Prior to Voir Dire
- 06/22/2015  Motion in Limine
Filed By: Plaintiff Orth, Beau R
Plaintiff's Motion in Limine No. 6 to Limit Defendant's Experts' Testimony to the Opinions and Bases Set Forth in Their Expert REports
- 06/24/2015  Notice to Vacate Deposition
Filed by: Defendant Capanna, MD, Albert H
Notice Vacating Deposition of The Custodian of Records-Person Most Knowledgeable for Desert Institute of Spine Care Billing and Payment Information
- 07/02/2015  Deposition
Filed By: Defendant Capanna, MD, Albert H
Fourth Amended Notice of Taking Deposition of the Custodian of Records-Person Most Knowledgeable for Desert Institute of Spine Care Billing and Payment Information
- 07/09/2015  Opposition
Filed By: Plaintiff Orth, Beau R
Plaintiff's Opposition to Defendant's Motion in Limine
- 07/09/2015  Opposition to Motion in Limine
Filed By: Defendant Capanna, MD, Albert H
Defendant's Response and Opposition to Plaintiff's Omnibus Motion in Limine No. 1
- 07/09/2015  Opposition to Motion in Limine
Filed By: Defendant Capanna, MD, Albert H
Defendant's Response and Opposition to Plaintiff's Motion in Limine No. 2: to Exclude Irrelevant and/or Unduly Prejudicial Information

DEPARTMENT 3
CASE SUMMARY
CASE NO. A-11-648041-C

- 07/09/2015  Opposition to Motion in Limine
Filed By: Defendant Capanna, MD, Albert H
Defendant's Response and Opposition to Plaintiff's Motion in Limine No. 3: to Exclude Prior Unrelated Medical Conditions
- 07/09/2015  Opposition to Motion in Limine
Filed By: Defendant Capanna, MD, Albert H
Defendant's Response and Opposition to Plaintiff's Motion in Limine No. 4: Permit Treating Physicians to Testify as to Causation, Diagnosis, Prognosis, Future Treatment, and Extent of Disability Without a Formal Expert Report
- 07/09/2015  Opposition to Motion in Limine
Filed By: Defendant Capanna, MD, Albert H
Defendant's Response and Limited Opposition to Plaintiff's Motion in Limine No. 5: to Allow Parties to Present a Jury Questionnaire Prior to Voir Dire
- 07/09/2015  Opposition to Motion in Limine
Filed By: Defendant Capanna, MD, Albert H
Defendant's Response and Limited Opposition to Plaintiff's Motion in Limine No. 6: to Limit Defendant's Expert's Testimony to the Opinions and Bases Set Forth in Their Reports
- 07/13/2015  Motion
Filed By: Plaintiff Orth, Beau R
Plaintiff's Motion to Declare NRS 42.021 and NRS 41A.035 Unconstitutional
- 07/20/2015  Pre-Trial Disclosure
Party: Plaintiff Orth, Beau R
Plaintiff's Pre-Trial Disclosure Pursuant to NRCP 16.1(a)(3)
- 07/21/2015  Pre-trial Memorandum
Filed by: Plaintiff Orth, Beau R
Plaintiff's Pre-Trial Memorandum
- 07/21/2015  Pre-Trial Disclosure
Party: Defendant Capanna, MD, Albert H
Defendant Albert H. Capanna, M.D.'s Pretrial Disclosure Pursuant to NRCP 16.1(a)(3)
- 07/21/2015  Pre-Trial Disclosure
Party: Defendant Capanna, MD, Albert H
Defendant Albert H. Capanna, M.D.'s Supplemental Pretrial Disclosure Pursuant to NRCP 16.1(a)(3)
- 07/22/2015  Motion
Filed By: Plaintiff Orth, Beau R
Plaintiff's Motion for a Rebuttable Presumption Jury Instruction Pursuant to NRS 41A.100
- 07/22/2015  **Calendar Call** (9:00 AM) (Judicial Officer: Herndon, Douglas W.)
- 07/22/2015  Designation of Expert Witness
Filed By: Defendant Capanna, MD, Albert H
Supplemental Expert Witness Disclosure Statement of Defendant Albert H. Capanna, M.D.
- 07/23/2015  Pre-Trial Disclosure
Party: Defendant Capanna, MD, Albert H
Defendant Albert H. Capanna, M.D.'s Second Supplemental Pretrial Disclosure Pursuant to

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CASE NO. A-11-648041-C

NRCP 16.1(a)(3)

- 07/27/2015  Errata
Filed By: Defendant Capanna, MD, Albert H
Defendant Albert H. Capanna, M.D.'s Errata to Defendant Albert H. Capanna, M.D.'s Pretrial Disclosure and Supplemental Pretrial Disclosures
- 07/27/2015  Errata
Filed By: Defendant Capanna, MD, Albert H
Defendant Albert H. Capanna, M.D.'s Errata to Supplement to NRCP 16.1 Early Case Conference Disclosure of Witnesses and Documents
- 07/27/2015  Designation of Expert Witness
Filed By: Defendant Capanna, MD, Albert H
Supplemental Expert Witness Disclosure Statement of Defendant Albert H. Capanna, M.D.
- 07/27/2015  Pre-Trial Disclosure
Party: Defendant Capanna, MD, Albert H
Defendant Albert H. Capanna, M.D.'s Third Supplemental Pretrial Disclosure Pursuant to NRCP 16.1(a)(3)
- 07/27/2015  Supplemental
Filed by: Defendant Capanna, MD, Albert H
Defendant Albert H. Capanna, M.D.'s Supplement to NRCP 16.1 Early Case Conference Disclosure of Witnesses and Documents
- 07/28/2015  Motion
Filed By: Defendant Capanna, MD, Albert H
Defendant's Trial Brief and Motion to Limit Damages to those Caused by Acts of Alleged Negligence
- 07/28/2015  Motion
Filed By: Defendant Capanna, MD, Albert H
Defendant's Motion re Application of NRS 50.275 and to Exclude Testimony regarding Future Treatment and Surgery Made Without Scientific Basis
- 07/30/2015  Opposition to Motion
Filed By: Defendant Capanna, MD, Albert H
Defendant's Opposition to Plaintiff's Motion to Declare NRS 42.021 and NRS 41A.035 Unconstitutional
- 08/03/2015  Reply in Support
Filed By: Plaintiff Orth, Beau R
Plaintiff's Reply in Support of Omnibus Motion in Limine No. 1
- 08/03/2015  Reply in Support
Filed By: Plaintiff Orth, Beau R
Plaintiff's Reply in Support of Motion in Limine No. 5: to Allow Parties to Present a Jury Questionnaire Prior to Voir Dire
- 08/03/2015  Reply in Support
Filed By: Plaintiff Orth, Beau R
Plaintiff's Reply in Support of Motion in Limine No. 6: to Limit Defendant's Experts' Testimony to the Opinions and Bases Set Forth in Their Expert Reports
- 08/03/2015

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CASE NO. A-11-648041-C

-  Reply in Support
Filed By: Plaintiff Orth, Beau R
Plaintiff's Reply in Support of Motion in Limine No. 4: to Permit Treating Physicians to Testify as to Causation, Diagnosis, Prognosis, Future Treatment, and Extent of Disability Without a Formal Expert Report
- 08/03/2015  Objection
Filed By: Defendant Capanna, MD, Albert H
Defendant Albert H. Capanna, M.D.'s Objection to Plaintiff's Pretrial Disclosure Pursuant to NRCPC 16.1(a)(3)(c)
- 08/03/2015  **Status Check: Medical/Dental Malpractice (8:30 AM)** (Judicial Officer: Wiese, Jerry A.)
- 08/03/2015  Reply to Opposition
Filed by: Defendant Capanna, MD, Albert H
Reply to Opposition to Defendant's Motions in Limine
- 08/03/2015  Reply in Support
Filed By: Plaintiff Orth, Beau R
Plaintiff's Reply in Support of Motion in Limine No. 2: to Exclude Irrelevant and/or Unduly Prejudicial Information
- 08/03/2015  Reply in Support
Filed By: Plaintiff Orth, Beau R
Plaintiff's Reply in Support of Motion in Limine No. 3: to Exclude Prior Unrelated Medical Conditions
- 08/04/2015  Motion to Strike
Filed By: Plaintiff Orth, Beau R
Plaintiff's Motion to Strike Defendant's Untimely Disclosures on Order Shortening Time
- 08/07/2015  Opposition
Filed By: Plaintiff Orth, Beau R
Plaintiff's Opposition to Defendant's Trial Brief and Motion to Limit Damages to Those Caused by Acts of Alleged Negligence
- 08/07/2015  Opposition
Filed By: Plaintiff Orth, Beau R
Plaintiff's Opposition to Defendant's Motion Re Application of NRS 50.275 and to Exclude Testimony Regarding Future Treatment and Surgery Made Without Scientific Basis
- 08/07/2015  Reply to Opposition
Filed by: Plaintiff Orth, Beau R
Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion to Declare NRS 42.021 and NRS 41A.035 Unconstitutional
- 08/09/2015  Opposition and Countermotion
Filed By: Defendant Capanna, MD, Albert H
Defendant's Opposition to Plaintiff's Motion to Strike Untimely Disclosures and Counter-Motion to Exclude Improper "Supplemental" Disclosures and Claims for Future Damages
- 08/10/2015  Opposition to Motion
Filed By: Defendant Capanna, MD, Albert H
Defendant's Opposition to Plaintiff's Motion for a Rebuttable Presumption Jury Instruction Pursuant to NRS 41A.100

DEPARTMENT 3
CASE SUMMARY
CASE NO. A-11-648041-C

- 08/12/2015  Pre-trial Memorandum
Filed by: Defendant Capanna, MD, Albert H
Defendant Albert H. Capanna, M.D.'s Pre-Trial Memorandum
- 08/12/2015  Brief
Filed By: Defendant Capanna, MD, Albert H
Trial Brief re Limited Hearsay Exception for Statements Made to a Physician
- 08/12/2015  Brief
Filed By: Defendant Capanna, MD, Albert H
Defendant's Trial Brief re NRS 42.021 and Introduction of Evidence of Benefits Payable to Plaintiff; Requirement that Plaintiff Obtain Medical Insurance Pursuant to Affordable Care Act Which Will Cover Claimed Future Medical Costs; Request for Periodic Payments for Any Award for Future Damages Over \$50,000
- 08/12/2015  Reply to Opposition
Filed by: Defendant Capanna, MD, Albert H
Reply to Opposition to Defendant's Motion re Application of NRS 50.275 and to Exclude Testimony regarding Future Treatment and Surgery Made Without Scientific Basis
- 08/13/2015  Reply in Support
Filed By: Plaintiff Orth, Beau R
Plaintiff's Reply in Support of Motion for a Rebuttable Presumption Jury Instruction Pursuant to NRS 41A.100
- 08/13/2015  Reply in Support
Filed By: Plaintiff Orth, Beau R
Plaintiff's Reply in Support of Motion to Strike Untimely Disclosures and Opposition to Defendant's Counter-Motion to Exclude Improper "Supplemental" Disclosures and Claims for Future Damages
- 08/14/2015 **Omnibus Motion in Limine** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)
Defendant's Motions in Limine
- 08/14/2015 **Motion in Limine** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)
Plaintiff's Motion in Limine No. 2: to Exclude Irrelevant and/or Unduly Prejudicial Information
- 08/14/2015 **Motion in Limine** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)
Plaintiff's Motion in Limine No. 3: to Exclude Prior Unrelated Medical Conditions
- 08/14/2015 **Motion in Limine** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)
Plaintiff's Motion in Limine No. 4: Permit Treating Physicians to Testify as to Causation, Diagnosis, Prognosis, Future Treatment, and Extent of Disability Without a Formal Expert Report
- 08/14/2015 **Motion in Limine** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)
Plaintiff's Motion in Limine No. 6: to Limit Defendant's Experts' Testimony to the Opinions and Bases Set Forth in Their Expert Reports
- 08/14/2015 **Motion** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)
Plaintiff's Motion No. 5 to Allow Parties to Present a Jury Questionnaire Prior to Voir Dire
- 08/14/2015 **Omnibus Motion in Limine** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)
Plaintiff's Omnibus Motion in Limine No. 1
- 08/14/2015 **Motion** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)

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Plaintiff's Motion to Declare NRS 42.021 and NRS 41A.035 Unconstitutional

- 08/14/2015 **Motion** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)
Plaintiff's Motion for a Rebuttable Presumption Jury Instruction Pursuant to NRS 41A.100
- 08/14/2015 **Motion** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)
Defendant's Motion re Application of NRS 50.275 and to Exclude Testimony regarding Future Treatment and Surgery Made Without Scientific Basis
- 08/14/2015 **Motion** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)
Defendant's Trial Brief and Motion to Limit Damages to those Caused by Acts of Alleged Negligence
- 08/14/2015 **Motion to Strike** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)
Plaintiff's Motion to Strike Defendant's Untimely Disclosures on Order Shortening Time
- 08/14/2015 **Opposition and Countermotion** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)
Defendant's Opposition to Plaintiff's Motion to Strike Untimely Disclosures and Counter-Motion to Exclude Improper "Supplemental" Disclosures and Claims for Future Damages
- 08/14/2015  **All Pending Motions** (1:00 PM) (Judicial Officer: Herndon, Douglas W.)
- 08/17/2015 **CANCELED Jury Trial** (10:00 AM) (Judicial Officer: Herndon, Douglas W.)
Vacated
Med Mal Sweeps
- 08/19/2015  **Motion** (10:00 AM) (Judicial Officer: Herndon, Douglas W.)
08/19/2015-08/21/2015
Defendant's Trial Brief and Motion to Limit Damages to those Caused by Acts of Alleged Negligence
- 08/19/2015  **Jury Trial - FIRM** (10:30 AM) (Judicial Officer: Herndon, Douglas W.)
08/19/2015-08/21/2015, 08/24/2015-08/28/2015, 08/31/2015-09/02/2015
- 08/20/2015  Brief
Filed By: Plaintiff Orth, Beau R
Plaintiff's Trial Brief No. 1
- 08/21/2015  Receipt of Copy
Filed by: Plaintiff Orth, Beau R
Receipt of Copy
- 08/21/2015  Recorders Transcript of Hearing
Recorder's Partial Transcript of Proceedings: Jury Trial - Day 1 August 19, 2015
- 08/21/2015  Jury List
- 08/22/2015  Order
Filed By: Plaintiff Orth, Beau R
Order Regarding Plaintiff's Motion to Declare NRS 42.021 and NRS 41A.035 UnConstitutional
- 08/22/2015  Order
Filed By: Plaintiff Orth, Beau R
Order Regarding Plaintiff's Motion to Strike Untimely Disclosures on Order Shortening Time

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CASE SUMMARY
CASE NO. A-11-648041-C

08/25/2015  Brief
Filed By: Plaintiff Orth, Beau R
Plaintiff's Trial Brief No. 2 (regarding collections notices)

08/26/2015  Recorders Transcript of Hearing
Partial Transcript of Proceedings Trial by Jury - Day 3 Plaintiff's Opening Statements Only

08/26/2015  Media Request and Order
Party: Plaintiff Orth, Beau R
Media Request And Order Allowing Camera Access To Court Proceedings

08/26/2015  Media Request and Order
Party: Plaintiff Orth, Beau R
Media Request And Order Allowing Camera Access To Court Proceedings

08/27/2015  Jury Instructions
Party: Plaintiff Orth, Beau R
Plaintiff's Amended Proposed Jury Instructions

08/27/2015  Jury Instructions
Party: Plaintiff Orth, Beau R
Plaintiff's Proposed Jury Instructions

08/27/2015  Recorders Transcript of Hearing
Transcript of Proceedings Jury Trial - Testimony of Dr. Allan Belzberg August 24, 2015

08/28/2015  Recorders Transcript of Hearing
Transcript of Proceedings Excerpt of Jury Trial 4 Testimony of Andrw Cash August 24, 2015

08/31/2015  Recorders Transcript of Hearing
Recorder's Transcript of Proceedings Jury Trial - Testimony of Dr. Frank Yoo August 25, 2015

08/31/2015  Jury Instructions
Party: Defendant Capanna, MD, Albert H
Defendant's Proposed Jury Instructions

09/01/2015  Amended Jury List
Amended Jury

09/01/2015  Jury Instructions

09/02/2015  Recorders Transcript of Hearing
Recorder's Transcript Re: All Pending Motions 08/14/15

09/02/2015  Recorders Transcript of Hearing
Recorder's Transcript of Jury Trial - Day 8; Testimony of Albert Capanna 08-28-15

09/02/2015  Jury Verdict

09/02/2015  Request
Request for Application of N.R.S. 41A.035, N.R.S. 42.021

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CASE SUMMARY
CASE NO. A-11-648041-C

- 09/09/2015  Ex Parte Application
Party: Defendant Capanna, MD, Albert H
Defendant's Ex Parte Application for Motion to Stay Entry of Judgment Pending Motion to Apply Provisions of NRS 41A.035 and NRS. 42.021
- 09/11/2015  Recorders Transcript of Hearing
Party: Plaintiff Orth, Beau R
Partial Transcript of Proceedings Trial by Jury Day 9, Direct Examination of Dr. Marc Kaye Only August 31, 2015
- 09/11/2015  Recorders Transcript of Hearing
Party: Plaintiff Orth, Beau R
Partial Transcript of Proceedings Trial by Jury Day 10, Plaintiff's Rebuttal Closing Statements Only Septembe 1, 2015
- 09/25/2015  Opposition
Filed By: Plaintiff Orth, Beau R
Plaintiff's Opposition to Defendant's Ex Parte Application for Motion to Stay Entry of Judgment Pending Motion to Apply Provisions of NRS 41A.035 and NRS 42.021
- 10/01/2015  Memorandum of Costs and Disbursements
Filed By: Plaintiff Orth, Beau R
Plaintiff's Memorandum of Costs and Disbursements
- 10/02/2015  Notice of Intent
Filed By: Defendant Capanna, MD, Albert H
Notice of Intend to File Motion to Retax and Settle the Costs
- 10/06/2015  Motion to Retax
Filed By: Defendant Capanna, MD, Albert H
Motion to Retax and Settle the Costs
- 10/14/2015  **Motion to Stay** (9:00 AM) (Judicial Officer: Herndon, Douglas W.)
Defendant's Ex Parte Application for Motion to Stay Entry of Judgment Pending Motion to Apply Provisions of NRS 41A.035 and NRS. 42.021
- 10/23/2015  Motion
Filed By: Defendant Capanna, MD, Albert H
Motion for Application of NRS 41A.035, NRS 42.021
- 10/26/2015  Judgment on Jury Verdict
Filed By: Plaintiff Orth, Beau R
Judgment Upon the Jury Verdict
- 10/26/2015 **Judgment Plus Legal Interest** (Judicial Officer: Herndon, Douglas W.)
Debtors: Albert H Capanna, MD (Defendant)
Creditors: Beau R Orth (Plaintiff)
Judgment: 10/26/2015, Docketed: 11/02/2015
Total Judgment: 4,659,490.49
- 10/27/2015  Objection
Filed By: Defendant Capanna, MD, Albert H
Defendant Albert H. Capanna, M.D.'s Objection to Judgment on the Jury Verdict

DEPARTMENT 3
CASE SUMMARY
CASE NO. A-11-648041-C

- 10/27/2015  Opposition
Filed By: Plaintiff Orth, Beau R
Plaintiff's Opposition to Defendant's Motion to Retax and Settle the Costs
- 10/28/2015  Notice of Entry of Judgment
Filed By: Plaintiff Orth, Beau R
Notice of Entry of Order
- 10/30/2015  Reply to Opposition
Filed by: Defendant Capanna, MD, Albert H
Defendant's Reply to Plaintiff's Opposition to Defendant's Motion to Retax and Settle The Costs
- 11/04/2015  Opposition
Filed By: Plaintiff Orth, Beau R
Plaintiff's Opposition to Defendant's Motion for Application of NRS 41A.035 [AND] NRS 42.021
- 11/09/2015  **Motion to Retax** (3:00 AM) (Judicial Officer: Herndon, Douglas W.)
Defendant's Motion to Retax and Settle the Costs
- 11/09/2015  Motion for New Trial
Filed By: Defendant Capanna, MD, Albert H
Defendant's Motion for New Trial, or In The Alternative, For Amendment of Judgment
- 11/10/2015  Recorders Transcript of Hearing
Partial Transcript of Proceedings Trial by Jury Day 3 August 21, 2015
- 11/11/2015  Reply to Opposition
Filed by: Defendant Capanna, MD, Albert H
Reply to Opposition to Motion for Application of N.R.S. 41A.035 and N.R.S. 42.021
- 11/12/2015  Notice of Association of Counsel
Filed By: Defendant Capanna, MD, Albert H
Notice of Association of Counsel
- 11/16/2015  Motion for Attorney Fees
Filed By: Plaintiff Orth, Beau R
Plaintiff's Motion for Attorney's Fees
- 11/16/2015  Recorders Transcript of Hearing
Recorder's Partial Transcript of Proceedings Jury Trial Day 4; Bench Conferences and Testimony of Andrew Cash Not Previously Transcribed August 24, 2015
- 11/16/2015  Recorders Transcript of Hearing
Recorder's Partial Transcript of Proceedings Jury Trial Day 5; Bench Conferences and Proceedings Not Previously Transcribed August 25, 2015
- 11/16/2015  Recorders Transcript of Hearing
Recorder's Transcript of Proceedings Jury Trial Day 6 August 26, 2015
- 11/16/2015  Recorders Transcript of Hearing
Recorder's Transcript of Proceedings Jury Trial Day 7 August 27, 2015

DEPARTMENT 3
CASE SUMMARY
CASE NO. A-11-648041-C

- 11/17/2015  Recorders Transcript of Hearing
Recorder's Partial Transcript of Proceedings Jury Trial Day 8 August 28, 2015
- 11/17/2015  Recorders Transcript of Hearing
Recorder's Partial Transcript of Proceedings Jury Trial Day 9 August 31, 2015
- 11/18/2015 **Motion** (9:00 AM) (Judicial Officer: Herndon, Douglas W.)
Argument: Motions
- 11/18/2015 **Motion** (9:00 AM) (Judicial Officer: Herndon, Douglas W.)
11/18/2015, 12/16/2015
Defendant's Motion for Application of NRS 41A.035, NRS 42.021
- 11/18/2015  **All Pending Motions** (9:00 AM) (Judicial Officer: Herndon, Douglas W.)
- 11/18/2015  Recorders Transcript of Hearing
Recorder's Transcript of Proceedings Jury Trial, Day 11, September 2, 2015
- 11/18/2015  Recorders Transcript of Hearing
Recorder's Transcript of Proceedings Defendant's Ex Parte Application for Motion to Stay Entry of Judgment Pending Motion to Apply Provisions of NRS 41A.035 and NRS 42.021, October 14, 2015
- 11/23/2015  Recorders Transcript of Hearing
Transcript of Proceedings Jury Trial Day 10 September 1, 2015
- 12/01/2015  Order
Filed By: Plaintiff Orth, Beau R
Order Regarding Plaintiff's Motions in Limine
- 12/02/2015  Opposition
Filed By: Defendant Capanna, MD, Albert H
Opposition to Motion for Attorney's Fees
- 12/02/2015  Opposition
Filed By: Plaintiff Orth, Beau R
Plaintiff's Opposition to Defendant's Motion for New Trial, or in the Alternative For Amendment of Judgment
- 12/03/2015  Notice of Entry of Order
Filed By: Plaintiff Orth, Beau R
Notice of Entry of Order
- 12/10/2015  Stipulation and Order
Filed by: Defendant Capanna, MD, Albert H
Stipulation and Order to Continue Hearings
- 12/11/2015  Reply to Opposition
Filed by: Defendant Capanna, MD, Albert H
Defendant's Reply to Opposition to Motion for New Trial, or in the Alternative, For Amendment of Judgment
- 12/15/2015  Reply in Support
Filed By: Plaintiff Orth, Beau R

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Plaintiff's Reply in Support of Motion for Attorney's Fees

12/16/2015 **Motion for New Trial** (9:00 AM) (Judicial Officer: Herndon, Douglas W.)
Defendant's Motion for New Trial, or In The Alternative, For Amendment of Judgment

12/16/2015  **All Pending Motions** (9:00 AM) (Judicial Officer: Herndon, Douglas W.)

12/21/2015  **Motion for Attorney Fees and Costs** (3:00 AM) (Judicial Officer: Herndon, Douglas W.)
Plaintiff's Motion for Attorney Fees and Costs

12/23/2015  **Recorders Transcript of Hearing**
Recorder's Transcript of Defendant's Motion for New Trial, or in the Alternative, for Amendment of Judgment; and Defendant's Motion for Application fo NRS 41A.035, NRS 42.021

01/28/2016  **Amended Judgment**
Filed By: Plaintiff Orth, Beau R
Amended Judgment Upon the Jury Verdict

01/28/2016 **Amended Verdict** (Judicial Officer: Herndon, Douglas W.)
Debtors: Albert H Capanna, MD (Defendant)
Creditors: Beau R Orth (Plaintiff)
Judgment: 01/28/2016, Docketed: 09/04/2015
Total Judgment: 941,435.34

02/01/2016 **CANCELED Status Check: Medical/Dental Malpractice** (8:30 AM) (Judicial Officer: Wiese, Jerry A.)
Vacated

02/03/2016  **Notice of Entry of Judgment**
Filed By: Plaintiff Orth, Beau R
Notice of Entry of Judgment

02/10/2016  **Order**
Filed By: Defendant Capanna, MD, Albert H
Order Regarding Defendant's Motion for New Trial, or in the Alternative, for Amendment of Judgment

02/10/2016  **Order**
Filed By: Defendant Capanna, MD, Albert H
Order Regarding Defendant's Motion for Application of NRS 41A.035 and 42.021

02/11/2016  **Notice of Entry of Order**
Filed By: Defendant Capanna, MD, Albert H
Notice of Entry of Order

02/11/2016  **Notice of Entry of Order**
Filed By: Defendant Capanna, MD, Albert H
Notice of Entry of Order

03/04/2016  **Motion to Strike**
Filed By: Plaintiff Orth, Beau R
Plaintiff's Motion to Strike New Arguments and Law Raised in Defendant's Reply Related to His Motion for New Trial on Order Shortening Time

03/04/2016

DEPARTMENT 3
CASE SUMMARY
CASE NO. A-11-648041-C

 Receipt of Copy
Filed by: Plaintiff Orth, Beau R
Receipt of Copy

03/07/2016  Notice of Appeal
Filed By: Defendant Capanna, MD, Albert H
Notice of Appeal

03/07/2016  Case Appeal Statement
Filed By: Defendant Capanna, MD, Albert H
Case Appeal Statement

03/07/2016  Notice of Filing Cost Bond
Filed By: Defendant Capanna, MD, Albert H
Notice of Cost Bond

03/08/2016  Opposition
Filed By: Defendant Capanna, MD, Albert H
Opposition to Motion to Strike

03/15/2016  Reply in Support
Filed By: Plaintiff Orth, Beau R
Plaintiff's Reply in Support of Motion to Strike New Arguments and Law Raised in Defendant's Reply Related to His Motion for New Trial on Order Shortening Time

03/16/2016  **Motion to Strike** (9:00 AM) (Judicial Officer: Herndon, Douglas W.)
Plaintiff's Motion to Strike New Arguments and Law Raised in Defendant's Reply Related to His Motion for New Trial on Order Shortening Time

03/21/2016  Notice of Appeal
Filed By: Plaintiff Orth, Beau R
Notice of Cross-Appeal

03/21/2016  Case Appeal Statement
Filed By: Plaintiff Orth, Beau R
Plaintiff's Cross-Appeal Statement

04/01/2016  Notice of Posting Bond
Filed By: Defendant Capanna, MD, Albert H
Notice of Filing Supersedeas Bond

04/15/2016  Order Granting Motion
Filed By: Plaintiff Orth, Beau R
Order Granting Plaintiff's Motion for Attorney's Fees

04/15/2016 **Order** (Judicial Officer: Herndon, Douglas W.)
Debtors: Albert H Capanna, MD (Defendant)
Creditors: Beau R Orth (Plaintiff)
Judgment: 04/15/2016, Docketed: 04/22/2016
Total Judgment: 169,989.58

04/18/2016  Notice of Entry of Order
Filed By: Plaintiff Orth, Beau R
Notice of Entry of Order

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04/18/2016	 Amended Case Appeal Statement <i>Supplemental Case Appeal Statement</i>
04/18/2016	 Amended Notice of Appeal <i>Supplemental Notice of Appeal</i>
04/21/2016	 Order Filed By: Plaintiff Orth, Beau R <i>Order Regarding Defendant's Motion to Retax and Settle the Costs</i>
04/21/2016	Order (Judicial Officer: Herndon, Douglas W.) Debtors: Albert H Capanna, MD (Defendant) Creditors: Beau R Orth (Plaintiff) Judgment: 04/21/2016, Docketed: 04/28/2016 Total Judgment: 123,322.20
04/25/2016	 Notice of Entry of Order Filed By: Plaintiff Orth, Beau R <i>Notice of Entry of Order</i>
04/28/2016	 Order to Statistically Close Case <i>Civil Order to Statistically Close Case</i>
05/02/2016	 Supplemental Filed by: Defendant Capanna, MD, Albert H <i>Second Supplemental Notice of Appeal</i>
05/02/2016	 Supplemental Filed by: Defendant Capanna, MD, Albert H <i>Second Supplemental Case Appeal Statement</i>
05/11/2016	 Notice of Entry of Order Filed By: Plaintiff Orth, Beau R <i>Notice of Entry of Order</i>

CIVIL COVER SHEET

A - 1 1 - 6 4 8 0 4 1 - C

Clark County, Nevada

Case No. _____

(Assigned by Clerk's Office)

XXVII

I. Party Information

Plaintiff(s) (name/address/phone): BEAU R. ORTH

Defendant(s) (name/address/phone): ALBERT H. CAPANNA, MD

Attorney (name/address/phone):

Dennis M. Prince, Prince & Keating, 3230 S. Buffalo Drive,
Suite 108, Las Vegas, Nevada 89117 (702) 228-6800

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

Arbitration Requested

Civil Cases

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence – Auto <input checked="" type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
<input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

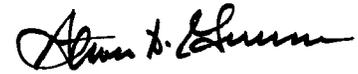
III. Business Court Requested (Please check applicable category, for Clark or Washoe Counties only.)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

09/8/11

Date

Signature of initiating party or representative



CLERK OF THE COURT

EGLET PRINCE

1 **ORDR**
2 **DENNIS M. PRINCE, ESQ.**
3 Nevada Bar No.: 5092
4 **TRACY A. EGLET, ESQ.**
5 Nevada Bar No.: 6419
6 **DANIELLE TARMU, ESQ.**
7 Nevada Bar No.: 11727
8 **EGLET PRINCE**
9 400 South Seventh Street, #400
10 Las Vegas, Nevada 89101
11 *eservice@egletlaw.com*
12 (702) 450-5400 phone
13 (702) 450-5451 facsimile
14 Attorneys for Plaintiff
15 *Beau R. Orth*

11 **DISTRICT COURT**
12
13 **CLARK COUNTY, NEVADA**

14 **BEAU R. ORTH,**

15 Plaintiff,

16 vs.

17 **ALBERT H. CAPANNA, M.D.;**
18 **DOES I through X; ROE BUSINESS**
19 **ENTITIES I through X, inclusive,**

20 Defendants.

CASE NO. : A-11-648041-C
DEPT. NO. : III

ORDER REGARDING DEFENDANT'S
MOTION TO RETAX AND SETTLE
THE COSTS

21
22 Plaintiff **BEAU ORTH**, after prevailing at trial, filed Memorandum of Costs and
23 Disbursements, and Defendant **ALBERT H. CAPANNA, M.D.** filed a Motion to Retax and
24 Settle the Costs, which was heard in Chambers on November 9, 2015. The Court, having read
25 the papers and pleadings on file herein, hereby **GRANTS IN PART AND DENIES IN PART**
26 Defendant's Motion to Retax and Settle the Costs, awarding total costs of \$123,322.20 as
27 follows:
28

1 This Court finds that a party who prevails in an action is entitled to move for its costs.
2 See Nev. Rev. Stat. 18.020. Here, having prevailed at the conclusion of a jury trial, Plaintiff is
3 a prevailing party and is entitled to statutory costs per NRS 18.005 and 18.020. Having
4 reviewed the Memorandum of Costs and accompanying documentation on file, and having
5 evaluated the requested costs in light of *Berasini v. PETA*, 114 Nev. 1348 (1998), the Court
6 **HEREBY ORDERS** that utilizing the eight categories in Plaintiff's memorandum of costs,
7 costs will be awarded in full as requested for the following categories of costs:

8
9 Category (1) In House Expenses (which includes copies, postage, courier and long
10 distance costs) - \$5,026.53;

11
12 Category (3) Expert Fees - \$69,975.95. The Court specifically finds that all named
13 experts were necessary to Plaintiff's case, and exceeding the statutory amounts is justified and
14 reasonable for Dr. Yoo and Dr. Cash based on their roles in the litigation;

15 Category (4) Express Mail - \$172.31;

16 Category (5) Investigation/Service - \$528.48;

17 Category (6) Medical/Financial Records - \$2,055.90; and

18 Category (8) Travel Expenses - \$488.00.

19
20 Regarding Category (2) Deposition Expenses, the Court finds that the TrialSmith
21 charge of \$868.00 and the Turner Reporting charge of \$372.25 are unjustified and the total
22 amount awarded for that category will be \$4,679.75.

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Regarding Category (7) Misc. Expenses/Court Fees, the Court notes that Plaintiff withdrew its meal cost request so that category will be reduced to a total award of \$40,395.28.

The Court **HEREBY GRANTS IN PART AND DENIES IN PART** Defendant's Motion to Retax and Settle the Costs and **ORDERS** that the total costs allowed to Plaintiff, as prevailing party, be reduced to \$123,322.20.

Dated this 18 day of ^{April} March, 2016.


DISTRICT COURT JUDGE

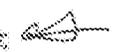
DATED this 8 day of ^{April} March, 2016.

Respectfully Submitted By:

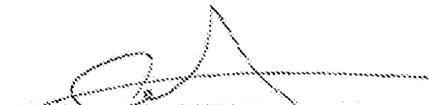
EGLET PRINCE

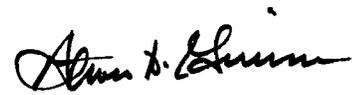

DENNIS M. PRINCE, ESQ.
Nevada Bar No. 5092
TRACY A. EGLET, ESQ.
Nevada Bar No. 6419
DANIELLE TARMU, ESQ.
Nevada Bar No.: 11727
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
Attorneys for Plaintiff

DATED this 3 day of March, 2016.

Approved as to Form and ~~Content~~ 

LAURIA TOKUNAGA GATES & LINN


ANTHONY D. LAURIA, ESQ.
Nevada Bar No. 4114
PAUL A. CARDINALE, ESQ.
Nevada Bar No.: 8394
601 South Seventh Street, 2nd Floor
Las Vegas, Nevada 89101
Attorneys for Defendant



CLERK OF THE COURT

1 **NEOJ**
2 DENNIS M. PRINCE, ESQ.
3 Nevada Bar No. 5092
4 TRACY A. EGLET, ESQ.
5 Nevada Bar No. 6419
6 DANIELLE TARMU, ESQ.
7 Nevada Bar No. 11727
8 **EGLET PRINCE**
9 400 South Seventh Street, #400
10 Las Vegas, Nevada 89101
11 *eservice@egletlaw.com*
12 (702) 450-5400 phone
13 (702) 450-5451 facsimile

14 Attorneys for Plaintiff
15 *Beau R. Orth*

11
12 **DISTRICT COURT**
13
14 **CLARK COUNTY, NEVADA**

14 **BEAU R. ORTH,**
15
16 **Plaintiff,**

17 vs.

18 **ALBERT H. CAPANNA, M.D.;**
19 **DOES I through X; ROE BUSINESS**
20 **ENTITIES I through X, inclusive,**
21
22 **Defendants.**

CASE NO. : A-11-648041-C
DEPT. NO. : III

NOTICE OF ENTRY OF ORDER

EGLET PRINCE


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PLEASE TAKE NOTICE that an Order Regarding Defendant's Motion to Retax and Settle the Costs was signed on April 18, 2016 and entered in the above-entitled action on April 21, 2016, a copy of which is attached hereto as **Exhibit "1."**

Respectfully submitted this 25th day of Aril, 2016.

EGLET PRINCE
/s/ Danielle Tarmu
DENNIS M. PRINCE, ESQ.
Nevada Bar No.: 5092
TRACY A. EGLET, ESQ.
Nevada Bar No.: 6419
DANIELLE TARMU, ESQ.
Nevada Bar No.: 11727
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

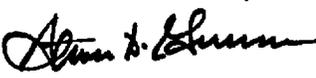
Pursuant to NRCP 5(b), I certify that I am an employee of EGLET PRINCE, and that on April 25th, 2016, I caused the foregoing document entitled **NOTICE OF ENTRY OF ORDER** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

Anthony D. Lauria, Esq.
Kimberly L. Johnson, Esq.
LAURIA, TOKUNAGA GATES &
LINN, LLP
601 South Seventh Street
2nd Floor
Las Vegas, NV 89101
Office: (702) 387-8633
Fax: (702) 387-8635
Alauria@ltglaw.net
Kjohnson@ltglaw.net
Attorneys for Defendant
Albert H. Capanna, M.D.

Robert L. Eisenberg, Esq.
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Suite 300
Reno Nevada 89519
rle@lge.net
Attorneys for Defendant
Albert H. Capanna, M.D.

/s/ Brittney Glover
an Employee of EGLET PRINCE

EXHIBIT “1”



CLERK OF THE COURT

EGLET PRINCE

1 **ORDER**
 2 **DENNIS M. PRINCE, ESQ.**
 Nevada Bar No.: 5092
 3 **TRACY A. EGLET, ESQ.**
 Nevada Bar No.: 6419
 4 **DANIELLE TARMU, ESQ.**
 Nevada Bar No.: 11727
 5 **EGLET PRINCE**
 6 400 South Seventh Street, #400
 Las Vegas, Nevada 89101
 7 *eservice@egletlaw.com*
 (702) 450-5400 phone
 8 (702) 450-5451 facsimile
 9 Attorneys for Plaintiff
Beau R. Orth

DISTRICT COURT

CLARK COUNTY, NEVADA

BEAU R. ORTH,

Plaintiff,

vs.

ALBERT H. CAPANNA, M.D.;
DOES I through X; ROE BUSINESS
ENTITIES I through X, inclusive,

Defendants.

CASE NO. : A-11-648041-C
DEPT. NO. : III

ORDER REGARDING DEFENDANT'S
MOTION TO RETAX AND SETTLE
THE COSTS

21

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EGLET PRINCE

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Regarding Category (7) Misc. Expenses/Court Fees, the Court notes that Plaintiff withdrew its meal cost request so that category will be reduced to a total award of \$40,395.28.

The Court **HEREBY GRANTS IN PART AND DENIES IN PART** Defendant's Motion to Retax and Settle the Costs and **ORDERS** that the total costs allowed to Plaintiff, as prevailing party, be reduced to \$123,322.20.

Dated this 18 day of ^{April} March, 2016.

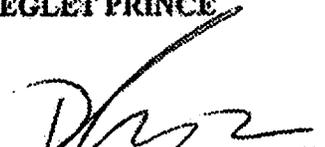

DISTRICT COURT JUDGE

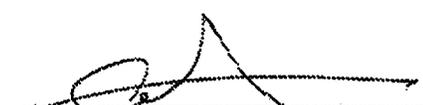
DATED this 8 day of ^{April} March, 2016.

DATED this 3 day of March, 2016.

Respectfully Submitted By:
EGLET PRINCE

Approved as to Form and Content: 
LAURIA TOKUNAGA GATES & LINN


DENNIS M. PRINCE, ESQ.
Nevada Bar No. 5092
TRACY A. EGLET, ESQ.
Nevada Bar No. 6419
DANIELLE TARMU, ESQ.
Nevada Bar No.: 11727
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
Attorneys for Plaintiff


ANTHONY D. LAURIA, ESQ.
Nevada Bar No. 4114
PAUL A. CARDINALE, ESQ.
Nevada Bar No.: 8394
601 South Seventh Street, 2nd Floor
Las Vegas, Nevada 89101
Attorneys for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

August 08, 2012

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

**August 08, 2012 9:00 AM Status Check:
Medical/Dental
Malpractice**

HEARD BY: Cory, Kenneth **COURTROOM:** Complex Litigation Center
Wiese, Jerry A.

COURT CLERK: Dulce Romea
Alice Jacobson
Sharon Coffman
Aaron Carbajal
Vanessa Ward

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Attorney(s) present: Michael Kane and John Cotton.

The Med-Mal Status Check was conducted by a panel consisting of Judges Jerry A. Wiese II and Kenneth C. Cory. Pursuant to EDCR 1.30, due to unavailability of the court or counsel, CHIEF JUDGE ORDERED case is REASSIGNED to Dept. 12.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

February 05, 2013

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

**February 05, 2013 1:00 PM Status Check:
Medical/Dental
Malpractice**

HEARD BY: Wiese, Jerry A.

COURTROOM: Complex Litigation Center

COURT CLERK: Alice Jacobson
Sylvia Perez
Andrea Natali
Katrina Hernandez
Michelle Jones

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Appearances by: Adam Schneider and Michael Kane.

The Med-Mal Status Check was conducted by Judge Jerry A. Wiese II. Colloquy regarding status of the case. COURT ORDERED, matter SET for trial and CONTINUED to next Med-Mal Status Check.

2/3/14 1:00 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

August 06, 2013

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

**August 06, 2013 9:00 AM Status Check:
Medical/Dental
Malpractice**

HEARD BY: Wiese, Jerry A.

COURTROOM: Complex Litigation Center

COURT CLERK: Sylvia Perez
Alice Jacobson
Sharon Coffman
Teresa Slade
Keri Cromer

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Attorneys present: Adam Schneider and Evan Schwab

The Med-Mal Status Check was conducted by Judge Jerry A. Wiese II. Colloquy regarding status of the case. COURT ORDERED, trial date VACATED AND RESET. Pursuant to EDCR 1.30, due to the unavailability of the Dept. or counsel, CHIEF JUDGE ORDERED, case TRANSFERRED to Dept. 3. FURTHER, matter SET on next Med-Mal Status Check.

1/6/14 1:30 PM JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

February 04, 2014

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

February 04, 2014 8:30 AM **Status Check:**
Medical/Dental
Malpractice

HEARD BY: Wiese, Jerry A. **COURTROOM:** Complex Litigation Center

COURT CLERK: Sylvia Perez
Alice Jacobson
Sharon Coffman
Athena Trujillo
Melissa Murphy
Andrea Natali

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- Parties Present: Garnet Beal, Adam Schneider

Colloquy regarding status of the case and Trial setting. Parties anticipated 5 days for trial. COURT ORDERED, matter SET for trial and CONTINUED to next Med-Mal Status Check.

10/13/14 JURY TRIAL (DEPT 03)

CLERK'S NOTE: Court inadvertently gave an inaccurate trial date set for 10/12/14, the above minute order has been AMENDED to reflect the correct trial setting for Department 03.// mm 02/07/14

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

August 12, 2014

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

August 12, 2014 8:30 AM Status Check:
Medical/Dental
Malpractice

HEARD BY: Wiese, Jerry A. COURTROOM: Complex Litigation Center

COURT CLERK: Keri Cromer
Alice Jacobson
Michelle Jones
Melissa Murphy
Andrea Natali

RECORDER:

REPORTER:

PARTIES

PRESENT: Beal, Garnet E. Attorney
 Lauria, Anthony D Attorney

JOURNAL ENTRIES

- The Med-Mal Status Check was conducted by Judge Jerry A. Wiese II. Mr. Lauria stated he filed a motion for a new trial setting; anticipated 8 days for trial. COURT ORDERED, trial date VACATED and RESET. DIRECTED, counsel to meet with Commissioner Bulla.

3/30/15 - JURY TRIAL MEDICAL MALPRACTICE (SET DURING SWEEPS) (DEPT. 3)

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

August 12, 2014

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

August 12, 2014 8:30 AM Status Check: Discovery

HEARD BY: Bulla, Bonnie COURTROOM: Complex Litigation Center

COURT CLERK: Jennifer Lott

RECORDER:

REPORTER:

PARTIES

PRESENT: Beal, Garnet E. Attorney
 Lauria, Anthony D Attorney

JOURNAL ENTRIES

- Dept. 3; March 30, 2015 Trial date. COMMISSIONER RECOMMENDED, discovery cutoff EXTENDED to 1/9/2015; adding parties, amended pleadings, and initial expert disclosures DUE 10/9/14; rebuttal expert disclosures DUE 11/10/14; FILE dispositive motions by 2/9/2015. Mr. Beal confirmed Pltf had additional treatment two months ago.

Mr. Lauria to prepare the Report and Recommendations, and Mr. Beal to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Mr. Lauria to appear at status check hearing to report on the Report and Recommendations.

9/12/14 11:00 a.m. Status Check: Compliance

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

February 03, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

February 03, 2015 8:30 AM **Status Check:**
Medical/Dental
Malpractice

HEARD BY: Wiese, Jerry A. COURTROOM: RJC Courtroom 10D

COURT CLERK: Alice Jacobson
Treva Palmer
Tena Jolley
Michelle Jones
Keri Cromer

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- Attorneys present: Richard Englemann and Paul Cardinale

The Med-Mal Status Check was conducted by Judge Jerry A. Wiese II. Colloquy regarding status of case. COURT ORDERED, trial date VACATED and RESET due to the unavailability of the Dept. or counsel. FURTHER , matter SET on next Med-Mal Status Check.

8/17/2015: MED-MAL JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

February 03, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

February 03, 2015 8:30 AM Status Check: Discovery

HEARD BY: Bulla, Bonnie COURTROOM: RJC Jury Deliberation Room
10th Floor - North

COURT CLERK: Jennifer Lott

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- Attorneys present: Richard Englemann and Paul Cardinale.

Dept. 3; 8/17/15 Trial date. Commissioner previously Recused from this case. Mr. Englemann stated deposition clean up is needed, and Dr. Capanna's deposition is still needed. COMMISSIONER RECOMMENDED, discovery cutoff EXTENDED to 5/29/15; FILE dispositive motions by 6/29/15.

Mr. Cardinale to prepare the Report and Recommendations, and Mr. Englemann to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Mr. Cardinale to appear at status check hearing to report on the Report and Recommendations.

3/6/15 11:00 a.m. Status Check: Compliance

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

July 22, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

July 22, 2015 9:00 AM Calendar Call

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Shelly Landwehr

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT: Lauria, Anthony D Attorney
 Prince, Dennis M Attorney

JOURNAL ENTRIES

- Parties announced ready for trial. Mr. Prince stated his expert would need to be on early in the trial and requested jury selection begin on 8/19/15 with witnesses to start on 8/24/15. Mr. Lauria expressed concern stating there are six surgeons that will be testifying. Representations by Mr. Lauria regarding defendant's upcoming motion. Colloquy. COURT ORDERED, trial date VACATED and RESET. FURTHER, all current pending motions RESCHEDULED to 8/10/15.

08/10/15 1:00 PM ALL PENDING MOTIONS

08/19/15 10:30 AM JURY TRIAL (FIRM)

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

August 03, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

August 03, 2015 8:30 AM Status Check:
Medical/Dental
Malpractice

HEARD BY: Wiese, Jerry A. COURTROOM: RJC Courtroom 15D

COURT CLERK: Alice Jacobson
Shelley Boyle
Cynthia Molerres
Natalie Ortega
Robin Thomas

RECORDER:

REPORTER:

PARTIES

PRESENT: Lauria, Anthony D Attorney
 Prince, Dennis M Attorney

JOURNAL ENTRIES

- The Med-Mal Status Check was conducted by Judge Jerry A. Wiese II. Colloquy regarding status of the case. COURT ORDERED, trial date STANDS, matter SET on next Med-Mal Status Check.

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

August 14, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

August 14, 2015 1:00 PM All Pending Motions

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16A

COURT CLERK: Alan Castle

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

JOURNAL ENTRIES

- Plaintiff's Omnibus Motion in Limine No. 1
Item #1 Court Finds Hypothetical medicals are okay if based on something that will be explained later in the case by the evidence or if there is some reasonable inference to what is in the plaintiff s medical records.

#2 Exclude Reference to Plaintiff being a malingerer, magnifying symptoms or manifesting secondary gain motives COURT ORDERED, GRANTED;

#3 Exclude Reference to Defense Medical Examiners as "Independent." COURT ORDERED, GRANTED;

#4 COURT Finds it not improper to say Plaintiff is asking for more than what the "evidence" suggests, however, not proper to for an amount less that Plaintiff expect to receive. COURT ORDERED, GRANTED;

#5 Exclude reference to taxation. No opposition. COURT ORDERED, GRANTED;

#6 Exclude reference to treating physicians on unrelated cases. COURT Finds if similar not unfair to ask about treating practices and being retained as an expert, but not appropriate to ask number of times expert worked counsel. COURT ORDERED, GRANTED IN PART / DENIED IN PART

#7 Exclude collateral sources. Addressed. COURT ORDERED, DENIED WITHOUT PREJUDICE.

Defendant's [Omnibus] Motions in Limine

#1 Exclude evidence relating to malpractice insurance coverage - COURT ORDERED, GRANTED;

#2 Exclude evidence relating to other claims - COURT admonished counsel and Finds sometimes regardless of the case, the witness will infer just by talking and make irrelevant statements. COURT ORDERED, GRANTED;

#3 Exclude evidence relating to Plaintiff's Nevada State Board of Medical Examiners' Complaint COURT ORDERED, GRANTED;

#4 Exclude evidence from Plaintiff's expert's report and testimony regarding Nevada Board of Medical Examiner's Complaint. COURT ORDERED, GRANTED

#5 Seek permission from Court during opening for demonstratives that are not stipulated; or Court and parties must go over beforehand; especially proposed evidence;

#6 Exclude evidence of claims for lost wages. No opposition. COURT ORDERED, GRANTED;

#7 Exclude evidence relating to medical matter by Plaintiff or lay witness. COURT ORDERED, GRANTED;

#8 Exclude evidence relating to the residence of defense counsel. No opposition. COURT ORDERED, GRANTED;

#9 Exclude evidence of alleged acts of negligence not the legal and proximate cause of harm to Plaintiff. COURT ORDERED, GRANTED;

#10 Exclude personal opinions and preferences of Plaintiff's experts. COURT ORDERED, GRANTED;

#11 Exclude opinions by Plaintiff's expert other than those provided at deposition, or, contained in expert's report. COURT Finds it would not be proper to supplement opinion at trial unless there is notice pursuant to the rules. COURT ORDERED, CONDITIONALLY GRANTED;

#12 Exclude testimony from an untimely identified expert witness. No opposition. COURT ORDERED, GRANTED;

#13 Sequence of testifying witness. COURT Finds asking generally who will be testifying is helpful for smoother flow and schedule planning. COURT ORDERED, GRANTED;

#14 Exclusionary rule INVOKED.

#15 COURT Finds there will be considerable 'crossover' based on the variety of medical disciplines, which is not necessarily cumulative as much as a different perspective. COURT ORDERED, GRANTED;

#16 Exclude reference to failure to call a doctor or witness. COURT Finds there may be comment from both sides if relevant to the case. COURT ORDERED, DENIED.

- Plaintiff's Motion in Limine No. 2: to Exclude Irrelevant and/or Unduly Prejudicial Information
COURT ORDERED, GRANTED.

Plaintiff's Motion in Limine No. 3: to Exclude Prior Unrelated Medical Conditions
COURT ORDERED, GRANTED.

Plaintiff's Motion in Limine No. 4: Permit Treating Physicians to Testify as to Causation, Diagnosis, Prognosis, Future Treatment, and Extent of Disability Without a Formal Expert Report
COURT ORDERED, GRANTED.

Plaintiff's Motion No. 5 to Allow Parties to Present a Jury Questionnaire Prior to Voir Dire
COURT FINDS WITHDRAWN; not practical due to timing.

Plaintiff's Motion in Limine No. 6: to Limit Defendant's Experts' Testimony to the Opinions and Bases Set Forth in Their Expert Reports
COURT ORDERED, GRANTED.

Plaintiff's Motion to Declare NRS 42.021 and NRS 41A.035 Unconstitutional
NRS 42.021 Actions based on professional negligence of providers of health care: Introduction of certain evidence relating to collateral benefits; restrictions on source of collateral benefits; payment of future damages by periodic payments. COURT FINDS the law says the statute passes constitutional scrutiny at this time and ORDERED, motion DENIED.

NRS 41A.035 Limitation on amount of award for noneconomic damages. In an action for injury or death against a provider of health care based upon professional negligence, the injured plaintiff may recover noneconomic damages, but the amount of noneconomic damages awarded in such an action must not exceed \$350,000. COURT FINDS the law says the statute passes constitutional scrutiny at

this time and the support of the ballot measure. COURT ORDERED, DENIED.

Plaintiff's Motion to Strike Defendant's Untimely Disclosures on Order Shortening Time
COURT ORDERED, DENIED.

Defendant's Opposition to Plaintiff's Motion to Strike Untimely Disclosures and Counter-Motion to
Exclude Improper "Supplemental" Disclosures and Claims for Future Damages
COURT ORDERED, DENIED.

Plaintiff's Motion for a Rebuttable Presumption Jury Instruction Pursuant to NRS 41A.100
COURT thinks Plaintiff is entitled and Finds inclined to give instruction, but DEFERRED RULING
until after the evidence has been presented and not be given as a pre-instruction.

Defendant's Motion re Application of NRS 50.275 and to Exclude Testimony regarding Future
Treatment and Surgery Made Without Scientific Basis
COURT ORDERED, DENIED.

Defendant's Trial Brief and Motion to Limit Damages to those Caused by Acts of Alleged Negligence
CONTINUED TO 8/19/15 @ 10:00 a.m.

8/19/15 10:00 a.m. Defendant's Trial Brief and Motion to Limit Damages to those Caused by Acts of
Alleged Negligence /// Jury Trial

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

August 19, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

August 19, 2015 10:00 AM Motion

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

JOURNAL ENTRIES

- COURT ORDERED, matter CONTINUED.

CONTINUED TO: 8/20/15 12:00 PM

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

August 19, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

August 19, 2015 10:30 AM Jury Trial - FIRM

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Discussion regarding Voir Dire and Jury selection. Mr. Prince advised parties have stipulated to majority of exhibits with the exception of medical bills. Colloquy regarding billing.

PROSPECTIVE JURY PANEL PRESENT: Introductions by Court and counsel. Clerk called roll of the prospective jury panel. Voir Dire of panel. .

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Colloquy regarding challenges for cause.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire of panel.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Colloquy regarding scheduling.

CONTINUED TO: 8/20/15 12:00 PM

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

August 20, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

August 20, 2015	12:00 AM	Motion	Defendant's Trial Brief and Motion to Limit Damages to those Caused by Acts of Alleged Negligence
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HEARD BY: Herndon, Douglas W.

COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

JOURNAL ENTRIES

- COURT ORDERED, matter CONTINUED.

CONTINUED TO: 8/21/15 8:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

August 20, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

August 20, 2015 12:00 AM Jury Trial - FIRM

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

JOURNAL ENTRIES

- OUTSIDE PRESENCE OF THE PROSPECTIVE JURY PANEL: Discussion regarding schedule and testimony of expert witnesses.

PROSPECTIVE JURY PANEL PRESENT: Juror #20 was excused for cause as she was delayed at a doctor's appointment. Voir Dire by Plaintiff s continued. Voir dire by Defense.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Court made a record of the bench conference as to challenges for cause.

PROSPECTIVE OF JURY PANEL PRESENT: Court admonished jury and excused for the evening.

CONTINUED TO: 8/21/15 8:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

August 21, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

August 21, 2015 8:30 AM Motion

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

JOURNAL ENTRIES

- Arguments by Mr. Lauria as to the computation of damages and the additional \$350,000 being requested. Arguments by Mr. Prince as to future damages, noting error that was filed in disclosure form. Court stated FINDINGS and ORDERED, Motion DENIED, noting he will allow future damages. Mr. Lauria requested he make a standing objection as to statements in opening as to future damages. Court GRANTED requested and noted he should raise standing objection during testimony. Arguments as to Mr. Lauria requesting to exclude questions regarding defendant going to law school. Arguments by Mr. Prince. Court GRANTED request to exclude reference that defendant attended law school. Further arguments by Mr. Prince as to Dr. Capanna's testimony, opposing any diagrammatic drawings of procedure. Court stated counsel may cross-examine witnesses regarding any drawings.

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

August 21, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

August 21, 2015 8:30 AM Jury Trial - FIRM

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Mr. Lauria noted objection to questioning regarding insurance during Voir dire and concern the jury has been prejudiced, therefore, requested a mistrial. Arguments by Mr. Prince. Court DENIED request for mistrial.

PROSPECTIVE JURY PANEL PRESENT: Voir dire continued.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Peremptory challenge exercised. Discussion regarding Motion in Limine as to expert testimony regarding family history. Arguments by counsel as to Motion to Limit Damages to those Caused by Acts of Alleged Negligence. Court stated FINDINGS and ORDERED, Motion DENIED. Discussion regarding Dr. Capanna's testimony.

JURY PANEL PRESENT: Jury SELECTED and SWORN. Opening statements by Mr. Prince. Opening statements by Mr. Lauria. Court ADMONISHED and EXCUSED jury for the weekend

A-11-648041-C

recess. COURT ORDERED, trial CONTINUED.

CONTINUED TO: 8/24/15 9:00 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

August 24, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

August 24, 2015 9:00 AM Jury Trial - FIRM

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY PANEL: Counsel stated stipulation as to exhibits and noted objections for the record. Colloquy regarding scheduling of witness testimony.

JURY PANEL PRESENT: Testimony and exhibits presented (see worksheets). DEPOSITION PUBLISHED IN OPEN COURT.

OUTSIDE THE PRESENCE OF THE JURY: Mr. Prince noted objection to the record regarding Dr. Belzberg's testimony. Arguments by Mr. Lauria. Court stated questions as to supplemental report are permitted.

JURY PRESENT: Testimony and Exhibits presented (see worksheets).

Court admonished jury and excused for the evening.

A-11-648041-C

CONTINUED TO: 8/25/15 11:00 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

August 25, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

August 25, 2015 11:00 AM Jury Trial - FIRM

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Mr. Lauria noted objection as to Dr. Yoo's as to need of future treatment, noting report was untimely. Discussion regarding questioning of witness.

JURY PRESENT: Testimony and exhibits presented. (See worksheet).

OUTSIDE THE PRESENCE OF THE JURY: Discussion regarding availability of witnesses.

JURY PRESENT: Testimony and exhibits presented. (See worksheets).

CONTINUED TO: 8/26/15 10:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

August 26, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

August 26, 2015 10:30 AM Jury Trial - FIRM

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Mr. Lauria requested Mr. Prince provide a copy of the cd be provided to the court of the demonstrative images. Court stated any power point presentation and demonstrative exhibits prior to the end of trial.

JURY PRESENT: Testimony and exhibits presented (See worksheet).

OUTSIDE THE PRESENCE OF THE JURY: Discussion regarding document to be discussed during testimony of Dr. Capanna. Mr. Prince argued document has been stipulated to in the exhibits. Arguments by Mr. Lauria. Court granted request to exclude testimony about suspension.

JURY PRESENT: Court noted question regarding suspension be stricken. Testimony and exhibits presented (See Worksheet).

A-11-648041-C

OUTSIDE PRESENCE OF THE JURY: Discussion regarding objections.

CONTINUED TO: 8/26/15 10:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

August 27, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

August 27, 2015 10:30 AM Jury Trial - FIRM

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Mr. Lauria requested court sign an order for counsel to obtain medical records. ORDER SIGNED IN OPEN COURT.

JURY PRESENT: Testimony and exhibits presented. (See worksheet).

CONTINUED TO: 8/27/15 9:00 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

August 28, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

August 28, 2015 9:00 AM Jury Trial - FIRM

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: April Watkins

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

JOURNAL ENTRIES

- OUTSIDE PRESENCE OF THE JURY:

Colloquy regarding witnesses and testimony.

JURY PRESENT:

Testimony and exhibits presented. (See worksheets).

OUTSIDE THE PRESENCE OF THE JURY:

Mr. Lauria moved for Rule 50(a) Motion and argued in support. Colloquy. Further argument by Mr. Lauria. Opposition by Mr. Prince. COURT ORDERED, motion DENIED. Court noted Pltf. will be withdrawing Ruggeroli claim and counsel precluded from bringing it up. Additional argument by

A-11-648041-C

Mr. Lauria.

Jury instructions argued by counsel and not settled.

Court recessed.

CONTINUED TO: 8/31/15 8:00 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

August 31, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

August 31, 2015 8:00 AM Jury Trial - FIRM

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

JOURNAL ENTRIES

- JURY PRESENT: Testimony and exhibits presented. (See worksheet).

OUTSIDE THE PRESENCE OF THE JURY: Defense rests. Plaintiff's rebuttal witness sworn and testified. (See worksheet). Plaintiff rests. Court ADMONISHED jury and excused for the evening.

OUTSIDE THE PRESENCE OF THE JURY: Jury Instructions settled on the record. Mr. Prince moved for Rule 50(a) Motion and argued in support. Colloquy. Arguments by Mr. Lauria. Further arguments by Mr. Prince. COURT ORDERED, motion DENIED. Colloquy regarding exhibits.

CONTINUED TO: 9/1/15 10:00 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

September 01, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

September 01, 2015 10:00 AM Jury Trial - FIRM

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Capanna, MD, Albert H	Defendant
	Cardinale, Paul A.	Attorney
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Discussion regarding exhibits and Jury Instructions.

JURY PRESENT: Court read jury instructions to the jury. Closing arguments by Mr. Prince.

OUTSIDE THE PRESENCE OF THE JURY: Mr. Lauria noted for the record objection regarding slide that was used during closing argument. COURT SO NOTED.

JURY PRESENT: Closing arguments continued. At the hour of 4.42 p.m., the Jury retired to begin deliberations.

CONTINUED TO: 9/2/15 10:00 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

September 02, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

September 02, 2015 10:00 AM Jury Trial - FIRM

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Capanna, MD, Albert H	Defendant
	Lauria, Anthony D	Attorney
	Orth, Beau R	Plaintiff
	Prince, Dennis M	Attorney
	Tarmu, Danielle A.	Attorney

JOURNAL ENTRIES

- JURY PRESENT: Jury returned at 10:00 a.m. for deliberations. At the hour of 12.29 p.m., the Jury returned with a verdict for the Plaintiff. Jury polled. Court thanked and excused jury.

Request for Application of N.R.S. 41A.035, N.R.S. 42.021 FILED IN OPEN COURT.

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

October 14, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

October 14, 2015 9:00 AM Motion to Stay

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER:

REPORTER:

PARTIES

PRESENT: Lauria, Anthony D Attorney
Prince, Dennis M Attorney

JOURNAL ENTRIES

- Mr. Lauria argued judgment is improper as it exceed \$350,000, noting he filed a pleading the day of the verdict. Arguments by Mr. Prince argued as to the lack of procedural basis to stay Entry of Judgment. Further arguments by counsel. COURT ORDERED, Motion DENIED; Mr. Lauria to file appropriate motions. COURT FURTHER ORDERED, Briefing schedule SET as follows: defense to file motion on or before October 23, 2015; plaintiff to reply on or before November 4, 2014; defense to reply on or before November 13, 2015, matter SET for argument. Discussion regarding Entry of Judgment.

Discussion regarding whether or not the PowerPoint with the MRI cuts was marked as a court exhibit. Court stated he does not recall it being marked as an exhibit, however, it will need to be submitted if they were ordered by the Court.

11/18/15 9:00 AM ARGUMENT: MOTIONS

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

November 09, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

November 09, 2015 3:00 AM Motion to Retax

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- As to the defendants motion to retax and settle costs, this Court orders that the motion for costs is GRANTED in part and DENIED in part. Specifically, this Court finds that a party who prevails in an action is entitled to move for its costs. See NRS 18.020. Here, plaintiff is a prevailing party, having prevailed at the conclusion of a jury trial, and is entitled to statutory costs per NRS 18.005 and 18.020. Having reviewed the memorandum of costs and accompanying documentation on file, and having evaluated the requested costs in light of Berosini, 114 Nev. 1348, the Court ORDERS that utilizing the eight categories in plaintiff s memorandum of costs, costs will be awarded in full as requested for Category (1) In House Expenses (which includes copies, postage, courier and long distance costs) - \$5,026.53; Category (3) Expert Fees - \$69,975.95 The Court specifically finds that all named experts were necessary to plaintiff s case and exceeding the statutory amounts is justified and reasonable for Dr. Yoo and Dr. Cash based on their roles in the litigation; Category (4) Express Mail - \$172.31; Category (5) Investigation/Service - \$528.48; Category (6) Medical/Financial Records - \$2055.90 and Category (8) Travel Expenses - \$488.00. Regarding Category (2) Deposition Expenses, the Court finds that the TrialSmith charge of \$868.00 and the Turner Reporting charge of \$372.25 are unjustified and the total amount awarded for that category will be \$4,679.75. Regarding Category (7) Misc. Expenses/Court Fees, the court notes that plaintiff has withdrawn its meal cost request so that category will be reduced to a total award of \$40,395.28.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

November 18, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

November 18, 2015 9:00 AM All Pending Motions

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Argument: Motions...Defendant's Motion for Application of NRS 41A.035, NRS 42.021

Court stated counsel is requesting matter be continued until December 16, 2015 when the Motion for New Trial is set to be heard. COURT SO ORDERED.

CONTINUED TO: 12/16/15 9:00 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

December 16, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

December 16, 2015 9:00 AM All Pending Motions

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT: Eisenberg, Robert L. Attorney
 Lauria, Anthony D Attorney
 Prince, Dennis M Attorney

JOURNAL ENTRIES

- DEFENDANT'S MOTION FOR NEW TRIAL, OR IN THE ALTERNATIVE, FOR AMENDMENT OF JUDGMENT...DEFENDANT'S MOTION FOR APPLICATION OF NRS 41A.035, NRS. 42.021

Court noted that the Motion for Attorney Fees and Costs will be done on his chambers calendar to allow him time to review all the billings. As to Defendant's Motion for a New Trial, Counsel submitted on the motion. Court stated FINDINGS and ORDERED, motion DENIED, noting the allegations fall under the seventh category of error in law.

As to Defendant's Motion for Application of NRS 41A.035, NRS 42.021, Mr. Lauria argued NRS 41A.035 and NRS 42.021 are mandatory per the statute. Arguments by Mr. Prince as to the jury award and the constitutionality of NRS 41A.035. Discussion regarding judgment of order. Mr. Prince to provide copies to the defense prior to signature in the future. Further arguments by counsel as to periodic payments and future damages. COURT ORDERED, Motion GRANTED as to 41A, Pain and Suffering awards reduced to \$350,000, noting law is constitutional; interest will start accruing at the time of the order. COURT FURTHER ORDERED, Motion GRANTED as to 42.021, periodic payments

set as follows: \$175,000 to be paid within six months, \$88,000 to be paid at the period of twelve months, and the remaining \$87,000 to be paid at the period of 18 months. Mr. Prince inquired as to the security for the payments. Mr. Eisenberg noted the statute states if the judgment debtor is not adequately insured, the Court can require security adequate to it. Court stated an amended judgment will be prepared and Mr. Prince will provide a copy to Mr. Lauria prior to signature. Further discussion regarding insurance. Court stated he will make the ruling on fees and costs and Mr. Prince may litigate security for the periodic payments in writing if he believes they should be entitled to it. Mr. Lauria to prepare orders on motions. Mr. Lauria noted for the record that he and Mr. Prince had an agreement that there would be no attempt to execute on the judgments until all the post trial orders are noticed or filed. Mr. Prince stated that he is not agreeing to counsel's representations. Further discussion regarding execution of judgment. Mr. Prince agreed to not seek any execution of judgment until the amended judgment order, order on today's motions, and order regarding Court's decision on fees and costs are filed.

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

December 21, 2015

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

December 21, 2015 3:00 AM Motion for Attorney Fees
and Costs

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- Upon review of the papers and pleadings on file herein, the Court notes that plaintiff, after prevailing at trial, has moved for an award of attorney s fees. The sole legal basis stated in plaintiff s request is NRS 18.010(2)(b). Pursuant to NRS 18.010(2)(b), attorney s fees are awardable to the prevailing party when the court finds the opposing party s claims were brought without reasonable grounds or to harass the prevailing party. Moreover, the court is to liberally construe the provisions of 18.010(2)(b). Plaintiff has alleged that all and/or at least the liability part, of defendant s defenses were maintained without reasonable grounds and therefore plaintiff should be awarded its appropriate attorney s fees. As with most, if not all, medical malpractice actions, issues regarding liability and damages are separate. Even when one issue or the other is agreed upon between the parties, evidence regarding each issue requires a different presentation to the jury. Generally speaking, where both issues are contested, the liability portion requires much more time and effort as you never even reach the issue of damages without first establishing liability. This case was no different. Although certain witnesses addressed both issues, the manner of the presentation on each issue is different and the time spent on presenting each issue is different. Understanding this is important in the instant case because the court cannot find that defendant s liability defense was maintained with reasonable grounds, although defending the issue of damages was made in good faith and with reasonable grounds. The presentation of evidence on liability, which it should be noted

included evidence and opinions from some of defendant's own experts, was overwhelming. It could not only be characterized as clearly exceeding the civil burden of proof standard but, arguably, the totality of evidence showing that the original surgery was performed at the wrong level of the spine would meet a beyond a reasonable doubt standard. Turning to the issue of time, it is difficult to ascertain with precision exactly how much time and effort is spent on liability issues versus damages issues over the course of a jury trial, particularly one such as this that spans the course of three weeks. However, a review of available information allows the Court to conclude that it is reasonable to characterize the presentation of liability issues (though jury selection, opening statements, evidence presentation and argument) as encompassing at least 80% of plaintiff's trial presentation. The Court has further evaluated the requested amounts, the documentation provided and, pursuant to Schouweiler, 101 Nev. 827 (1985), has taken into account the complexity of the case, the quality of the advocacy, the character of the work, the work actually performed and the results. The Court also finds that the application of NRS 7.095 is an appropriate mechanism to address attorney's fees. Based upon that, the Court finds that the total attorney's fees award of \$212,486.98 as requested in plaintiff's reply brief (which is less than the original amount requested in the motion) is an appropriate figure to which to apply the 80% designation described above. Therefore, having found pursuant to NRS 18.010(2)(b) that defendant maintained a liability defense without reasonable grounds and that plaintiff's liability presentation at trial encompassed at least 80% of their time and effort, the Court now ORDERS that attorney's fees will be awarded in the amount of \$169,989.58.

CLERK'S NOTE: A copy of this minute order has been emailed to Dennis Prince, Esq. and Anthony Lauria, Esq. dm3/17/16

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental

COURT MINUTES

March 16, 2016

A-11-648041-C Beau Orth, Plaintiff(s)
vs.
Albert Capanna, MD, Defendant(s)

March 16, 2016 9:00 AM Motion to Strike

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT: Lauria, Anthony D Attorney
 Prince, Dennis M Attorney

JOURNAL ENTRIES

- Mr. Prince argued reply brief improperly raised new arguments and law. Mr. Lauria argued the request is untimely and Plaintiff's arguments are not supported by legal authority. Court stated he does not feel it would be appropriate for Court to strike something that he considered and allowed to be part of previous argument. Further, Court stated he would be inclined to DENY the motion if he had jurisdiction, however, Supreme Court will decide if appropriate to consider Discussion regarding pending motions. Mr. Lauria requested sanctions be imposed regarding the time to prepare for the motion. COURT ORDERED, request for sanctions, DENIED, noting issue was appropriate to have been raised in front on the Court prior to the Supreme Court. Mr. Lauria to prepare order and provide to opposing counsel prior to submitting for signature.

Beau Orth vs. Albert Capanna, M.D.
Case No. A-11-648041-C; Department III

PLAINTIFF'S TRIAL EXHIBITS

	Description	Stipulated	Objected	Offered	Admitted
1.	Medical records from International Neuroscience (P00001 - P00096)	X		8-24-15	8-24-15
2.	Billing records from International Neuroscience (P00097 - P00099)	X			
3.	Medical records from Desert Institute of Spine Care (P00100 - P00225)	X			
4.	Billing records from Desert Institute of Spine Care (P00226)	X			
5.	Medical records from Steinberg Diagnostic Medical Imaging (P00227 - P00232)	X			
6.	Billing records from Steinberg Diagnostic Medical Imaging (P00233 - P00235)	X			
7.	Medical records from McKenna and Ruggeroli Pain Specialists (P00236 - P00257)	X			
8.	Billing records from McKenna and Ruggeroli Pain Specialists (P00258 - P00259)	X			
9.	Medical records from Surgical Arts Center (P00260 - P00445) <i>P00318 removed by stipulation of counsel</i>	X			
10.	Billing records from Surgical Arts Center (P00446 - P00448)	X			
11.	Medical records from Desert Radiologists (P00449 - P00451)	X			
12.	Billing records from Desert Radiologists (P00452 - P00454)	X			
13.	Medical records from Axiom Imaging of Las Vegas (P00455 - P00457)	X			
14.	Medical records from Clinical Neurology Specialists (P00458 - P00473)	X			
15.	Medical records from Keith Kleven Physical Therapy (P00474 - P00714)	X			

	Description	Stipulated	Objected	Offered	Admitted
16.	Billing records from Keith Kleven Physical Therapy (P00715 - P00737)	X		8.24.15	8.24.15
17.	Medical records from University Medical Center (P00738 - P00793)	X			
18.	Billing records from University Medical Center (P00794 - P00798)	X			
19.	Medical records from Southern Hills Hospital (P00799 - P01045)	X			
20.	Billing records from Southern Hills Hospital (P01046 - P01052)	X			
21.	Billing records from Radiology Specialists (P01053 - P01054)	X			
22.	Medical records from PBS Anesthesia (P01055 - P01058)	X			
23.	Billing records from PBS Anesthesia (P01059)	X			
24.	Billing records from Andrew L. Zak, M.D. (P01060 - P02062)	X			
25.	Billing records from ProCare Medical Center (P01063)	X			
26.	Life Expectancy Table (P01064 - P01065)	X			
27.	Medical Billing Summary (P01066)		X	8.24.15	not Admitted
28.	University Medical Center - Call Sheet, July, 2008 - January, 2012 BMC (P01064 - P01111) P01067		X		not Admitted
29.	University Medical Center - Surgery Schedule of Albert Capanna, M.D., 1/1/2008 - 5/11/2015 (P01112 - P01125)		X		not Admitted
30.	Consent for Operation	8-24-15			not Admitted

DEFENDANT'S EXHIBIT LIST

TRIAL DATE: **Aug. 19, 2015**

Case No.: A648041	Clerk: <i>Debbie Miller</i>
Dept.: III Judge: Douglas Herdon	Recorder: <i>Sara Richardson</i>
Pltf(s): Beau Orth	Pltf's Counsel: Dennis M. Prince, Esq.
	Jo _____
Deft(s): Albert H. Capanna, M.D.	Deft's Counsel: Anthony D. Lauria, Esq.
	Paul A. Cardinale, Esq.

Exh. No.	Description	Date Offered	Obj.	Date Admitted
A	Plaintiff's Complaint filed on September 8, 2011			
B	Defendant's Answer to Plaintiff's Complaint filed on January 11, 2012			
C	Medical records from Michael Milligan, M.D./A. Scott Martin, M.D. Bates Stamped: <i>C001 - C028</i>	<i>8-24-15</i>	<i>yes</i>	<i>NOT Admitted</i>
D	Billing records from Michael Milligan, M.D. / A.S. Martin, M.D. Bates Stamped: <i>D001 - D029</i>	<i>8-24-15</i>	<i>stop</i>	<i>8-24-15</i>
E	Medical records from Desert Radiologist Bates Stamped: <i>E001 - E017</i>			
F	Billing records from Desert Radiologist Bates Stamped: <i>F001</i>			
G	Medical records from McKenna and Ruggeroli Pain Specialists Bates Stamped: <i>G001 - G119</i>			
H	Billing records from McKenna and Ruggeroli Pain Specialists Bates Stamped: <i>H001 - H004</i>			
I	Medical records from Clinical Neurology Specialists Bates Stamped: <i>I001 - I009</i>			
J	Billing records from Clinical Neurology Specialists Bates Stamped: <i>J001</i>			
K	Medical records from International Neuroscience (Dr. Capanna) Bates Stamped: <i>K001 - K119</i>			
L	Billing records from International Neuroscience (Dr. Capanna) <i>L001 - L003</i>			

DEFENDANT'S EXHIBIT LIST

TRIAL DATE: **Aug. 19, 2015**

Exh. No.	Description	Date Offered	Obj.	Date Admitted
	<i>Bates Stamped:</i>			
M	Medical records from Axion Imaging of Las Vegas <i>Bates Stamped: m001 - m005</i>	8-24-15	stip	8-24-15
N	Medical records from University Medical Center <i>Bates Stamped: N001 - N059</i>			
O	Billing records from University Medical Center <i>Bates Stamped: 0001 - 005</i>			
P	Medical and billing records from PBS Anesthesia <i>Bates Stamped: P001 - P005</i>			
Q	Billing records from PBS Anesthesia <i>Bates Stamped: Q001</i>			
R	Medical records from Steinberg Diagnostic Medical Imaging <i>Bates Stamped: 0273-0285 R001 - R002</i>			
S	Billing records from Steinberg Diagnostic Medical Imaging <i>Bates Stamped: 0273-0285 S001</i>			
T	Medical records from Desert institute of Spine Care (Dr. Cash) <i>Bates Stamped: 0287-0354 T001 - T121</i>			
U	Billing records from Desert Institute of Spine Care (Dr. Cash) <i>Bates Stamped: 0355 U001 - U002</i>			
V	Updated billing records from Desert Institute of Spine Care (Dr. Cash) <i>V001 - V028</i>			
W	Medical records from Southern Hills Hospital <i>Bates Stamped: W001 - W247</i>			
X	Billing records from Southern Hills Hospital <i>Bates Stamped: 0606-0614 X001 - X009</i>			

DEFENDANT'S EXHIBIT LIST

TRIAL DATE: **Aug. 19, 2015**

Exh. No.	Description	Date Offered	Obj.	Date Admitted
Y	Medical records from Keith Kleven Physical Therapy <i>Bates Stamped: 0615-0732</i> <i>Y001 - Y128</i>	8-24-15	Slip	8-24-15
Z	Billing records from Keith Kleven Physical Therapy <i>Bates Stamped: 0733-0742</i> <i>Z001 - Z013</i>			
AA	Billing records from Andrew L. Zak, M.D. <i>Bates Stamped: 0743-0745</i> <i>AA001 - A003</i>			
BB	Desert Radiologists, Medical Imaging Report dated 8/31/12 <i>Bates Stamped: B001 - B002</i>			
CC	Billing records from Desert Radiologists (Zotec Partners) dated 8/31/12 <i>Bates Stamped: CC001 - CC002</i>			
DD	Records from UCLV Athletic Training <i>DD001 - DD252</i>	8-24-15	yes	8-24-15
EE	Plaintiff's Answers to Defendant's Interrogatories	8-24-15	yes	8-31-15 Court Exhibit #13
FF	Plaintiff's Response to Defendant's Request for Production of Documents	8-24-15	yes	not Admitted
GG	Plaintiff's Supplement to Response to Defendant's Request for Production of Documents			
HH	Plaintiff's Response to Defendant's Second Set of Request for Production of Documents			
II	Plaintiff's Answers to Defendant's Second Set of Interrogatories			
JJ	Plaintiff's Response to Defendant's Third Set of Request for Production of Documents			
KK	Plaintiff's Answers to Defendant's Third Set of Interrogatories			
LL	Plaintiff's Response to Defendant's Fourth Set of Request for Production of Documents			Court Exhibit #14 8-31-15
MM	Plaintiff's Response to Defendant's Request for Admissions			not Admitted

DEFENDANT'S EXHIBIT LIST

TRIAL DATE: **Aug. 19, 2015**

Exh. No.	Description	Date Offered	Obj.	Date Admitted
NN	Curriculum Vitae, Testimony List and Fee Schedule for Allan Belzberg, B.Sc., M.D., FRCS	8-24-15	400	8-24-15
OO	Expert Report prepared by Allan Belzberg, B.Sc., M.D., FRCSC			not Admitted
PP	Supplemental Expert Report prepared by Allan Belzberg, B.Sc., M.D., FRCSC dated 7/20/15			
QQ	Curriculum Vitae, Testimony List and Fee Schedule for Marc D. Kaye, M.D.			
RR	Expert Report prepared by Marc D. Kaye, M.D. dated 8/5/13			
SS	Power Point prepared by Marc D. Kaye, M.D.			
TT	Updated Power Point prepared by Marc D. Kaye, M.D.			
UU	Curriculum Vitae, Testimony and Fee Schedule for Reynold L. Rimoldi, M.D.			
VV	Expert Report prepared by Reynold L. Rimoldi, M.D. dated 7/17/13			
WW	Supplemental Expert Report prepared by Reynold L. Rimoldi, M.D. dated 5/26/15			
XX	Supplemental Expert Report prepared by Reynold L. Rimoldi, M.D. dated 7/24/15			
YY	Steinberg Diagnostic Medical Imaging and records which include an MRI of the lumbar spine dated 3/21/14	8-24-15	stip	8-24-15
ZZ	Steinberg Diagnostic Medical Imaging billing records	8-24-15	stip	8-24-15
AAA	Surgical Arts Center billing including facility for injections by Dr. Ruggeroli on 3/26/14, 4/16/14, and 5/14/14			
BBB	Medical records from Surgical Arts Center			
CCC	Updated billing from Desert Institute of Spine Care through 3/18/14 (Dr. Cash)			
DDD	UNLV - MRI Lumbar spine dated 2/8/10			not Admitted

DEFENDANT'S EXHIBIT LIST

TRIAL DATE: **Aug. 19, 2015**

Exh. No.	Description	Date Offered	Obj.	Date Admitted
EEE	Axion Imaging – MRI Lumbar spine dated 9/2/10	8-24-15	stop	not Admitted
FFF	Axion Imaging – MRI Lumbar spine dated 9/2/10			
GGG	Dr. Capanna's Operative Report	8-24-15	stop	8-24-15
HHH	Dr. Cash's Operative Report	8-24-15	stop	8-24-15
III	Dr. Ruggeroli's Operative Report dated 4/16/14	8-24-15	stop	8-24-15
JJJ	Desert Radiologists, MRI taken 2/3/2009	8-24-15		NOT Admitted
KKK	Desert Radiologists, MRI taken 2/18/2010			
LLL	Desert Radiologists, MRI taken 8/31/2012			
MMM	Steinberg Diagnostics, MRI Lumbar taken 10/6/2010			
NNN	Steinberg Diagnostics, MRI Lumbar taken 3/13/2014			
OOO	Desert Institute of Spine Care, X-ray, Lumbar dated 10/12/10			
PPP	Desert Institute of Spine Care, X-ray, Lumbar dated 11/3/2010			
QQQ	Desert Institute of Spine Care, X-ray, Lumbar dated 12/1/2010			
RRR	Desert Institute of Spine Care, X-ray, Lumbar dated 2/8/2011			
SSS	Desert Institute of Spine Care, X-ray, Lumbar dated 8/28/2012			
TTT	Desert Institute of Spine Care, X-ray, Lumbar dated 10/12/10			
UUU	Article entitled Microdiscectomy for the treatment of lumbar disc herniation: an evaluation of reoperations and long-term outcomes, Evid Base Spine Care J., 2014	8-24-15	6/10	NOT Admitted

DEFENDANT'S EXHIBIT LIST

TRIAL DATE: **Aug. 19, 2015**

Exh. No.	Description	Date Offered	Obj.	Date Admitted
	Oct; 5(2): 77-86.			
VVV	Article entitled Limited microdiscectomy for lumbar disk herniation: a retrospective long-term outcome analysis, J. Spinal Disord Tech., 2014 Feb; 27(1):E8-E13.	8-24-15	660	not Admitted
WWW	Article entitled Recurrent disc herniation and long-term back pain after primary lumbar discectomy: review of outcomes reported for limited versus aggressive disc removal, Neurosurgery, 2009 Feb; 64(2):338-44.			
XXX	Article entitled Long-term back pain after a single-level discectomy for radiculopathy: incidence and health care cost analysis, J Neurosurg Spine, 2010 Feb; 12(2):178-82.			
YYY	Article entitled Microdiscectomy for the treatment of lumbar disc herniation: an evaluation of reoperations and long-term outcomes, Evid Based Spine Care J., 2014 Oct; 5(2):77-86.			
ZZZ	Article entitled Mid- to long-term outcome of disc excision in adolescent disc herniation, Spine J, 2006 Jul-Aug; 6(4):380-4.			
AAAA	Article entitled The outcomes of lumbar microdiscectomy in a young, active population: correlation by herniation type and level, Spine (Phila Pa 1976). 2008 Jan 1; 33(1):33-8.			
BBBB	Article entitled Minimally invasive surgery for lumbar disc herniation: a systematic review and meta-analysis, Eur Spine J. 2014 May;23(5):1021-43.			
CCCC	Article entitled Is the rate of re-operation after primary lumbar microdiscectomy affected by surgeon grade or intra-operative lavage of the disc space? Br J Neurosurg., 2014 Apr; 28(2):247-51			
DDDD	Article entitled Reoperation for recurrent lumbar disc herniation: a study over a 20-year period in a Japanese population, J Orthop Sci., 2012 Mar; 17(2): 107-13.			

DEFENDANT'S EXHIBIT LIST

TRIAL DATE: **Aug. 19, 2015**

Exh. No.	Description	Date Offered	Obj.	Date Admitted
EEEE	Article entitled Long-term outcomes of lumbar microdiscectomy in a working class sample, Neurocirugia (Astur), 2011 Ju: 22(3):235-44.	8-24-15	y60	Not Admitted
FFFF	Article entitled The efficacy of minimally invasive discectomy compared with open discectomy: a meta-analysis of prospective randomized controlled trial, J. Neurosurg Spine, 2012 May; 16(5):452-62.			
GGGG	Article entitled Reoperation rate after surgery for lumbar spinal stenosis without spondylolisthesis: a nationwide cohort study. Spine J. 2013 Oct; 13(10):1230-7.			
HHHH	Article entitled 5-year reoperation rates after different types of lumbar spine surgery. Spine (Phila Pa 1976). 1988 Apr 1; 23(7):814-20.			
IIII	Article entitled Revision surgery following operations for lumbar stenosis. J Bone Joint Surg Am. 2011 Nov 2; 93(21):1979-86.			
JJJJ	Article entitled Surgery for spinal stenosis: long-term reoperation rates, health care cost, and impact of instrumentation. Spine (Phila Pa 1976). 2014 May 20; 39(12):978-87.			
KKKK	Article entitled Complications, reoperation rates, and health-care cost following surgical treatment of lumbar spondylolisthesis. J Bone Joint Surg. Am, 2013 Nov 6; 95(21):e 162.			
LLLL	Article entitled Reoperation rate after surgery for lumbar herniated intervertebral disc disease: nationwide cohort study. Spine (Phila Pa 1976). 2013 Apr 1; 38(7):581-90			
MMMM	Article entitled Repeat surgery after lumbar decompression for herniated disc: the quality implications of hospital and surgeon variation. Spine J. 2012 Feb; 12(2):89-97			

DEFENDANT'S EXHIBIT LIST

TRIAL DATE: **Aug. 19, 2015**

Exh. No.	Description	Date Offered	Obj.	Date Admitted
NNNN	Article entitled Risk of multiple reoperations after lumbar discectomy: a population-based study. Spine (Phila Pa 1976). 2003 Mar 15; 28(6):621-7	8-24-15	Yoo	not Admitted
OOOO	The deposition transcript of Beau Orth, dated April 14, 2015, and any exhibits thereto.	8-25-15	N	Court Exhibit #17 9-2-15
PPPP	The deposition transcript of Albert Capanna, M.D. dated January 15, 2015, and any exhibits thereto.	8-26-15	N	Court Exhibit #18 9-2-15
QQQQ	The deposition transcript of Allan Belzberg, M.D. dated May 29, 2015, and any exhibits thereto.	8-24-15	N	Court Exhibit #16 9-2-15
RRRR	The deposition transcript of Marc Kaye, M.D., dated June 15, 2015, and any exhibits thereto	8-31-15	N	Court Exhibit #19 9-2-15
SSSS	The deposition transcript of Reynold Rimoldi, M.D. dated June 17, 2015, and any exhibits thereto	- not offered or Admitted		
TTTT	The deposition transcript of Michelle Bennion, dated April 7, 2015, and any exhibits thereto	- not offered or Admitted		
UUUU	The deposition transcript of Eileen Rinaldi, dated April 8, 2015, and any exhibits thereto			
VVVV	The deposition transcript of Anthony Ruggeroli, M.D., dated May 21, 2015, and any exhibits thereto.			
WWWW	The deposition transcript of Frank Yoo, M.D., dated May 26, 2015, and any exhibits thereto			
XXXX	The deposition transcript of Andrew Cash, M.D., dated June 17, 2015, and any exhibits thereto.			
YYYY	The deposition transcript of Andrew Cash, M.D., dated June 23, 2015, and any exhibits thereto			
ZZZZ	The deposition transcript of Andrew Cash, M.D., dated May 27, 2015, and any exhibits thereto			
AAAAA	The deposition transcript of Stephanie Saxon, dated July 8, 2015, and any exhibits thereto			
BBBBB	Affidavit of Kevin Yoo, M.D. dated 9/7/2011	8-21-15	Yoo	not Admitted
CCCCC	Expert Report prepared by Kevin Yoo, M.D. undated and served on 7/17/15			
DDDDD	Supplemental Expert Report by Kevin Yoo, M.D. dated 7/17/2015			
EEEEE	Expert Report prepared by Andrew Cash, M.D. dated 4/1/2015			

DEFENDANT'S EXHIBIT LIST

TRIAL DATE: **Aug. 19, 2015**

Exh. No.	Description	Date Offered	Obj.	Date Admitted
FFFFF	Expert Report prepared by Anthony Ruggeroli, M.D. dated 4/27/2015	8-24-15	Y	Not Admitted
GGGGG	Supplemental Expert Report prepared by Andrew Cash, M.D. dated 7/28/2015			
HHHHH	Medical Report prepared by Andrew Cash, M.D. dated 2/25/2011			
IIIII	Medical report prepared by Andrew Cash, M.D. dated 4/21/2011			
JJJJJ	Medical report prepared by Andrew Cash, M.D. dated 9/6/2012			
KKKKK	Medical report prepared by Andrew Cash dated 9/6/2012			
LLLLL	Medical report prepared by Andrew Cash dated 3/13/2014			
MMMMM	Medical report prepared for Andrew Cash, M.D. dated 3/19/2014			
NNNNN	McKenna, Ruggeroli and Helmi Pain Specialists notes			
OOOOO	Andrew Cash, M.D. letter to Eglet Prince dated May 14, 2015			
	Prior testimony of Dr. Frank Yoo			Not offered or Admitted
	Prior testimony of Andrew Cash, M.D.			
	Prior testimony of Anthony Ruggeroli, M.D.			
PPPPP	Chief Complaint - Deoart Institute	8-31-15	Y	
QQQQQ	Letter dated 4-5-15			Not Admitted
RRRRR	Dr. Cash log - 3-1-07			
SSSSS	Billing for Dr. Cash	8-1-15	N	8-1-15
TTTTT	Affidavit of Timothy Spears	8-31-15	Y	8-31-15

COURT'S EXHIBITS

CASE NO. A648041

	Date Offered	Objection	Date Admitted
1) Demonstrative	8/24/15	N	8/24/15
2) Demonstrative	8/24/15	N	8/24/15
3) Juror # 1 Question	8/25/15	N	8/25/15
4) Juror # 4 Question	8/26/15	N	8/26/15
5) Juror # 10 Question	8/26/15	didn't read	8/26/15
6) Juror # 6 Question	8/27/15	N	8/27/15
7) Juror # 1 Question	8/27/15	N	8/27/15
8) Juror # 6 Question	8/27/15	N	8/27/15
9) Juror # 10 Question	8/29/15	N	8/29/15
10) Juror # 3 Question	8/31/15	Y	8/31/15
11) Juror # 1 Question	8/31/15	not asked	8/31/15
12) Juror # 1 Question	8/31/15	not asked	8/31/15
13) Defense Exhibit EE	8/31/15	N	8/31/15
14) Defense Exhibit LL	8/31/15	N	8/31/15
15) Plaintiffs opening Powerpoint	9/2/15	N	9/2/15
16) Deposition of Allan Belzberg, MD	8-24-15	N	9/2/15
17) Deposition of Beau Onth	8-25-15	N	9/2/15
18) Deposition of Albert Capanna MD	8-26-15	N	9/2/15
19) Deposition of Marc D. Kaye, M.D.	8/3/15	-	9/2/15

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

SECOND SUPPLEMENTAL NOTICE OF APPEAL; SECOND SUPPLEMENTAL CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER REGARDING DEFENDANT’S MOTION TO RETAX AND SETTLE THE COSTS; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST

BEAU R. ORTH,

Plaintiff(s),

vs.

ALBERT H. CAPANNA, M.D.,

Defendant(s),

Case No: A-11-648041-C

Dept No: III

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 2 day of August 2016.

Steven D. Grierson, Clerk of the Court

Chaunte Pleasant

Chaunte Pleasant, Deputy Clerk

