

Exhibit “6”

Exhibit “6”

EXPERT RETAINER FEES ARE AS FOLLOWS:

Surgical Cost Letters \$500.00

Hourly rate for Depositions \$1,200.00 per hour
(We need to know the amount of time if more than one hour might be required)

**Deposition fees are required Two weeks in advance;
Or otherwise the deposition may be canceled**
If Deposition is not canceled or rescheduled 72 hours before there will not be a refund

Video Depositions \$2,000.00 per hour (**cancellation policy applies**)

Preparations for Deposition or Trial \$850.00 per hour (no charge for local travel time)

Trial fees are required one week in advance; Cancellation for full refund must be 4 working days or for ½ refund 2-3 working days prior to set trial date.

(If trial is canceled you will still be billed for any preparation time)

Half day Trial fee (max 4 hours) \$5,000.00

All day Trial fee (8 hours) \$10,000.00

Out of state Trials will vary on complexity and travel expenses

Out of state Trial cancellations must be 5 working days prior to trial for refund

(Less any fees incurred for travel cancellations)

Telephone conferences and meetings are \$250.00 per 15 minute intervals

Independent medical examinations are \$1,500.00 not including
x-rays or record review;

Cancellations must be 2 working days prior to exam

“No Shows” will be charged a fee of \$300.00

Record review charges with written report are \$1,000.00 per inch of records or \$750.00
per hour whichever is greatest

Record review charges without written report \$750.00 per hour

Life Care Plans are charged on an individual basis
(They start at \$3800.00 most average about \$4500.00)

For clarification call Joy Murray Practice Administrator

Please note: prices are subject to change any time.

Tax Id 20-3966607

William S. Muir, M.D.
Curriculum Vitae

Business Address: 653 N. Town Center Dr Suite 210
Las Vegas NV 89144

Field of Specialization: Orthopedic Surgery (Spine Only)

Date of Birth: September 7, 1951

Place of Birth: San Jose, California

LANGUAGES

Fluent in English and Spanish

CERTIFICATIONS

Board Certified- American Board of Orthopedic Surgeons- Recertified

MEDICAL LICENSES

Nevada	11685
Utah	186266-1205
California	87019

HOSPITAL STAFF PRIVILEGES

Summerlin Hospital – Las Vegas, NV
Southern Hills Hospital – Las Vegas, NV

POST GRADUATE

Fellowship:

July 1991- January 1992

Spine Fellowship

Ashville Surgical Center – Ashville, North Carolina

Fellowship included comprehensive experience in all aspects of spinal surgery

Professors: Keith Maxwell, M.D. and L.S. Van Blaricom, M.D.

Residency:

July 1986 – June 1991

Phoenix Orthopedic Residency Program

Curriculum included 8 months of Spine and one year of Pediatric Orthopedics

Curriculum included spine training of Barrow's Neurological Institute

Internship:

June 1986 – June 1987

Mariposa Medical Center – Phoenix, AZ

MEDICAL EDUCATION

University of Nevada School of Medicine

Reno, NV

1982 – 1986

Degree: M.D.

AOA Honor Society

Practicing Physical Therapy

1977 – 1982

Stanford School of Medicine – Division of Physical

Stanford, CA

1975 – 1977

Degree: Master of Arts in Physical Therapy

UNDERGRADUATE EDUCATION

Brigham Young University

653 N. Town Center Dr. Ste. 210 Las Vegas, NV 89144 Tel. (702) 254-3020 Fax (702) 255-2620

Rev February 20, 2013

Provo, UT
1969 – 1971, 1973 – 1975
Degree: Bachelor of Science Graduate

LIFECARE PLANNER

Life Care Planner: Recognized by the State of Nevada 2006 - Present

HONORS

2001 – 2006
Professor of Spinal Surgery, El Cima Hospital – Costa Rica

2000 – 2005
Consultant for Spinal Concepts
Trustee for Desert Foundation (Charitable Organization)

1998 – 2000
Chairman of Healthier Communities (Charitable Organization)

1995 – 1996
Chief of Staff, Orthopedics – Cottonwood Hospital

April 1991
Annual Resident Writers Award – Runner up – Orthopedic Review, Vol. 20, No. 4, April 1991, Page 380

1990
Vernon P. Thompson Award for Research by the Western Orthopedic Association

1986 – Present
A.O.A – Alpha Omega Alpha: Medical Honorary Society

RESEARCH PUBLICATIONS

SCIENCE DIRECT- JOURNAL OF SURGICAL RESEARCH 194 (2015) 679-687, “ Fibrocaps for surgical hemostasis : two randomized, controlled phase II trials”

ORTHOPEDIC REVIEW, (Principal Author) “Comparison of Ultrasonically Applied vs. Intra-articula Injected Hydrocortisone Levels in Canine Knees” Factors Affecting Ambulation: Vol. 15, No, Summer 1991, Page 339

653 N. Town Center Dr. Ste. 210 Las Vegas, NV 89144 Tel. (702) 254-3020 Fax (702) 255-2620
Rev February 20, 2013

ORTHOPEDIC TRANSACTIONS – JOURNAL OF BONE AND JOINT SURGERY,
(Principal author): “Local and Systematic Effects of Phonophoresis of Hydrocortisone in Canines”

ORTHOPEDIC PRESENTATIONS

PLASMA DISC DECOMPRESSION Selby Spine Conference 2010

PLASMA DISC DECOMPRESSION Pain Week Conference 2009

ORTHOPEDIC REHABILITATION ASSOCIATION annual meeting in Washington, D.C.
September 12, 1991 “Local and Systemic Effects of Phonophoresis of Hydrocortisone in Canines”

WESTERN ORTHOPEDIC ASSOCIATION meeting in San Antonio, Texas, October 15, 1990.
“Comparison of Ultrasonically Applied vs. Intra-articular Injected Hydrocortisone Levels in Canine Knees”

ORTHOPEDIC SECTION OF AMERICAN ACADEMY OF PEDIATRIC, Boston, Massachusetts,
October 7, 1990. “Myelodysplasia: Factors Affecting Ambulation”

TWENTY-SECOND ANNUAL LOUIS-COULTON PEDIATRIC ORTHOPEDIC SYMPOSIUM,
Phoenix, Arizona, April 20, 1990, “Myelodysplasia: Factors Affecting Ambulation”
(Selected by John Herring as Best Clinical Paper)

TWENTY – THIRD ANNUAL LOUIS – COULTON PEDIATRIC ORTHOPEDIC SYMPOSIUM,
Phoenix, Arizona, April 20, 1990, “ Local and Systemic effects of Phonophoresis of Hydrocortisone in Canines” (Selected by Stuart Weinstein as Best Basic Science Paper)

SPEAKING ENGAGEMENTS

Spine Surgery as Related to Senior Citizens, Summerlin Hospital, Las Vegas, Nevada 2009

Compression Fracture Treatment and Prevention, Las Vegas, Sun City, Public Service Talk
2008

“Present & Future Trends of Spine Surgery”, Annual State of Nevada Chiropractic
Conference 2007

653 N. Town Center Dr. Ste. 210 Las Vegas, NV 89144 Tel. (702) 254-3020 Fax (702) 255-2620
Rev February 20, 2013

Advanced Bionics Conference, instructor spinal cord stimulators placement, demonstrated surgery on cadavers and oversaw physicians regarding surgery, Las Vegas, Nevada 2007

Spinal Concepts Seminar, "Anterior Cervical Plating" and "Pedicicle Screw Instrumentation", San Jose, Costa Rica 2002

North Western Neurosurgeons, "Anterior Cervical Discectomy and Fusion", Tijuana, Mexico 2002

Selby Spine Conference, "Microscopic Endodiscectomy" 2000

Channel 13 Fox News, "Endoscopic Microdiscectomy" 1999

U.S.R.T Annual Meeting, Park City, Utah 1998

Eleventh Annual Compensable Disability Forum, Salt Lake City, Utah 1998

Industrial Medicine TOSH Seminar, Salt Lake City, Utah 1997

Channel 13 Fox News, "Low Back Care" 1995

Annual Physical Therapy Association Meeting, St George, Utah, "Danger signs in Spine Disorders" 1995

KSL Radio open forum, "Diagnosing of Spinal Disorders"

Early Bird Talks, "Conservative Care of the Lumbar Spine" ISI, Salt Lake City, Utah 1994-1996

Early Bird Talks, "Surgical care of the Lumbar Spine" ISI, Salt Lake City, Utah 1994-1996

Early Bird Talks, "Conservative care of the Cervical Spine" ISI, Salt Lake City, Utah 1994-1996

Early Bird Talks, "Surgical care of the Cervical Spine" ISI, Salt Lake City, Utah 1994-1996

"Oh my Aching Neck" ISI, Salt Lake City, Utah, quarterly seminar

"Oh my Aching Back" ISI, Salt Lake City, Utah, quarterly seminar

BYU Education Week, "Advances in Spinal Surgery" 1993

“Laser Discectomy” Utah Valley Regional Medical Center, presented to hospital staff
1992

Annual ISI Symposium, Salt Lake City, Utah 1991 – 2001 (Speaker each year on various
spine topics to more than 150 attendees)

Spinal Outlook: North Carolina, “Conservative Care of Low Back Pain” 1991

PRINCIPLE INVESTIGATOR CLINICAL RESEARCH EXPERIENCE

PI Certification by WIRB® and CITI

2013- 2014

A PHASE 2, MULTICENTER, RANDOMIZED, DOUBLE-BLIND, PLACEBO-CONTROLLED,
PARALLEL-GROUP STUDY TO EVALUATE THE EFFICACY AND SAFETY OF “xxxx” IN
SUBJECTS WITH NEUROPATHIC PAIN FROM LUMBOSACRAL RADICULOPATHY
(ONGOING)

2012-2013

A PROSPECTIVE PATIENT REGISTRY FOR BONE GRAFT SUBSTITUTES IN
SPINAL FUSION: PATIENT OUTCOMES AND USE IN CLINICAL PRACTICE
(7 ENROLLED) (ADD ON SITE)

2012-2013

QUALITATIVE RESEARCH IN LOW BACK PAIN FOR THE DEVELOPMENT OF A NEW
PATIENT REPORTED OUTCOME MEASURE (15 ENROLLED)

2012-2013

A PHASE 3, RANDOMIZED, SINGLE-BLIND, CONTROLLED TRIAL OF TOPICAL
“xxxx” IN INTRAOPERATIVE SURGICAL HEMOSTASIS (FINISH-3)
(32 ENROLLED)

2011-2011

D3820C00008: AN OPEN-LABEL 52-WEEK STUDY TO ASSESS THE LONG-TERM SAFETY OF
“xxxx” IN OPIOID-INDUCED CONSTIPATION (OIC) IN PATIENTS WITH NON-CANCER-
RELATED PAIN (Add on site)

2010-2011

A US PHASE 2, RANDOMIZED, SINGLE-BLIND, CONTROLLED, COMPARATIVE EFFICACY
AND SAFETY STUDY OF TOPICAL “xxxx” AND GELATIN SPONGE (USP) IN SURGICAL
HEMOSTASIS. (13 ENROLLED)

2006 – 2009

RANDOMIZED CONTROLLED TRIAL OF “xxxx” PLUS ADHESION BARRIER MATRIX TO MINIMIZE ADHESIONS FOLLOWING LUMBAR DISCECTOMY
(37 ENROLLED)

2005-2006

PHASE 3 RANDOMIZED, DOUBLE BLIND, CONTROLLED, COMPARATIVE EFFICACY AND SAFETY STUDY OF (XXXX) AND XXXX IN SURGICAL HEMOSTASIS
(27 ENROLLED)

2004 – 2006

RANDOMIZED, THIRD-PARTY BLINDED, MULTICENTER, CLINICAL TRIAL TO DETERMINE THE SAFETY AND EFFECTIVENESS OF XXXX GEL FOR THE REDUCTION OF PAIN AND SYMPTOMS FOLLOWING LUMBAR DISC SURGERY (32 ENROLLED)

2004

A TWO PART PHASE I/II STUDY OF THE SAFETY AND EFFICACY OF TOPICAL XXXX IN PATIENTS UNDERGOING SURGERY ON THE BONY PORTIONS OF THE SPINE
(28 ENROLLED)

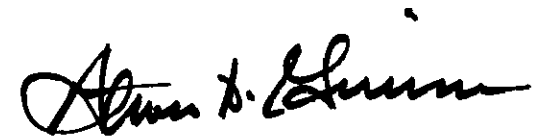
2000 – 2002

A CONTROLLED, DOUBLE BLIND, RANDOMIZED EFFICACY AND SAFETY EVALUATION OF XXXX FOR REDUCING POST-SURGICAL PERINEURAL ADHESION/SCARRING IN PATIENTS UNDERGOING INTRASPINAL LUMBAR SURGICAL PROCEDURES OF HERNIATED INVERTEBRAL DISC
(20 ENROLLED)

AFFILIATED INVESTIGATOR

Physicians’ Research Options, LLC
2000-Present
10011 South Centennial Parkway Suite 340
Sandy, UT 84070

Participant in AAOS Expert Witness Program



CLERK OF THE COURT

ERR
BRIAN D. NETTLES, ESQ.
Nevada Bar No. 7462
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
NETTLES LAW FIRM
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Telephone: (702) 434-8282
Facsimile: (702) 434-1488
brian@nettleslawfirm.com
christian@nettleslawfirm.com
jon@nettleslawfirm.com
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

YVONNE O'CONNELL, an individual,

Plaintiff,

Case No.: A-12-655992-C

Dept. No.: V

vs.

WYNN LAS VEGAS, LLC, a Nevada
Limited Liability Company, doing business as
WYNN LAS VEGAS; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

ERRATA TO SUPPLEMENTAL BRIEF REGARDING DEVIATING ABOVE NRS
18.005(5)'S EXPERT WITNESS STATUTORY CAP PURSUANT TO THE *FRAZIER V.*
***DRAKE*¹ FACTORS**

Date and Time of Hearing:
August 12, 2016, at 9:00 a.m.

Plaintiff YVONNE O'CONNELL by and through her counsel, Brian D. Nettles, Esq.,
Christian M. Morris, Esq., and Jon J. Carlston, Esq., of the NETTLES LAW FIRM, submits this

¹ 357 P.3d 365, 131 Nev. Adv. Rep. 64 (Nev. Ct. App. 2015).

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Errata in reference to the *Supplemental Brief Regarding Deviating Above NRS 18.005(5)'s Expert Witness Statutory Cap Pursuant to the Frazier v. Duke* ("Supplemental Brief") filed with this court on July 13, 2016.

On page 4 at line 3 of *Supplemental Brief*, Plaintiff inadvertently neglected to attach "Exhibit 3" which is a copy of the "Order Partially Granting and Partially Denying Defendant's Motion to Retax Costs and Plaintiff's Motion to Tax Costs and for Fees, Costs and Post-Judgment Interest". This proposed Order is attached to this Errata as "Exhibit 3A" as the 'Exhibit 3' referenced later in the *Supplemental Brief* is selected portions of the Trial Transcript from the November 9, 2015, jury trial.

On page 5 at line 3 of the *Supplemental Brief*, this citation should refer to Exhibits "1", "2", "4", "5", and "6". Reference to "Exhibit "1", "2", "xx." was an error.

DATED this 18th day of July, 2016.

NETTLES LAW FIRM

/s/ Christian M. Morris

By _____
BRIAN D. NETTLES, ESQ.
Nevada Bar No. 7462
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
JON J. CARLSTON, ESQ.
Nevada Bar No. 10689
Attorneys for Plaintiff

NETTLES LAW FIRM
1389 Galleria Dr. Suite 200
Henderson, NV 89014
702-434-8282 / 702-434-1488 (fax)

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CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 18th day of July, 2016, I served the foregoing **ERRATA TO SUPPLEMENTAL BRIEF REGARDING DEVIATING ABOVE NRS 18.005(5)’S EXPERT WITNESS STATUTORY CAP PURSUANT TO THE FRAZIER V. DUKE FACTORS** to the following parties by electronic transmission through the Wiz-Net system:

Semenza Kircher Rickard		
	Contact	Email
	Christopher D. Kircher	cdk@skrlawyers.com
	Jarrod L. Rickard	jlr@skrlawyers.com
	Lawrence J. Semenza, III	ljs@skrlawyers.com
	Olivia Kelly	oak@skrlawyers.com

/s/ Laura Vila-Pinillos

An Employee of Nettles Law Firm

Exhibit “3a”

Exhibit “3a”

LAWRENCE J. SEMENZA, III, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

ORDER

Lawrence J. Semenza, III, Esq., Bar No. 7174

Email: ljs@semenzalaw.com

Christopher D. Kircher, Esq., Bar No. 11176

Email: cdk@semenzalaw.com

LAWRENCE J. SEMENZA, III, P.C.

10161 Park Run Drive, Suite 150

Las Vegas, Nevada 89145

Telephone: (702) 835-6803

Facsimile: (702) 920-8669

Attorneys for Defendant Wynn Las Vegas, LLC

d/b/a Wynn Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

YVONNE O'CONNELL, individually,

Plaintiff,

v.

WYNN LAS VEGAS, LLC, a Nevada
Limited Liability Company d/b/a WYNN
LAS VEGAS; DOES I through X; and ROE
CORPORATIONS I through X; inclusive,

Defendants.

Case No. A-12-655992-C

Dept. No. V

**ORDER PARTIALLY GRANTING
AND PARTIALLY DENYING
DEFENDANT'S MOTION TO RETAX
COSTS AND PLAINTIFF'S MOTION
TO TAX COSTS AND FOR FEES,
COSTS AND POST-JUDGMENT
INTEREST**

Date of Hearing: March 4, 2016

Time of Hearing: 8:30 a.m.

On March 4, 2016, the Court held a hearing on (1) Plaintiff Yvonne O'Connell's ("Plaintiff") Amended Application for Fees, Costs and Pre-Judgment Interest, amended and resubmitted as Plaintiff's Motion to Tax Costs and for Fees and Post-Judgment Interest (the "Amended Application for Fees") and on (2) Defendant Wynn Las Vegas, LLC's d/b/a Wynn Las Vegas ("Defendant") Motion to Re-tax Costs and Supplement to its Motion to Re-tax Costs (together "Motion to Re-tax"). Christian Morris, Esq. and Edward J. Wynder, Esq. of the Nettles Law Firm appeared on behalf of Plaintiff and Lawrence J. Semenza, III, Esq. and Christopher D. Kircher, Esq. of Lawrence J. Semenza, III, P.C. appeared on behalf of Defendant.

The Court, having reviewed the records and pleadings on file, as well as the oral argument of counsel, hereby rules as follows:

I. FACTUAL BACKGROUND

This is a personal injury action resulting from Plaintiff's slip and fall at Defendant's casino. A jury trial was held and the jury found in favor of Plaintiff on November 16, 2015. The jury awarded Plaintiff \$150,000 for past pain and suffering and \$250,000 for future pain and suffering, finding her to be 40% at fault. Plaintiff's total award was \$240,000. After the verdict was entered, Plaintiff filed her initial Application for Fees, Costs and Pre-Judgment Interest (the "Initial Application") on November 25, 2015, attaching a Memorandum of Costs as an exhibit. On December 7, 2015, Defendant filed its Opposition to the Initial Application and a Motion to Re-tax Costs. On December 21, 2015, Plaintiff filed an Amended Verified Memorandum of Costs and the above-described Amended Application for Fees. On December 28, 2015, Defendant filed its Supplement to its Motion to Re-tax Costs and Opposition to the Amended Application for Fees. On January 14, 2016, Plaintiff filed an Opposition to the Motion to Re-tax and Reply in support of her Amended Application for Fees.

II. DISCUSSION

A. Legal Standards and Applicable Statutes

Plaintiff moves for fees and costs under both NRCP 68 and NRS 18.010. NRCP 68(f) provides:

If the offeree [of an offer of judgment] rejects an offer and fails to obtain a more favorable judgment,

(1) the offeree cannot recover any costs or attorney's fees and shall not recover interest for the period after the service of the offer and before the judgment; and

(2) the offeree shall pay the offeror's post-offer costs, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney's fees, if any be allowed, actually incurred by the offeror from the time of the offer. If the offeror's attorney is collecting a contingent fee, the amount of any attorney's fees awarded to the party for whom the offer is made must be deducted from that contingent fee.

NRS 17.115(4) similarly provides, in relevant part:

1 Except as otherwise provided in this section, if a party who rejects
2 an offer of judgment fails to obtain a more favorable judgment, the
3 court:

4 (c) Shall order the party to pay the taxable costs incurred by the
5 party who made the offer; and

6 (d) May order the party to pay to the party who made the
7 offer... (3) Reasonable attorney's fees incurred by the party
8 who made the offer for the period from the date of service of
9 the offer to the date of entry of the judgment. If the attorney of
10 the party who made the offer is collecting a contingent fee, the
11 amount of any attorney's fees awarded to the party pursuant to
12 this subparagraph must be deducted from that contingent fee.

13 Additionally, NRS 18.010(2)(b) provides that fees may be awarded to the prevailing party
14 "[w]ithout regard to the recovery sought, when the court finds that the claim, counterclaim, cross-
15 claim or third-party complaint or defense of the opposing party was brought or maintained
16 without reasonable ground or to harass the prevailing party."

17 NRS 18.110(1)-(2) provides that whenever a party claims costs, she must file a verified
18 memorandum setting forth those costs within 5 days of entry of the judgment and that witness
19 fees are recoverable costs, regardless of whether the witness was subpoenaed, if the witness
20 testified at trial. NRS 18.110(4) allows the opposing party to file a motion to re-tax claimed costs
21 within 3 days of service of a copy of the memorandum of costs.

22 As a preliminary note, Defendant's first argument is that Plaintiff improperly and
23 unilaterally filed the Amended Application for Fees after reading Defendant's Opposition, so the
24 Court should only consider the Initial Application. Here, judgment was entered on December 15,
25 2015. Plaintiff filed the Initial Application well before this, on November 25, 2015. She also
26 filed her Amended Application for Fees on December 21, 2015, which is within the time limit set
27 forth in the rule (note that under EDCR 1.14(a), the period for filing is five *judicial* days from
28 entry of judgment). However, Defendant's Motion to Re-tax Costs as to the Initial Application
was due on December 2, 2015,¹ but it was not filed until December 7, 2015, and was thus

¹ Plaintiff served the Initial Application on November 25, 2015.

1 untimely.² Defendant's Motion to Re-tax as to the Amended Verified Memorandum of Costs was
2 timely, though. It is true that generally, supplemental briefing is allowed only by leave of court.
3 See EDCR 2.20(i). However, given that Defendant's first Motion to Re-tax Costs was untimely, it
4 would seem that it would be willing to waive its first argument in opposition to Plaintiff's
5 Amended Application for Fees.

6 **B. Analysis: Fees under NRCP 68**

7 In order for the penalties associated with the rejection of an offer of judgment to apply, the
8 offeree must not have obtained a more favorable judgment. NRCP 68(f); NRS 17.115(4). To
9 determine whether the offeree of a lump-sum³ offer of judgment obtained a more favorable
10 judgment, the amount of the offer must be compared to the amount of the offeree's *pre-offer*,
11 *taxable costs*. *McCrory v. Bianco*, 122 Nev. 102, 131 P.2d 573, 576, n. 10 (2006) (stating that
12 NRCP 68(g) must be read in conformance with NRS 17.115(5)(b)). Here, Plaintiff offered to
13 settle the case for \$49,999.00 on September 3, 2015. The verdict was in favor of Plaintiff for a
14 total of \$240,000.00. It seems that this may be a more favorable judgment, although Plaintiff has
15 neglected to specifically set forth her pre-offer taxable costs. On the other hand, Plaintiff's total
16 claimed costs were \$26,579.38 (whether pre- or post-offer) and that, together with the offer,
17 amounts to \$76,578.38. Plaintiff's jury recovery was well above this – \$240,000.00 – so it
18 appears that Plaintiff has met the threshold requirement to show entitlement to fees and costs
19 under Rule 68.

20 The determination of whether to grant fees to a party under NRCP 68 rests in the sound
21 discretion of the trial court. *Chavez v. Sievers*, 118 Nev. 288, 296, 43 P.3d 1022, 1027 (2002).
22 Such a decision will not be disturbed unless it is arbitrary and capricious. *Schouweiler v. Yancey*
23 *Co.*, 101 Nev. 827, 833, 712 P.2d 786, 790 (1985). District courts must consider several factors
24 when making a fee determination under *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268,
25

26 ² Defendant argues that Plaintiff never actually served the initial Memorandum of Costs, but this is
27 disingenuous because Plaintiff did in fact serve her Initial Application that attached a Memorandum of
28 Costs as an Exhibit.

³ A lump-sum offer of judgment is one that includes all damages, legal costs, and attorneys' fees.

1 274 (1963): (1) whether the plaintiff's claim was brought in good faith; (2) whether the offer was
2 reasonable and in good faith in timing and amount; (3) whether the decision to reject the offer was
3 grossly unreasonable or in bad faith; and (4) whether the sought fees are reasonable and justified.
4 However, where the defendant is the offeree of an offer of judgment, the first factor changes to a
5 consideration of whether the defendant's defenses were litigated in good faith. *See Yamaha Motor*
6 *Co. v. Arnoult*, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998).

7 As to the first factor, whether Defendant's defenses were litigated in good faith, Plaintiff
8 argues that Defendant's defense that it had no notice of the liquid on the casino floor was in bad
9 faith because it failed to make an inquiry into the last time the floor was checked before Plaintiff
10 slipped. (Am. App. at 5-6.) Plaintiff also argues that Defendant's defense that there was no
11 causation here was unreasonable because it relied upon expert testimony that lacked a basis in
12 modern science. (*Id.* at 6.) Defendant's Motion to Re-tax and Opposition to the Amended
13 Application for Fees does not address whether its defenses were maintained in good faith.
14 However, this Court has already highlighted in its Tentative Ruling on Defendant's Renewed
15 Motion for Judgment as a Matter of Law that Nevada case law surrounding constructive notice is,
16 at best, confusing. This is not a case where the law is black and white. Based on that and the
17 evidence presented at trial, it was not bad faith for Defendant to contend that it lacked notice of
18 the condition on the floor and Plaintiff in fact so concedes.

19 Furthermore, Plaintiff's evidence of constructive notice may have been enough to escape
20 the granting of a Rule 50 motion, but it was by no means overwhelming. Additionally, Plaintiff's
21 damages claims were reasonably disputed by expert testimony of a defense witness. That the jury
22 was not persuaded by this expert does not translate to bad faith by the Defendant. Thus, the first
23 factor therefore weighs in favor of the Defendant.

24 As to the second factor, Defendant argues that the offer was unreasonable in amount
25 because Plaintiff had no basis for its offer and that due to Plaintiff's "gamesmanship," Defendant
26 could not sufficiently evaluate the offer. (Opp. at 5-7.) Here, discovery closed on June 12, 2015,
27 Plaintiff was unable to submit proof of special medical damages at the time of trial because the
28 Court precluded them on the basis that they were not properly disclosed in discovery. This made

1 it extremely difficult for the Defense to evaluate a potential value of the case. An offer made at a
2 time when Plaintiff has not properly provided a calculation of damages is unreasonable. Thus, the
3 second factor weighs in favor of Defendant.

4 In ascertaining whether Defendant's decision to reject the offer was grossly unreasonable
5 or in bad faith, a pertinent consideration is whether enough information was available to
6 determine the merits of the offer. *Trustees of the Carpenters for S. Nev. Health & Welfare Trust*
7 *v. Better Building Co.*, 101 Nev. 742, 746, 710 P.2d 1379, 1382 (1985). Here, discovery closed
8 on June 12, 2015. The offer of judgment was made three months later, on September 3, 2015.
9 Given that at the time of the offer, Defendant had available all the materials obtained during
10 discovery, including witness depositions, Defendant's decision to reject the offer was well-
11 informed. Furthermore, the issues surrounding notice were not necessarily clear-cut, as evidenced
12 by the parties' pre-trial and post-trial motions on that issue. Overall, it is unlikely that Defendant's
13 rejection of the offer was grossly unreasonable or in bad faith, and in the end weighs in favor of
14 Defendant.

15 With regard to the last *Beattie* factor, the Court must undergo an analysis of whether
16 claimed fees were reasonable in light of the factors set forth in *Brunzell v. Golden Gate Nat'l*
17 *Bank*, 85 Nev. 345, 249, 455 P.2d 31, 33 (1969). Plaintiff has addressed some, but not all, of
18 these factors. Plaintiff's counsel has set forth the qualities of the advocate(s) on this case and, of
19 course, we know that a favorable result was obtained. However, Plaintiff has not provided any
20 bills setting forth what tasks were performed and the associated hours for those tasks. This
21 prevents the Court from determining whether the fees charged were reasonable in light of the
22 tasks actually performed. Therefore, because Plaintiff has not carried her burden under *Brunzell*,
23 this factor weighs in favor of Defendant. On the whole, all of the factors set forth in *Beattie* (as
24 modified by *Yamaha, supra*) weigh in favor of Defendant in this case and Plaintiff's Amended
25 Application for Fees should be **denied**.

26 **C. Analysis: Award of Costs**

27 Although NRCP 68 costs are only for post-offer costs, NRS 18.020(3) mandates awarding
28 all costs to Plaintiff since she prevailed in seeking damages in an amount more than \$2,500. NRS

1 18.110(1) requires the filing of a memorandum of costs by the party in whose favor judgment is
2 rendered, including a verification of the party, the party's attorney, or an agent of the party's
3 attorney that the costs are correct and were necessarily incurred.

4 The amount of awarded costs rests in the sole discretion of the trial court. *Bergmann v.*
5 *Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 565-66 (1993). The court also has "discretion when
6 determining the reasonableness of the individual costs to be awarded." *U.S. Design & Constr.*
7 *Corp. v. I.B.E.W. Local 357*, 118 Nev. 458, 463, 50 P.3d 170, 173 (2002). Claimed costs must be
8 "actual and reasonable, rather than a reasonable estimate or calculation of such costs." *Bobby*
9 *Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 385-86 (1998) (internal quotations
10 omitted). The Supreme Court has also indicated that claimed costs must be supported by
11 documentation and itemization. *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 971 P.2d 383
12 (1998). Defendant only challenges certain specific fees, each of which will be addressed in turn.

13 *I. Expert Witness Fees*

14 Defendant argues that the amounts for expert witnesses should be reduced because they
15 are well over the statutory limit of \$1,500.00 per expert and the additional amounts are not
16 necessary and reasonable. (Mot. to Re-tax Costs at 6-8.) NRS 18.005(5) provides that
17 recoverable costs include "[r]easonable fees of not more than five expert witnesses in an amount
18 of not more than \$1,500 for each witness, unless the court allows a larger fee after determining
19 that the circumstances surrounding the expert's testimony were of such necessity as to require the
20 larger fee." Allowing fees above the statutory maximum requires this Court to determine whether
21 those fees were necessary and reasonable. *Arnold v. Mt. Wheeler Power Co.*, 101 Nev. 612, 615,
22 707 P.2d 1137, 1139 (1985).

23 Granting fees in excess of the statutory maximum may be necessary and reasonable where
24 the expert witness' testimony "constituted most of the evidence." *Gilman v. Nevada State Bd. of*
25 *Veterinary Med. Examiners*, 120 Nev. 263, 273, 89 P.3d 1000, 1006-07 (2004), *disapproved of on*
26 *other grounds by Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. Adv. Op. 27, 327 P.3d 487
27 (2014). Here, the testimony of Dr. Dunn and Dr. Tingey was important but did not constitute
28

1 most of the evidence. Plaintiff herself testified, as well as other witnesses and employees of
2 Defendant.

3 On the other hand, Plaintiff outlined in her Amended Application for Fees and Opposition
4 to Defendant's Motion to Re-tax that the nature of their testimony was fairly complex and
5 required several hours of file review. Even though Drs. Dunn and Tingey were Plaintiff's treating
6 physicians, as Defendant points out, this does not necessarily make an increased fee unnecessary
7 or unreasonable. Plaintiff requests a total fee of \$6,000 for Dr. Tingey, \$10,000 for Dr. Dunn,
8 and \$3,699 for Gary Presswood.

9 Dr. Tingey's fee seems to be reasonable, for the reasons identified by Plaintiff in her
10 Amended Application for Fees. As to Dr. Dunn, Defendant does point out that half of the
11 claimed amount is for the second day of testimony, which lasted less than an hour and was done
12 to accommodate his own schedule. (Mot. to Re-tax Costs at 8.) Hence, Dr. Dunn should be
13 allowed only \$5,000. As to Mr. Presswood, his testimony was not used at trial because this Court
14 ruled that his testimony would be unreliable. Since his testimony was clearly inadmissible under
15 the *Hallmark* standard, as reflected in this Court's prior pre-trial ruling, his fees should not be
16 awarded. Hence, as to the expert fees, Defendant's Motion to Re-tax should be **granted in part**.

17 **2. Service Fees**

18 NRS 18.005(7) allows recovery of service fees. Defendant next challenges the service
19 fees claimed by Plaintiff in serving Yanet Elias, Corey Prowell, and Salvatore Risco. (Mot. to
20 Re-tax Costs at 8-9.) Plaintiff acknowledges that all costs must be both reasonable and *necessary*.
21 As to Yanet Elias and Corey Prowell, each was an employee of Defendant and Defendant points
22 out that it had accepted service for those persons. Even with the agreement that service can be
23 made upon counsel instead of the witness, however, does not eliminate the need to serve and the
24 fees would be necessary and she should be **granted** those fees.

25 As to Mr. Risco, Defendant argues that the service fees were unnecessary and
26 unreasonable because Plaintiff's counsel had good communication with him. However, unlike the
27 other two employee-witnesses, Mr. Risco was not a party to this case or an agent of a party to this
28 case, so service of a subpoena upon him was necessary. Additionally, Plaintiff has outlined

1 sufficient reasons for the amount of the claimed charge that show it to be reasonable and she
2 should be **granted** those fees.

3 *3. Jury Fees*

4 NRS 18.005(3) specifically allows an award of jury fees as an element of costs.
5 Defendant next argues it should not be responsible for the jury fees because Plaintiff failed to
6 request a jury trial within the time allowed. (Mot. to Re-tax Costs at 9.) Defendant essentially
7 only argues that because Plaintiff's demand for a jury trial was untimely and this should have been
8 a bench trial, it should not have to pay for the jury fees. However, those arguments are premised
9 on challenging this Court's grant of Plaintiff's request for a jury trial and the time for
10 reconsidering that decision has long since passed. Moreover, both parties had prepared this entire
11 case under the assumption that it was going to be tried by jury, so Defendant was not prejudiced
12 by the Court's ruling in any event. Since the jury fees were actually incurred and reasonable,
13 Defendant's Motion to Re-tax as to those fees should be denied, and Plaintiff should be **granted**
14 the jury fees incurred.

15 *4. Parking Fees*

16 NRS 18.005(17) allows the court to award any other reasonable costs actually incurred.
17 This would, of course, include costs incurred in parking for hearings and the like. Defendant
18 argues that there were other free places Plaintiff could have parked. (Mot. to Re-tax Costs at 9.)
19 This may or may not be true, but Defendant's argument is conclusory in any event. Because
20 Plaintiff actually incurred the parking costs, they should be **granted**.

21 *5. Skip Trace Fees*

22 Defendant lastly argues that Plaintiff's request for skip trace/investigative fees for Terry
23 Ruby were unreasonable and unnecessary. (Mot. to Re-tax Costs at 9.) Terry Ruby is a former
24 employee of Defendant and was the first to respond to Plaintiff's fall. (Opp. at 8.) It is clear why
25 Plaintiff would have a need to locate and depose Mr. Ruby. A \$150.00 fee for that service is not
26 unreasonable, given the extreme costs associated with reporting services like Accurant.
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1 Therefore, Defendant's Motion to Re-tax as to the skip trace fee should be denied, and Plaintiff
2 should be **granted** that amount as a cost.

3 **6. Remaining Fees**

4 Defendant does not challenge the remaining requested fees. Plaintiff has attached back-up
5 documentation for each claimed cost and they all seem to be reasonable and within the going
6 market rate for each associated service. Plaintiff has therefore carried her burden under *Berosini*
7 and the remaining costs requested should be awarded. Therefore, Plaintiff's Amended
8 Application for Fees as to costs should be **granted** as to the remaining costs sought, as set forth
9 herein.

10 Based on the foregoing, with good cause appearing:

11 **IT IS HEREBY ORDERED** that Plaintiff's Amended Application for Fees and
12 Defendant's Motion to Re-tax are both **GRANTED IN PART, DENIED IN PART**. The
13 requested attorney's fees are denied and Plaintiff is not awarded any attorney's fees related to this
14 matter. Plaintiff's requested costs in this matter is partially granted, but the amount of costs set
15 forth in Plaintiff's Amended Verified Memorandum of Costs is reduced by \$8,699.00 from the
16 amount sought of \$26,579.38. As a result, Plaintiff is granted costs in the total sum of
17 \$17,880.38.

18 DATED this ____ day of _____, 2016.

20
21 **EIGHTH JUDICIAL DISTRICT COURT JUDGE**

22 *Respectfully Submitted By:*

23 LAWRENCE J. SEMENZA, III, P.C.

24 

25 Lawrence J. Semenza, III, Esq., Bar No. 7174

26 Christopher D. Kircher, Esq., Bar No. 11176

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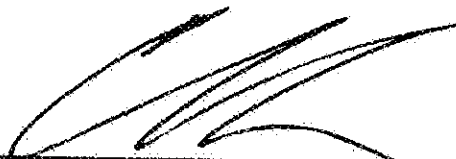
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Wynn Las Vegas

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Attorneys for Defendant Wynn Las Vegas, LLC
d/b/a Wynn Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

YVONNE O'CONNELL, individually,

Plaintiff,

v.

WYNN LAS VEGAS, LLC, a Nevada
Limited Liability Company, doing business as
WYNN LAS VEGAS; DOES I through X;
and ROE CORPORATIONS I through X;
inclusive;

Defendants.

Case No. A-12-655992-C
Dept. No. V

**DEFENDANT'S SUPPLEMENTAL
RESPONSE BRIEF REGARDING
FRAZIER V. DUKE**

Date of Hearing: August 12, 2016
Time of Hearing: 9:00 a.m.

Defendant Wynn Las Vegas, LLC d/b/a Wynn Las Vegas ("Wynn"), by and through its attorneys of record, Lawrence J. Semenza, III, Esq. and Christopher D. Kircher, Esq., hereby submits this Supplemental Response Brief pursuant to the Court's Minute Order entered on June 29, 2016. As set forth in Wynn's previous briefing, there is no basis under the circumstances of this case or the law to award Plaintiff the costs associated with her purported expert witnesses, Dr. Thomas Dunn and Dr. Craig Tingey. Consequently, the Court should not award Plaintiff any costs for these purported expert witnesses.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

On November 25, 2015, Plaintiff filed an Application for Fees, Costs and Prejudgment Interest ("Application") with an unfiled Memorandum of Costs and Disbursements and Calculation of Pre-Judgment Interest ("Memorandum of Costs") attached as an exhibit.

On December 7, 2015, Wynn filed an Opposition to Plaintiff's Application and, out of an abundance of caution, included a *timely filed* Motion to Retax the Costs, identifying the numerous deficiencies with Plaintiff's Application and Memorandum of Costs. A true and correct copy of Wynn's Opposition and Motion to Retax (minus exhibits) is attached hereto as **Exhibit 1**.

On December 15, 2015, judgement was entered by the Court in this case.

On December 21, 2015, Plaintiff unilaterally filed an Amended Application for fees and costs and an Amended Memorandum of Costs.

On December 28, 2015, Wynn filed its Supplement to Motion to Retax Costs and Opposition to Plaintiff's Amended Application for Fees, Costs and Prejudgment Interest. A true and correct copy of the Supplement to Motion to Retax Costs and Opposition to Plaintiff's Amended Application for Fees, Costs and Prejudgment Interest (minus exhibits) is attached hereto as **Exhibit 2**.

On March 4, 2016, the Court held a hearing relating to the attorney's fees and costs being sought by Plaintiff.

On June 29, 2016, the Court issued a Minute Order requesting briefing related to the costs sought by Plaintiff for her purported experts. On July 13, 2016, Plaintiff filed her supplemental brief. Therefore, Wynn submits the instant Supplemental Response Brief.

II. ARGUMENT

A. To Clarify the Court's Previous Tentative Ruling, Wynn Timely Filed Its Motion to Retax Costs

As a preliminary matter to clarify the Court's previous Tentative Ruling, Wynn timely filed its Motion to Retax Costs under NRS 18.110(4). Pursuant to NRS 18.110(4), a party may

1 move to retax costs within "3 days after service" of the memorandum of costs. Pursuant to
2 Nevada Rule of Civil Procedure ("NRCP") 6(a):

3 In computing any period of time prescribed . . . by any applicable statute,
4 the day of the act, event, or default from which the designated period of
5 time begins to run shall not be included. The last day of the period so
6 computed shall be included, unless it is a Saturday, a Sunday, or a
7 nonjudicial day, in which event the period runs until the end of the next
8 day which is not a Saturday, a Sunday, or a nonjudicial day, or, when the
9 act to be done is the filing of a paper in court, a day on which weather or
other conditions have made the office of the clerk of the district court
inaccessible, in which event the period runs until the end of the next day
which is not one of the aforementioned days. When the period of time
prescribed or allowed is less than 11 days, intermediate Saturdays,
Sundays, and nonjudicial days shall be excluded in the computation

10 *See also* EDCR 1.14(a) (the time computation mirrors NRCP 6(a)). In addition, under NRCP
11 6(e), "[w]henever a party has the right or is required to do some act or take some proceedings
12 within a prescribed period after the service of a notice or other paper, other than process, upon the
13 party and the notice or paper is served upon the party by mail or by electronic means, **3 days shall**
14 ***be added to the prescribed period.***"

15 Here, assuming *arguendo* that Plaintiff filed her Memorandum of Costs on November 25,
16 2015 as the Court determined¹, Wynn timely filed its Motion to Retax Costs on December 7,
17 2016.

18 On November 25, 2015, Plaintiff filed and electronically served her Application with the
19 Memorandum of Costs attached as an exhibit. Since Plaintiff electronically served Wynn, Wynn
20 had 3 judicial days under NRS 18.110(4), NRCP 6(a) and EDCR 1.14(a), ***plus*** 3 additional days
21 under NRCP 6(e) to file a motion to retax costs.

22 The first day (Wednesday, November 25, 2015) is not included in the computation. Thus,
23 the time to file a motion to retax costs commenced on Monday, November 30, 2015, because
24 Thursday, November 26, 2015 was Thanksgiving Day and Friday November 27, 2015 was
25 Family Day – both nonjudicial days. The 3 judicial days under NRS 18.110(4) ended on
26

27 ¹ Wynn previously argued that Plaintiff failed to separately file and serve her Memorandum of Costs
28 before filing her initial Application on November 25, 2016.

1 Wednesday, December 2, 2015. Then, Wynn was entitled to 3 additional days under NRCP 6(e)
2 since service was made by electronic means, which ended on Saturday, December 5, 2015. Under
3 NRCP 6(e) and EDCR 1.14(a), because December 5, 2015 was a Saturday, the period ran until
4 the next judicial day, which was Monday, December 7, 2015.

5 Therefore, Wynn timely filed its Motion to Retax Costs on December 7, 2015, which it
6 had filed out of an abundance of caution on that date to ensure it was timely filed despite it not
7 believing that Plaintiff's Memorandum of Costs had not been properly filed and served under
8 NRS 18.110.

9 **B. Under *Frazier v. Duke*, Plaintiff Is Not Entitled to Any Expert Fees**

10 As the Plaintiff correctly points out in her Supplemental Brief, both parties addressed the
11 recent decision of *Frazier v. Duke*, 131 Nev. Adv. Op. 64, 357 P.3d 365 (Nev. Ct. App. 2015) in
12 the briefing related to the purported "expert costs" Plaintiff is seeking in this matter. In particular,
13 Wynn addressed *Frazier v. Duke* on pages 10 through 13 of its Opposition to Plaintiff's
14 Application for Fees, Costs and Pre-Judgment Interest and Motion to Retax Costs filed on
15 December 7, 2016, as well as on pages 7 and 8 of its Supplement to Motion to Retax Costs and
16 Opposition to Plaintiff's Amended Application for Fees, Costs and Prejudgment Interest filed on
17 December 28, 2016. (Exhibits 1 and 2.)

18 For judicial economy, Wynn incorporates by reference the entire arguments set forth
19 therein related to the purported "expert costs" that Plaintiff is seeking as if set forth fully herein.²
20 The circumstances have not changed relating to Plaintiff's purported expert witnesses testifying at
21 trial. Nonetheless, Plaintiff has taken full advantage of the Court's Minute Order to expand its
22 *Frazier* analysis in hopes of being awarded additional costs related to its purported expert
23 witnesses. As set forth in Wynn's previous briefing, however, there is not a sufficient basis to
24 award Plaintiff expert costs for her treating physicians (especially above the statutory amount of
25 \$1,500 under *Frazier v. Duke*). Simply put, the amounts sought are outrageous. Therefore, the
26 Court should deny Plaintiff's request for costs related to Dr. Thomas Dunn and Dr. Craig Tingey.

27 _____
28 ² As set forth previously, Wynn has attached its previous briefing for the Court's convenience.

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1 **III. CONCLUSION**

2 Based on the foregoing, the Court should not award any expert costs in this case related to
3 Dr. Dunn and Dr. Tingey.

4 DATED this 26th day of July, 2016.

5 LAWRENCE J. SEMENZA, III, P.C.

6 /s/ Christopher D. Kircher
7 Lawrence J. Semenza, III, Esq., Bar No. 7174
8 Christopher D. Kircher, Esq., Bar No. 11176
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10 Attorneys for Defendant Wynn Las Vegas, LLC
11 d/b/a Wynn Las Vegas

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of Lawrence J. Semenza, III, P.C., and that on this 26th day of July, 2016 I caused to be sent through electronic transmission via Wiznet's online system, a true copy of the foregoing **DEFENDANT'S SUPPLEMENTAL RESPONSE BRIEF REGARDING FRAZIER V. DUKE** to the following registered e-mail addresses:

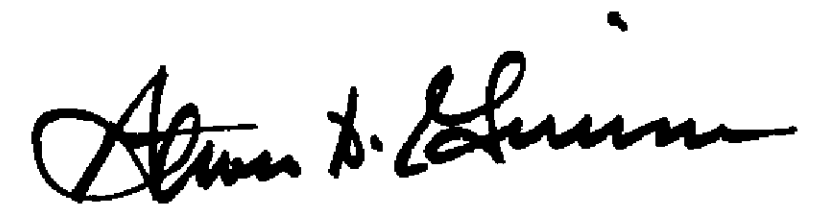
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Attorneys for Plaintiff

/s/ Jennifer A. Bidwell
An Employee of Lawrence J. Semenza, III

EXHIBIT 1

3 RA 534



CLERK OF THE COURT

OPPS

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Attorneys for Defendant Wynn Las Vegas, LLC

d/b/a Wynn Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

YVONNE O'CONNELL, individually,

Plaintiff,

v.

WYNN LAS VEGAS, LLC, a Nevada
Limited Liability Company, doing business as
WYNN LAS VEGAS; DOES I through X;
and ROE CORPORATIONS I through X;
inclusive;

Defendants.

Case No. A-12-655992-C

Dept. No. V

**DEFENDANT'S OPPOSITION TO
PLAINTIFF'S APPLICATION FOR
FEES, COSTS AND PRE-JUDGMENT
INTEREST AND MOTION TO RETAX
COSTS**

Defendant Wynn Las Vegas, LLC d/b/a Wynn Las Vegas ("Wynn"), by and through its attorneys of record, Lawrence J. Semenza, III, Esq. and Christopher D. Kircher, Esq., hereby opposes Plaintiff Yvonne O'Connell's Application for Fees, Costs and Pre-Judgment Interest (the "Application") and, out of an abundance of caution, submits a Motion to Retax Costs ("Motion"). For the reasons explained in detail below, the Court should deny Plaintiff's Application in its entirety because the Plaintiff has failed to meet the minimal requirements for an award of fees, costs and interest under Nevada law.

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1 This Opposition and Motion are made and based upon the following points and
2 authorities, the attached exhibits, all papers and pleadings on file herein, and any oral argument
3 this Court may entertain at the hearing of this Motion.

4 DATED this 7th day of December, 2015.

5 LAWRENCE J. SEMENZA, III, P.C.

6
7 /s/ Christopher D. Kircher
8 Lawrence J. Semenza, III, Esq., Bar No. 7174
9 Christopher D. Kircher, Esq., Bar No. 11176
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13 Attorneys for Defendant Wynn Las Vegas, LLC
14 d/b/a Wynn Las Vegas
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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

On or about February 7, 2012, Plaintiff filed her Complaint against Wynn, alleging a claim of Negligence. (Complaint, on file with the Court.)

From the date of filing her lawsuit through today, three law firms have represented Plaintiff. Plaintiff's attorney from the Nettles Law Firm appeared on February 18, 2015. (Notice of Appearance filed 2/18/15, attached hereto as **Exhibit 1**.) That being so, Plaintiff's current attorney has been involved in this case for about ten (10) months. (*Id.*)

On or about September 3, 2015, Plaintiff served Wynn with an Offer of Judgment. (Offer of Judgment 9/3/15, attached hereto as **Exhibit 2**.) To resolve the lawsuit, Plaintiff offered to accept \$49,999.99 from Wynn, inclusive of all accrued interest, costs, attorney's fees and any other sums that could be claimed by Plaintiff. (*Id.*) Wynn did not accept Plaintiff's offer.

On October 29, 2015, Plaintiff orally moved the Court for a jury trial, which Wynn opposed. The Court granted Plaintiff's motion for a jury trial, which increased the amount of time necessary to prepare for and complete the trial.

On November 4, 2015, jury selection began in this case. After a week trial, the jury returned a verdict in favor of Plaintiff, awarding her \$240,000.00. A judgment has not been filed in this case, and Plaintiff has not served a notice of entry of judgment pursuant to Nevada Rule of Civil Procedure 58(e).

On or about November 25, 2015, Plaintiff filed her Application seeking attorney's fees, costs and interest. Attached as an exhibit to Plaintiff's Application is an unfiled "Memorandum of Costs and Disbursements and Calculation of Pre-Judgment Interest." While Plaintiff's purported Memorandum of Costs fails to add up the costs sought, Plaintiff's Application identifies that she is seeking \$24,969.26 in costs, prejudgment interest for \$2,589.00 and attorney's fees equal to 40% of the verdict amount, *i.e.* \$96,000.00. The basis for the \$96,000.00 in attorney's fees is a contingency fees agreement between Plaintiff and her counsel.

To be clear, Plaintiff has not filed and served on Wynn a memorandum of costs. Moreover, the Application fails to include any supporting documentation or backup for her

1 claimed costs other than a printout for her filing fees. Finally, Plaintiff fails to identify the
2 amount of time actually incurred by her counsel in this lawsuit. For these reasons, the Court must
3 deny Plaintiff's Application in its entirety.

4 **II. ARGUMENT**

5 **A. The Court Cannot Award \$96,000 in Attorney's Fees to Plaintiff Because Her**
6 **Application Is Deficient under Nevada Law**

7 **1. The Attorney's Fees Sought Are Unreasonable under Nevada Law**

8 The attorney's fees sought by Plaintiff are completely unreasonable and unjustified.
9 Pursuant to NRS 17.115, Plaintiff may only seek her reasonable attorney's fees from the date she
10 served the Offer of Judgment, forward:

11 Reasonable attorney's fees incurred by the party who made the offer for
12 the period from the date of service of the offer to the date of entry of the
13 judgment. If the attorney of the party who made the offer is collecting a
contingent fee, the amount of any attorney's fees awarded to the party
pursuant to this subparagraph must be deducted from that contingent fee.

14 NRS 17.115(4)(d)(3). Rule 68 contains a similar provision. Nev. R. Civ. P. 68(f) ("attorney's
15 fees, if any be allowed, *actually incurred* by the offeror from the time of the offer") (emphasis
16 added).

17 Furthermore, the Nevada Supreme Court looks to the following four factors in
18 determining the reasonableness of an attorney's services before an award may be given: (1) the
19 qualities of the advocate: his ability, his training, education, experience, professional standing and
20 skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and
21 skill required, the responsibility imposed and the prominence and character of the parties where
22 they affect the importance of the litigation; (3) the work actually performed by the lawyer: the
23 skill, time and attention given to the work; and (4) the result: whether the attorney was successful
24 and what benefits were derived. *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d
25 31, 33 (1969); *Shuette v. Beazer Homes Holdings Corp.*, 124 P.3d 530, 549 (Nev. 2005).
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Here, Plaintiff is seeking \$96,000.00 in attorney's fees for the two (2) month time period since she served the Offer of Judgment. Plaintiff, however, fails to provide any documentation supporting that this amount represents fees and time actually incurred since September 3, 2015. In addition, Plaintiff's Application fails to address the *Brunzell* factors, making the Application deficient under Nevada law. Importantly, the third factor requires an analysis of the work *actually performed* by the attorney but Plaintiff fails to provide this information, such as billing invoices or timesheets, about the amount of work the attorneys actually performed since September 2015. Consequently, the Court must deny Plaintiff's request for attorney's fees in its entirety.

2. The Offer of Judgment Does Not Provide a Basis to Award Plaintiff Her Attorney's Fees Because Her Offer of Judgment Was Unreasonable and Wynn Appropriately Rejected the Offer

To determine whether to award attorney's fees should be allowed pursuant to an Offer of Judgment, the Court must "carefully evaluate" and weigh the following factors: "(1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount." *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). "Claims for attorney fees under NRS 17.115 and NRC 68 are fact intensive." *Wynn v. Smith*, 117 Nev. 6, 13, 16 P.3d 424, 428 (2001).

When analyzing these factors, it is abundantly clear that Plaintiff should not be awarded any attorney's fees in this case. Indeed, it would be an abuse of the Court's discretion to award Plaintiff any attorney's fees based on her deficient Application. *Bergman v. Boyce*, 109 Nev. 670, 675, 856 P.2d. 560, 565 (1993). Wynn addresses below the factors identified in *Beattie* in reverse order.

To begin with the fourth factor, the attorney's fees are clearly unreasonable and unjustified in amount for the reasons previously explained. Plaintiff seeks \$96,000.00 in attorney's fees without providing any supporting documentation regarding the fees actually incurred. The Court

1 cannot verify whether this amount is reasonable and justified based on Plaintiff's deficient
2 Application. As a result, Plaintiff cannot satisfy the last factor identified in *Beattie*.

3 Analyzing the third factor, Wynn's decision to reject the Offer of Judgment and proceed to
4 trial was extremely justified. Plaintiff intended to prejudice Wynn during all aspects of this
5 lawsuit, including its ability to properly evaluate an offer of settlement. The validity of Plaintiff's
6 alleged injuries, pain and damages was dubious throughout this case. Plaintiff identified over
7 \$37,946.98 in past medical damages throughout the case, but informed Wynn and the Court at the
8 last-minute that she did not intend to seek any of these special damages at trial. By doing so, she
9 essentially admitted that the \$37,946.98 in past medical damages identified in her Rule 16.1
10 disclosures was completely unrelated to the incident at issue.

11 Furthermore, Plaintiff identified purported injuries during discovery completely unrelated
12 to the incident when she had no intention to claim such injuries at trial. She also failed to identify
13 until Calendar Call which of her twenty-one treating physicians she intended to call at trial.¹
14 Plaintiff's fluid and ever-changing claims of injuries and damages throughout the lawsuit was
15 completely improper and prejudiced Wynn. Plaintiff undermined the purpose of an Offer of
16 Judgment and severely prejudiced Wynn with her calculated actions throughout the case.
17 Therefore, the Court should not award her any attorney's fees.

18 The second factor also weighs in Wynn's favor. At the time Plaintiff served the Offer of
19 Judgment, it was unreasonable and not in good faith in both its timing and amount. At the time of
20 the offer, Plaintiff had identified and was still claiming past medical expenses related to the entire
21 right side of her body, her wrists, hands, neck, head, face, back, spine, chest, abdomen, eyes and
22 heart. In addition, at that time she attributed to the incident her purported IBS, continuing
23 headaches, blurred vision, pain throughout her body, nausea, difficulty breathing, difficulty
24 walking, frequent urination, joint pain, muscle spasms, trembling, decreased sensation in her
25 hands and feet, carpal tunnel syndrome, trigger finger, dropping of her left eyelid, weakness,
26 chills, trouble sleeping, heartburn, sexual dysfunction and heart problems. Plaintiff attributed all

27 ¹ Wynn strenuously opposed any testimony from any of her treating physicians because, *inter alia*,
28 Plaintiff failed the disclosure requirements of Rule 16.1 and Wynn was severely prejudiced.

1 of these purported health issues to the Incident even though numerous of her medical providers
2 finding no objective symptoms of injury after performing countless examinations and tests.
3 Further, most of these medical issues and conditions were preexisting and she had not properly
4 apportioned them to the incident.

5 Plaintiff's Application claims that Wynn was aware at the time it rejected the Offer of
6 Judgment that she "had medical expenses in excess of \$60,000 and was a surgical candidate for a
7 3 level anterior surgical fusion and right knee meniscus repair." (Application, 5:2-6.) This is
8 untrue. As stated previously, her last Rule 16.1 disclosure identified medical expenses totaling
9 \$37,946.98. Moreover, Wynn did not learn that she was a surgical candidate for "a 3 level
10 anterior surgical fusion" until Dr. Dunn testified at trial. Further, Wynn learned of the right and
11 left meniscus tears in a late disclosure of medical records. Wynn believed this information and
12 documents would not be permitted at trial due to their untimely disclosure and the clear lack of
13 causation. Again, it is clear the \$37,946.98 in past medical damages she had identified in her
14 Rule 16.1 disclosures were unrelated to the incident at issue. Wynn appropriately rejected the
15 Offer of Judgment because it correctly doubted her claimed injuries and damages.

16 Finally, the first factor weighs in Wynn's favor because Plaintiff has been disingenuous
17 throughout this lawsuit. After the incident at issue, Plaintiff declined medical assistance from
18 Wynn's employees and continued to stay on Wynn's property and gamble. Upon leaving Wynn,
19 Plaintiff traveled yet to another casino to continue to gamble for hours. She did not seek medical
20 attention for two days. Despite seeing twenty-one medical providers and five years later, Plaintiff
21 has never had a surgery that she testified at trial she apparently needs. She claimed special
22 medical damages during discovery that she never intended to claim at trial. Even though Plaintiff
23 ultimately prevailed at trial, Wynn believes the circumstances surrounding this lawsuit
24 substantiate that it was not brought in good faith.

25 In conclusion, Plaintiff has failed to meet her burden in seeking an award of attorney's
26 fees. The facts and circumstances of this case do not warrant an award of attorney's fees in any
27 amount.
28

B. Plaintiff Is Not Entitled to Any Costs

1. Plaintiff Cannot be Awarded Her Costs Because She Has Failed to File and Serve a Memorandum of Costs on Wynn

Pursuant to NRS 18.110(1), "[t]he party in whose favor judgment is rendered, and who claims costs, *must* file with the clerk, and serve a copy upon the adverse party, within 5 days after the entry of judgment . . . a memorandum of the items of the costs in the action or proceeding, which memorandum must be verified by the oath of the party, or the party's attorney or agent" (Emphasis added). Importantly, this statute must be "strictly construed" and a district court "should exercise restraint" in awarding costs because statutes permitting the award of costs are in derogation of the common law. *Bobby Beronsini, Ltd. v. PETA*, 114 Nev. 1348, 1352-53, 971 P.2d. 383 (1998); *Bergman*, 109 Nev. at 679, 856 P.2d. at 566 (citations omitted).

In this case, Plaintiff has failed to file and serve a memorandum of costs; rather, attached as Exhibit "5" to her Application is an unfiled "Memorandum of Costs and Disbursements and Calculation of Pre-Judgment Interest" that was never separately served on Wynn. The Memorandum of Costs does not provide any documentation to support her alleged costs besides a printout for her filing fees despite Nevada law requiring such documentation "to ensure that the costs awarded are only those costs actually incurred." *Village Builder, 96, L.P. v. U.S. Labs, Inc.*, 120 Nev. 261, 278, 112 P.3d 1082, 1093 (2005). Therefore, Plaintiff cannot be awarded her alleged costs because she fails to meet the minimal requirements of NRS 18.110.²

2. The Court Cannot Award Costs to Plaintiff Because They Are Unreasonable and She Fails to Provide the Requisite Supporting Documentation

Even if Plaintiff's Application and Memorandum of Costs were not procedurally deficient, Plaintiff is not entitled to the entirety of her alleged costs. Under Nevada law, Plaintiff is required to show (1) how the alleged costs were necessarily incurred in this case, and (2) provide sufficient justifying documentation and specific itemization to demonstrate the reasonableness and the

² Pursuant to NRS 18.110(4), a party may move to retax the costs within 3 days after service of a copy of the memorandum of costs. As explained previously, Plaintiff has failed to file and serve on Wynn a memorandum of costs. Out of an abundance of caution, however, Wynn has moved herein to retax the costs claimed in Plaintiff's Application within the requisite time.

1 accuracy of the costs claimed. *Bobby Beronsini, Ltd.*, 114 Nev. at 1352-53. Necessary expenses
2 are those necessarily incurred as a matter of course in litigation, not merely expenses helpful or
3 advantageous in the particular case. *See Bergman v. Boyce*, 109 Nev. 670, 681-82, 856 P.2d. 560
4 (1993) (denying juror analysis and witness preparation expenses). Importantly, merely filing a
5 motion for costs is insufficient verification of the incurred costs. *See Village Builder, 96, L.P.*,
6 120 Nev. at 276-77, 112 P.3d at 1092-93; *Gibellini v. Klindt*, 110 Nev. 1201, 1205, 885 P.2d 540,
7 543 (1994) (holding reasonable costs must be actual and reasonable, "rather than a reasonable
8 estimate or calculation of such costs"); *Bergman v. Boyce*, 109 Nev. 670, 681-82, 856 P.2d. 560
9 (1993) (denying juror analysis and witness preparation expenses).

10 Here, the Court should not award Plaintiff her alleged costs. Plaintiff has failed to provide
11 any justifying documentation besides her filing fees of \$101.50. Without supporting
12 documentation, the Court cannot determine the accuracy, reasonableness or necessity of the
13 alleged costs. *See e.g., Bobby Beronsini, Ltd.*, 114 Nev. at 1353, 971 P.2d. at 386 (finding the
14 district court abused its discretion in awarding costs for photocopies and long distance phone calls
15 because the party failed to provide sufficient justifying documentation); *Bergman*, 109 Nev. at
16 682, 856 P.2d. at 568 ("trial court may award courier expenses to the extent that the court
17 determines that the expenses incurred were reasonable and necessary"). By way of example,
18 Plaintiff's alleged cost of \$153.50 for a runner service fee on October 5, 2015, for "Expert Report
19 Pick-up/Pre-trial Memo hand delivery to dept [sic]" must be inaccurate because Plaintiff's treating
20 physicians did not prepare expert reports. Consequently, the Court cannot award Plaintiff her
21 costs other than her filing fees because she fails to provide sufficient documentation that
22 demonstrates the reasonableness and the accuracy of the costs claimed.

23 Next, Plaintiff fails to explain how her alleged costs were necessary in this case. Indeed,
24 there is no explanation at all in the Application. Taken with the fact that there is no supporting
25 documentation for each claimed expense by Plaintiff, Plaintiff has utterly failed to show that the
26 alleged costs were necessary and reasonable. For example, Plaintiff fails to demonstrate how the
27 investigator fee for a "skip trace" of Terry Ruby was necessary. *Bobby Beronsini, Ltd.*, 114 Nev.
28 at 1353, 971 P.2d. at 386 (finding the district court abused its discretion in awarding investigative

1 fees because the party failed to justify its entitlement to such fees). Likewise, Plaintiff fails to
2 explain how her service fees, copy fees, runner service fees and deposition fees are both
3 reasonable and necessary. In short, Plaintiff has failed to meet her burden to show how the
4 alleged costs were necessary and truly incurred in this case.

5 Because the Plaintiff has failed to meet her burden justifying an award of costs other than
6 her filing fees, the Court should not award any additional amounts sought. *Gibellini*, 110 Nev. at
7 1206 (reversing district court's award of costs because the district failed to determine the actual
8 costs incurred).

9 **3. The Court Should Not Award Plaintiff Her Expert Fees Because They**
10 **Are Unreasonable and Plaintiff Fails to Meet the Minimal**
11 **Requirements of NRS 18.005 and *Frazier v. Drake***

12 NRS 18.005 defines costs to include reasonable fees for expert witnesses "in an amount
13 of not more than \$1,500 for each witness, unless the court allows a larger fee after determining
14 that the circumstances surrounding the expert's testimony were of such necessity as to require
15 the larger fee." NRS 18.005(5). The Court of Appeals of Nevada recently held that a district
16 court's award of expert witness fees in excess of \$1,500 per expert witness "must be supported by
17 express, careful and preferably written explanation of the court's analysis of factors pertinent to
18 determining reasonableness of the requested fees and whether the 'circumstances surrounding the
19 expert's testimony were of such necessity as to require the large fee.'" *Frazier v. Drake*, 357 P.3d
20 365, 377, 2015 Nev. App. LEXIS 12 (Nev. Ct. App. 2015) (citations omitted). In evaluating
21 requests for such awards, a district court should consider the following nonexhaustive factors:

- 22 1. The importance of the expert's testimony to the party's case;
- 23 2. The degree to which the expert's opinion aided the trier of fact in
24 deciding the case;
- 25 3. Whether the expert's reports or testimony were repetitive of other
26 expert witnesses;
- 27 4. The extent and nature of the work performed by the expert;
- 28 5. Whether the expert had to conduct independent investigations or
testing;

6. The amount of time the expert spent in court, preparing a report, and preparing for trial;
7. The expert's area of expertise;
8. The expert's education and training;
9. The fee actually charged to the party who retained the expert;
10. The fees traditionally charged by the expert on related matters;
11. Comparable experts' fees charged in similar cases; and,
12. If an expert is retained from outside the area where the trial is held, the fees and costs that would have been incurred to hire a comparable expert where the trial was held.

Id. at 377-78. Since this is a nonexhaustive list, other facts may be appropriate to consider when considering costs for expert witnesses. *Id.*

Here, without providing an invoice or bill from the witnesses to substantiate the costs actually incurred, Plaintiff seeks the following fees purportedly for an expert witness and treating physician testimony: (1) \$3,699.00 for Gary Presswood; (2) \$10,000.00 for Dr. Thomas Dunn; and (2) \$6,000.00 for Dr. Craig Tingey. Like the remainder of her claimed costs, Plaintiff fails to provide any explanation regarding the necessity of these expenses. Moreover, Plaintiff fails to provide any explanation why the circumstances surrounding each expert in this case were of such necessity as to require a fee larger than \$1,500.00 as required by *Frazier*. Clearly, the Court cannot award Plaintiff her purported expenses associated with these individuals.

To start, Plaintiff should not recover any costs related to the retention of Gary Presswood because he was not an expert witness and he did not testify at trial. (Order Granting Motion in Limine [#1] to Exclude Purported Expert Witness Gary Presswood, attached hereto as **Exhibit 3**.) Prior to trial, the Court found that his proffered testimony would not assist the jury for multiple reasons and precluded him from testifying. (*Id.*) Because Mr. Presswood did not meet the minimal requirements of NRS 50.275 to testify as an expert witness in this case, it follows that Plaintiff cannot be awarded costs for Mr. Presswood under NRS 18.005(5) since he was not an

1 expert witness. Accordingly, the Court should deny all costs related to Mr. Presswood.

2 Next, the substantial fees charged by Plaintiff's treating physicians, Dr. Dunn and Dr.
3 Tingey, are completely unreasonable under the circumstances of this case. Their testimony was
4 repetitive, insignificant to Plaintiff's case, did not aid the jury. Both Dr. Dunn and Dr. Tingey
5 based their "causation opinion" testimony solely on Plaintiff's subjective physical complaints
6 without reviewing Plaintiff's medical history. Simply put, their opinions were unreliable,
7 repetitive and unnecessary because Plaintiff testified regarding her subjective complaints of pain
8 and injury.

9 In addition, at trial Plaintiff did not seek any medical special damages, but only pain and
10 suffering damages. In typical personal injury cases, an expert witness is needed to testify
11 regarding the necessity of past or future medical treatment or the reasonableness of the costs for
12 such past or future medical treatment. Because Plaintiff decided not to seek these damages, their
13 testimony was not necessary and largely duplicative of Plaintiff's testimony. As such, Dr. Dunn
14 and Dr. Tingey's testimony was not important to Plaintiff's case and did not aid the jury in
15 deciding this case.

16 Next, both Dr. Dunn and Dr. Tingey admitted they did not perform much work to prepare
17 for trial, yet Plaintiff seeks \$16,000.00 in expenses related to them. They are both Plaintiff's
18 treating physicians, not retained expert witnesses. They did not prepare a written expert report.
19 They were not deposed in this case. They did not conduct any independent evaluations or testing
20 of Plaintiff. They did not spend much time testifying at trial. Indeed, they probably spent
21 approximately two to three hours each testifying at trial. As such, the amount of time spent by
22 each treating physician in court and preparation time (if any) does not justify an award of
23 \$16,000.00 in expenses. This is simply absurd to claim these amounts under the circumstances of
24 this case.

25 Actually, Dr. Dunn's fee doubled due to Plaintiff failing to adequately plan for and
26 schedule his testimony. At Calendar Call, Plaintiff claimed that both Dr. Dunn and Dr. Tingey
27 were available to testify during the trial, but failed to identify to the Court that they could not
28 testify until 4:00 p.m. Despite the Court permitting testimony past 5:00 p.m. to accommodate

1 Plaintiff and her doctors, Dr. Dunn's testimony could not be completed on the first day he
2 testified, requiring him to return for less than an hour for a second day of testimony at a cost of
3 \$5,000.00. Consequently, the \$5,000.00 cost for Dr. Dunn's second day of testimony is entirely
4 unreasonable based on the facts and circumstances of this case.

5 In summary, the Court cannot award expert fees in excess of \$1,500.00 per expert because
6 Plaintiff failed to provide any argument or analysis of the factors pertinent to determining
7 reasonableness of the requested fees as mandated by *Frazier v. Drake*. In addition, Plaintiff
8 should not be awarded any costs for Gary Presswood because he was precluded from testifying at
9 trial. Finally, Plaintiff should not be awarded \$16,000.00 in expert witness fees for the testimony
10 of her two treating physicians, Dr. Dunn and Dr. Tingey, because this amount is completely
11 unreasonable and their testimony was unnecessary at trial.

12 **III. CONCLUSION**

13 Based on the foregoing, the Court should deny Plaintiff's Application in its entirety.

14 DATED this 7th day of December, 2015.

15 LAWRENCE J. SEMENZA, III, P.C.

16
17 /s/ Christopher D. Kircher

18 Lawrence J. Semenza, III, Esq., Bar No. 7174

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23 d/b/a Wynn Las Vegas
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of Lawrence J. Semenza, III, P.C., and that on this 7th day of December, 2015 I caused to be sent through electronic transmission via Wiznet's online system, a true copy of the foregoing **DEFENDANT'S OPPOSITION TO PLAINTIFF'S APPLICATION FOR FEES, COSTS AND PRE-JUDGMENT INTEREST AND MOTION TO RETAX COSTS** to the following registered e-mail addresses:


NETTLES LAW FIRM
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Attorneys for Plaintiff

/s/ Olivia A. Kelly
An Employee of Lawrence J. Semenza, III, P.C.

EXHIBIT 2

3 RA 549



CLERK OF THE COURT

SUPPL

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Attorneys for Defendant Wynn Las Vegas, LLC

d/b/a Wynn Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

YVONNE O'CONNELL, individually,

Plaintiff,

v.

WYNN LAS VEGAS, LLC, a Nevada
Limited Liability Company, doing business as
WYNN LAS VEGAS; DOES I through X;
and ROE CORPORATIONS I through X;
inclusive;

Defendants.

Case No. A-12-655992-C

Dept. No. V

**DEFENDANT'S SUPPLEMENT TO
MOTION TO RETAX COSTS AND
OPPOSITION TO PLAINTIFF'S
AMENDED APPLICATION FOR FEES,
COSTS AND PRE-JUDGMENT
INTEREST**

Date of Hearing: January 21, 2015

Time of Hearing: 9:00 a.m.

Defendant Wynn Las Vegas, LLC d/b/a Wynn Las Vegas ("Wynn"), by and through its attorneys of record, Lawrence J. Semenza, III, Esq. and Christopher D. Kircher, Esq., hereby submits this supplemental brief in support of its Motion to Retax Costs and opposes Plaintiff Yvonne O'Connell's ("Plaintiff") Amended Application for Fees, Costs and Pre-Judgment Interest (the "Amended Application"). Wynn incorporates by reference its Opposition to Plaintiff's initial Application for Fees, Costs and Prejudgment Interest ("Application") and Motion to Retax Costs filed on December 7, 2015.

Preliminarily, Wynn objects to this second round of filings by Plaintiff seeking attorney's fees and costs. In desperation, Plaintiff has filed the Amended Application and Amended Memorandum of Costs after Wynn identified the numerous deficiencies under Nevada law with

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1 her initial Application and Memorandum of Costs. Plaintiff is now asking the Court for a "do-
2 over" to the severe prejudice of Wynn. This should not be permitted. The Court should not
3 consider the Amended Application and Amended Memorandum of Costs.

4 Even if the Court decides to consider the Amended Application and Amended
5 Memorandum of Costs, Plaintiff still has failed to meet the minimal requirements under Nevada
6 law for an award of the fees or costs she seeks. Accordingly, the Court must deny Plaintiff's
7 Amended Application and retax the costs.

8 This supplemental brief and opposition are made and based upon the following points and
9 authorities, the attached exhibits, all papers and pleadings on file herein, including Wynn's
10 Opposition to Plaintiff's initial Application and Wynn's Motion to Retax Costs, as well as any oral
11 argument this Court may entertain at the hearing of this matter.

12 DATED this 28th day of December, 2015.

13 LAWRENCE J. SEMENZA, III, P.C.

14
15 /s/ Christopher D. Kircher

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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

As the Court is aware, Plaintiff previously filed an Application for Fees, Costs and Prejudgment Interest on or about November 25, 2015. In her Application, Plaintiff seeks \$24,969.26 in costs, prejudgment interest for \$2,589.00 and attorney's fees equal to 40% of the verdict amount, *i.e.* \$96,000.00. The basis for the \$96,000.00 in attorney's fees is a contingency fee agreement between Plaintiff and her counsel. Attached as an exhibit to Plaintiff's Application is an unfiled copy of Plaintiff's "Memorandum of Costs and Disbursements and Calculation of Pre-Judgment Interest." (Memorandum of Costs, attached hereto as **Exhibit 1.**)

On December 7, 2015, Wynn filed an Opposition to Plaintiff's Application and, out of an abundance of caution, a Motion to Retax the Costs, identifying the numerous deficiencies under Nevada law with Plaintiff's Application and Memorandum of Costs. Conceding the deficiencies with her Application, Plaintiff has unilaterally filed the Amended Application for fees and costs and an Amended Memorandum of Costs. (Amended Memorandum of Costs, attached hereto as **Exhibit 2.**) Among other modifications, Plaintiff is seeking an additional \$1,610.12 in costs in her Amended Memorandum of Costs compared to her initial Memorandum of Costs. (*Id.*)

The Court should not consider Plaintiff's Amended Application and Amended Memorandum of Costs. Wynn has already spent substantial time and expense opposing Plaintiff's initial Application and filing the Motion to Retax Costs. Even if the Court considers Plaintiff's Amended Application and Amended Memorandum of Costs, they should be denied and the Court should not award Plaintiff any attorney's fees or costs in this matter.

II. ARGUMENT

A. The Court Should Not Consider Plaintiff's Amended Application or Amended Memorandum of Costs

Plaintiff has already filed the Application with a Memorandum of Costs. To ensure compliance with the timing requirements of NRS 18.110(4), Wynn diligently filed a Motion to Retax Costs and Opposition to Plaintiff's Application addressing the numerous deficiencies with the attorney's fees and costs sought by Plaintiff. Realizing the severe errors in the Memorandum

1 of Costs and Application, Plaintiff unilaterally and improperly filed the Amended Application and
2 Amended Memorandum of Costs. One thing is abundantly clear after reviewing Plaintiff's second
3 round of filings: Plaintiff's Application and Memorandum of Costs are entirely inaccurate.
4 Plaintiff should not be rewarded for claiming unsubstantiated costs and failing to address the
5 pertinent Nevada law for an award of fees and costs.

6 Plaintiff is circumventing the pertinent rules and statutes and severely prejudicing Wynn.
7 For the second time in less than a month, Wynn has been forced to oppose Plaintiff's request for
8 fees and costs on extremely short notice due to the filing requirements of NRS 18.110(4). Thus,
9 the Court should not consider Plaintiff's Amended Application and Amended Memorandum of
10 Costs.

11 **B. As a Matter of Law, the Court Cannot Award Plaintiff Any Attorney's Fees**
12 **Because She Is Inappropriately Seeking Attorney's Fees Incurred before the**
13 **Service of the Offer of Judgment and Has Failed to Satisfy the Brunzell**
14 **Factors**

15 In her initial Application, Plaintiff failed to address the factors set forth *Brunzell v. Golden*
16 *Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) despite the requirement to do so under
17 Nevada law when seeking an award of attorney's fees. Based on this fact alone, the Court should
18 not award Plaintiff any attorney's fees in this case.

19 Recognizing this grave error, Plaintiff attempts to address the *Brunzell* factors in her
20 Amended Application. However, she still has not (and apparently cannot given that this is her
21 second try) properly addressed the third *Brunzell* factor: the work actually performed by the
22 attorney. Furthermore, Plaintiff fails to specifically identify the attorney's fees incurred after the
23 service of the Offer of Judgment, *i.e.*, September 3, 2015. As a matter of law, the Court cannot
24 award Plaintiff any attorney's fees incurred before the date of service of the Offer of Judgment or
25 that are not determined to be reasonable. *Brunzell*, 85 Nev. at 349, 455 P.2d at 33; Nev. R. Civ.
26 P. 68(f) ("attorney's fees, if any be allowed, actually incurred by the offeror from the time of the
offer"); *see also* NRS 17.115(4)(d)(3).

27 Nevertheless, Plaintiff is seeking an astounding amount of \$96,000.00 in attorney's fees
28 for the two (2) month time period since she served the Offer of Judgment on Wynn without

1 satisfying these requirements. In a conclusory fashion, Plaintiff merely states that her "attorneys
2 and staff have spent hundreds of hours preparing and litigating this case." (Amended App. at
3 10:13-14.) This is insufficient as a matter of law. The *Brunzell* case requires Plaintiff to identify
4 the *actual* work performed – not just an extremely vague, unsubstantiated and unverifiable
5 estimate of the work performed.

6 Additionally, Plaintiff is clearly seeking attorney's fees incurred before the service of the
7 Offer of Judgment, which is prohibited under Rule 68 and NRS 17.115. With her initial
8 Application, Plaintiff provided a contingency fee agreement dated February 17, 2015, and
9 Plaintiff's counsel presumably has been litigating this case since then. Plaintiff has failed to
10 provide any documentation, such as billing invoices or timesheets, supporting that the large
11 amount requested represents the amount of fees and time *actually incurred* since September 3,
12 2015 – not the date counsel appeared on behalf of Plaintiff. Indeed, the Amended Application
13 does not even include the contingency fee agreement or an affidavit from counsel.

14 Accordingly, Plaintiff has failed to meet her burden proving that the attorney's fees sought
15 are reasonable and were incurred after the date of service of the Offer of Judgment. Claiming
16 unverifiable attorney's fees in amount of \$96,000.00 for two months is, in fact, completely
17 unreasonable and absurd. Consequently, the Court should not award Plaintiff any attorney's fees
18 in this matter.

19 **C. Plaintiff Is Not Entitled to Any Attorney's Fees under Rule 68 or NRS 18.010**

20 Plaintiff is not entitled to \$96,000.00 in attorney's fees under Rule 68 or NRS 18.010 for
21 two months of work. In her Application and Amended Application, Plaintiff omits important
22 facts and many of her statements are simply untrue, which warrants the denial of an award of
23 attorney's fees pursuant to her Offer of Judgment.

24 At the time it was served, the Offer of Judgment was entirely unreasonable and Wynn
25 appropriately rejected the offer. The validity of Plaintiff's alleged injuries, pain and damages
26 have been suspect throughout this case making it nearly impossible for Wynn to evaluate a
27 settlement offer from Plaintiff. For instance, throughout the lawsuit Plaintiff has continually
28 altered the extent of her alleged damages caused by the incident, including now. During

1 discovery, Plaintiff identified the amount of \$37,946.98 in past medical damages. In her initial
2 Application, Plaintiff states she "had medical expenses in excess of \$60,000" (Application at
3 5:2-6.) In her Amended Application, Plaintiff states that she has "in excess of \$100,000.00" for
4 "past and future medical expenses for knee and neck surgery." (Amended App. at 7:9-11.) This
5 is clear evidence of the problems Plaintiff caused Wynn in evaluating her settlement offers, as
6 well as her gamesmanship throughout this lawsuit. Plaintiff apparently believes she can claim
7 damages in any amount, even if the damages are not based in fact or supported by any evidence,
8 in order to force a defendant to settle. This is completely improper and severely prejudiced Wynn
9 during all aspects of this lawsuit. In reality, Plaintiff is purely speculating as to the amount of her
10 past and future medical expenses because there was never any testimony during trial, or
11 disclosure during the discovery period, regarding the costs of the surgeries she allegedly needs,
12 yet has never had over the past five (5) years.

13 Furthermore, Plaintiff identified purported injuries during discovery completely unrelated
14 to the incident when she clearly did not intend to claim such injuries at trial. Plaintiff obviously
15 did this in bad faith in order to increase the amount of a potential settlement. Quite tellingly,
16 when the date for trial arrived, Plaintiff did not seek any medical special damages because there
17 was no causal connection between Plaintiff's purported injuries and the incident at issue.

18 Based on these facts alone, the Court should deny Plaintiff's request for attorney's fees
19 pursuant to her Offer of Judgment because Plaintiff has failed to meet her burden for such an
20 award. An award of attorney's fees pursuant to an Offer of Judgment is only allowed if the claim
21 was brought in good faith, the offer of judgment was reasonable and in good faith in both its
22 timing and amount, the decision to reject the offer and proceed to trial was grossly unreasonable
23 or in bad faith, and the fees sought are reasonable and justified in amount. *Beattie v. Thomas*, 99
24 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). The facts and circumstances of this case do not
25 warrant an award of attorney's fees in any amount. Simply put, the Court should not reward
26 Plaintiff for such inexcusable conduct.

1 **D. Plaintiff Cannot Be Awarded the Costs Associated with Her Purported**
2 **Expert Witnesses Because She Still Fails to Meet the Requirements of NRS**
3 **18.005 and *Frazier v. Drake***

4 For the second time, Plaintiff has not provided any basis for an award of her expert fees as
5 mandated by NRS 18.005 and *Frazier v. Drake*, 357 P.3d 365, 2015 Nev. App. LEXIS 12 (Nev.
6 Ct. App. 2015).¹ To award of expert witness fees in excess of \$1,500 per expert witness, the
7 Court must determine the reasonableness of the requested fees and whether the "circumstances
8 surrounding the expert's testimony were of such necessity as to require the large fee." *Frazier*,
9 357 P.3d at 377 (quotations and citations omitted). The *Frazier* Court expressly set forth
10 numerous factors the Court may consider when awarding an expert witness fee in excess of
11 \$1,500.00, which was addressed in Wynn's Motion to Retax the Costs. Despite this, Plaintiff's
12 Amended Application omits any discussion of the *Frazier* factors. For this reason alone, the
13 Court should not award Plaintiff any fees related to her alleged "experts" in this case.

14 More reason exists for the Court to deny Plaintiff any award of costs for expert fees: only
15 Plaintiff's treating physicians testified at trial and the claimed fees are outrageous. Plaintiff is
16 seeking \$3,699.00 for Gary Presswood, \$10,000.00 for Dr. Thomas Dunn, and \$6,000.00 for Dr.
17 Craig Tingey. Gary Presswood, however, did not meet the minimal requirements of NRS 50.275
18 to testify as an expert witness in this case and was precluded from testifying by the Court.
19 Accordingly, the Court should deny all costs related to Mr. Presswood because he was not an
20 expert witness in this case. Next, Plaintiff did not retain a medical expert witness; rather, she
21 offered testimony from two of her treating physicians. As such, Plaintiff should not be awarded
22 any costs related to Dr. Dunn or Dr. Tingey.

23 Even if Dr. Dunn and Dr. Tingey qualify as expert witnesses in this case, seeking \$16,000
24 for their combined few hours of trial testimony is outrageous. Their testimony was repetitive,
25 unreliable, insignificant to Plaintiff's case, and did not aid the jury at all. Both Dr. Dunn and Dr.
26 Tingey based their "causation opinion" testimony solely on Plaintiff's subjective physical

27 ¹ NRS 18.005(5) defines costs to include reasonable fees for expert witnesses "in an amount of not more
28 than \$1,500 for each witness, unless the court allows a larger fee after determining that the circumstances
surrounding the expert's testimony were of such necessity as to require the larger fee."

1 complaints and they did not review her medical history. Moreover, Plaintiff did not seek medical
2 special damages at trial. Dr. Dunn and Dr. Tingey were character witnesses for Plaintiff – not
3 expert witnesses. Finally, the additional \$5,000.00 cost for Dr. Dunn's second day of testimony,
4 which lasted less than an hour, was incurred to accommodate Dr. Dunn's schedule.

5 Therefore, the Court should not award Plaintiff any expert witness costs in this case.

6 **E. Plaintiff Should Not Be Awarded Her Other Alleged Costs Identified in Her**
7 **Amended Memorandum of Costs**

8 First, Wynn filed the Motion to Retax Costs because Plaintiff's Memorandum of Costs
9 was utterly deficient to warrant the award of any costs. By filing an Amended Memorandum of
10 Costs, Plaintiff has conceded that this is true.² Plaintiff should not be given a second bite of the
11 apple. *See Bobby Beronsini, Ltd. v. PETA*, 114 Nev. 1348, 1352-53, 971 P.2d. 383 (1998) (NRS
12 18.110 must be "strictly construed" and a district court "should exercise restraint" in awarding
13 costs because statutes permitting the award of costs are in derogation of the common law). Wynn
14 has been prejudiced and is incurring additional fees and costs in having to address Plaintiff's
15 second Memorandum of Costs.

16 Second, even if the Court considers the Amended Memorandum of Costs, Plaintiff should
17 not be awarded the amounts sought, including her alleged "Service Fees." The "Service Fees" are
18 clearly unreasonable after reviewing the amounts and the invoices attached.³ Wynn's counsel
19 accepted service on behalf of Yanet Elias and Corey Prowell, which were delivered on the same
20 date to counsel's office, but Plaintiff seeks \$80.00 for Ms. Elias and \$110.00 for Mr. Prowell. The
21 breakdown on the invoices do not justify the costs charged. The service fee of \$171.20 for Sal
22 Risco is likewise outlandish, especially since Plaintiff knows where he resides and he cooperated
23 with her during this lawsuit. This fee includes a fee of \$50.00 for "immediate handling," a fee for
24 the witness check and \$85.00 to serve Mr. Risco.

25
26
27 ² Wynn previously filed its Motion to Retax out of an abundance of caution despite Plaintiff failing to file
and serve her initial Memorandum of Costs on Wynn as required by NRS 18.110(1).

28 ³ *See* PLTF 005 to PLTF 009 attached as part of Exhibit "1" to Plaintiff's Amended Memorandum of
Costs.

1 Third, Wynn should not be responsible for the jury fees of \$1,880.00. Among other
2 reasons, Wynn opposed Plaintiff's oral motion for a jury trial, made a couple of weeks before the
3 start of trial, because of the costs associated with a jury trial. As such, Wynn should not be
4 responsible for any costs associated with having a jury trial since it is Wynn's position that it
5 should have been a bench trial.

6 Fourth, Wynn should not be responsible for the parking fees for \$53.00 because there are
7 more reasonable, or free, parking options available to Plaintiff.

8 Fifth, the investigator fee for a "skip trace" of Terry Ruby was unnecessary. *Bobby*
9 *Beronsini, Ltd.*, 114 Nev. at 1353, 971 P.2d. at 386 (finding the district court abused its discretion
10 in awarding investigative fees because the party failed to justify its entitlement to such fees).
11 Necessary expenses are those necessarily incurred as a matter of course in litigation, not merely
12 expenses helpful or advantageous in the particular case. *See Bergman v. Boyce*, 109 Nev. 670,
13 681-82, 856 P.2d. 560 (1993).

14 Based on the above, Plaintiff has failed to meet her burden to show how the alleged costs
15 were necessary. Because Plaintiff has failed to meet her burden justifying an award of costs, the
16 Court should not award any other amounts sought.

17 **III. CONCLUSION**

18 Based on the foregoing, the Court should not award Plaintiff any attorney's fees or costs in
19 this matter.

20 DATED this 28th day of December, 2015.

21 LAWRENCE J. SEMENZA, III, P.C.

22
23 /s/ Christopher D. Kircher
24 Lawrence J. Semenza, III, Esq., Bar No. 7174
25 Christopher D. Kircher, Esq., Bar No. 11176
26 10161 Park Run Drive, Suite 150
27 Las Vegas, Nevada 89145

28 Attorneys for Defendant Wynn Las Vegas, LLC
d/b/a Wynn Las Vegas

LAWRENCE J. SEMENZA, III, P.C.
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Las Vegas, Nevada 89145
Telephone: (702) 835-6803

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of Lawrence J. Semenza, III, P.C., and that on this 28th day of December, 2015 I caused to be sent through electronic transmission via Wiznet's online system, a true copy of the foregoing **DEFENDANT'S SUPPLEMENT TO MOTION TO RETAX COSTS AND OPPOSITION TO PLAINTIFF'S AMENDED APPLICATION FOR FEES, COSTS AND PRE-JUDGMENT INTEREST** to the following registered e-mail addresses:

NETTLES LAW FIRM
christianmorris@nettleslawfirm.com
kim@nettleslawfirm.com

Attorneys for Plaintiff

/s/Olivia A. Kelly
An Employee of Lawrence J. Semenza, III, P.C.

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[Search](#) [Refine Search](#) [Close](#)

Location : District Court Civil/Criminal [Help](#)

REGISTER OF ACTIONS

CASE No. A-12-655992-C

Yvonne O'Connell, Plaintiff(s) vs. Wynn Resorts Limited,
 Defendant(s)

§
§
§
§
§
§
§
§

Case Type: **Negligence - Premises Liability**
 Subtype: **Slip and Fall**
 Date Filed: **02/07/2012**
 Location: **Department 5**
 Cross-Reference Case Number: **A655992**
 Supreme Court No.: **70583 71789**

PARTY INFORMATION

Defendant **Wynn Las Vegas LLC *Doing Business As* Wynn Las Vegas**

Lead Attorneys
Lawrence Semenza, III
Retained
 702-835-6803(W)

Defendant **Wynn Resorts Limited**

Plaintiff **O'Connell, Yvonne**

Brian D. Nettles
Retained
 7024348282(W)

EVENTS & ORDERS OF THE COURT

08/12/2016 **Hearing (9:00 AM) (Judicial Officer Ellsworth, Carolyn)**
Hearing: Retax Costs

Minutes

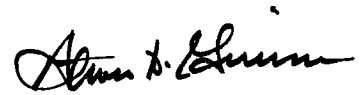
08/12/2016 9:00 AM

- Mr. Carlston stated he had a couple of points that he wanted to raise, one being Dr. Dunn's second day of testimony; these Frazier factors non exhausted lists trial witnesses can be difficult, he had to come back. The second issue we had been awarded Dr. Tingy's full \$6,000 fee and \$5,000 of that was for his testimony, \$1,000 was for consult with our office, we ask that is something that should be awardable it was part of his preparation for trial and his retention for treating as a medical expert should be awarded his full \$6,000 rather than capping it at \$5,000. Mr. Semenza argued with regard to Dr's Dunn and Tingy there was an issues with the disclosures, in their disclosures they had provided identical descriptions for 30 something providers and that was the basis why we didn't take the depositions beforehand and there were concerns if these two doctors would be permitted to testify at all in this case. That was the basis for the voir dire that took some time that the Court did allow us to take. The reason Dr. Dunn took the stand so late was based on his schedule, not the Court's schedule. We didn't finish with him which required him to come back the following day. The Court appropriately limited the amount of the award relating to Dr. Dunn to only that first day, based upon his schedule. With regard to the \$6,000 or \$5,000 difference. The \$6,000 was related to Dr. Tingy and Dr. Dunn was \$5,000 for the day, Dr. Tingy was the same, therefore we believe that the \$5,000 is more appropriate. The Court stated the reason Dr. Tingy's fee was adjusted down from the original \$6,000 was because the medical record by both physicians which was obtained late by the defense, was not very expansive or extensive. The Court finds the time Dr. Tingy spent testifying his fee was adequate. COURT ORDERED, DEFT'S RETAX COSTS GRANTED. Mr.

Semenza will prepare the Order.

[Parties Present](#)

[Return to Register of Actions](#)



CLERK OF THE COURT

1 **TRAN**

2
3 **EIGHTH JUDICIAL DISTRICT COURT**
4 **CIVIL/CRIMINAL DIVISION**
5 **CLARK COUNTY, NEVADA**

6 YVONNE O'CONNELL,

7 Plaintiff,

8 vs.

9 WYNN RESORTS, LIMITED, et al,

10 Defendants.

)
) CASE NO. A-12-655992

)
) DEPT NO. V

11
12 BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

13 FRIDAY, AUGUST 12, 2016

14 **TRANSCRIPT RE:**
15 **HEARING: RETAX COSTS**

16 **APPEARANCES:**

17 For the Plaintiff:

JON CARLSTON, ESQ.

18 For the Defendants:

LAWRENCE J. SEMENZA, III, ESQ.

19
20
21
22
23
24 RECORDED BY: Lara Corcoran, Court Recorder

1 LAS VEGAS, NEVADA, FRIDAY, AUGUST 12, 2016, 8:57 A.M.

2 * * * * *

3 THE COURT: All right. Case No. A-12-655992, Yvonne O'Connell versus
4 Wynn Resorts. Good morning.

5 MR. SEMENZA: Good morning.

6 MR. CARLSTON: Good morning, Your Honor.

7 MR. SEMENZA: L.J. Semenza on behalf of Wynn Las Vegas.

8 MR. CARLSTON: Jon Carlston on behalf of the plaintiff.

9 THE COURT: Good morning. And so, I'm sorry that we had to come back,
10 but rather than -- since I know this case is up on appeal, I figured if I didn't address
11 this now this issue would come back, especially if it got pushed down to the court of
12 appeal, since we did not address the factors that the Court now wants us to in their
13 2015 ruling. So, you got my written tentative?

14 MR. SEMENZA: Yes, Your Honor. I mean, I'll submit it. I understand.
15 We've been over this quite a bit.

16 THE COURT: Right.

17 MR. SEMENZA: So the tentative ruling is comprehensive. Obviously we
18 disagree with Your Honor's conclusions relating to it, but we'll go ahead and submit
19 it at this time.

20 THE COURT: All right. Thank you, Mr. Semenza.

21 MR. CARLSTON: Your Honor, just very briefly for the record. I'm not going
22 to pretend like I'm going to be the first attorney to perhaps flip one of your tentative
23 rulings, and we really appreciate the time and effort that your department has put
24 into it. I just have two points. One, the point regarding Dr. Dunn's second day of

1 testimony, these Frazier factors, non-exhaustive list --

2 THE COURT: Correct.

3 MR. CARLSTON: -- we have approached it more from more of a pragmatic
4 approach that, look, trials -- scheduling witnesses, especially medical expert
5 witnesses can be very difficult. We know that the meter is running on these people
6 who come and we try and get them in and out as quickly as possible. Simply due
7 to how the late start at 4:35 with Dr. Dunn and then the voir dire, he only -- we
8 were only able to start with direct. He had to come back. And while it's not an
9 enumerated factor, I think it's just kind of a pragmatic common sense approach
10 to medical expert witnesses, how they bill in half day increments. I've never seen
11 one who didn't. It's something that happens and he had to come back. And we
12 feel like we're being unfairly -- that's being unfairly held against us for him having
13 to come back.

14 The second issue, point I wanted to make is earlier with the Court's
15 ruling we had been awarded Dr. Tingey's full \$6,000 fee and \$5,000 of that was for
16 his testimony. One thousand was kind of in the run up with a consult with our office.
17 We would also ask that that is something that should be awardable. It was part of
18 his preparation for trial and his retention as a treating medical expert that we also
19 feel should be awarded, his full \$6,000 rather than capping it at \$5,000.

20 And with that, I'll pass it to Mr. Semenza.

21 MR. SEMENZA: Just briefly, Your Honor. As you'll recall, with regard to
22 Drs. Dunn and Tingey, there was an issue relating to the disclosures. In their
23 disclosures they had provided identical descriptions for thirty-something providers.
24 Maybe not thirty, but it was a large number of providers. And that was the basis

1 as to why we didn't take the depositions beforehand and we also obviously had
2 concerns as to whether these two doctors would be permitted to testify at all in this
3 particular case. And so with regard to that, that was the basis for the voir dire that
4 the Court allowed us to undertake, which did take some time. But as the Court will
5 recall, the reason that Dr. Dunn took the stand so late that first day was based upon
6 his schedule; not the Court's schedule, not counsel's schedule, but his schedule.
7 We didn't finish with him, which required him to come back that following day.
8 I think the Court appropriately limited the award relating to Dr. Dunn to only that
9 first day, based upon obviously his schedule and that's when he was designated to
10 testify originally.

11 With regard to this \$6,000 or \$5,000 difference, I believe that Dr.
12 Tingey was the one that was seeking -- or the \$6,000 related to Dr. Tingey. Dr.
13 Dunn was only \$5,000 for the day. Dr. Tingey I believe was the same. And so we
14 believe that the \$5,000 is more appropriate, obviously, than the \$6,000. And again,
15 I'll go ahead and submit it on that.

16 THE COURT: Well, the reason I adjusted Dr. Tingey's fee downward from
17 the original six was because I recall how -- I mean, the medical record of both of
18 these physicians, which were obtained late by the defense as you've pointed out,
19 was not very, you know, exhaustive or expansive. I mean, there were only a few
20 documents, really. So to say -- to talk to you on the phone and review those
21 records, a thousand dollars, I just couldn't see that because there just weren't very
22 many records. Now, I can't remember how many pages. It was not more than --
23 I thought like total 12 between both doctors. I mean, it was really not very much
24 in the way of records.

1 And I remember, and you'll have to correct me if I'm wrong on my
2 memory, that there was another doctor, I can't remember his name, but he retired,
3 left the practice. Does that sound familiar?

4 MR. SEMENZA: I think that's correct, Your Honor, that there was another
5 doctor in that practice group --

6 THE COURT: Right.

7 MR. SEMENZA: -- who I believe was identified actually as a witness --

8 THE COURT: Yes.

9 MR. SEMENZA: -- but never did testify --

10 THE COURT: Correct.

11 MR. SEMENZA: -- and left the practice group. That's correct.

12 THE COURT: And that was why she had to change to a different doctor
13 within that practice. And I can't remember if it was Tingey or Dunn, but anyway,
14 the medical records just were not that extensive.

15 MR. SEMENZA: Right.

16 THE COURT: I think they were relevant, that those doctors needed to
17 testify regarding causation, especially when admittedly by plaintiff's counsel plaintiff
18 had exaggerated her subjective complaints. I mean, that was stated by plaintiff's
19 counsel at the time of trial. And so they needed to be able to show that there were
20 some objective findings and I believe there was the MRI of the knee and Dr. Tingey
21 explained that, talking about the one knee and excluding some of what he thought
22 was not caused by the fall. So I think that his testimony certainly was important,
23 but that \$5,000 for the time he spent testifying was adequate.

24 I think -- I guess if the Legislature wants us to just start paying doctors

1 whatever their fee is, then they should go in and fix that statute. I know -- I don't
2 believe it's been revised upward for something like twenty years now, maybe a little
3 less, but it just seems -- I realize that you can't get an expert to come, even if it's a
4 treating physician or maybe especially if it's a treating physician to come and cancel
5 their surgery schedule. Tingey and Dunn are both surgeons. And so -- and I
6 pointed that out in my written tentative, and that's why I think that has to be taken
7 into consideration.

8 So I really -- I think that what little Dr. Tingey would have done as far
9 as prepping for it, I mean, he was the treating physician, it's his patient. It's not like
10 he had to review expansive records. So I think that the \$5,000, especially when
11 you pointed out that that \$5,000 fee per day is common, and so that's the reason
12 I revised it.

13 So, did you want to add anything else, because you're standing up?

14 MR. CARLSTON: No, Your Honor, I understand your position. I agree
15 to disagree. I think making a good record in this case is important, and certainly
16 we're dealing with issues of just how they bill. And I agree, \$1,500 is just simply
17 an amount that you can't get anybody to come to trial. So we will submit it on that,
18 Your Honor.

19 MR. SEMENZA: Thank you, Your Honor.

20 THE COURT: All right. And let's see, how did this end up with this? This
21 was -- it was your motion to relax.

22 MR. SEMENZA: Yes.

23 THE COURT: Do you want to prepare the order or do you want the other
24 side? I mean --

1 MR. SEMENZA: Unless he has a preference, I'm fine with preparing
2 the order.

3 THE COURT: All right.

4 MR. SEMENZA: I think it was our order originally, if I'm not mistaken.

5 MR. CARLSTON: Yeah, it was.

6 MR. SEMENZA: Okay.

7 MR. CARLSTON: And I had the same question. We had a written order.
8 Do we want to do --

9 THE COURT: I didn't sign it, I believe --

10 MR. CARLSTON: Correct.

11 THE COURT: -- because I remembered --

12 MR. CARLSTON: About these factors.

13 THE COURT: -- this case that, oh, we didn't address these factors. Or
14 maybe I read something in another case and I remembered, oh, we have to do that,
15 and knowing that it would get kicked back if we didn't, so.

16 MR. CARLSTON: We can do one total order, though, for both hearings?

17 THE COURT: Yes.

18 MR. SEMENZA: Yeah, that's fine.

19 THE COURT: And so you'll incorporate then what you had before on the
20 other rulings and this --

21 MR. SEMENZA: Absolutely, Your Honor. Yes.

22 THE COURT: -- so we have a very expansive record. I've recently learned
23 that the court of appeal just looks at the written order and apparently doesn't really
24 look, the law clerks, at the --

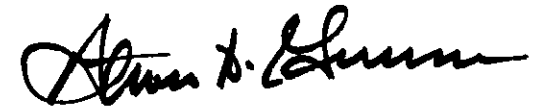
1 MR. SEMENZA: At the tentative?
2 THE COURT: No, at the -- of course they're not going to look at the
3 tentative --
4 MR. SEMENZA: Right.
5 THE COURT: -- because it's just tentative, but they're not going to read
6 the transcript initially --
7 MR. SEMENZA: Understood.
8 THE COURT: -- you know, so we need it in the order.
9 MR. SEMENZA: Okay, great.
10 THE COURT: All right. Thank you.
11 MR. SEMENZA: Thank you.
12 MR. CARLSTON: Thank you, Your Honor. Have a nice weekend, everyone.
13 THE COURT: You, too.

14 (PROCEEDINGS CONCLUDED AT 9:07 A.M.)

15 * * * * *

16
17 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video
18 proceedings in the above-entitled case to the best of my ability.

19 
20 Liz Garcia, Transcriber
21 LGM Transcription Service
22
23
24



CLERK OF THE COURT

ORDR

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Attorneys for Defendant Wynn Las Vegas, LLC

d/b/a Wynn Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

YVONNE O'CONNELL, individually,

Plaintiff,

v.

WYNN LAS VEGAS, LLC, a Nevada
Limited Liability Company d/b/a WYNN
LAS VEGAS; DOES I through X; and ROE
CORPORATIONS I through X; inclusive,

Defendants.

Case No. A-12-655992-C

Dept. No. V

**ORDER PARTIALLY GRANTING
AND PARTIALLY DENYING
DEFENDANT'S MOTION TO RETAX
COSTS AND PLAINTIFF'S MOTION
TO TAX COSTS AND FOR FEES,
COSTS AND POST-JUDGMENT
INTEREST**

**Dates and Times of Hearings: March 4,
2016 at 8:30 a.m. and August 12, 2016 at
9:00 a.m.**

On March 4, 2016, the Court held a hearing on (1) Plaintiff Yvonne O'Connell's ("Plaintiff") Amended Application for Fees, Costs and Pre-Judgment Interest, amended and resubmitted as Plaintiff's Motion to Tax Costs and for Fees and Post-Judgment Interest (the "Amended Application for Fees") and on (2) Defendant Wynn Las Vegas, LLC's d/b/a Wynn Las Vegas ("Defendant") Motion to Re-tax Costs and Supplement to its Motion to Re-tax Costs (together "Motion to Re-tax"). Christian Morris, Esq. and Edward J. Wynder, Esq. of the Nettles Law Firm appeared on behalf of Plaintiff and Lawrence J. Semenza, III, Esq. and Christopher D. Kircher, Esq. of Lawrence J. Semenza, III, P.C. appeared on behalf of Defendant.

LAWRENCE J. SEMENZA, III, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

8 I. FACTUAL BACKGROUND

On June 29, 2016 this Court issued a minute order for counsel to file supplemental briefs regarding the factors for awarding expert fees above \$1,500 outlined in *Frazier v. Duke*, 357 P.3d 365, 131 Nev. Adv. Op. 64 (Nev. Ct. App. 2015).

25 A. Legal Standards and Applicable Statutes

3 RA 571

1 If the offeree [of an offer of judgment] rejects an offer and fails to
2 obtain a more favorable judgment,

3 (1) the offeree cannot recover any costs or attorney's fees and shall
4 not recover interest for the period after the service of the offer and
5 before the judgment; and

6 (2) the offeree shall pay the offeror's post-offer costs, applicable
7 interest on the judgment from the time of the offer to the time of
8 entry of the judgment and reasonable attorney's fees, if any be
9 allowed, actually incurred by the offeror from the time of the offer.
10 If the offeror's attorney is collecting a contingent fee, the amount of
11 any attorney's fees awarded to the party for whom the offer is made
12 must be deducted from that contingent fee.

13 NRS 17.115(4) similarly provides, in relevant part:

14 Except as otherwise provided in this section, if a party who rejects
15 an offer of judgment fails to obtain a more favorable judgment, the
16 court:

17 (c) Shall order the party to pay the taxable costs incurred by the
18 party who made the offer; and

19 (d) May order the party to pay to the party who made the
20 offer...(3) Reasonable attorney's fees incurred by the party
21 who made the offer for the period from the date of service of
22 the offer to the date of entry of the judgment. If the attorney of
23 the party who made the offer is collecting a contingent fee, the
24 amount of any attorney's fees awarded to the party pursuant to
25 this subparagraph must be deducted from that contingent fee.

26 Additionally, NRS 18.010(2)(b) provides that fees may be awarded to the prevailing party
27 "[w]ithout regard to the recovery sought, when the court finds that the claim, counterclaim, cross-
28 claim or third-party complaint or defense of the opposing party was brought or maintained
without reasonable ground or to harass the prevailing party."

NRS 18.110(1)-(2) provides that whenever a party claims costs, she must file a verified
memorandum setting forth those costs within 5 days of entry of the judgment and that witness
fees are recoverable costs, regardless of whether the witness was subpoenaed, if the witness
testified at trial. NRS 18.110(4) allows the opposing party to file a motion to re-tax claimed costs
within 3 days of service of a copy of the memorandum of costs.

As a preliminary note, Defendant's first argument is that Plaintiff improperly and unilaterally filed the Amended Application for Fees after reading Defendant's Opposition, so the Court should only consider the Initial Application. Here, judgment was entered on December 15, 2015. Plaintiff filed the Initial Application well before this, on November 25, 2015. She also filed her Amended Application for Fees on December 21, 2015, which is within the time limit set forth in the rule (note that under EDCR 1.14(a), the period for filing is five *judicial* days from entry of judgment). However, Defendant's Motion to Re-tax Costs as to the Initial Application was due on December 2, 2015,¹ but it was not filed until December 7, 2015, and was thus untimely.² Defendant's Motion to Re-tax as to the Amended Verified Memorandum of Costs was timely, though. It is true that generally, supplemental briefing is allowed only by leave of court. *See* EDCR 2.20(i). However, given that Defendant's first Motion to Re-tax Costs was untimely, it would seem that it would be willing to waive its first argument in opposition to Plaintiff's Amended Application for Fees.

B. Analysis: Fees under NRCP 68

In order for the penalties associated with the rejection of an offer of judgment to apply, the offeree must not have obtained a more favorable judgment. NRCP 68(f); NRS 17.115(4). To determine whether the offeree of a lump-sum³ offer of judgment obtained a more favorable judgment, the amount of the offer must be compared to the amount of the offeree's *pre-offer, taxable costs*. *McCrory v. Bianco*, 122 Nev. 102, 131 P.2d 573, 576, n. 10 (2006) (stating that NRCP 68(g) must be read in conformance with NRS 17.115(5)(b)). Here, Plaintiff offered to settle the case for \$49,999.00 on September 3, 2015. The verdict was in favor of Plaintiff for a total of \$240,000.00. It seems that this may be a more favorable judgment, although Plaintiff has neglected to specifically set forth her pre-offer taxable costs. On the other hand, Plaintiff's total

¹ Plaintiff served the Initial Application on November 25, 2015.

² Defendant argues that Plaintiff never actually served the initial Memorandum of Costs, but this is disingenuous because Plaintiff did in fact serve her Initial Application that attached a Memorandum of Costs as an Exhibit.

³ A lump-sum offer of judgment is one that includes all damages, legal costs, and attorneys' fees.

1 claimed costs were \$26,579.38 (whether pre- or post-offer) and that, together with the offer,
2 amounts to \$76,578.38. Plaintiff's jury recovery was well above this – \$240,000.00 – so it
3 appears that Plaintiff has met the threshold requirement to show entitlement to fees and costs
4 under Rule 68.

5 The determination of whether to grant fees to a party under NRCP 68 rests in the sound
6 discretion of the trial court. *Chavez v. Sievers*, 118 Nev. 288, 296, 43 P.3d 1022, 1027 (2002).
7 Such a decision will not be disturbed unless it is arbitrary and capricious. *Schouweiler v. Yancey*
8 *Co.*, 101 Nev. 827, 833, 712 P.2d 786, 790 (1985). District courts must consider several factors
9 when making a fee determination under *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268,
10 274 (1963): (1) whether the plaintiff's claim was brought in good faith; (2) whether the offer was
11 reasonable and in good faith in timing and amount; (3) whether the decision to reject the offer was
12 grossly unreasonable or in bad faith; and (4) whether the sought fees are reasonable and justified.
13 However, where the defendant is the offeree of an offer of judgment, the first factor changes to a
14 consideration of whether the defendant's defenses were litigated in good faith. *See Yamaha Motor*
15 *Co. v. Arnoult*, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998).

16 As to the first factor, whether Defendant's defenses were litigated in good faith, Plaintiff
17 argues that Defendant's defense that it had no notice of the liquid on the casino floor was in bad
18 faith because it failed to make an inquiry into the last time the floor was checked before Plaintiff
19 slipped. (Am. App. at 5-6.) Plaintiff also argues that Defendant's defense that there was no
20 causation here was unreasonable because it relied upon expert testimony that lacked a basis in
21 modern science. (*Id.* at 6.) Defendant's Motion to Re-tax and Opposition to the Amended
22 Application for Fees does not address whether its defenses were maintained in good faith.
23 However, Nevada case law has caused some confusion in differentiating between constructive
24 notice and the "mode of operation approach," the latter of which is specifically discussed in cases
25 decided subsequent to *Sprague v. Lucky Stores, Inc.*, 109 Nev. 247, 250, 849 P.2d 320. 322-33
26 (1993). This is not a case where the law is black and white. Based on that and the evidence
27 presented at trial, it was not bad faith for Defendant to contend that it lacked notice of the
28 condition on the floor and Plaintiff in fact so concedes.

1 Furthermore, Plaintiff's evidence of constructive notice may have been enough to escape
2 the granting of a Rule 50 motion, but it was by no means overwhelming. Additionally, Plaintiff's
3 damages claims were reasonably disputed by expert testimony of a defense witness. That the jury
4 was not persuaded by this expert does not translate to bad faith by the Defendant. Thus, the first
5 factor therefore weighs in favor of the Defendant.

6 As to the second factor, Defendant argues that the offer was unreasonable in amount
7 because Plaintiff had no basis for its offer and that due to Plaintiff's "gamesmanship," Defendant
8 could not sufficiently evaluate the offer. (Opp. at 5-7.) Here, discovery closed on June 12, 2015.
9 Plaintiff was unable to submit proof of special medical damages at the time of trial because the
10 Court precluded them on the basis that they were not properly disclosed in discovery. This made
11 it extremely difficult for the Defense to evaluate a potential value of the case. An offer made at a
12 time when Plaintiff has not properly provided a calculation of damages is unreasonable. Thus, the
13 second factor weighs in favor of Defendant.

14 In ascertaining whether Defendant's decision to reject the offer was grossly unreasonable
15 or in bad faith, a pertinent consideration is whether enough information was available to
16 determine the merits of the offer. *Trustees of the Carpenters for S. Nev. Health & Welfare Trust*
17 *v. Better Building Co.*, 101 Nev. 742, 746, 710 P.2d 1379, 1382 (1985). Here, discovery closed
18 on June 12, 2015. The offer of judgment was made three months later, on September 3, 2015.
19 Given that at the time of the offer, Defendant had available all the materials obtained during
20 discovery, including witness depositions, Defendant's decision to reject the offer was well-
21 informed. Furthermore, the issues surrounding notice were not necessarily clear-cut, as evidenced
22 by the parties' pre-trial and post-trial motions on that issue. Overall, it is unlikely that Defendant's
23 rejection of the offer was grossly unreasonable or in bad faith, and in the end weighs in favor of
24 Defendant.

25 With regard to the last *Beattie* factor, the Court must undergo an analysis of whether
26 claimed fees were reasonable in light of the factors set forth in *Brunzell v. Golden Gate Nat'l*
27 *Bank*, 85 Nev. 345, 249, 455 P.2d 31, 33 (1969). Plaintiff has addressed some, but not all, of
28 these factors. Plaintiff's counsel has set forth the qualities of the advocate(s) on this case and, of

1 course, we know that a favorable result was obtained. However, Plaintiff has not provided any
2 bills setting forth what tasks were performed and the associated hours for those tasks. This
3 prevents the Court from determining whether the fees charged were reasonable in light of the
4 tasks actually performed. Therefore, because Plaintiff has not carried her burden under *Brunzell*,
5 this factor weighs in favor of Defendant. On the whole, all of the factors set forth in *Beattie* (as
6 modified by *Yamaha, supra*) weigh in favor of Defendant in this case and Plaintiff's Amended
7 Application for Fees should be **denied**.

8 **C. Analysis: Award of Costs**

9 Although NRCF 68 costs are only for post-offer costs, NRS 18.020(3) mandates awarding
10 all costs to Plaintiff since she prevailed in seeking damages in an amount more than \$2,500. NRS
11 18.110(1) requires the filing of a memorandum of costs by the party in whose favor judgment is
12 rendered, including a verification of the party, the party's attorney, or an agent of the party's
13 attorney that the costs are correct and were necessarily incurred.

14 The amount of awarded costs rests in the sole discretion of the trial court. *Bergmann v.*
15 *Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 565–66 (1993). The court also has "discretion when
16 determining the reasonableness of the individual costs to be awarded." *U.S. Design & Constr.*
17 *Corp. v. I.B.E.W. Local 357*, 118 Nev. 458, 463, 50 P.3d 170, 173 (2002). Claimed costs must be
18 "actual and reasonable, rather than a reasonable estimate or calculation of such costs." *Bobby*
19 *Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 385–86 (1998) (internal quotations
20 omitted). The Supreme Court has also indicated that claimed costs must be supported by
21 documentation and itemization. *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 971 P.2d 383
22 (1998). Defendant only challenges certain specific fees, each of which will be addressed in turn.

23 **1. Expert Witness Fees**

24 With regard to Mr. Presswood, his testimony was not used at trial because this Court ruled
25 that his testimony would be unreliable. Since his testimony was clearly inadmissible under the
26 *Hallmark* standard, as reflected in this Court's prior pre-trial ruling, his fees should not be
27 awarded.
28

1 Plaintiff seeks expert witness fees of \$6,000 for Craig Tingey, M.D. and \$10,000 for
2 Thomas Dunn, M.D. NRS 18.005(5) provides for recovery of “reasonable fees of not more than
3 five expert witnesses in an amount of not more than \$1,500 for each witness, unless the court
4 allows a larger fee after determining that the circumstances surrounding the expert’s testimony
5 were of such necessity as to require the larger fee.”

6 In order for an award of expert witness fees in excess of the statutory maximum to be
7 proper, the fees must not only be reasonable, but also “the circumstances surrounding [each]
8 expert’s testimony [must be] of such necessity as to require the larger fee.” *Frazier*, 357 P.3d at
9 374 (citing NRS 18.005(5); *Logan v. Abe*, 131 Nev. ---, ---, 350 P.3d 1139, 1144 (2015)). In
10 crafting its decision, the Court of Appeals used the limited Nevada Supreme Court authority
11 available as well as extra-jurisdictional authority, particularly from Idaho (which has a statute
12 similar to NRS 18.005(5)), Louisiana, Connecticut, and Massachusetts.

13 Ultimately, the Nevada Court of Appeals set forth a nonexhaustive list of factors, some of
14 which may not necessarily be pertinent to every request for expert witness fees in excess of
15 \$1,500. The factors in evaluating requests for awards over the statutory maximum include:

- 16 1. The importance of the expert’s testimony to the party’s case;
- 17 2. the degree to which the expert’s opinion aided the trier of fact in deciding the case;
- 18 3. whether the expert’s reports or testimony were repetitive of other expert witnesses;
- 19 4. the extent and nature of the work performed by the expert;
- 20 5. whether the expert had to conduct independent investigations or testing;
- 21 6. the amount of time the expert spent in court, preparing a report, and preparing for
22 trial;
- 23 7. the expert’s area of expertise;
- 24 8. the expert’s education and training;
- 25 9. the fee actually charged to the party who retained the expert;
- 26 10. the fees traditionally charged by the expert on related matters;
- 27 11. comparable experts’ fees charged in similar cases; and
- 28

1 12. if an expert is retained from outside the area where the trial is held, the fees and
2 costs that would have been incurred to hire a comparable expert where the trial was held.
3 *Frazier*, 357 P.3d at 377-78.

4 Plaintiff argues that pursuant to *Frazier*, this Court should award the entire \$6,000 for Dr.
5 Tingey's fee. (Pl. Supp. Brief at 3-4.) Additionally, Plaintiff argues that this Court should award
6 at least \$5,000 of Dr. Dunn's fee if not the entire amount. (Pl. Supp. Brief at 3-4.) In its brief,
7 rather than discussing the *Frazier* factors in the brief itself, Defendant incorporated by reference
8 its arguments set forth related to the "expert costs." Specifically, Defendant directs this Court to
9 pages 10-13 of its Opposition to Plaintiff's Application for Fees, Costs and Pre-Judgment Interest
10 and Motion to Retax Costs filed on December 7, 2016 as well as pages 7 and 8 of Defendant's
11 Supplement to Motion to Retax Costs and Opposition to Plaintiff's Amended Application for
12 Fees, Costs and Prejudgment Interest filed on December 28, 2016. In sum, Defendant argues
13 there is not a sufficient basis to award Plaintiff expert costs for her treating physicians at all and
14 especially not above the statutory maximum of \$1,500. (Def. Supp. Brief at 4.)

15 *The Importance of the expert's testimony*

16 Plaintiff argues that Dr. Tingey testified primarily regarding Plaintiff's right knee and Dr.
17 Dunn testified primarily regarding Plaintiff's spine. (Pl. Supp. Brief at 5.) Both parties agree that
18 the doctors testified that the injuries to the right knee and cervical spine were caused by the slip
19 and fall. However, the parties disagree as to how important that testimony was to Plaintiff's case.
20 Plaintiff argues that the testimony "formed the lynchpin" of Plaintiff's causation argument. (Pl.
21 Supp. Brief at 6.) Alternatively, Defendant argues that the doctors did not add anything
22 substantive to trial, because the doctors based their opinions solely on Plaintiff's subjective
23 physical complaints without reviewing her medical history. (Def. Opp. to Pl. Motion for Fees at
24 12.) Defendant further argues that the doctors' opinions were unreliable, repetitive and
25 unnecessary because Plaintiff testified regarding her subjective complaints of pain and injury.
26 (Def. Opposition at 12.) Finally, Defendant argues that experts are generally needed in personal
27 injury cases to testify regarding the necessity of past or future medical treatment or the
28 reasonableness of costs, and because Plaintiff did not seek these damages, the doctors' testimony

1 was largely duplicative of Plaintiff's testimony and therefore unimportant in aiding the jury in
2 deciding the case. (Def. Opposition at 12.)

3 Even though the doctors based their opinions on the subjective pain about which the
4 Plaintiff testified at trial, the causation opinion was probably important to Plaintiff's case.
5 Further, even though Plaintiff did not seek any medical special damages, but only pain and
6 suffering, the doctors' testimony regarding causation was still important to Plaintiff's case,
7 because the testimony relates to the causation element of Plaintiff's claim. **Therefore, the first**
8 **factor favors the Plaintiff.**

9 *Whether the expert's reports or testimony were repetitive of other expert witnesses*

10 Defendant argues, as noted above, that the doctors' testimony was largely duplicative of
11 Plaintiff's testimony. (Def. Opposition at 12.) However, this factor relates to whether the
12 expert's testimony is repetitive of other experts. Here, Dr. Tingey testified regarding Plaintiff's
13 knee and Dr. Dunn testified regarding Plaintiff's spine. (Pl. Supp. Brief at 7.) Each expert
14 testified regarding different injuries resulting from the same slip and fall. **Therefore, the second**
15 **factor favors the Plaintiff.**

16 *The extent and nature of the work performed by the expert*

17 Defendant argues that both Dr. Dunn and Dr. Tingey admitted they did not perform much
18 work to prepare for trial. (Def. Opposition at 12.) However, Plaintiff believes this factor not only
19 weighs in her favor, but should be given more weight than other factors. (Pl. Supp. Brief at 7.)
20 Defendant argues that the doctors were treating physicians, not retained expert witnesses. (Def.
21 Opposition at 12.) Additionally, Defendant argues that the doctors did not prepare a written
22 expert report and were not deposed. (Def. Opposition at 12.) However, the Plaintiff is not asking
23 for money for depositions or reports. Instead, with respect to Dr. Tingey, Plaintiff is asking for
24 costs incurred for a telephone conference, file review and for his appearance and testimony at
25 trial. (Pl. Supp. Brief at 3.) With respect to Dr. Dunn, Plaintiff seeks costs incurred for the file
26 review and trial testimony. (Pl. Supp. Brief at 3.) Defendant merely argues that \$16,000 is
27 "simply absurd" for the work performed. (Def. Opposition at 12.) Alternatively, Plaintiff argues
28 that Drs. Tingey and Dunn are orthopaedic doctors who routinely perform surgeries on sensitive

1 areas of the body and are skilled professionals that perform work few others can perform.
2 However, Plaintiff did not describe the extent of the doctors' work as treating physicians. The
3 Court assumes that this is relevant to the fee that they can command as a result of having to leave
4 their normal practice in order to attend court. Plaintiff notes that Dr. Tingey was part of a
5 telephone conference, conducted a file review, and testified at trial. Additionally, Plaintiff noted
6 that Dr. Dunn conducted a file review and testified at trial on two separate days.

7 While the Defendant argues the doctors did not perform some work associated with expert
8 witnesses such as preparing a report, the doctors did review records and testified at trial.
9 **Therefore, given that Drs. Tingey and Dunn spent time reviewing records for trial and**
10 **actually testified, the third factor favors the Plaintiff.**

11 *Whether the expert had to conduct independent investigations or testing*

12 Defendant does not provide any additional argument with respect to this factor. Plaintiff
13 argues that this factor is irrelevant to this case because Dr. Tingey and Dr. Dunn performed the
14 work of any other treating physician. (Pl. Supp. Brief at 8.) However, this factor is not irrelevant
15 as Plaintiff argues, but rather this factor simply does not favor Plaintiff's argument, because the
16 doctors did not conduct and independent investigations or testing outside the ordinary course of
17 treatment. **Therefore, this factor does not favor an increased fee because neither doctor**
18 **performed work above and beyond that of a regular treating physician.**

19 *The amount of time the expert spent in court, preparing a report, and preparing for trial*

20 As stated above, Defendant argues that Dr. Tingey and Dr. Dunn did not prepare a report,
21 did not spend much time preparing for trial, and did not even spend that much time testifying in
22 court (Approximately 2-3 hours each). (Def. Opp. at 12.) Plaintiff argues that the fees are
23 customary for each doctor's specialty and their testimony required time away from their practices,
24 which does not address this factor. (Pl. Supp. Brief at 8.) Even though the doctors may not have
25 spent a lot of time in court, the doctors still spent several hours testifying. While Dr. Dunn had to
26 return for a second day, this was an accommodation by the court to the doctor's schedule.
27 **Therefore, this factor favors the Plaintiff regarding Dr. Tingey, but the Defendant**
28 **concerning Dr. Dunn's fees for 2 days.**

The expert's area of expertise, education, and training

Defendant does not make any additional argument with respect to this factor. Plaintiff notes that Dr. Tingey is board certified in orthopaedic surgery who focuses on ailments affecting the shoulders, hips, and knees. (Pl. Supp. Brief at 8.) Dr. Tingey graduated from medical school in 1999. (Pl. Supp. Brief Exhibit 1.) He completed a General Surgery Internship at Loma Linda University School of Medicine following graduation. (Pl. Supp. Brief Exhibit 1.) Additionally, Dr. Tingey was an Orthopaedic Surgery Resident and Loma Linda from 2000-2004. (Pl. Supp. Brief Exhibit 1.)

Dr. Dunn is a board certified orthopaedic surgeon specializing in spine surgery and disorders affecting the neck and back. (Pl. Supp. Brief Exhibit 2.) Plaintiff references the doctors' CV's for additional qualifications. Dr. Dunn graduated from Medical School in June of 1985 from the UC Irvine College of Medicine. (Pl. Supp. Brief Exhibit 2.) Upon graduation, Dr. Dunn completed a general surgery internship at the UC Irvine College of Medicine. (Pl. Supp. Brief Exhibit 2.) Dr. Dunn completed his residency at the UC Irvine School of Medicine and from 1991 to 1992 was a fellow at Rancho Los Amigos Hospital. (Pl. Supp. Brief Exhibit 2.)

The doctors seem to have the requisite education and experience that would justify an increased fee. Both Doctors graduated from Medical School over 15 years ago and are board certified surgeons. **Given the doctors' education and board certifications, this factor favors the Plaintiff.**

The fee actually charged to the party who retained the expert

Defendant does not make any additional argument with respect to this factor. Plaintiff notes that Dr. Tingey's fee of \$6,000 was actually charged and paid, and Dr. Dunn's fee of \$10,000 was actually charged and paid. (Pl. Supp. Brief at 9.) **Therefore, this factor favors the Plaintiff.**

Comparable experts' fees charged in similar cases

Defendant does not make any additional argument with respect to this factor. Plaintiff argues that a "flat-fee" for court appearances is common for medical experts in Las Vegas and cites to Dr. Victor Klausner's fee schedule, which uses a flat-fee structure at \$2,500 per ½ day or

1 \$5,000 per day. Plaintiff also points to “routinely used orthopaedic defense expert” Dr. Serfustini
2 as another example of an expert who uses a flat-fee structure for court appearances. Finally,
3 Plaintiff points to Dr. Muir as an example of a spine surgeon who charges the same as Dr. Tingey
4 and Dr. Dunn for court appearances. (Pl. Supp. Brief at 9.)

5 While Plaintiff argues Dr. Klausner’s credentials are not as distinguished as Drs. Tingey
6 and Dunn, this argument seems to ask the court to compare the qualifications of the experts rather
7 than compare expert fees. A more compelling point regarding Dr. Klausner is that he charges
8 \$2,500 per half day and \$5,000 per day (same as Dr. Dunn), and he is not a board certified
9 surgeon, which suggests that Dr. Tingey and Dr. Dunn’s fees are fair and reasonable. Dr. Muir is
10 a spine surgeon. Dr. Muir charges the same amount as Dr. Dunn and Dr. Tingey for court
11 appearances, and those three doctors are similar because they graduated from Medical School
12 over 15 years ago and perform surgeries and treatments on sensitive areas of the human body.
13 **Therefore, this factor favors the Plaintiff’s request for excess fees above \$1,500.00.**

14 Based upon the *Frazier* factors and the briefing by the Parties, the Court should award
15 expert witness costs in excess of the NRS 18.005(5) statutory cap, \$5,000 for Dr. Tingey’s fees
16 and \$5,000 for Dr. Dunn’s fees. Both doctors are similarly situated and testified for similar
17 lengths of time. Dr. Dunn’s fee of \$10,000 was apparently charged because he testified on two
18 separate days. This could have been avoided by better planning on the part of Plaintiff’s trial
19 counsel and the defense should not bear that extra expense.

20 Hence, as to the expert fees, Defendant’s Motion to Re-tax should be **granted in part**.

21 2. Service Fees

22 NRS 18.005(7) allows recovery of service fees. Defendant next challenges the service
23 fees claimed by Plaintiff in serving Yanet Elias, Corey Prowell, and Salvatore Risco. (Mot. to
24 Re-tax Costs at 8-9.) Plaintiff acknowledges that all costs must be both reasonable and *necessary*.
25 As to Yanet Elias and Corey Prowell, each was an employee of Defendant and Defendant points
26 out that it had accepted service for those persons. Even with the agreement that service can be
27 made upon counsel instead of the witness, however, does not eliminate the need to serve and the
28 fees would be necessary and she should be **granted** those fees.

1 As to Mr. Risco, Defendant argues that the service fees were unnecessary and
2 unreasonable because Plaintiff's counsel had good communication with him. However, unlike the
3 other two employee-witnesses, Mr. Risco was not a party to this case or an agent of a party to this
4 case, so service of a subpoena upon him was necessary. Additionally, Plaintiff has outlined
5 sufficient reasons for the amount of the claimed charge that show it to be reasonable and she
6 should be **granted** those fees.

7 **3. Jury Fees**

8 NRS 18.005(3) specifically allows an award of jury fees as an element of costs.
9 Defendant next argues it should not be responsible for the jury fees because Plaintiff failed to
10 request a jury trial within the time allowed. (Mot. to Re-tax Costs at 9.) Defendant essentially
11 only argues that because Plaintiff's demand for a jury trial was untimely and this should have been
12 a bench trial, it should not have to pay for the jury fees. However, those arguments are premised
13 on challenging this Court's grant of Plaintiff's request for a jury trial and the time for
14 reconsidering that decision has long since passed. Moreover, both parties had prepared this entire
15 case under the assumption that it was going to be tried by jury, so Defendant was not prejudiced
16 by the Court's ruling in any event. Since the jury fees were actually incurred and reasonable,
17 Defendant's Motion to Re-tax as to those fees should be denied, and Plaintiff should be **granted**
18 the jury fees incurred.

19 **4. Parking Fees**

20 NRS 18.005(17) allows the court to award any other reasonable costs actually incurred.
21 This would, of course, include costs incurred in parking for hearings and the like. Defendant
22 argues that there were other free places Plaintiff could have parked. (Mot. to Re-tax Costs at 9.)
23 This may or may not be true, but Defendant's argument is conclusory in any event. Because
24 Plaintiff actually incurred the parking costs, they should be **granted**.

25 **5. Skip Trace Fees**

26 Defendant lastly argues that Plaintiff's request for skip trace/investigative fees for Terry
27 Ruby were unreasonable and unnecessary. (Mot. to Re-tax Costs at 9.) Terry Ruby is a former
28

1 employee of Defendant and was the first to respond to Plaintiff's fall. (Opp. at 8.) It is clear why
2 Plaintiff would have a need to locate and depose Mr. Ruby. A \$150.00 fee for that service is not
3 unreasonable, given the extreme costs associated with reporting services like Accurint.
4 Therefore, Defendant's Motion to Re-tax as to the skip trace fee should be denied, and Plaintiff
5 should be **granted** that amount as a cost.

6 **6. Remaining Fees**

7 Defendant does not challenge the remaining requested fees. Plaintiff has attached back-up
8 documentation for each claimed cost and they all seem to be reasonable and within the going
9 market rate for each associated service. Plaintiff has therefore carried her burden under *Berosini*
10 and the remaining costs requested should be awarded. Therefore, Plaintiff's Amended
11 Application for Fees as to costs should be **granted** as to the remaining costs sought, as set forth
12 herein.

13 Based on the foregoing, with good cause appearing:

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IT IS HEREBY ORDERED that Plaintiff's Amended Application for Fees and Defendant's Motion to Re-tax are both **GRANTED IN PART, DENIED IN PART**. The requested attorney's fees are denied and Plaintiff is not awarded any attorney's fees related to this matter. Plaintiff's requested costs in this matter is partially granted, but the amount of costs set forth in Plaintiff's Amended Verified Memorandum of Costs is reduced by \$9,699.00 from the amount sought of \$26,579.38. As a result, Plaintiff is granted costs in the total sum of \$16,880.38.

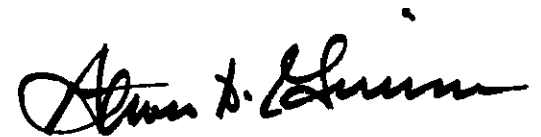
EIGHTH JUDICIAL DISTRICT COURT JUDGE

LAWRENCE J. SEMENZA, III, P.C.

Attorneys for Defendant Wynn Las Vegas LLC d/b/a
Wynn Las Vegas

NETTLES LAW FIRM

Attorneys for Plaintiff Yvonne O'Connell



CLERK OF THE COURT

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*Attorneys for Defendant Wynn Las Vegas, LLC
d/b/a Wynn Las Vegas*

DISTRICT COURT

CLARK COUNTY, NEVADA

YVONNE O'CONNELL, individually,

Plaintiff,

v.

WYNN LAS VEGAS, LLC, a Nevada
Limited Liability Company, doing business as
WYNN LAS VEGAS; DOES I through X;
and ROE CORPORATIONS I through X;
inclusive;

Defendants.

Case No. A-12-655992-C

Dept. No. V

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order was entered by the Court on November 9, 2016, a true and complete copy of which is attached hereto.

DATED this 10th day of November, 2016.

LAWRENCE J. SEMENZA, III, P.C.

/s/ Christopher D. Kircher

Lawrence J. Semenza, III, Esq., Bar No. 7174

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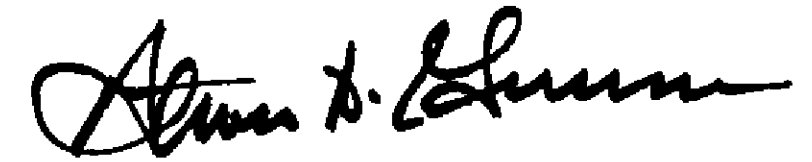
CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of Lawrence J. Semenza, III, P.C., and that on this 10th day of November, 2016 I caused to be sent through electronic transmission via Wiznet's online system, a true copy of the foregoing **NOTICE OF ENTRY OF ORDER** to the following registered e-mail addresses:

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/s/ Olivia A. Kelly
An Employee of Lawrence J. Semenza, III, P.C.



CLERK OF THE COURT

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d/b/a Wynn Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

YVONNE O'CONNELL, individually,

Plaintiff,

v.

WYNN LAS VEGAS, LLC, a Nevada
Limited Liability Company d/b/a WYNN
LAS VEGAS; DOES I through X; and ROE
CORPORATIONS I through X; inclusive,

Defendants.

Case No. A-12-655992-C

Dept. No. V

**ORDER PARTIALLY GRANTING
AND PARTIALLY DENYING
DEFENDANT'S MOTION TO RETAX
COSTS AND PLAINTIFF'S MOTION
TO TAX COSTS AND FOR FEES,
COSTS AND POST-JUDGMENT
INTEREST**

**Dates and Times of Hearings: March 4,
2016 at 8:30 a.m. and August 12, 2016 at
9:00 a.m.**

On March 4, 2016, the Court held a hearing on (1) Plaintiff Yvonne O'Connell's ("Plaintiff") Amended Application for Fees, Costs and Pre-Judgment Interest, amended and resubmitted as Plaintiff's Motion to Tax Costs and for Fees and Post-Judgment Interest (the "Amended Application for Fees") and on (2) Defendant Wynn Las Vegas, LLC's d/b/a Wynn Las Vegas ("Defendant") Motion to Re-tax Costs and Supplement to its Motion to Re-tax Costs (together "Motion to Re-tax"). Christian Morris, Esq. and Edward J. Wynder, Esq. of the Nettles Law Firm appeared on behalf of Plaintiff and Lawrence J. Semenza, III, Esq. and Christopher D. Kircher, Esq. of Lawrence J. Semenza, III, P.C. appeared on behalf of Defendant.

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6 The Court, having reviewed the records and pleadings on file, as well as the oral argument
7 of counsel, hereby rules as follows:

I. FACTUAL BACKGROUND

9 This is a personal injury action resulting from Plaintiff's slip and fall at Defendant's
10 casino. A jury trial was held and the jury found in favor of Plaintiff on November 16, 2015. The
11 jury awarded Plaintiff \$150,000 for past pain and suffering and \$250,000 for future pain and
12 suffering, finding her to be 40% at fault. Plaintiff's total award was \$240,000. After the verdict
13 was entered, Plaintiff filed her initial Application for Fees, Costs and Pre-Judgment Interest (the
14 "Initial Application") on November 25, 2015, attaching a Memorandum of Costs as an exhibit.
15 On December 7, 2015, Defendant filed its Opposition to the Initial Application and a Motion to
16 Re-tax Costs. On December 21, 2015, Plaintiff filed an Amended Verified Memorandum of
17 Costs and the above-described Amended Application for Fees. On December 28, 2015,
18 Defendant filed its Supplement to its Motion to Re-tax Costs and Opposition to the Amended
19 Application for Fees. On January 14, 2016, Plaintiff filed an Opposition to the Motion to Re-tax
20 and Reply in support of her Amended Application for Fees.

On June 29, 2016 this Court issued a minute order for counsel to file supplemental briefs regarding the factors for awarding expert fees above \$1,500 outlined in *Frazier v. Duke*, 357 P.3d 365, 131 Nev. Adv. Op. 64 (Nev. Ct. App. 2015).

24 II. DISCUSSION

25 **A. Legal Standards and Applicable Statutes**

26 Plaintiff moves for fees and costs under both NRCP 68 and NRS 18.010. NRCP 68(f)
27 provides:

1 If the offeree [of an offer of judgment] rejects an offer and fails to
2 obtain a more favorable judgment,

3 (1) the offeree cannot recover any costs or attorney's fees and shall
4 not recover interest for the period after the service of the offer and
5 before the judgment; and

6 (2) the offeree shall pay the offeror's post-offer costs, applicable
7 interest on the judgment from the time of the offer to the time of
8 entry of the judgment and reasonable attorney's fees, if any be
9 allowed, actually incurred by the offeror from the time of the offer.
10 If the offeror's attorney is collecting a contingent fee, the amount of
11 any attorney's fees awarded to the party for whom the offer is made
12 must be deducted from that contingent fee.

13 NRS 17.115(4) similarly provides, in relevant part:

14 Except as otherwise provided in this section, if a party who rejects
15 an offer of judgment fails to obtain a more favorable judgment, the
16 court:

17 (c) Shall order the party to pay the taxable costs incurred by the
18 party who made the offer; and

19 (d) May order the party to pay to the party who made the
20 offer...(3) Reasonable attorney's fees incurred by the party
21 who made the offer for the period from the date of service of
22 the offer to the date of entry of the judgment. If the attorney of
23 the party who made the offer is collecting a contingent fee, the
24 amount of any attorney's fees awarded to the party pursuant to
25 this subparagraph must be deducted from that contingent fee.

26 Additionally, NRS 18.010(2)(b) provides that fees may be awarded to the prevailing party
27 "[w]ithout regard to the recovery sought, when the court finds that the claim, counterclaim, cross-
28 claim or third-party complaint or defense of the opposing party was brought or maintained
without reasonable ground or to harass the prevailing party."

NRS 18.110(1)-(2) provides that whenever a party claims costs, she must file a verified
memorandum setting forth those costs within 5 days of entry of the judgment and that witness
fees are recoverable costs, regardless of whether the witness was subpoenaed, if the witness
testified at trial. NRS 18.110(4) allows the opposing party to file a motion to re-tax claimed costs
within 3 days of service of a copy of the memorandum of costs.

1 As a preliminary note, Defendant's first argument is that Plaintiff improperly and
2 unilaterally filed the Amended Application for Fees after reading Defendant's Opposition, so the
3 Court should only consider the Initial Application. Here, judgment was entered on December 15,
4 2015. Plaintiff filed the Initial Application well before this, on November 25, 2015. She also
5 filed her Amended Application for Fees on December 21, 2015, which is within the time limit set
6 forth in the rule (note that under EDCR 1.14(a), the period for filing is five *judicial* days from
7 entry of judgment). However, Defendant's Motion to Re-tax Costs as to the Initial Application
8 was due on December 2, 2015,¹ but it was not filed until December 7, 2015, and was thus
9 untimely.² Defendant's Motion to Re-tax as to the Amended Verified Memorandum of Costs was
10 timely, though. It is true that generally, supplemental briefing is allowed only by leave of court.
11 See EDCR 2.20(i). However, given that Defendant's first Motion to Re-tax Costs was untimely, it
12 would seem that it would be willing to waive its first argument in opposition to Plaintiff's
13 Amended Application for Fees.

14 **B. Analysis: Fees under NRCP 68**

15 In order for the penalties associated with the rejection of an offer of judgment to apply, the
16 offeree must not have obtained a more favorable judgment. NRCP 68(f); NRS 17.115(4). To
17 determine whether the offeree of a lump-sum³ offer of judgment obtained a more favorable
18 judgment, the amount of the offer must be compared to the amount of the offeree's *pre-offer*,
19 *taxable costs*. *McCrory v. Bianco*, 122 Nev. 102, 131 P.2d 573, 576, n. 10 (2006) (stating that
20 NRCP 68(g) must be read in conformance with NRS 17.115(5)(b)). Here, Plaintiff offered to
21 settle the case for \$49,999.00 on September 3, 2015. The verdict was in favor of Plaintiff for a
22 total of \$240,000.00. It seems that this may be a more favorable judgment, although Plaintiff has
23 neglected to specifically set forth her pre-offer taxable costs. On the other hand, Plaintiff's total
24

25 ¹ Plaintiff served the Initial Application on November 25, 2015.

26 ² Defendant argues that Plaintiff never actually served the initial Memorandum of Costs, but this is
27 disingenuous because Plaintiff did in fact serve her Initial Application that attached a Memorandum of
28 Costs as an Exhibit.

³ A lump-sum offer of judgment is one that includes all damages, legal costs, and attorneys' fees.

1 claimed costs were \$26,579.38 (whether pre- or post-offer) and that, together with the offer,
2 amounts to \$76,578.38. Plaintiff's jury recovery was well above this – \$240,000.00 – so it
3 appears that Plaintiff has met the threshold requirement to show entitlement to fees and costs
4 under Rule 68.

5 The determination of whether to grant fees to a party under NRCP 68 rests in the sound
6 discretion of the trial court. *Chavez v. Sievers*, 118 Nev. 288, 296, 43 P.3d 1022, 1027 (2002).
7 Such a decision will not be disturbed unless it is arbitrary and capricious. *Schouweiler v. Yancey*
8 *Co.*, 101 Nev. 827, 833, 712 P.2d 786, 790 (1985). District courts must consider several factors
9 when making a fee determination under *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268,
10 274 (1963): (1) whether the plaintiff's claim was brought in good faith; (2) whether the offer was
11 reasonable and in good faith in timing and amount; (3) whether the decision to reject the offer was
12 grossly unreasonable or in bad faith; and (4) whether the sought fees are reasonable and justified.
13 However, where the defendant is the offeree of an offer of judgment, the first factor changes to a
14 consideration of whether the defendant's defenses were litigated in good faith. *See Yamaha Motor*
15 *Co. v. Arnoult*, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998).

16 As to the first factor, whether Defendant's defenses were litigated in good faith, Plaintiff
17 argues that Defendant's defense that it had no notice of the liquid on the casino floor was in bad
18 faith because it failed to make an inquiry into the last time the floor was checked before Plaintiff
19 slipped. (Am. App. at 5-6.) Plaintiff also argues that Defendant's defense that there was no
20 causation here was unreasonable because it relied upon expert testimony that lacked a basis in
21 modern science. (*Id.* at 6.) Defendant's Motion to Re-tax and Opposition to the Amended
22 Application for Fees does not address whether its defenses were maintained in good faith.
23 However, Nevada case law has caused some confusion in differentiating between constructive
24 notice and the "mode of operation approach," the latter of which is specifically discussed in cases
25 decided subsequent to *Sprague v. Lucky Stores, Inc.*, 109 Nev. 247, 250, 849 P.2d 320. 322-33
26 (1993). This is not a case where the law is black and white. Based on that and the evidence
27 presented at trial, it was not bad faith for Defendant to contend that it lacked notice of the
28 condition on the floor and Plaintiff in fact so concedes.

1 Furthermore, Plaintiff's evidence of constructive notice may have been enough to escape
2 the granting of a Rule 50 motion, but it was by no means overwhelming. Additionally, Plaintiff's
3 damages claims were reasonably disputed by expert testimony of a defense witness. That the jury
4 was not persuaded by this expert does not translate to bad faith by the Defendant. Thus, the first
5 factor therefore weighs in favor of the Defendant.

6 As to the second factor, Defendant argues that the offer was unreasonable in amount
7 because Plaintiff had no basis for its offer and that due to Plaintiff's "gamesmanship," Defendant
8 could not sufficiently evaluate the offer. (Opp. at 5-7.) Here, discovery closed on June 12, 2015.
9 Plaintiff was unable to submit proof of special medical damages at the time of trial because the
10 Court precluded them on the basis that they were not properly disclosed in discovery. This made
11 it extremely difficult for the Defense to evaluate a potential value of the case. An offer made at a
12 time when Plaintiff has not properly provided a calculation of damages is unreasonable. Thus, the
13 second factor weighs in favor of Defendant.

14 In ascertaining whether Defendant's decision to reject the offer was grossly unreasonable
15 or in bad faith, a pertinent consideration is whether enough information was available to
16 determine the merits of the offer. *Trustees of the Carpenters for S. Nev. Health & Welfare Trust*
17 *v. Better Building Co.*, 101 Nev. 742, 746, 710 P.2d 1379, 1382 (1985). Here, discovery closed
18 on June 12, 2015. The offer of judgment was made three months later, on September 3, 2015.
19 Given that at the time of the offer, Defendant had available all the materials obtained during
20 discovery, including witness depositions, Defendant's decision to reject the offer was well-
21 informed. Furthermore, the issues surrounding notice were not necessarily clear-cut, as evidenced
22 by the parties' pre-trial and post-trial motions on that issue. Overall, it is unlikely that Defendant's
23 rejection of the offer was grossly unreasonable or in bad faith, and in the end weighs in favor of
24 Defendant.

25 With regard to the last *Beattie* factor, the Court must undergo an analysis of whether
26 claimed fees were reasonable in light of the factors set forth in *Brunzell v. Golden Gate Nat'l*
27 *Bank*, 85 Nev. 345, 249, 455 P.2d 31, 33 (1969). Plaintiff has addressed some, but not all, of
28 these factors. Plaintiff's counsel has set forth the qualities of the advocate(s) on this case and, of

1 course, we know that a favorable result was obtained. However, Plaintiff has not provided any
2 bills setting forth what tasks were performed and the associated hours for those tasks. This
3 prevents the Court from determining whether the fees charged were reasonable in light of the
4 tasks actually performed. Therefore, because Plaintiff has not carried her burden under *Brunzell*,
5 this factor weighs in favor of Defendant. On the whole, all of the factors set forth in *Beattie* (as
6 modified by *Yamaha, supra*) weigh in favor of Defendant in this case and Plaintiff's Amended
7 Application for Fees should be **denied**.

8 **C. Analysis: Award of Costs**

9 Although NRCF 68 costs are only for post-offer costs, NRS 18.020(3) mandates awarding
10 all costs to Plaintiff since she prevailed in seeking damages in an amount more than \$2,500. NRS
11 18.110(1) requires the filing of a memorandum of costs by the party in whose favor judgment is
12 rendered, including a verification of the party, the party's attorney, or an agent of the party's
13 attorney that the costs are correct and were necessarily incurred.

14 The amount of awarded costs rests in the sole discretion of the trial court. *Bergmann v.*
15 *Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 565–66 (1993). The court also has "discretion when
16 determining the reasonableness of the individual costs to be awarded." *U.S. Design & Constr.*
17 *Corp. v. I.B.E.W. Local 357*, 118 Nev. 458, 463, 50 P.3d 170, 173 (2002). Claimed costs must be
18 "actual and reasonable, rather than a reasonable estimate or calculation of such costs." *Bobby*
19 *Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 385–86 (1998) (internal quotations
20 omitted). The Supreme Court has also indicated that claimed costs must be supported by
21 documentation and itemization. *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 971 P.2d 383
22 (1998). Defendant only challenges certain specific fees, each of which will be addressed in turn.

23 **1. Expert Witness Fees**

24 With regard to Mr. Presswood, his testimony was not used at trial because this Court ruled
25 that his testimony would be unreliable. Since his testimony was clearly inadmissible under the
26 *Hallmark* standard, as reflected in this Court's prior pre-trial ruling, his fees should not be
27 awarded.
28

1 Plaintiff seeks expert witness fees of \$6,000 for Craig Tingey, M.D. and \$10,000 for
2 Thomas Dunn, M.D. NRS 18.005(5) provides for recovery of “reasonable fees of not more than
3 five expert witnesses in an amount of not more than \$1,500 for each witness, unless the court
4 allows a larger fee after determining that the circumstances surrounding the expert’s testimony
5 were of such necessity as to require the larger fee.”

6 In order for an award of expert witness fees in excess of the statutory maximum to be
7 proper, the fees must not only be reasonable, but also “the circumstances surrounding [each]
8 expert’s testimony [must be] of such necessity as to require the larger fee.” *Frazier*, 357 P.3d at
9 374 (citing NRS 18.005(5); *Logan v. Abe*, 131 Nev. ---, ---, 350 P.3d 1139, 1144 (2015)). In
10 crafting its decision, the Court of Appeals used the limited Nevada Supreme Court authority
11 available as well as extra-jurisdictional authority, particularly from Idaho (which has a statute
12 similar to NRS 18.005(5)), Louisiana, Connecticut, and Massachusetts.

13 Ultimately, the Nevada Court of Appeals set forth a nonexhaustive list of factors, some of
14 which may not necessarily be pertinent to every request for expert witness fees in excess of
15 \$1,500. The factors in evaluating requests for awards over the statutory maximum include:

- 16 1. The importance of the expert’s testimony to the party’s case;
- 17 2. the degree to which the expert’s opinion aided the trier of fact in deciding the case;
- 18 3. whether the expert’s reports or testimony were repetitive of other expert witnesses;
- 19 4. the extent and nature of the work performed by the expert;
- 20 5. whether the expert had to conduct independent investigations or testing;
- 21 6. the amount of time the expert spent in court, preparing a report, and preparing for
22 trial;
- 23 7. the expert’s area of expertise;
- 24 8. the expert’s education and training;
- 25 9. the fee actually charged to the party who retained the expert;
- 26 10. the fees traditionally charged by the expert on related matters;
- 27 11. comparable experts’ fees charged in similar cases; and
- 28

12. if an expert is retained from outside the area where the trial is held, the fees and costs that would have been incurred to hire a comparable expert where the trial was held. *Frazier*, 357 P.3d at 377-78.

Plaintiff argues that pursuant to *Frazier*, this Court should award the entire \$6,000 for Dr. Tingey's fee. (Pl. Supp. Brief at 3-4.) Additionally, Plaintiff argues that this Court should award at least \$5,000 of Dr. Dunn's fee if not the entire amount. (Pl. Supp. Brief at 3-4.) In its brief, rather than discussing the *Frazier* factors in the brief itself, Defendant incorporated by reference its arguments set forth related to the "expert costs." Specifically, Defendant directs this Court to pages 10-13 of its Opposition to Plaintiff's Application for Fees, Costs and Pre-Judgment Interest and Motion to Retax Costs filed on December 7, 2016 as well as pages 7 and 8 of Defendant's Supplement to Motion to Retax Costs and Opposition to Plaintiff's Amended Application for Fees, Costs and Prejudgment Interest filed on December 28, 2016. In sum, Defendant argues there is not a sufficient basis to award Plaintiff expert costs for her treating physicians at all and especially not above the statutory maximum of \$1,500. (Def. Supp. Brief at 4.)

The Importance of the expert's testimony

Plaintiff argues that Dr. Tingey testified primarily regarding Plaintiff's right knee and Dr. Dunn testified primarily regarding Plaintiff's spine. (Pl. Supp. Brief at 5.) Both parties agree that the doctors testified that the injuries to the right knee and cervical spine were caused by the slip and fall. However, the parties disagree as to how important that testimony was to Plaintiff's case. Plaintiff argues that the testimony "formed the lynchpin" of Plaintiff's causation argument. (Pl. Supp. Brief at 6.) Alternatively, Defendant argues that the doctors did not add anything substantive to trial, because the doctors based their opinions solely on Plaintiff's subjective physical complaints without reviewing her medical history. (Def. Opp. to Pl. Motion for Fees at 12.) Defendant further argues that the doctors' opinions were unreliable, repetitive and unnecessary because Plaintiff testified regarding her subjective complaints of pain and injury. (Def. Opposition at 12.) Finally, Defendant argues that experts are generally needed in personal injury cases to testify regarding the necessity of past or future medical treatment or the reasonableness of costs, and because Plaintiff did not seek these damages, the doctors' testimony

1 was largely duplicative of Plaintiff's testimony and therefore unimportant in aiding the jury in
2 deciding the case. (Def. Opposition at 12.)

3 Even though the doctors based their opinions on the subjective pain about which the
4 Plaintiff testified at trial, the causation opinion was probably important to Plaintiff's case.
5 Further, even though Plaintiff did not seek any medical special damages, but only pain and
6 suffering, the doctors' testimony regarding causation was still important to Plaintiff's case,
7 because the testimony relates to the causation element of Plaintiff's claim. **Therefore, the first**
8 **factor favors the Plaintiff.**

9 *Whether the expert's reports or testimony were repetitive of other expert witnesses*

10 Defendant argues, as noted above, that the doctors' testimony was largely duplicative of
11 Plaintiff's testimony. (Def. Opposition at 12.) However, this factor relates to whether the
12 expert's testimony is repetitive of other experts. Here, Dr. Tingey testified regarding Plaintiff's
13 knee and Dr. Dunn testified regarding Plaintiff's spine. (Pl. Supp. Brief at 7.) Each expert
14 testified regarding different injuries resulting from the same slip and fall. **Therefore, the second**
15 **factor favors the Plaintiff.**

16 *The extent and nature of the work performed by the expert*

17 Defendant argues that both Dr. Dunn and Dr. Tingey admitted they did not perform much
18 work to prepare for trial. (Def. Opposition at 12.) However, Plaintiff believes this factor not only
19 weighs in her favor, but should be given more weight than other factors. (Pl. Supp. Brief at 7.)
20 Defendant argues that the doctors were treating physicians, not retained expert witnesses. (Def.
21 Opposition at 12.) Additionally, Defendant argues that the doctors did not prepare a written
22 expert report and were not deposed. (Def. Opposition at 12.) However, the Plaintiff is not asking
23 for money for depositions or reports. Instead, with respect to Dr. Tingey, Plaintiff is asking for
24 costs incurred for a telephone conference, file review and for his appearance and testimony at
25 trial. (Pl. Supp. Brief at 3.) With respect to Dr. Dunn, Plaintiff seeks costs incurred for the file
26 review and trial testimony. (Pl. Supp. Brief at 3.) Defendant merely argues that \$16,000 is
27 "simply absurd" for the work performed. (Def. Opposition at 12.) Alternatively, Plaintiff argues
28 that Drs. Tingey and Dunn are orthopaedic doctors who routinely perform surgeries on sensitive

1 areas of the body and are skilled professionals that perform work few others can perform.
2 However, Plaintiff did not describe the extent of the doctors' work as treating physicians. The
3 Court assumes that this is relevant to the fee that they can command as a result of having to leave
4 their normal practice in order to attend court. Plaintiff notes that Dr. Tingey was part of a
5 telephone conference, conducted a file review, and testified at trial. Additionally, Plaintiff noted
6 that Dr. Dunn conducted a file review and testified at trial on two separate days.

7 While the Defendant argues the doctors did not perform some work associated with expert
8 witnesses such as preparing a report, the doctors did review records and testified at trial.
9 **Therefore, given that Drs. Tingey and Dunn spent time reviewing records for trial and**
10 **actually testified, the third factor favors the Plaintiff.**

11 *Whether the expert had to conduct independent investigations or testing*

12 Defendant does not provide any additional argument with respect to this factor. Plaintiff
13 argues that this factor is irrelevant to this case because Dr. Tingey and Dr. Dunn performed the
14 work of any other treating physician. (Pl. Supp. Brief at 8.) However, this factor is not irrelevant
15 as Plaintiff argues, but rather this factor simply does not favor Plaintiff's argument, because the
16 doctors did not conduct and independent investigations or testing outside the ordinary course of
17 treatment. **Therefore, this factor does not favor an increased fee because neither doctor**
18 **performed work above and beyond that of a regular treating physician.**

19 *The amount of time the expert spent in court, preparing a report, and preparing for trial*

20 As stated above, Defendant argues that Dr. Tingey and Dr. Dunn did not prepare a report,
21 did not spend much time preparing for trial, and did not even spend that much time testifying in
22 court (Approximately 2-3 hours each). (Def. Opp. at 12.) Plaintiff argues that the fees are
23 customary for each doctor's specialty and their testimony required time away from their practices,
24 which does not address this factor. (Pl. Supp. Brief at 8.) Even though the doctors may not have
25 spent a lot of time in court, the doctors still spent several hours testifying. While Dr. Dunn had to
26 return for a second day, this was an accommodation by the court to the doctor's schedule.
27 **Therefore, this factor favors the Plaintiff regarding Dr. Tingey, but the Defendant**
28 **concerning Dr. Dunn's fees for 2 days.**

The expert's area of expertise, education, and training

Defendant does not make any additional argument with respect to this factor. Plaintiff notes that Dr. Tingey is board certified in orthopaedic surgery who focuses on ailments affecting the shoulders, hips, and knees. (Pl. Supp. Brief at 8.) Dr. Tingey graduated from medical school in 1999. (Pl. Supp. Brief Exhibit 1.) He completed a General Surgery Internship at Loma Linda University School of Medicine following graduation. (Pl. Supp. Brief Exhibit 1.) Additionally, Dr. Tingey was an Orthopaedic Surgery Resident and Loma Linda from 2000-2004. (Pl. Supp. Brief Exhibit 1.)

Dr. Dunn is a board certified orthopaedic surgeon specializing in spine surgery and disorders affecting the neck and back. (Pl. Supp. Brief Exhibit 2.) Plaintiff references the doctors' CV's for additional qualifications. Dr. Dunn graduated from Medical School in June of 1985 from the UC Irvine College of Medicine. (Pl. Supp. Brief Exhibit 2.) Upon graduation, Dr. Dunn completed a general surgery internship at the UC Irvine College of Medicine. (Pl. Supp. Brief Exhibit 2.) Dr. Dunn completed his residency at the UC Irvine School of Medicine and from 1991 to 1992 was a fellow at Rancho Los Amigos Hospital. (Pl. Supp. Brief Exhibit 2.)

The doctors seem to have the requisite education and experience that would justify an increased fee. Both Doctors graduated from Medical School over 15 years ago and are board certified surgeons. **Given the doctors' education and board certifications, this factor favors the Plaintiff.**

The fee actually charged to the party who retained the expert

Defendant does not make any additional argument with respect to this factor. Plaintiff notes that Dr. Tingey's fee of \$6,000 was actually charged and paid, and Dr. Dunn's fee of \$10,000 was actually charged and paid. (Pl. Supp. Brief at 9.) **Therefore, this factor favors the Plaintiff.**

Comparable experts' fees charged in similar cases

Defendant does not make any additional argument with respect to this factor. Plaintiff argues that a "flat-fee" for court appearances is common for medical experts in Las Vegas and cites to Dr. Victor Klausner's fee schedule, which uses a flat-fee structure at \$2,500 per ½ day or

1 \$5,000 per day. Plaintiff also points to “routinely used orthopaedic defense expert” Dr. Serfustini
2 as another example of an expert who uses a flat-fee structure for court appearances. Finally,
3 Plaintiff points to Dr. Muir as an example of a spine surgeon who charges the same as Dr. Tingey
4 and Dr. Dunn for court appearances. (Pl. Supp. Brief at 9.)

5 While Plaintiff argues Dr. Klausner’s credentials are not as distinguished as Drs. Tingey
6 and Dunn, this argument seems to ask the court to compare the qualifications of the experts rather
7 than compare expert fees. A more compelling point regarding Dr. Klausner is that he charges
8 \$2,500 per half day and \$5,000 per day (same as Dr. Dunn), and he is not a board certified
9 surgeon, which suggests that Dr. Tingey and Dr. Dunn’s fees are fair and reasonable. Dr. Muir is
10 a spine surgeon. Dr. Muir charges the same amount as Dr. Dunn and Dr. Tingey for court
11 appearances, and those three doctors are similar because they graduated from Medical School
12 over 15 years ago and perform surgeries and treatments on sensitive areas of the human body.
13 **Therefore, this factor favors the Plaintiff’s request for excess fees above \$1,500.00.**

14 Based upon the *Frazier* factors and the briefing by the Parties, the Court should award
15 expert witness costs in excess of the NRS 18.005(5) statutory cap, \$5,000 for Dr. Tingey’s fees
16 and \$5,000 for Dr. Dunn’s fees. Both doctors are similarly situated and testified for similar
17 lengths of time. Dr. Dunn’s fee of \$10,000 was apparently charged because he testified on two
18 separate days. This could have been avoided by better planning on the part of Plaintiff’s trial
19 counsel and the defense should not bear that extra expense.

20 Hence, as to the expert fees, Defendant’s Motion to Re-tax should be **granted in part**.

21 **2. Service Fees**

22 NRS 18.005(7) allows recovery of service fees. Defendant next challenges the service
23 fees claimed by Plaintiff in serving Yanet Elias, Corey Prowell, and Salvatore Risco. (Mot. to
24 Re-tax Costs at 8-9.) Plaintiff acknowledges that all costs must be both reasonable and *necessary*.
25 As to Yanet Elias and Corey Prowell, each was an employee of Defendant and Defendant points
26 out that it had accepted service for those persons. Even with the agreement that service can be
27 made upon counsel instead of the witness, however, does not eliminate the need to serve and the
28 fees would be necessary and she should be **granted** those fees.

1 As to Mr. Risco, Defendant argues that the service fees were unnecessary and
2 unreasonable because Plaintiff's counsel had good communication with him. However, unlike the
3 other two employee-witnesses, Mr. Risco was not a party to this case or an agent of a party to this
4 case, so service of a subpoena upon him was necessary. Additionally, Plaintiff has outlined
5 sufficient reasons for the amount of the claimed charge that show it to be reasonable and she
6 should be **granted** those fees.

7 **3. Jury Fees**

8 NRS 18.005(3) specifically allows an award of jury fees as an element of costs.
9 Defendant next argues it should not be responsible for the jury fees because Plaintiff failed to
10 request a jury trial within the time allowed. (Mot. to Re-tax Costs at 9.) Defendant essentially
11 only argues that because Plaintiff's demand for a jury trial was untimely and this should have been
12 a bench trial, it should not have to pay for the jury fees. However, those arguments are premised
13 on challenging this Court's grant of Plaintiff's request for a jury trial and the time for
14 reconsidering that decision has long since passed. Moreover, both parties had prepared this entire
15 case under the assumption that it was going to be tried by jury, so Defendant was not prejudiced
16 by the Court's ruling in any event. Since the jury fees were actually incurred and reasonable,
17 Defendant's Motion to Re-tax as to those fees should be denied, and Plaintiff should be **granted**
18 the jury fees incurred.

19 **4. Parking Fees**

20 NRS 18.005(17) allows the court to award any other reasonable costs actually incurred.
21 This would, of course, include costs incurred in parking for hearings and the like. Defendant
22 argues that there were other free places Plaintiff could have parked. (Mot. to Re-tax Costs at 9.)
23 This may or may not be true, but Defendant's argument is conclusory in any event. Because
24 Plaintiff actually incurred the parking costs, they should be **granted**.

25 **5. Skip Trace Fees**

26 Defendant lastly argues that Plaintiff's request for skip trace/investigative fees for Terry
27 Ruby were unreasonable and unnecessary. (Mot. to Re-tax Costs at 9.) Terry Ruby is a former
28

1 employee of Defendant and was the first to respond to Plaintiff's fall. (Opp. at 8.) It is clear why
2 Plaintiff would have a need to locate and depose Mr. Ruby. A \$150.00 fee for that service is not
3 unreasonable, given the extreme costs associated with reporting services like Accurint.
4 Therefore, Defendant's Motion to Re-tax as to the skip trace fee should be denied, and Plaintiff
5 should be **granted** that amount as a cost.

6 **6. Remaining Fees**

7 Defendant does not challenge the remaining requested fees. Plaintiff has attached back-up
8 documentation for each claimed cost and they all seem to be reasonable and within the going
9 market rate for each associated service. Plaintiff has therefore carried her burden under *Berosini*
10 and the remaining costs requested should be awarded. Therefore, Plaintiff's Amended
11 Application for Fees as to costs should be **granted** as to the remaining costs sought, as set forth
12 herein.

13 Based on the foregoing, with good cause appearing:

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IT IS HEREBY ORDERED that Plaintiff's Amended Application for Fees and Defendant's Motion to Re-tax are both **GRANTED IN PART, DENIED IN PART**. The requested attorney's fees are denied and Plaintiff is not awarded any attorney's fees related to this matter. Plaintiff's requested costs in this matter is partially granted, but the amount of costs set forth in Plaintiff's Amended Verified Memorandum of Costs is reduced by \$9,699.00 from the amount sought of \$26,579.38. As a result, Plaintiff is granted costs in the total sum of \$16,880.38.

DATED this 31st day of October, 2016.


EIGHTH JUDICIAL DISTRICT COURT JUDGE

Respectfully Submitted By:

LAWRENCE J. SEMENZA, III, P.C.

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IT IS HEREBY ORDERED that Plaintiff's Amended Application for Fees and Defendant's Motion to Re-tax are both **GRANTED IN PART, DENIED IN PART**. The requested attorney's fees are denied and Plaintiff is not awarded any attorney's fees related to this matter. Plaintiff's requested costs in this matter is partially granted, but the amount of costs set forth in Plaintiff's Amended Verified Memorandum of Costs is reduced by \$9,699.00 from the amount sought of \$26,579.38. As a result, Plaintiff is granted costs in the total sum of \$16,880.38.

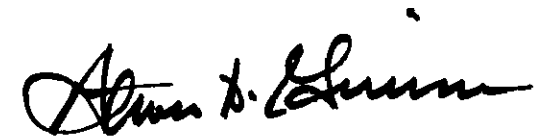
EIGHTH JUDICIAL DISTRICT COURT JUDGE

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

13 YVONNE O'CONNELL, an individual,
14
15 Plaintiff,

Case No.: A-12-655992-C
Dept. No.: V

16 vs.

NOTICE OF APPEAL

17 WYNN LAS VEGAS, LLC, a Nevada
18 Limited Liability Company, doing business as
19 WYNN LAS VEGAS; DOES I through X;
20 and ROE CORPORATIONS I through X,
21 inclusive,
22 Defendants.

22 **NOTICE IS HEREBY GIVEN**, that Plaintiff, YVONNE O'CONNELL ("Plaintiff"),
23 appeals to the Supreme Court of Nevada the district court's order titled *Order Partially Granting*
24 *and Partially Denying Defendant's Motion to Retax Costs and Plaintiffs Motion to Tax and for*
25 *Fees, Costs and Post-Judgment Interest* entered in the above-captioned case on the 9th day of

November 2016, as well as an orders, judgments, and rulings made appealable by the foregoing.

DATED this 17th day of November, 2016.

NETTLES LAW FIRM

/s/ Jon J. Carlston, Esq.
BRIAN D. NETTLES, ESQ.
Nevada Bar No. 7462
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
JON J. CARLSTON, ESQ.
Nevada Bar No. 10869
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 17th day of November, 2016, I served the foregoing **NOTICE OF APPEAL** to the following parties by electronic transmission through the Wiznet system:

Semenza Kircher Rickard		
	Contact	Email
	Christopher D. Kircher	cdk@skrlawyers.com
	Jarrold L. Rickard	jlr@skrlawyers.com
	Jennifer A. Bidwell	jab@skrlawyers.com
	Lawrence J. Semenza, III	ljs@skrlawyers.com
	Olivia Kelly	oak@skrlawyers.com

/s/ Jenn Alexy
An Employee of NETTLES LAW FIRM

IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN LAS VEGAS, LLC d/b/a WYNN
LAS VEGAS,

Appellant,

vs.

YVONNE O'CONNELL, an individual,

Respondent.

YVONNE O'CONNELL, an individual,

Appellant,

vs.

WYNN LAS VEGAS, LLC d/b/a WYNN
LAS VEGAS,

Respondent.

Supreme Court Case No.: 70583(L)

Consolidated with Case No.: 71789

Electronically Filed

Jul 31 2017 02:36 p.m.

Eighth Jud. Dist. Ct.
Elizabeth A. Brown
Case No.: A-12-55992-C
Clerk of Supreme Court

Supreme Court Case No.: 71789

RESPONDENT/APPELLANT'S APPENDIX ("RA")
Vol. 3; 3 RA 401-607

Brian D. Nettles, Esq. (7462)
Christian M. Morris, Esq. (11218)
Jon J. Carlston, Esq. (10869)
NETTLES LAW FIRM
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Telephone: (702) 434-8282
Facsimile: (702) 434-1488
Attorneys for Respondent/Appellant
YVONNE O'CONNELL

CHRONOLOGICAL INDEX

Volume 1: 1 RA 001-200

Volume 2: 2 RA 201-400

Volume 3: 3 RA 401-607

Description	Date	Pages
Plaintiff's First Supplement to and Amendment of Initial 16.1 Disclosures: Medical Records from Desert Orthopaedic Center (PLTF000600-627)	March 16, 2015	1 RA 001- 1 RA 046
Defendant's Ninth Supplemental Disclosures Pursuant to NRCP 16.1: Medical Records from Desert Orthopaedic Center (Wynn-O'Connell01296-01328)	March 28, 2015	1 RA 047- 1 RA 082
Plaintiff's Fourth Supplement to and Amendment of Initial 16.1 Disclosures: Medical Records from Desert Orthopaedic Center (PLTF 000729-752)	July 14, 2015	1 RA 082- 1 RA 128
Joint Stipulated Exhibit 1-13 (0001-0015) entered at trial	November 4, 2015	1 RA 129- 1 RA 143
Copy of Joint Stipulated Exhibit 1-13 (0001-0015) entered at trial (more legible copy)	November 4, 2015	1 RA 144- 1 RA 158
The Clerk/Parties' Exhibit List from the November 2015 Trial	November 16, 2015	1 RA 159- 1 RA 167
Plaintiff's Trial Exhibit 4	November 12, 2016	1 RA 168
Plaintiff's Trial Exhibit 6	November 12, 2016	1 RA 169
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Plaintiff's Application for Fees, Costs and Pre-Judgment Interest	November 25, 2016	1 RA 171- 1 RA 200
Plaintiff's Amended Application for Fees, Costs and Pre-Judgment Interest	December 7, 2015	1 RA 201- 2 RA 221
Defendant's Opposition to Plaintiff's Application for Fees, Costs and Pre-Judgment Interest and Motion to Retax Costs	December 21, 2015	2 RA 222- 2 RA 245
Plaintiff's Amended Verified Memorandum of Costs	December 21, 2015	2 RA 246- 2 RA 324

Defendant's Supplement to Motion to Retax Costs and Opposition to Plaintiff's Application for Fees, Costs and Pre-Judgment Interest	December 28, 2015	2 RA 325- 3 RA 421
Plaintiff's Opposition to Defendant's Motion to Retax Costs And Reply to Defendant's Opposition to Plaintiff's Motion and Notice of Motion to Tax Costs and For Fees and Post-Judgment Interest	January 14, 2016	3 RA 422- 3 RA 435
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Supplemental Brief Regarding Deviating above NRS 18.005(5)'s Expert Witness Statutory Cap Pursuant to the <i>Frazier v. Duke</i> Factors	July 13, 2016	3 RA 438- 3 RA 512
Errata to Supplemental Brief Regarding Deviating above NRS 18.005(5)'s Expert Witness Statutory Cap Pursuant to the <i>Frazier v. Duke</i> Factors	July 13, 2016	3 RA 513- 3 RA 527
Defendant's Supplemental Response Brief Regarding <i>Frazier v. Duke</i>	July 26, 2016	3 RA 528- 3 RA 559
Count Minutes	August 12, 2016	3 RA 560- 3 RA 561
Transcript from the August 12, 2015, hearing	September 13, 2016	3 RA 562- 3 RA 569
Order Partially Granting and Partially Denying Defendant's Motion to Retax Costs and Plaintiff's Motion to Tax Costs and for Fees, Costs and Post-Judgment Interest	November 9, 2016	3 RA 570- 3 RA 586

Notice of Entry of Order	November 10, 2016	3 RA 587- 3 RA 605
Notice of Appeal	November 17, 2016	3 RA 606- 3 RA 607

DATED this 21st day of July, 2017.

NETTLES LAW FIRM

/s/ Jon J. Carlston

BRIAN D. NETTLES, ESQ. (7462)

CHRISTIAN M. MORRIS, ESQ. (11218)

JON J. CARLSTON, ESQ. (10869)

Attorneys for Respondent/Appellant

YVONNE O'CONNELL

CERTIFICATE OF SERVICE

I certify that on the 21th day of July 2017, I electronically filed **RESPONDENT/APPELLANT'S APPENDIX** with the Supreme Court of Nevada by using the Court's eFlex electronic filing system to the following parties.

Lawrence J. Semenza, III, Esq.

Christopher D. Kircher, Esq.

Jarrold L. Rickard, Esq.

SEMENZA KIRCHER RICKARD

Attorneys for Appellant/Respondent

WYNN LAS VEGAS, LLC d/b/a WYNN LAS VEGAS

/s/ Jenn Alexy

An employee of the NETTLES LAW FIRM

DATE: 11-10-15

TO: DOT

FROM: ANN MARIE

FAX NUMBER: 702-434-1488

RE: Y. O CONNEZL TRIAL

NUMBER OF PAGES INCLUDING COVER
SHEET:

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1389 GALLERIA DRIVE, SUITE 200
HENDERSON, NV 89014

16352

94-236/1224

DATE 4/27/2015

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\$ **2,489.20

Two Thousand Four Hundred Eighty-Nine and 20/100*****

DOLLARS

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16352

randy watson
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yanet elias

702.50
941.70
845.00

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16352

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702.50
941.70
845.00

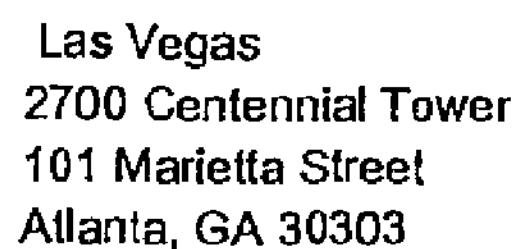
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Fax (856) 437-5009

Invoice # ESQ288092

Invoice Date	04/09/2015
Terms	NET 30
Payment Due	05/09/2015
Date of Loss	
Name of Insured	
Adjustor	
Claim Number	

CHRISTIAN MORRIS ,ESQ.
NETTLES LAW FIRM - HENDERSON
SUITE 200
1389 GALLERIA DRIVE
HENDERSON, NV 89014

Assignment	Case	Assignment #	Shipped	Shipped Via
03/24/2015	O'CONNELL, YVONNE VS. WYNN LAS VEGAS, LL	300733	04/08/2015	FED EX

Description	
Original Deposition for YANET ELIAS, 03/24/2015 (LAS VEGAS, NV)	
EXHIBITS	
SUMMARY	
MATTER NUMBER: N/A	
	Tax: \$ 0.00
	Paid: \$ 0.00
Amount Due On/Before 05/24/2015	\$ 845.00
Amount Due After 05/24/2015	\$ 929.50

Tax Number: 45-3463120

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Amount Due On/Before 05/24/2015 **\$ 845.00**

Amount Due After 05/24/2015 **\$ 929.50**

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NETTLES LAW FIRM - HENDERSON
SUITE 200
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217 0000288092 04092015 1 000084500 1 05092015 05242015 5 000092950_Q7

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3 RA 403

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16373
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900 S. Fourth Street, Suite 100

Las Vegas, Nevada 89101

Phone: (702) 430-5003

Fax: (702) 974-0125

Invoice Date

Monday, April 27, 2015

Invoice #

9001094V6

Christian M. Morris
Nettles Law Firm
1389 Galleria Drive, Suite 200
Henderson, NV 89014

Phone: (702) 434-8282 Fax: (702) 434-1488

Witness: Yvonne O'Connell**Case:** O'Connell v. Wynn Resorts Limited**Venue:** Clark County District Court**Case #:** A-12-655992-C**Date:** 3/19/2015**Start Time:** 10:00 AM**End Time:** 3:37 PM**Reporter:** son Harris, Kristy Clark**Claim #:****File #:**

903489V6

Description	Total
Certified Copy of Transcript	\$483.00
Attached exhibits/online - B&W	\$4.40
Attached exhibits/online - Color	\$3.80
Complimentary - Online E-transcript	\$0.00
Complimentary - Condensed Transcript	\$0.00
Postage / Delivery	\$16.00
Sub Total	\$507.20
Payments	\$0.00
Balance Due	\$507.20

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Lawyer Solutions Group, LLC

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7/6/2015

16637

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Las Vegas, Nevada 89101

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Fax: (702) 974-0125

Tuesday, June 23, 2015

9001163V6

Christian M. Morris
Nettles Law Firm
1389 Galleria Drive, Suite 200
Henderson, NV 89014

Phone: (702) 434-8282 Fax: (702) 434-1488

Witness: Yvonne O'Connell**Case:** O'Connell v. Wynn Resorts Limited**Venue:** Clark County District Court**Case #:** A-12-655992-C**Date:** 6/9/2015**Start Time:** 1:00 PM**End Time:** 3:52 PM**Reporter:** Kristy Clark**Claim #:****File #:** 903626V6

Description	Total
Certified Copy of Transcript	\$351.00
Attached exhibits/online - B&W	\$30.00
Complimentary - Online E-transcript	\$0.00
Complimentary - Condensed Transcript	\$0.00
Postage / Delivery	\$16.00
Sub Total	\$397.00
Payments	\$0.00
Balance Due	\$397.00

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16645
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\$ **599.42

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from O'Connell
Costs



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Date 6/23/2015
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Due Date 7/23/2015

Client Number C06883
Esquire Office Las Vegas
Proceeding Type Deposition
Name of Insured
Adjuster
Firm Matter/File # N/A
Client Claim/Matter #
Date of Loss

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Nettles Law Firm - Henderson
1389 Galleria Drive
Suite 110
Henderson NV 89014

Ship To

Morris, Christian
1389 Galleria Drive
Suite 110
Henderson NV 89014

Job Date	Job ID	Job Location	Case	
5/26/2015	JS335921	LAS VEGAS, NEVADA	O'CONNELL, YVONNE VS. WYNN LAS VEGAS, LLC	
Description	Deposition	Qty	Unit Rate	Amount
TRANSCRIPT - O&1-WI	COREY PROWELL - CR	60	4.60	276.00
CONDENSED TRANSCRIPT	COREY PROWELL - CR	1	25.00	25.00
SUMMARY	COREY PROWELL - CR	1	55.00	55.00
DIGITAL TRANSCRIPT	COREY PROWELL - CR	1	50.00	50.00
DIGITAL TRANSCRIPT PTX	COREY PROWELL - CR	1	0.00	0.00
DIGITAL TRANSCRIPT PDF	COREY PROWELL - CR	1	0.00	0.00
EXHIBITS TABS	COREY PROWELL - CR	2	0.50	1.00
EXHIBITS COLOR	COREY PROWELL - CR	1	1.95	1.95
APP FEE: HALF DAY	COREY PROWELL - CR	1	114.00	114.00
HANDLING FEE	COREY PROWELL - CR	1	20.00	20.00
WITNESS READ & SIGN PACKET	COREY PROWELL - CR	1	0.00	0.00

Subtotal 542.95
Shipping Cost (FedEx) 56.47
Total 599.42
Amount Due \$599.42

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Client # C06883
Invoice # INV0523862
Invoice Date 6/23/2015
Due Date 7/23/2015
Amount Due \$ 599.42

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trevor maxwell
trish matthieu

11/17/2015

17164

640.50
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945.31

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trevor maxwell
trish matthieu

11/17/2015

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640.50
304.81

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945.31

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101 Marietta Street
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Invoice INV0619629

Date 11/2/2015
Terms Net 30
Due Date 12/2/2015

Client Number C06883
Esquire Office Las Vegas
Proceeding Type Deposition
Name of Insured
Adjuster
Firm Matter/File #
Client Claim/Matter #
Date of Loss

Bill To

Nettles Law Firm - Henderson
1389 Galleria Drive
Suite 110
Henderson NV 89014

Services Provided For

Nettles Law Firm - Henderson
Morris, Christian
1389 Galleria Drive
Suite 200
Henderson NV 89014

Date	Invoice #	City/State	Case
10/7/2015	J0143079	Las Vegas, NEVADA	O'CONNELL, YVONNE VS. WYNN LAS VEGAS, LLC
Description	Deposition	Rate	Amount
TRANSCRIPT - O&1-WI	Trevor Maxwell	75	6.12
CONDENSED TRANSCRIPT	Trevor Maxwell	1	25.00
HANDLING FEE	Trevor Maxwell	1	20.00
ORIGINAL COMPLIANCE FEE	Trevor Maxwell	1	15.00
DIGITAL TRANSCRIPT-PDF-PTX	Trevor Maxwell	1	50.00
DIGITAL TRANSCRIPT-PDF-PTX	Trevor Maxwell	1	50.00
EXHIBITS W/TABS	Trevor Maxwell	33	0.50
TRANSCRIPT - O&1-WI	Trish Matthieu	40	5.73
ORIGINAL COMPLIANCE FEE	Trish Matthieu	1	15.00
DIGITAL TRANSCRIPT-PDF-PTX	Trish Matthieu	1	50.00
EXHIBITS W/TABS	Trish Matthieu	13	0.50
WITNESS READ & SIGN LETTER	Trevor Maxwell	1	0.00
WITNESS READ & SIGN LETTER	Trish Matthieu	1	0.00

Representing Client: Nettles Law Firm - Henderson

Subtotal 936.00
Shipping Cost (FedEx) 9.31
Total 945.31
Amount Due \$945.31

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Client # C06883
Invoice # INV0619629
Invoice Date 11/2/2015
Due Date 12/2/2015
Amount Due \$ 945.31

PLTF 061

LAW OFFICES OF BRIAN D NETTLES, INC.
OPERATING ACCOUNT
1389 GALLERIA DRIVE, SUITE 200
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11-17-2015

17165
94-236/1224

DATE 11/17/2015

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17165

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salvatore risco

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17165

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salvatore risco

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160.75

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MONTHLY STATEMENT

Statement

A Company of SOS LITIGATION SERVICES, LLC

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Las Vegas, Nevada 89101

Phone: (702) 255-5514

Fax: (702) 974-0125

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Date

11/10/2015

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Christian M. Morris						
O'Connell v. Wynn Resorts Limited						

9001294V6 10/15/2015 4/29/2015 Salvatore Risco

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O'Connell 17166
94-236/1224

DATE 11/17/2015

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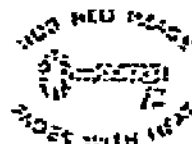
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Rene Ocougne De Gascon

MEMO

Trial - interpret (O'Connell v Wynn)



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11/17/2015

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LAW OFFICES OF BRIAN D NETTLES, INC. - OPERATING ACCOUNT

Rene Ocougne De Gascon

trial / janet elias

11/17/2015

160.00

17166

Trial - interpret (O'Connell v Wynn)

160.00

LAW OFFICES OF BRIAN D NETTLES, INC. - OPERATING ACCOUNT

Rene Ocougne De Gascon

trial / janet elias

11/17/2015

160.00

17166

Trial - interpret (O'Connell v Wynn)

160.00

PLTF 064

RENEE OCOUGNE DE GASCON

3619 Lake Victoria Drive
North Las Vegas, NV 89032
(702) 431-7857 * Cell: (702) 498-2018 * FAX: (702) 633-4239
E-mail: rocougne@earthlink.net

November 14, 2015

INVOICE

To: Christian M. Morris
Nettles Law Firm
1389 Galleria Dr., Ste. 200
Fax: (702) 434-1488

Case Name: Yvonne O'Connell vs. Wynn Las Vegas
Case # A-655992

Date	Service	Amount
11/09/15	Trial - Interpret for Janet Elias	\$160.00

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Renee Ocougne de Gascon
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North Las Vegas, NV 89032



Certified Court Interpreter

710# 343-74-

PLTF 065

LAW OFFICES OF BRIAN D NETTLES, INC.
OPERATING ACCOUNT
1389 GALLERIA DRIVE, SUITE 200
HENDERSON, NV 89014

17167
94-236/1224

DATE 11/17/2015

PAY TO THE ORDER OF Clark County Treasurer

\$ **560.00

Five Hundred Sixty and 00/100***** DOLLARS

Clark County Treasurer

MEMO

O'Connell v. Wynn Resorts (11/4-16/15)

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

LAW OFFICES OF BRIAN D NETTLES, INC. - OPERATING ACCOUNT
Clark County Treasurer

11/17/2015 17167
560.00

O'Connell v. Wynn Resorts (11/4-16/15) 560.00

LAW OFFICES OF BRIAN D NETTLES, INC. - OPERATING ACCOUNT
Clark County Treasurer

11/17/2015 17167
560.00

Costs

O'Connell v. Wynn Resorts (11/4-16/15)

560.00

TRANSCRIBER'S BILLING INFORMATION

CASE #	A655992				
CASE NAME:	O'Connell vs. Wynn Resorts				
TRIAL DATE:	11/4/15 – 11/16/15				
DEPARTMENT #	V 671-4356				
ORDERED BY:	Christian Morris				
FIRM:	Nettles Law Firm				
EMAIL:	Christian@nettleslawfirm.com				
PAYABLE TO COUNTY:	Make check payable to: <u>Clark County Treasurer</u> County Tax ID#: 88-600028 Include case number on check				
BILL AMOUNT:		CDs @ \$25 each =			\$
	28	hours @ \$40 an hour recording fee = \$1120/ split equally with opposing counsel = \$560 each			\$560.00
		pages @	\$	per page of trans. =	\$
	Total				\$560.00
PAYABLE TO OUTSIDE TRANSCRIBER:	Make check payable to:				
BILL AMOUNT:		pages @	\$	per page of trans	\$
DATE PAID:					

Kim Alverson

From: Christian Morris
Sent: Tuesday, November 17, 2015 6:17 PM
To: Kim Alverson
Cc: Brian Nettles
Subject: FW: A655992 -- Recording Fee Bill
Attachments: A655992 -- O'CONNELL VS WYNN -- 11-4-15 - 11-16-15 --MORRIS BILL.doc

FYI

From: [REDACTED] [mailto:[REDACTED]]
Sent: Tuesday, November 17, 2015 11:15 AM
To: Christian Morris <Christian@nettleslawfirm.com>
Subject: A655992 -- Recording Fee Bill

Christian,

I have attached a copy of the recording fee bill for the trial in Case Number A655992, O'Connell vs. Wynn Resorts Ltd. The charge has been split equally between the parties. You may pay the bill at the 3rd floor cashier's window in the Regional Justice Center located near jury services. If paying by check, please make the check payable to: Clark County Treasurer and include the case number on your check. We also accept MasterCard and Visa. The telephone number for the Cashier's Office is [REDACTED]

Once this bill has been paid please bring a copy of the receipt to my office, which is located on the 16th floor of the RJC, and leave it in the box for Department 5. You may also fax [REDACTED] or send a copy of the receipt by email to my office.

If you have any further questions please call me at [REDACTED]

Thank you,

[REDACTED]
*Senior Court Recorder to
The Honorable Carolyn Ellsworth
District Court, Dept. V*
[REDACTED]

LAW OFFICES OF BRIAN D NETTLES, INC.
OPERATING ACCOUNT
1389 GALLERIA DRIVE, SUITE 200
HENDERSON, NV 89014

17237
94-236/1224

DATE 12/7/2015

PAY TO THE
ORDER OF Eighth Judicial Court

\$ **1,880.00

One Thousand Eight Hundred Eighty and 00/100***** DOLLARS

Eighth Judicial Court

MEMO

~~A655992 - Plt's Jury Fees~~

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

LAW OFFICES OF BRIAN D NETTLES, INC. - OPERATING ACCOUNT

Eighth Judicial Court

12/7/2015

17237
1,880.00

A655992 - Plt's Jury Fees

1,880.00

LAW OFFICES OF BRIAN D NETTLES, INC. - OPERATING ACCOUNT

Eighth Judicial Court

12/7/2015

17237
1,880.00

A655992 - Plt's Jury Fees

1,880.00

Remit and Make Check Payable To:
CC Eighth Judicial District Court
TAX ID - 88-6000028
200 Lewis Avenue, 2nd Floor
Las Vegas NV 89155



INVOICE

Repeat Print

Document Number	90188000
Date	11/24/2015
Customer No.	10002640
Amount	\$1,880.00
Terms of Payment	Net 30 days
Invoice Period From	
Invoice Period To	11/24/2015
Reference	

NETTLES LAW FIRM
110
1389 GALLERIA DR
HENDERSON NV 89014-6686

Contact Person: KIMBERLY OCKEY
Phone: (702) 671-4615

DETACH HERE AND RETURN UPPER PORTION

ATTORNEY: BRIAN D. NETTLES
CASE NO: A655992
O'CONNELL VS. WYNN LAS VEGAS, LLC
DATE OF HEARING: 11/09/2015 - 11/20/15
JURY FEES

Item	Material/Description	Quantity	Unit Price	Total
000010	Jury Fees	1 EA	1,880.00	1,880.00
	JURY FEES			
	Invoice Amount			\$ 1,880.00

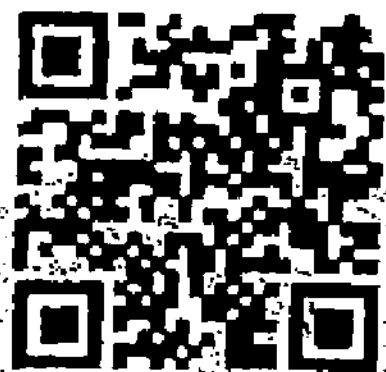
Balance Due \$1,880.00

22 88964 To give feedback SCAN HERE
10/23 04:27 PM
EXPENSE CODE
SPACE
EXPIRES LOT

Purchase Date/Time
10/23/15 03:57 PM \$ 1.00

Transaction ID:
51901

Meter ID:
2000106



O'Connell - Emerg. Not to Continue Trial
www.lasvegasnevada.gov/parking

LEWIS CENTER GARAGE
321 CASINO CENTER DR
LAS VEGAS, NV

Rcpt# 1332
11/12/15 18:20 L# 3 A# 1 Txn# 5365
11/12/15 08:03 In 11/12/15 18:20 Out
Tkt# 577770
AMEX \$ 20.00-
XXXXXXXXXXXX1001
Approval No.:503204
Reference No.:0096
PLEASE CALL FOR MONTHLY RATES
DOUGLAS PARKING
(702) 382-7988

VALET SERVICES AVAILABLE

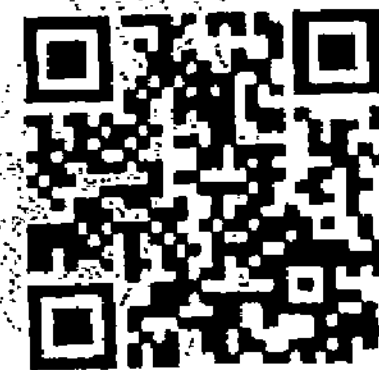
LEWIS CENTER GARAGE
321 CASINO CENTER DR
LAS VEGAS, NV

Rcpt# 2526
11/13/15 17:22 L# 4 A# 5 Txn# 4062
11/13/15 09:54 In 11/13/15 17:22 Out
Tkt# 578208
AMEX \$ 20.00-
XXXXXXXXXXXX1001
Approval No.:507030
Reference No.:0096
PLEASE CALL FOR MONTHLY RATES
DOUGLAS PARKING
(702) 382-7988

VALET SERVICES AVAILABLE

Transaction Info:

58 53262
10/29 10:41 AM
Purchase Date/Time
10/29/15 08:41 AM \$ 4.00
Transaction ID:
4444
Meter ID:
2000213



O'Connell to Continue Trial
To give feedback SCAN HERE
www.lasvegasnevada.gov/parking

Transaction Info:

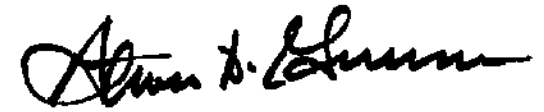
58 57390
11/04 04:21 PM
Purchase Date/Time
11/04/15 12:21 PM \$ 8.00
Transaction ID:
4583
Meter ID:
2000213
O'Connell
Jay Vair Dite



www.lasvegasnevada.gov/parking

O'Connell

O'Connell



CLERK OF THE COURT

1 **OPPM**
2 BRIAN D. NETTLES, ESQ.
3 Nevada Bar No. 7462
4 CHRISTIAN M. MORRIS, ESQ.
5 Nevada Bar No. 11218
6 NETTLES LAW FIRM
7 1389 Galleria Drive, Suite 200
8 Henderson, Nevada 89014
9 Telephone: (702) 434-8282
10 Facsimile: (702) 434-1488
11 briannettles@nettlawfirm.com
12 christianmorris@nettlawfirm.com
13 *Attorneys for Plaintiff*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11
12 YVONNE O'CONNELL, an individual,
13
14 Plaintiff,

15 vs.

16 WYNN LAS VEGAS, LLC, a Nevada
17 Limited Liability Company, doing business
18 as WYNN LAS VEGAS; DOES I through
19 X; and ROE CORPORATIONS I through X,
20 inclusive,

21 Defendants.

CASE NO. A-12-655992-C
DEPT NO. V

PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO RETAX
COSTS AND REPLY TO
DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION AND NOTICE
OF MOTION TO TAX COSTS AND
FOR FEES AND POST-JUDGMENT
INTEREST

21 Plaintiff Yvonne O'Connell ("Plaintiff") by and through her counsel, Brian D. Nettles,
22 Esq. and Christian M. Morris, Esq., of Nettles Law Firm, hereby resubmits her (1) Opposition to
23 Defendant's Motion to Retax Costs and (2) Reply to Defendant's Opposition to Plaintiff's
24 Application for Fees, Costs and Pre-Judgment Interest amended and resubmitted as Plaintiff's

25 ///

26 ///

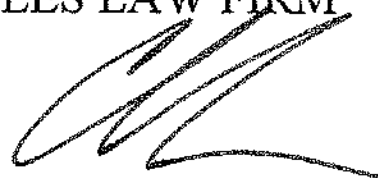
27 ///

28 ///

1 Motion to Tax Costs and for Fees and Post-judgment Interest (*Plaintiff was awarded pre-*
2 *judgment interest in her Judgment on Verdict already on file*).

3 DATED this 1st day of January, 2016.

4
5 NETTLES LAW FIRM

6 

7 BRIAN D. NETTLES, ESQ.
8 Nevada Bar No. 7462
9 CHRISTIAN M. MORRIS, ESQ.
10 Nevada Bar No. 11218
11 1389 Galleria Drive, Suite 200
12 Henderson, Nevada 89014
13 *Attorneys for Plaintiff*

14 **POINTS AND AUTHORITIES**

15 **I. Plaintiff's Opposition to Defendant's Motion to Retax Costs**

16 **A. Costs which Defendant did not address in its Motion to Retax, as Supplemented**

17 The following costs included in Plaintiff's memorandum of costs were not addressed in
18 Defendant's Supplemented Motion to Retax:

• Filing Fees	\$ 108.50
• Medical Record Copy Charges	\$ 4.98
• Copy Charges and Facsimile Charges	\$ 177.52
• Witness Fees	\$ 60.00
• Runner Service Fees	\$ 210.50
• Deposition Fees/Transcript Copy Charges	\$ 3,154.68
• Interpreter Fees	\$ 160.00
• County Clerk (Trial Transcription)	\$ <u>560.00</u>

25 **Total Costs (unopposed/unaddressed by Defendant)** **\$ 4,436.18**

26 ///

27 ///

B. Costs objected to by Defendant in its Motion to Retax, as Supplemented

i. Expert Witness Fees

Plaintiff's memorandum of costs provides explanation of why expert witness fees in excess of \$1,500 were "of such necessity as to require the larger fee" as required in NRS 18.005(5). In its motion to retax, Defendant appears to assert (1) that no Frazier factors were addressed by Plaintiff, (2) that Plaintiff's treating physicians were "character witnesses," not expert witnesses, and (3) that fees paid to a retained expert must be denied if the expert does not testify. These assertions are factually inaccurate and unsupported by law.

a. *Frazier clarifies that courts should consider "appropriate" factors*

At the outset, it should be noted that Frazier does not create or alter any new burden on Plaintiff to show how an award of fees is proper under NRS 18.005(5); rather it merely clarifies that courts should consider "appropriate factors" and requires courts to support their decisions by "an express, careful, and preferably written explanation" of its analysis and reasoning in approving an award of expert witness fees over the \$1,500 level set in NRS 18.005(5). Frazier v. Drake, 131 Nev. ___, ___, 357 P.3d 365, 376, 377 (Nev. Ct. App. 2015). In other words, under Frazier plaintiffs may make their requests for expert witness fees, and courts are to analyze all "appropriate factors" and express those factors in its decision. Under Frazier, requests for expert witness fees over the statutory amount "will necessarily require a case-by-case examination of appropriate factors" because "not all [of the factors mentioned in Frazier] may be pertinent" in other cases. 131 Nev. at ___, 357 P.3d at 378. Contrary to Defendant's apparent suggestion, Frazier contains no requirement that it be cited by name, nor that the factors expressly addressed in that decision be specifically identified.

b. *Plaintiff did discuss appropriate factors supporting a higher award*

On page 3 of her memorandum of costs, Plaintiff explained why expert fees for Mr. Presswood and Drs. Dunn and Tingey exceeded \$1,500, and why they should be awarded by the Court under NRS 18.005 and Frazier. For example:

///

///

- Plaintiff pointed out that Mr. Presswood conducted a file review (1.8 hours), a site inspection and field test of the flooring (2.4 hours), preparation of a report (4.8 hours). This addressed the following factors expressly mentioned in Frazier:
 - The extent and nature of the work performed by the expert;
 - Whether the expert had to conduct independent investigations or testing;
 - The amount of time the expert spent preparing a report;
- Plaintiff also pointed out that the Mr. Presswood's work required unique and specialized experience which justified a \$300/hour charge (although not attached to Plaintiff's memorandum, Mr. Presswood's previously-disclosed CV indicates he is a Professional Engineer and former City Engineer and Deputy Director of Public Works for the City of Las Vegas). This addressed the following factors expressly mentioned in Frazier:
 - The expert's area of expertise; and
 - The expert's education and training.

Plaintiff similarly discussed reasons for approving a higher amount for Drs. Dunn and Tingey. Plaintiff noted that fees well in excess of \$1,500 are customary for each doctor's specialty and that testimony required time away from their regular practice of medicine, including time to review their chart, to travel to and from court, time waiting to testify, and time actually on the stand. Additionally, a look to discussion at trial and in motion's in limine, shows that the doctors' testimony was important to the extent it supported Plaintiff's claim of causation, i.e., to establish the extent of Plaintiff's injuries from the fall.

c. Treating physicians testify as expert witnesses, even though not "retained"

Defendant's assertion that Drs. Dunn and Tingey were "character witnesses" rather than non-retained experts, i.e., treating physicians, is silly. This assertion is inconsistent with Nevada case law on treating physicians and is inconsistent with the sort of testimony character witnesses may provide in Nevada. See, e.g., FCH1, LLC v. Rodriguez, 130 Nev. ___, ___, 335 P.3d 183, 189 (2014) (treating physicians are experts, but not subject to all the requirements that "retained

1 experts” are subject to when testifying about their treatment of the patient); NRS 50.085
2 (providing when character witnesses are proper and what the scope of testimony can include).

3 Because they testified as Plaintiff’s treating physicians, Drs. Dunn and Tingey were non-
4 retained experts and their fees are properly awarded to Plaintiff.

5 *d. Fees paid to Mr. Presswood are proper under NRC 68 and NRS 18.005(5) even*
6 *though he was not allowed to testify*

7 Frazier clarifies that a court should consider “appropriate factors” in awarding expert
8 witness fees above the \$1,500 level provided in NRS 18.005(5) but does not require that the
9 expert witness actually testify. See generally, 131 Nev. at ___, 357 P.3d at 377–378. Here, this
10 Court exercised its discretion to exclude Mr. Presswood’s testimony as the Court believed his
11 testimony would not be helpful to the trier of fact. This decision as to whether the testimony
12 would assist the trier of fact was one of discretion. That is, this Court could have properly
13 admitted the evidence because it was relevant to support Plaintiff’s theory that the marble floor
14 had a low slip resistance.

15 This Court’s exercise of discretion to exclude testimony by Mr. Presswood does not
16 exclude the award of expert witness fees for Mr. Presswood. Because the amount charged by Mr.
17 Presswood for the preparation of his report was reasonable and seeking his professional input
18 was reasonable, an award of expert witness fees of the amount requested is proper.

19 *e. Fees paid to Mr. Presswood are proper under NRCP 68 and NRS 18.005(17)*
20 *even when the expert is not allowed to testify*

21 In opposing an award of fees paid to Mr. Presswood, Defendant appears to suggest that
22 costs for retained experts who are not used at trial are per se non-recoverable. This is inconsistent
23 with Nevada law that courts are to award “other reasonable and necessary expense[s] incurred in
24 connection with the action.” NRS 18.005(17); see, also, NRCP 68. That is, underlying every
25 consideration of cost, “reasonableness” is the watchword. See, e.g. NRS 18.005(17).

26 Accepting Defendant’s proposed per se rule would serve to threaten parties seeking
27 expert help at trial. That is, under the Defendant’s suggested rule, retention of an expert in a case
28 would be greatly discouraged because reimbursement under NRCP 68 and NRS 18.005 would

1 hinge on whether the testimony was allowed. The proposed rule would encourage parties to call
2 experts even when their testimony was unnecessarily duplicative or where it might confuse the
3 jury. Also, it would make discretionary decisions to exclude testimony made under NRS 48.035
4 of significant monetary impact. Indeed, it might even encourage parties to deny aspects of an
5 opposing party's case, thereby necessitating the retention of an expert, only to later concede the
6 fact making testimony by the expert unnecessary. Rather than make reimbursement of expert
7 fees hinge on whether they are called and allowed to testify at trial, this Court should look to the
8 reasonableness in incurring the expense.

9 Here, retaining Mr. Presswood, an experienced professional engineer, to test the area of
10 the floor where Plaintiff fell was reasonable because it helped inform Plaintiff's understanding of
11 how dangerous the condition was. Although this Court exercised its discretion to exclude Mr.
12 Presswood, it is not clear that similar experts would be excluded in every case. As such, it was
13 reasonable for Plaintiff to retain Mr. Presswood and her expenses in doing so should be awarded
14 as requested.

15 **ii. Service Fees**

16 The requested service fees were reasonable and necessary. Defendant asserts the
17 requested amounts are "outlandish," but does not provide any reasoning why or any suggestion
18 as to what a reasonable amount would be. As detailed below, and on page 2 of Plaintiff's
19 memorandum of costs, the costs for service were reasonable, customary, actually incurred, and
20 necessary. The service costs included preparation of documents (acceptance of service and
21 affidavits of service) and service based on the distance from the process server's office to the
22 location of service (the server's standard service fees range from \$65, for downtown service, up
23 to \$95, for service in Boulder City).

24 Service of Mr. Risco was effected in Summerlin and the service fee was \$171.20. This
25 fee was higher than usual because it included (1) a witness fee check advance of \$36.20 and (2)
26 an expedited service fee of \$50.00. The witness fee is customary compensation to a witness for
27 their time spent testifying. The expedited service was necessary because Plaintiff's counsel had
28 difficulty getting a hold of Mr. Risco to see if he would be available to testify at trial. Plaintiff's

1 counsel made multiple attempts to call Mr. Risco, but Mr. Risco did not immediately return the
2 calls. Accordingly, Plaintiff's counsel delayed ordering service of the trial subpoena until it was
3 clear it that Mr. Risco could testify. Because of the delay in Mr. Risco's response, expedited
4 service was necessary. The fee of \$85.00 is the normal fee for service in the area where Mr.
5 Risco lives.

6 Service of Ms. Elias and Mr. Prowell was effected in the 89145 area code. This service
7 carried a \$75.00 charge for the first document served and a \$55.00 charge for additional
8 documents. Multiple fees are customary because individual process servers are generally paid
9 per document, not per location.¹ Additionally, each document served requires preparation of
10 Acceptance of Service and Affidavit of Service documents.

11 **iii. Jurors' Fees**

12 Defendant's opposition to an award of jurors' fees is simply insufficient. The Nevada
13 constitution guarantees a right to jury trial in civil actions at law. Nevada Constitution Art. I, § 3.
14 Under NRCP 38 & 39, this right is to be "preserved to the parties inviolate." NRCP 38(a).
15 Nevada law provides that jurors' fees and expenses are properly awarded under NRCP 68 and
16 NRS 18.005(3).

17 Despite this constitutional right and the statutory provision making reimbursement
18 proper, Defendant opposes the award of Jurors' fees solely because it objected to Plaintiff's rule
19 39(b) motion for a jury trial. Defendant provides no reasoning or legal authority suggesting this
20 is a legitimate basis for denying an award of jurors' fees. After an understandably brief search,
21 Plaintiff's counsel can find nothing in the law to suggest that the provisions of NRCP 68 and
22 NRS 18.005(3) are somehow nullified by a party objecting to demand or motion for jury trial.
23 Notably, Defendant did not assert that the fees were not reasonable or actually incurred.
24 Accordingly, this Court should award Plaintiff Jurors' fees as requested by Plaintiff.

25 ///

26
27
28 ¹ Information provided to Plaintiff's counsel during telephone conversation with representative
from the process service provider.

1 **iv. Parking Fees**

2 Plaintiff's requested parking fees were reasonable, necessary, and actually incurred.
3 Defendant opposes award of the requested parking fees, but it does not assert they are
4 unreasonable. Rather, Defendant supports its opposition by asserting there were "more
5 reasonable, or free" places to park. However, nothing in Nevada law requires that costs be
6 absolutely unavoidable in order to be considered "necessary," nor that they be the absolute
7 cheapest option possible—rather Nevada law focuses on the reasonableness of the expense. NRS
8 18.005(17); see, e.g., Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1352–1353 (1998). Thus,
9 the availability of free parking somewhere does not render paid parking unreasonable or
10 unnecessary. The parking fees requested were incurred by Plaintiff when appearing in court at
11 trial and at hearings. The fees were modest and should be awarded as requested by Plaintiff.

12 **v. Investigator (skip trace) fees**

13 Plaintiff's requested investigator fees were incurred in an effort to locate Terry Ruby and
14 were reasonable and necessary. Defendant asserts they were "unnecessary," but does not explain
15 why. Review of the record makes the necessity and reasonableness of this expense immediately
16 obvious. Terry Ruby was the first employee of Defendant to respond after Plaintiff fell. He
17 provided a written statement at the time of the fall and Plaintiff sought to depose him regarding
18 what he remembered. Plaintiff's request is proper and should be awarded as requested.

19 **II. Plaintiff's Reply to Defendant's Opposition to Plaintiff's Application for Attorney**
20 **Fees**

21 Defendant opposed Plaintiff's requests for attorney fees under NRCP 68 and NRS
22 18.010(2)(b) under one argument. The analyses under each provision are different, and each was
23 addressed separately in Plaintiff's amended application. Below, Plaintiff addresses Defendant's
24 discussion of the four Beatty factors in the same reverse order Defendant did. For the reasons
25 stated below, Defendant's discussion of the Beattie factors lacks serious merit and attorney fees
26 should be awarded as requested by Plaintiff.

27 ///

28 ///

1 i. **Fourth Beattie Factor (whether fees are reasonable and justified in amount)**

2 Analysis of the fourth Beattie factor requires a four-factor analysis of its own, i.e., the
3 four Brunzell factors. Although Brunzell analysis requires a weighing of the four factors,
4 Defendant's analysis appears to have focused entirely on the third Brunzell factor. The third
5 Brunzell factor looks to "the work actually performed by the lawyer: the skill, time, and attention
6 given to the work." Defendant's analysis asserts that Plaintiff's request should be denied because
7 she did not "specifically identify the attorney's fees incurred after the Offer of Judgment."
8 Defendant's argument implies, or at least seems to assume, that attorney fees must have been
9 billed or paid to qualify for reimbursement under NRCP 68. This position is incorrect and, if
10 applied, would exclude an award of attorney fees whenever an attorney is paid solely on a
11 contingency basis.

12 Plaintiff discusses the four Brunzell factors individually in Part D(i)(a)–(d) on pages 5–10
13 of her amended application for costs. For reasons stated above, and in Plaintiff's application, the
14 fourth Beattie factor weighs in favor of an award of costs.

15 ii. **Third Beattie Factor (whether defendant's decision to reject the offer was**
16 **grossly unreasonable or in bad faith)**

17 The third factor weighs in favor of awarding attorney fees because Defendant's rejection
18 of a Plaintiff's offer was not in line with a reasonable assessment of the facts and law. The
19 attorney fee provisions of NRCP 68 and NRS 18.010 are intended as a measure meant to
20 motivate reasonable and objective assessments of the strengths and weaknesses of each party's
21 case in order to motivate the sides to resolve cases before trial. In this way, the third Beattie
22 factor is a key part of the analysis because it goes to whether the decision to reject an offer of
23 judgment and go to trial was reasonable. The question of whether rejection was reasonable is
24 based on what information was available to the rejecting offeree and what assessment of that
25 information a reasonable party would make.

26 In its analysis, however, Defendant seeks to push attention away from its rejection by
27 accusing Plaintiff of intentionally lying and purposefully trying to confuse Defendant. Not only
28 are these accusations unfounded, they distract from question asked by this Beattie factor:

1 whether the assessment and rejection of the offer was objectively reasonable.² As indicated in
2 Plaintiff's motion for attorney fees, and here below in less detail, Defendant's rejection was
3 grossly unreasonable because it rejected an amount much smaller than it stood to lose at trial
4 even though a strong factual basis existed supporting liability.

5 First, Defendant over-estimated its constructive notice argument. Testimony from
6 Plaintiff and two of Defendant's employees provided strong evidence that a liquid was on the
7 ground in a high traffic with smooth marble floors and had been there for a significant period of
8 time, i.e., long enough to start drying and becoming sticky.

9 Second, Defendant made logical errors concluding that if some of Plaintiff's initially
10 alleged injuries were not related to the fall then none of them were. Defendant further concluded
11 that injuries not specifically complained of in the first 48 hours could not be related to the fall. Its
12 all-or-nothing approach to injury and damages was grossly unreasonable because it led them to
13 conclude that if Plaintiff could not prove all of what she mentioned to her doctors, that she could
14 not prove any of them.

15 Third, Defendant did not reasonably and objectively assess the evidence showing injury
16 causation. Defendant had deposition testimony from Plaintiff and Sal Risco showing the impact
17 that the fall had on her life and the pain she began having after the fall. Also available to
18 Defendant were the medical records from Drs. Dunn and Tingey, including diagnostic tests
19 showing injury. Thus, there was both subjective and objective evidence supporting Plaintiff's
20

21 ² Defendant makes of accusations against Plaintiff, e.g., that she "intended to prejudice"
22 Defendant, that she "identified injuries during discovery . . . when she had no intention to claim
23 [them] at trial." These accusations, though privileged because made during a judicial proceeding,
24 lack that level of civility to which attorneys should aspire. Moreover, the accusations fail to
25 acknowledge the fact-finding purpose that discovery serves, i.e., Plaintiff need not know the end
26 from beginning. Furthermore, Plaintiff's decision not to seek medical expenses at trial was not an
27 "admission" that Plaintiff's past medical damages were "completely unrelated," as Defendant
28 alleges.

1 assertion of injury, immobility, and pain and suffering. Defendant seemed to assert throughout
2 that this evidence would not meet the preponderance standard. This assessment was grossly
3 unreasonable because it clearly does. The question was whether the jury would believe Plaintiff
4 and these witnesses, not whether Defendant believed them. Defendant was grossly unreasonable
5 in insisting that a jury could not.

6 Fourth, Defendant had access to Plaintiff's medical bills, knew of the recommendations
7 from Drs. Dunn and Tingey for knee and neck surgery, and knew that a finding of liability and
8 injury would also result in an award of pain and suffering. These amounts significantly exceed
9 the offer of \$49,999.00 made to Defendant.

10 Thus, despite the existence of strong evidentiary support in the record, Defendant rejected
11 an amount that was much less than it stood to be liable for. Its rejection was based on a grossly
12 unreasonable assessment of the case. If Defendant had made a reasonable assessment of the
13 strengths and weaknesses of the Plaintiff's and Defendant's cases, it would have accepted
14 Plaintiff's offer and this case would have been resolved without requiring a trial.

15 **iii. Second Beattie Factor (whether Plaintiff's offer of judgment was reasonable**
16 **and in good faith as to its timing and amount)**

17 Plaintiff's offer was reasonable as to its timing and amount. First, it was made after
18 significant discovery, as detailed in Plaintiff's application. As detailed in Plaintiff's motion,
19 included in those discovery disclosures were medical records which stated Plaintiff had been
20 recommended to have knee and neck surgery,³ and the depositions of Plaintiff and several of
21 Defendant's employees.

23 ³ Defendant asserts it was unaware that Plaintiff had been recommended to receive neck surgery
24 until during Dr. Dunn's testimony. However, this fact was indicated in Plaintiff's disclosures on
25 PLTF0619 where Dr. Dunn stated "After discussion with the patient, I have recommended
26 anterior cervical decompression and fusion at C4-C5, C5-C6, C6-C7 with allograft." Notably,
27 Defendant elected not to depose Dr. Dunn, and had it done so, would have had another
28 opportunity to learn what he would testify to prior to trial.

1 Second, the offer was reasonable as to amount. Plaintiff's medical records, recommended
2 surgeries, and pain and suffering were, though not precisely quantified, well in excess of the
3 offered amount \$49,999.00. Defendant alleges that none of Plaintiff's medical expenses were
4 related to the fall. Assuming, as Defendant alleges, that not all of Plaintiff's medical expenses
5 resulted from the fall, the pain and suffering aspect of the case, by itself, was sufficient to make
6 an offer of \$49,999.00 a reasonable amount.

7 **iv. First Beattie Factor (whether defendant's defense was in good faith)**

8 Defendant incorrectly argues the first factor, focusing on the Plaintiff's good faith in
9 bringing her claim rather than Defendant's good faith in asserting its defenses. See Beattie v.
10 Thomas, 99 Nev. 579, 588–89 (1983); Yamaha Motor Co., U.S.A. v. Arnoult, 114 Nev. 233, 252
11 (1998) (applying Beattie when plaintiff was offeror and defendant was offeree who rejected the
12 offer). Admittedly, in its earlier filing, Plaintiff also incorrectly stated the Beattie factors for a
13 Plaintiff-offeror/Defendant-offeree scenario. However, following Plaintiff's amended filing
14 where this scenario was addressed, Defendant did not address the correct factor in its
15 supplement, i.e., whether the Defendant's defenses were maintained in good faith.⁴ Plaintiff
16 maintains that this factor is neutral.

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25 ⁴ Again, Defendant makes argument that lacks that level of civility attorneys should aspire to
26 when it asserts Plaintiff has been "disingenuous throughout this lawsuit," and asserting that she
27 "claimed medical damages . . . that she never intended to claim at trial." Ad hominem attacks on
28 Plaintiff were rejected by the jury and should similarly be rejected here, too.

NETTLES LAW FIRM
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

1 **III. CONCLUSION**

2 Plaintiff respectfully requests an award of attorney fees, costs, and interest detailed in the
3 instant motion and request.

4 DATED this 14th day of January, 2016.

5 NETTLES LAW FIRM

6
7 
8 BRIAN D. NETTLES, ESQ.

Nevada Bar No. 7462

9 CHRISTIAN M. MORRIS, ESQ.

Nevada Bar No. 11218

10 NETTLES LAW FIRM

11 1389 Galleria Drive, Suite 200

12 Henderson, Nevada 89014

13 *Attorneys for Plaintiff*
14
15
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CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 14 day of December, 2015, I served the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO RETAX COSTS AND REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION AND NOTICE OF MOTION TO TAX COSTS AND FOR FEES AND POST-JUDGMENT INTEREST** to the following party by electronic transmission through the Wiznet system:

Lawrence J. Semenza, III, P.C.

Contact

Christopher D. Kircher
Jarrod L. Rickard
Lawrence J. Semenza, III
Olivia Kelly

Email

cdk@semenzalaw.com
jlr@semenzalaw.com
ljs@semenzalaw.com
oak@semenzalaw.com


An Employee of the NETTLES LAW FIRM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

June 29, 2016

A-12-655992-C Yvonne O'Connell, Plaintiff(s)
vs.
Wynn Resorts Limited, Defendant(s)

June 29, 2016 3:00 AM Minute Order

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- MINUTE ORDER

This matter came before the Court on March 4, 2016 on Defendant s Motion to Retax Costs and Plaintiff s Motion to Tax Costs and for Fees, Costs, and Post-Judgment Interest. After reviewing the parties' briefs and hearing arguments of counsel, the Court made its findings granting in part and denying in part both Motions.

The Court received the proposed order on those Motions on May 27, 2016. The proposed order awarded fees to two expert witnesses, Dr. Tingey and Dr. Dunn, above the statutory maximum of \$1,500.00 set forth in NRS 18.005(5), and disallowed all fees for expert Gary Presswood.

However, in reviewing that proposed order and additional case law surrounding the award of expert witness fees, it has come to the Court s attention that the Nevada Court of Appeals has recently outlined several express factors that are to be considering when deviating above the statutory maximum in NRS 18.005(5) for expert witness fee awards. See *Frazier v. Duke*, 131 Nev. Adv. Op. 64, 357 P.3d 365 (2015). That case was issued in September of 2015, just before the trial of this matter, but was not cited in either party s briefing with regard to a fee award. Therefore, the Court finds it

PRINT DATE: 06/29/2016

Page 1 of 2

Minutes Date: June 29, 2016

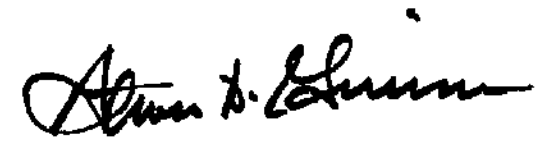
appropriate to order additional limited briefing on that issue and, good cause appearing,

IT IS HEREBY ORDERED that Plaintiff s counsel is to file a supplemental brief of no more than 10 pages that addresses the factors set forth in Frazier, supra, in detail, as applicable, for Drs. Tingey and Dunn no later than July 13, 2015.

IT IS FURTHER ORDERED that Defendant s counsel is to file a supplemental response brief of no more than 10 pages no later than July 27, 2016.

IT IS FURTHER ORDERED that this matter will be set for hearing on the supplemental briefs only on August 12, 2016 at 9AM. If the parties wish to submit on their briefs, or if the hearing date of August 12 is unavailable for either counsel, they are to contact the Court s law clerk, Travis Chance, at 702-671-4357 to reschedule to a mutually agreeable date.

The Court further notes that this matter has been appealed, however, a final order on the issue of a fee award has not yet been entered and may still be resolved by this Court.


CLERK OF THE COURT

1 **SB**
2 BRIAN D. NETTLES, ESQ.
3 Nevada Bar No. 7462
4 CHRISTIAN M. MORRIS, ESQ.
5 Nevada Bar No. 11218
6 **NETTLES LAW FIRM**
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Attorneys for Plaintiff

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

12 YVONNE O'CONNELL, an individual,
13
14 Plaintiff,

Case No.: A-12-655992-C
Dept. No.: V

15 vs.

16 WYNN LAS VEGAS, LLC, a Nevada
17 Limited Liability Company, doing business as
18 WYNN LAS VEGAS; DOES I through X;
19 and ROE CORPORATIONS I through X,
20 inclusive,
Defendants.

21 **SUPPLEMENTAL BRIEF REGARDING DEVIATING ABOVE NRS 18.005(5)'S**
22 **EXPERT WITNESS STATUTORY CAP PURSUANT TO THE *FRAZIER V. DUKE*¹**
23 **FACTORS**

24 **Date of and Time of Hearing:**
August 12, 2016, at 9:00 a.m.

25 Plaintiff YVONNE O'CONNELL by and through her counsel, Brian D. Nettles, Esq.,
26 Christian M. Morris, Esq., and Jon J. Carlston, Esq., of the NETTLES LAW FIRM, submits the
27
28

¹ 357 P.3d 365, 131 Nev. Adv. Rep. 64 (Nev. Ct. App. 2015).

following *Supplemental Brief* (“Brief”) pursuant to this Court’s Minute Order entered July 29, 2016.

DATED this 13th day of July, 2016.

NETTLES LAW FIRM

/s/ Christian M. Morris

By

BRIAN D. NETTLES, ESQ.
Nevada Bar No. 7462
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
JON J. CARLSTON, ESQ.
Nevada Bar No. 10689
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT PROCEDURAL BACKGROUND

A. Plaintiff timely submits a request for the expert witness fees incurred and paid to Dr. Craig T. Tingey (“Dr. Tin and Dr. Thomas Dunn with the necessary supporting documentation pursuant to *Bobby Berosini, Ltd. v. PETA*.”²

On November 25, 2015, Plaintiff YVONNE O’CONNELL (“Plaintiff”) filed and served upon Defendant WYNN LAS VEGAS, LLC (“Defendant”) an *Application for Fees, Costs and Pre-Judgment Interest* seeking the following award of expert witness fees:

Expert Witness Fees:

Gary Presswood	\$3,699.00
Craig Tingey, M.D. Trial Preparation/Trial Testimony	\$6,000.00
Thomas Dunn, M.D. – Trial Testimony	\$10,000.00

See Exhibit “5” to said Application incorporated herein by reference but not attached pursuant to EDCR 2.27(e). After the entry of the *Judgment on Jury Verdict* on December 15, 2015, on

² 114 Nev. 1348, 971 P.2d 383 (1998).

December 21, 2015, Plaintiff filed and served an *Amended Verified Memorandum of Costs* and detailing the expert witness fees for Drs. Tingey and Dunn and as set forth below:

Expert Witness Fees:

Craig Tingey, M.D. Trial Preparation/Trial Testimony \$ 6,000.00

- This cost was incurred for a telephone conference, file review in preparation for trial, and for trial testimony, to compensate Dr. Tingey for the time away from his regular practice. The amount necessarily exceeded \$1,500, because Dr. Tingey's specialty is highly compensated and time away from his regular practice still requires him to pay staff overhead.

Thomas Dunn, M.D. – Trial Testimony \$10,000.00

- This cost was incurred for file review in preparation for trial, and for trial testimony, to compensate Dr. Dunn for the time away from his regular practice. The amount necessarily exceeded \$1,500, because Dr. Dunn's specialty is highly compensated and time away from his regular practice still requires him to pay staff overhead. Also, the need to be available for surgery coupled with the trial's scheduling requirements made returning for a second day of testifying necessary after a lengthy voir dire by Defendant.

Dr. Tingey's \$6,000 in total invoices, fee schedule, CV, and proof of payment are attached hereto as Exhibit "1". Dr. Dunn's \$10,000 in total invoices, fee schedule, CV, and proof of payment are attached hereto as Exhibit "2".

B. Counsel for both parties cite to *Frazier v. Drake* in their related post-trial briefing regarding attorneys' fees, costs, and pre-judgment interest.

On pages 6-7 of Defendant's *Supplement to Motion to Retax Costs and Opposition to Plaintiff's Amended Application For Fees, Costs and Pre-Judgment Interest* filed and served December 28, 2015, Defendant cites to Frazier v. Drake to argue Drs. Tingey and Dunns' fees should be disallowed. On pages 3-4 of Plaintiff's *Opposition to Defendant's Motion to Retax Costs and Reply to Defendant's Opposition to Plaintiff's Motion and Notice of Motion to Tax Costs and for Fees and Post-Judgment Interest* filed January 14, 2016, Plaintiff addresses Defendant's arguments regarding Frazier v. Drake.

C. This Court issues a tentative ruling at the March 4, 2016, hearing regarding Drs. Tingey and Dunns' expert witness fees.

At the hearing held on March 4, 2016, the Court issued a tentative ruling expert awarding Dr. Tingey his entire \$6,000 fee and Dr. Dunn one-half of his \$10,000 fee (\$5,000 = \$10,000 /

2). See Court Minutes from said hearing incorporated herein by reference but not attached pursuant to EDCR 2.27(e). Thereafter, a proposed written order (attached as Exhibit 3) was signed by both parties and submitted to this Court for review and signature but is never approved/signed by this Court. On June 29, 2016, this Court issued the subject Minute Order that is the focus of this supplemental briefing regarding Drs. Tingey and Dunns' expert witness fees.³

II. ARGUMENT

A. The Court should not exclude Dr. Dunn's total \$10,000 fee for having to testify on two separate trial days.

To attend court hearings, Dr. Dunn charges a flat fee of \$5,000 per one-half day regarding of the actual amount of time he testifies, e.g., five minutes or four hours. See Exhibit "2"; see also the *Frazier* factors discussed below. As the Court will recall, Defendant attempted to exclude both Dr. Dunn and Dr. Tingey from testifying at trial. See generally, *Defendant's Supplemental Brief to Exclude Treating Physician Expert Witnesses* filed October 27, 2015, filed with the court. Ultimately, this Court permitted both doctors to testify with the caveat that Defendant could voir dire them outside the presence of the jury prior to their direct examination. See court minutes from the October 29, 2015, hearing (written Order filed December 23, 2015), and the *Transcript of Proceedings* from said hearing filed January 12, 2016.

Dr. Dunn appeared at court to testify – Defendant's voir dire followed by testimony to the jury – sometime during the afternoon of November 9, 2015. Defendant's voir dire of Dr. Dunn that afternoon began at 4:35 p.m. See Exhibit "3" at page 83 – selected pages of the November 9, 2015, Trial Transcript filed January 12, 2016. After Defendant concluded its voir dire of Dr.

³ Said Minute Order only requests briefing regarding Drs. Tingey and Dunn, and thus the Court is ostensibly not revisiting its decision to completely exclude Plaintiff's request for expert witness Gary Prestwood's \$3,699.00 fee.

1 Dunn's concluded, the Court made it clear that trial that day would end at 6:00 p.m. even before
2 Plaintiff began its direct examination of Plaintiff. Id., at page 114, line 15. Indeed, after
3 Defendant completed Dr. Dunn's voir dire and before he began testifying to the jury, the Court
4 and counsel for parties discussed that Dr. Dunn would have to return to complete his testimony
5 on separate day at the insistence of counsel for Defendant. Id., at page 113, line 23, through
6 page 114, line 14 (specifically at page 114, lines 3-4). Trial concluded that day at 6:03 p.m. Id.,
7 at page 140. Dr. Dunn accommodated all parties involved by graciously agreeing to put
8 whatever commitments – revenue producing or otherwise – he may have had aside and return to
9 court on Thursday, November 12, 2015, to complete his testimony including Defendant's entire
10 cross-examination. Id.

13 As the selected portions of the November 9, 2016, trial transcript demonstrate, Dr. Dunn
14 was forced to return a second day to complete his testimony due to the late afternoon start of his
15 voir dire and direct testimony that day. The late afternoon start was simply due to the ordinary
16 time “ebb and flow” of trial / coordinating witnesses' trial appearances, and to no fault of anyone
17 involved. Such a logistical happenstance should not be held against Plaintiff when considering
18 whether to award her only one of the two days that Dr. Dunn testified in court. Similar to a large
19 portion if not a majority of expert witnesses in Las Vegas, Dr. Dunn charges a flat-fee, per diem
20 rate for attending court hearings regardless of the amount of time actually testifying. See
21 Exhibits “1”, “2”, “xx.”

24 **B. Pursuant to the *Frazier v. Drake* this Court should adhere to its previous**
25 **tentative ruling awarding Plaintiff Dr. Tingey's entire \$6,000.00 fee, and**
26 **should also at least award \$5,000 of Dr. Dunn's \$10,000 fee if not the entire**
amount.

27 In Frazier v. Drake, the Court of Appeals for the State of Nevada set forth the following
28 list of non-exhaustive factors that district courts are to analyze and make explicit findings

1 regarding when considering expert witness cost requests that exceed NRS 18.005(5)'s statutory
2 cap:

3 "In evaluating requests for such awards, district courts should consider the importance of
4 the expert's testimony to the party's case; the degree to which the expert's opinion aided
5 the trier of fact in deciding the case; whether the expert's reports or testimony were
6 repetitive of other expert witnesses; the extent and nature of the work performed by the
7 expert; whether the expert had to conduct independent investigations or testing; the
8 amount of time the expert spent in court, preparing a report, and preparing for trial; the
9 expert's area of expertise; the expert's education and training; the fee actually charged to
the party who retained the expert; the fees traditionally charged by the expert on related
matters; comparable experts' fees charged in similar cases; and, if an expert is retained
from outside the area where the trial is held, the fees and costs that would have been
incurred to hire a comparable expert where the trial was held."

10 357 P.3d 365, 131 Nev. Adv. Rep. 64 (Nev. Ct. App. 2015). An analysis of these factors as to
11 Dr. Tingey and Dr. Dunn is jointly discussed below unless they are specifically named.

12 **1. The importance of the expert's testimony to the party's case, and the**
13 **degree to which the expert's opinion aided the trier of fact in deciding**
14 **the case.**

15 As this Court may recall, at trial Dr. Tingey testified primarily regarding Plaintiff's right
16 knee and Dr. Dunn testified primarily regarding Plaintiff's spine. Specifically, Drs. Tingey and
17 Dr. Dunn explicitly testified to a medical degree of probability that Plaintiff's injuries to her right
18 knee (Dr. Tingey) and cervical spine (Dr. Dunn) were *caused* by the subject slip and fall.⁴ Their
19 testimony formed the lynchpin of Plaintiff successful argument to the jury that her right knee and
20 cervical spine injuries were related to the fall. Without their causation testimony, the jury would
21 have been without a basis to find Plaintiff's right knee and cervical spine injuries were related to
22 the fall, and thus the jury's ultimate verdict would most likely not have been possible. Further,
23 each doctor opined to a medical degree of probability that Plaintiff may require surgery at some
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28 ⁴ Plaintiff previously briefed the causation issue to this Court – *see Plaintiff's Brief on Regarding Causation Testimony by Drs. Dunn and Tingey* filed November 9, 2015, incorporated herein by reference but not attached pursuant to EDCR 2.27(e).

1 point in the future. This testimony served an important basis for the jury's award of future pain
2 and suffering damages.⁵

3 The jury's monetary damage award – net damages \$240,000 for Plaintiff's past and
4 future pain and suffering – is proof-positive that their testimony was both important to the jury
5 and greatly aided their decision. Their testimony withstood counsel for Defendant's cross-
6 examination, and was accepted over the testimony of Defendant's medical expert, Dr. Victor B.
7 Klausner, D.O., who opined Plaintiff's injuries were not causally related. This Court is on firm
8 ground to rely heavily upon this factor to explicitly find that both doctor's entire fees are
9 awardable as their testimony was central to Plaintiff's case-in-chief, and expertly assisted the
10 jury to medically link Plaintiff's injuries were caused by the fall thus warranting an award of
11 damages.

12 **2. Whether the expert's reports or testimony were repetitive of other**
13 **expert witnesses.**

14 It is incontrovertible that Dr. Tingey testified regarding the condition of Plaintiff's knees,
15 and Dr. Dunn testified regarding her spine. Accordingly, their testimony was not repetitive and
16 this factor weighs squarely in favor of Plaintiff.

17 **3. The extent and nature of the work performed by the expert.**

18 As discussed above and below, Dr. Tingey and Dr. Dunns' flat-fee per ½ day court
19 appearance is what they actually charge, is usually and customary for medical experts who
20 appear in court, and their fees are in line with Las Vegas's going rate for this type of specialized
21 work. In this regard, the extent of the work they performed should trump other, more weighty
22 factors such as those discussed above in item no. 1. Drs. Tingey and Dr. Dunn – practicing
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26

27 ⁵ Plaintiff previously briefed the future pain and suffering issue – see brief titled *Plaintiff's Brief as to*
28 *Testimony Regarding Future Pain and Suffering* filed November 9, 2015, incorporated herein by
reference but not attached pursuant to EDCR 2.27(e).

1 orthopaedic doctors who routinely perform surgeries on sensitive area of the human body – are
2 very skilled professionals performing work that very few other professionals can perform even
3 among their medical doctor peers. Accordingly, this factor also weighs in Plaintiff's favor for a
4 full requested cost award.

5
6 **4. Whether the expert had to conduct independent investigations or testing.**

7
8 Plaintiff was a patient of both Drs. Tingey and Dunn and they saw her in the ordinary
9 course of treatment. They had to both be knowledgeable regarding Plaintiff's complicated
10 medical history, and guide the jury through Plaintiff's unrelated conditions and injuries not
11 related to the fall. Drs. Tingey and Dunn performed the work of any other treating physician,
12 and thus this factor is largely irrelevant.

13 **5. The amount of time the expert spent in court, preparing a report, and preparing for trial.**

14
15 Regardless of the amount of time Drs. Tingey and Dunn spent as part of involvement in
16 this case, their fees are customary for each doctor's specialty and their testimony required time
17 away from their regular practice of medicine, including time to review their charts, travel to and
18 from court, time waiting to testify, and time actually testifying during voir dire and in front of the
19 jury.

20 **6. The expert's area of expertise, education, and training.**

21 Dr. Tingey – a board certified orthopaedic surgeon focusing on ailments affecting the
22 shoulders, hips, and knees – 'expertise, education, and training' speak for themselves without
23 qualification as his CV schedule indicates. See Exhibit "1". He enjoys an excellent reputation as
24 one of Las Vegas's top orthopaedic surgeons to justify his \$6,000 fee.

25 Similarly, Dr. Dunn – a board certified orthopaedic surgeon specializing in spine surgery
26 and disorders affecting the neck and back – 'expertise, education, and training' also speak for
27 themselves without qualification as his CV schedule indicates. See Exhibit "2". He also enjoys
28 an excellent reputation as one of Las Vegas's top orthopaedic surgeons to justify his \$10,000 fee.

1 This factor again squarely rest in Plaintiff's favor warranting a full cost award for their
2 services.

- 3 7. The fee actually charged to the party who retained the expert, the fees
4 traditionally charged by the expert on related matters, comparable
5 experts' fees charged in similar cases, and, if an expert is retained
6 from outside the area where the trial is held, the fees and costs that
would have been incurred to hire a comparable expert where the trial
was held.

7 Dr. Tingey and Dr. Dunn's flat-fee court appearance testimony in the amount of \$5,000
8 per ½ day is attached as Exhibits "1" and "2". Dr. Tingey's \$6,000 fee and Dr. Dunn's \$10,000
9 fee was actually charged and actually paid. Id. This type of "flat-fee" court appearance rate
10 schedule is extremely common for medical expert witnesses in the Las Vegas valley. To wit,
11 Defendant's medical expert, Dr. Victor B. Klausner, D.O., uses a similar flat-fee structure at
12 \$2,500 per ½ day, \$5,000 per day. See Exhibit "4". Dr. Klausner's credentials and not as
13 distinguished as Drs. Tingey and Dunn. Similarly, routinely used orthopedic defense expert Dr.
14 Anthony B. Serfustini, M.D., uses a similar flat-fee structure at \$4,000 per ½ day, \$8,000 per day
15 for court appearances. See Exhibit "5". And lastly, spine orthopedic surgeon Dr. William S.
16 Muir, M.D., charges the same as Drs. Tingey and Dunn for court appearances, \$5,000 per ½ day,
17 \$10,000 per day. See Exhibit "6".

18 The attached CV and fees schedules demonstrate that fees charged by Drs. Tingey and
19 Dunn are usual, customary, and in line with the market for medical expert witnesses appearing in
20 court.

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IV. CONCLUSION

Based upon the foregoing arguments and analysis of the *Frazier* factors, Plaintiff should be award expert witness costs in excess of NRS 18.005(5)'s \$1,500 statutory cap. Plaintiff should be awarded \$6,000 for Dr. Tingey and \$10,000 for Dr. Dunn.

DATED this 13th day of July, 2016.

NETTLES LAW FIRM

/s/ Christian M. Morris

By _____
BRIAN D. NETTLES, ESQ.
Nevada Bar No. 7462
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
JON J. CARLSTON, ESQ.
Nevada Bar No. 10689
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 13th day of July, 2016, I served the foregoing **SUPPLEMENTAL BRIEF REGARDING DEVIATING ABOVE NRS 18.005(5)'S EXPERT WITNESS STATUTORY CAP PURSUANT TO THE FRAZIER V. DUKE FACTORS** to the following parties by electronic transmission through the Wiz-Net system:

Semenza Kircher Rickard		
	Contact	Email
	Christopher D. Kircher	cdk@skrlawyers.com
	Jarrod L. Rickard	jlr@skrlawyers.com
	Lawrence J. Semenza, III	ljs@skrlawyers.com
	Olivia Kelly	oak@skrlawyers.com

/s/ Laura Vila-Pinillos

An Employee of Nettles Law Firm

Exhibit “1”

Exhibit “1”

**CRAIG T. TINGEY, M.D.
DESERT ORTHOPAEDIC CENTER
MEDICAL / LEGAL FEE SCHEDULE
2015**

Prepayment or deposit required for all services

Base Fee for IME \$1500.00

Fees Relating to Record Reviews/IMEs:

Review of records/creation of abstract	\$500 per ½ hour
Surgery Cost Letters	\$500
Extensive interview/examination (prolonged examination/complex case)	\$600 per hour
Phone Conference	\$1000 per hour
Arbitration	\$2000 per hour
Deposition One hour minimum	\$1500 per hour
Video Depositions	\$2500 per hour
Pre-Deposition Meeting	\$1000 per hour
Meeting with Attorney One hour minimum with Dr. pre-approval	\$1000 per hour

Court Appearance ½ day \$5,000
Whole day \$10,000

Retainer fee of \$5,000 for court appearance due 7 days in advance of appearance date

Please note: A "re-schedule clinic fee" of \$2600 will be incurred without a 96 hour notice of trial date and time for doctor to testify *or* change in date/time of doctor's testimony without 96 hour notice.

Refund Policy for all services:

Full refund if canceled 7 days prior
½ refund if canceled more than 48 hours prior
No refund if canceled less than 48 hours prior

Tax ID # 91-0858192

***Please sign and return this document along with necessary prepayments to acknowledge your cooperation:**

Attorney Name/Firm Name

Signature

Date

Revised 07/01/2015

PLTF 046

CRAIG T. TINGEY, M.D.

BOARD CERTIFIED ORTHOPAEDIC SURGEON

ORTHOPAEDIC SURGERY PRACTICE

- ♦ Private practice in Orthopaedic Surgery, 2005-current. Specializing in Sports Medicine/Arthroscopy, Joint Replacement, and Orthopaedic Trauma with emphasis on shoulder, hip, and knee surgery.
- ♦ Partner, Desert Orthopaedic Center 2009-current.
- ♦ Partner, Orthopaedic Specialists of Nevada, 2005-2009
- ♦ Board Certified with the American Board of Orthopaedic Surgeons
- ♦ Fellow of the American Academy of Orthopaedic Surgeons
- ♦ Chief of Orthopaedic Surgery, Mt. View Hospital 2009-2011
- ♦ Staff Privileges at Mountain View Hospital, San Martin Hospital, Centennial Hills Hospital, Specialty Surgery Center, Institute of Orthopaedic Surgery
- ♦ Member of Trauma Orthopaedic Surgical Services, providing Orthopaedic Trauma care at University Medical Center, a Level I Trauma Center, 2005-2013
- ♦ Team Physician, Gorman High School, 2005-2007

EDUCATION

- ♦ Orthopaedic Surgery Resident, Loma Linda University School of Medicine, 2000-2004
- ♦ General Surgery Internship, Loma Linda University School of Medicine, 1999-2000
- ♦ M.D., Wake Forest University School of Medicine, 1999
- ♦ B.S., Human Biology, Brigham Young University, 1995

RESEARCH EXPERIENCE

- ♦ *Biomechanical Comparison of Unipedicular Versus Bipedicular Kyphoplasty*, Published in *Spine* 30(2):201-205, January 15, 2005; 1st place award at 12th Annual Orthopaedic Research Seminar, Loma Linda University, 2004
 - ♦ *Independent Index Finger Extension After EIP Transfer: Excision of Junctional Tendon in the Cadaver*; 2nd place award at 11th Annual Orthopaedic Research Seminar, Loma Linda University, 2003
 - ♦ *The Effect of Botulinum-A Toxin Injections on the Natural History of Equinus Foot Deformity in Pediatric Cerebral Palsy Patients*; Podium presentation at Oscar Miller Day Symposium on Pediatric Orthopaedics, 1997
-

**HONORS AND
AWARDS**

- ♦ *Medical Student Ethical Experience—A Follow-up Study*, 1998
- ♦ Leonard Marmor award for "Excellence in Orthopaedic Surgery", Loma Linda University, 2004
- ♦ 96th percentile national score on United States Medical Licensing Exam, Step I
- ♦ National Institutes of Health Medical Student Research Fellowship, 1997
- ♦ President of Medical School Class, Wake Forest University, 1998
- ♦ Academic Scholarship, Brigham Young University, 1989-1995

**VOLUNTEER
WORK**

- ♦ Medical missions to Dominican Republic and Haiti; Perform orthopaedic surgeries at mission hospital, 2001, 2003, 2005, 2008, 2009, 2011, 2013
- ♦ Missionary for LDS Church to Brazil, 1990-1992
- ♦ Member of committee that developed the Honor Code System for Wake Forest University School of Medicine, 1998

LANGUAGES

- ♦ English, Spanish, and Portuguese

**PERSONAL
INTERESTS**

- ♦ Four children
- ♦ Basketball, mountain biking, piano, woodworking, skiing, hiking

2015

PLTF000758



DESERT ORTHOPAEDIC CENTER

Central Office

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Las Vegas, Nevada 89121
(702) 731-1616 (Fax) 734-4900

Northwest Office

8402 W. Centennial Parkway
Las Vegas, NV 89149
(702) 869-3486 (Fax) 869-3542

Henderson Office

2930 W. Horizon Ridge Pkwy, Suite 100
Henderson, Nevada 89052
(702) 263-9082 (Fax) 263-9088

Date: 09/28/2015.

Via Facsimile: 702-434-1488
Nettles Law Firm
1389 Galleria Dr., Ste 200
Henderson, NV 89014

John M. Balilauf, M.D.

Reconstructive Surgery and Sports Medicine

Hugh L. Bassewitz, M.D.

Adult Spinal Surgery

Patrick J. Brandner, M.D., F.A.C.S.

General Orthopedics

Thomas Dunn, M.D.

Adult Spinal Surgery

Roger A. Fontes, M.D.

Complex Trauma Surgery,

Hip, Knee and Shoulder

Matthew N. Fouse, M.D.

Arthroscopy and Sports Medicine

Clint M. Hanson, M.D.

Orthopaedic Surgery and Sports Medicine

Lawrence R. Huff, M.D.

Adult Reconstruction, Shoulder and Elbow

Parmiter S. Kang, M.D.

Hip Preservation, Joint Replacement

Michael L. Lee, M.D.

Hand, Wrist and Upper Extremity Surgery

Michael Mino, M.D.

Arthroscopy and Sports Medicine

Archie C. Perry, Jr., M.D.

Adult and Pediatric Spinal Surgery

Abdi Raissi, M.D.

Foot and Ankle Surgery

D. Daniel Rotenberg, M.D.

Arthroscopy and Sports Medicine

William T. Stewart, M.D.

Orthopaedic Surgery and Hand Surgery

Timothy B. Sutherland, M.D.

Arthroscopy of Knee and Shoulder

Todd V. Swanson, M.D.

Total Joint Replacement

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Troy S. Watson, M.D.

Foot and Ankle Surgery Arthroscopy

Michael F. Pendleton, J.D., CMPE

CEO/General Counsel

James P. Washer II, CFA

Director of Finance

Sharon E. Marchitti

Director of Operations

All Appointments (702) 731-4088

www.doclv.com

RE: Yvonne O'Connell

DOL: 08/18/1951

Our Acct#:

Provider: Dr. Tingey

Dear Mr. Morris,

I am in receipt of your request for a 15 minute telephone conference on the above listed patient. This requires a deposit of \$250.00, equivalent to 15 minutes, based on our office policy.

Any additional charges incurred beyond the 15 minute time will be billed to your office accordingly. If you would like to have Dr. Tingey complete this request, please forward a check in the amount of \$250.00 made payable to Craig Tingey, MD to my attention at the following address:

Desert Orthopaedic Center
ATTN: Tami Reynolds
8402 W. Centennial Pwy
Las Vegas, NV 89149

Tax Identification number: 46-2279210

Please include claimant name on check.

Upon receipt of deposit, your request for dates will be forwarded.
Thank you in advance for your attention to this matter.

Sincerely,

Tami Reynolds
CCMA for Craig Tingey, MD
702-869-3486



DESERT ORTHOPEDIC CENTER

Central Office

2800 E. Desert Inn Rd., Suite 100
Las Vegas, Nevada 89121
(702) 731-1616 (Fax) 734-4900

Northwest Office

8402 W. Centennial Parkway
Las Vegas, NV 89149
(702) 869-3486 (Fax) 869-3542

Henderson Office

2930 W. Horizon Ridge Pkwy, Suite 100
Henderson, Nevada 89052
(702) 263-9082 (Fax) 263-9088

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General Orthopaedics

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*Complex Trauma Surgery,
Hip, Knee and Shoulder*

Matthew N. Fouse, M.D.

Arthroscopy and Sports Medicine

Chad M. Hanson, M.D.

Orthopaedic Surgery and Sports Medicine

Lawrence R. Huff, M.D.

Adult Reconstruction, Shoulder and Elbow

Parminder S. Kang, M.D.

Hip Preservation, Joint Replacement

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Michael Miao, M.D.

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Arthroscopy of Knee and Shoulder

Todd V. Swanson, M.D.

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Arthroscopy and Sports Medicine

Troy S. Watson, M.D.

Foot and Ankle Surgery, Arthroscopy

Michael F. Pendleton, J.D., CMPE

CEO/General Counsel

James P. Washer II, CFA

Director of Finance

Sharen E. Marchitt

Director of Operations

All Appointments (702) 731-4088

www.doelv.com

Date: 11/03/2015

VIA Facsimile: 702-434-1488

Christian Morris, Esq.

Nettles Law Firm

1389 Galleria Dr., Ste 200

Henderson, NV 89014

RE: Yvonne O'Connell

Our acct#:

Provider: Dr. Craig Tingey

INVOICE

Please remit payment for the following items.

Telephone conference	\$1000.00
(1 hr at \$250.00 per 15 minutes)	
(NO Report)	

Pre-payment ck# 16962	\$250.00
-----------------------	----------

Total Due:	\$750.00
-------------------	-----------------

Tax Identification Number: 46-2279210

Please include patient name on check and remit payment to:

Craig Tingey, MD
ATTN: Tami Reynolds
8402 W. Centennial Pkwy
Las Vegas, NV 89149

Upon receipt of payment, medial review/records will be forwarded to your office. Thank you in advance for your attention to this matter.

Sincerely,
Tami Reynolds
CCMA for Craig Tingey, MD
(702)869-3486

Brian D. Nettles, Esq.

Christian M. Morris, Esq.*

**Also licensed in California and New Jersey*



Costs

JANICE L. MACIAC, J.D.

Exclusively representing injured victims and their families.

September 30, 2015

Craig Tingey, M.D.
Desert Orthopaedic Center
8402 West Centennial Parkway
Las Vegas, Nevada 89149

Attention: Tami Reynolds

Re: Yvonne O'Connell v. Wynn, et al.

Dear Tami:

Enclosed please find our check number 16962, dated 9/29/2015, in the amount of \$250.00, made payable to Craig Tingey, representing payment of his fee for a telephone conference with Christian M. Morris, Esq., in the above-referenced matter. This will confirm our telephone conversation, wherein you advised me that upon receipt of this fee, you will contact me to schedule this telephone conference.

Your courtesy and cooperation are genuinely appreciated. I look forward to hearing from you.

Very truly yours,
NETTLES LAW FIRM

Dorothy A. Allen
Dorothy A. Allen
Paralegal to
Christian M. Morris, Esq.

CMM:daa
Enclosure

PLTF 042

THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

LAW OFFICES OF BRIAN D NETTLES, INC.
OPERATING ACCOUNT
1389 GALLERIA DRIVE, SUITE 200
HENDERSON, NV 89014

17123
94-236/1224

DATE 11/4/2015

PAY TO THE ORDER OF Craig Tingey, M.D.

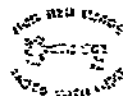
\$ *750.00

Seven Hundred Fifty and 00/100***** DOLLARS

Craig Tingey, M.D.

MEMO

Teleconference - Yvonne O'Connell



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SECURITY FEATURES INCLUDED. DETAILS ON BACK.

LAW OFFICES OF BRIAN D NETTLES, INC. - OPERATING ACCOUNT

Craig Tingey, M.D.

teleconf

11/4/2015

17123

750.00

Teleconference - Yvonne O'Connell

750.00

LAW OFFICES OF BRIAN D NETTLES, INC. - OPERATING ACCOUNT

Craig Tingey, M.D.

teleconf

11/4/2015

17123

750.00

Teleconference - Yvonne O'Connell

750.00

PLTF 040

THE FRONT OF THIS DOCUMENT IS A COPY OF THE BACKGROUND ON WHICH IT IS BASED. IT IS NOT A COPY OF THE ORIGINAL DOCUMENT.

LAW OFFICES OF BRIAN D NETTLES, INC.
OPERATING ACCOUNT
1389 GALLERIA DRIVE, SUITE 200
HENDERSON, NV 89014

16962
94-236/1224

DATE 9/29/2015

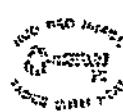
PAY TO THE ORDER OF Craig Tingey, M.D.

\$ **250.00

Two Hundred Fifty and 00/100***** DOLLARS
Craig Tingey, M.D.

MEMO

Tele conf - Yvonne O'Connell



SECURITY FEATURES INCLUDED. DETAILS ON BACK.

[Handwritten signature]

LAW OFFICES OF BRIAN D NETTLES, INC. - OPERATING ACCOUNT

16962

Craig Tingey, M.D.

9/29/2015

tele conf

250.00

Tele conf - Yvonne O'Connell

250.00

LAW OFFICES OF BRIAN D NETTLES, INC. - OPERATING ACCOUNT

16962

Craig Tingey, M.D.

9/29/2015

tele conf

250.00

Tele conf - Yvonne O'Connell

250.00

PLTF 043

LAW OFFICES OF BRIAN D. NETTLES, INC.

OPERATING ACCOUNT
1389 GALLERIA DRIVE, SUITE 200
HENDERSON, NV 89014

17102

94-236/1224

DATE 11/3/2015

PAY TO THE
ORDER OF

Craig Tingey, M.D.

\$ 5,000.00

Five Thousand and 00/100*****

COSTS

***** DOLLARS

Craig Tingey, M.D.

MEMO

Court appearance - Yvonne O'Connell

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

LAW OFFICES OF BRIAN D. NETTLES, INC. - OPERATING ACCOUNT

Craig Tingey, M.D.

court appearance

11/3/2015

17102

5,000.00

Court appearance - Yvonne O'Connell

5,000.00

LAW OFFICES OF BRIAN D. NETTLES, INC. - OPERATING ACCOUNT

Craig Tingey, M.D.

court appearance

11/3/2015

17102

5,000.00

Court appearance - Yvonne O'Connell

5,000.00

PLTF 045

Exhibit “2”

Exhibit “2”

THOMAS DUNN, M.D.
DESERT ORTHOPAEDIC CENTER
MEDICAL / LEGAL FEE SCHEDULE
2015

Prepayment or deposit required for all services

Base Fee for IME

\$1500.00

Fees Relating to Record Reviews/IMEs:

Sort/organize records (including excessive records)	\$800 per hour
Review of records/creation of abstract	\$800 per hour
Surgery Cost Letters	\$600 minimum
Dictation/prolonged dictation (excessive records and/or complex case)	\$800 per hour
Extensive interview/examination (prolonged examination/complex case)	\$800 per hour

STAT FEE:

Additional \$1,000 if final report required within 1-7 calendar days of record receipt date
Additional \$ 500 if final report required within 8-14 calendar days of record receipt date

Phone Conference (0.25/hr increments)	\$1000 per hour
Arbitration	\$2000 per hour
Deposition (One hour minimum)	\$1750 per hour
Video Depositions (One hour minimum)	\$2500 per hour
Pre Deposition	\$1000 per hour
Meeting with Attorney (One hour minimum with Dr. pre-approval)	\$1000 per hour

Refund Policy for above services:

Full refund only if canceled 7 calendar days prior
1/2 refund if canceled more than 48 hours prior
No refund if canceled less than 48 hours prior

Court Appearance:

1/2 day \$5,000
Whole day \$10,000

Retainer fee of \$5,000 for court appearance due 7 calendar days in advance of appearance date.

No refunds given for cancellation within 7 calendar days of appearance date.

revised 04/20/2015

PLTF000755

CURRICULUM VITAE

THOMAS DUNN, M.D. ORTHOPAEDIC SURGERY

SPECIALIZING IN SPINE SURGERY
AND DISORDERS OF THE NECK AND BACK

BUSINESS ADDRESS:

DESERT ORTHOPAEDIC CENTER
2800 E. Desert Inn Road, Suite 100
Las Vegas, Nevada 89121
(702) 731-1616

BOARD CERTIFICATION:

Fellow, American Academy of Orthopaedic Surgeons
February 22, 1996

Diplomate, American Board of Orthopaedic Surgeons
July, 1994; Recertification - January 1, 2005

PRACTICE HISTORY:

DESERT ORTHOPAEDIC CENTER
1995 - Present

Private Practice - Thomas Dunn, M.D.
San Diego, California 1992-1995

POST DOCTORAL TRAINING:

Fellowship:

Rancho Los Amigos Hospital
Downey, California
Spine Surgery
August, 1991 to July, 1992

Residency:

University of California, Irvine Medical Center
General Surgery
June, 1986 to June, 1987

University of California, Irvine Medical Center
Orthopaedic Surgery
July, 1987 to June, 1991

Internship:

University of California, Irvine Medical Center
General Surgery
June, 1985 to June, 1986

EDUCATION:

Medical School:

University of California, Irvine College of Medicine
Irvine, California
Degree: Doctor of Medicine
June, 1985

PLTF000753

Curriculum Vitae Thomas Dunn, M.D.

Undergraduate School: University of California, San Diego
La Jolla, California
Degree: Bachelor of Arts - Biology
June, 1981

CERTIFICATIONS:

Diplomate, American Board of Spine Surgery
Recertification: December 31, 2003

National Board of Medical Examiners #303711
July, 1986

Fluoroscopy X-Ray Supervisor and Operator
August, 1987

LICENSURE:

Nevada	6714	1993
California	G59910	1987
Hawaii	8708	1994 (Inactive)
Arizona	23383	1995

**HOSPITAL
AFFILIATIONS:**

St. Rose Dominican Hospital, Las Vegas, Nevada
Spring Valley, Las Vegas, Nevada
Valley Hospital, Las Vegas, Nevada
Desert Springs Hospital, Las Vegas, Nevada
St. Rose San Martin, Las Vegas, Nevada
Mountain View Hospital, Las Vegas, Nevada

**PROFESSIONAL
ORGANIZATIONS:**

Diplomate, American Board of Orthopaedic Surgery
Diplomate American Board of Spine Surgery
Fellow - American Academy of Orthopaedic Surgeons
North American Spine Society (NASS)
Clark County Medical Society
Nevada Medical Association
American Medical Association
California Orthopaedic Association
Former Chairman - Ad Hoc Spine Committee
Sunrise Hospital



DESERT ORTHOPAEDIC CENTER

Central Office

1800 E. Desert Inn Rd., Suite 100
Las Vegas, Nevada 89121
702) 731-1616 (Fax) 734-4900

Northwest Office

402 W. Centennial Parkway
Las Vegas, NV 89149
702) 869-3486 (Fax) 869-3542

Henderson Office

930 W. Horizon Ridge Pkwy. Suite 100
Henderson, Nevada 89052
702) 263-9082 (Fax) 263-9088

John M. Baldwin, M.D.,
Reconstructive Surgery and Sports Medicine
Hugh L. Buxsewitz, M.D.,
Adult Spinal Surgery
Patrick J. Brannan, M.D., F.A.C.S.,
General Orthopaedics

Thomas Dunn, M.D.,
Spinal Surgery

Gregory A. Fantes, M.D.,
Complex Trauma Surgery,
Hip, Knee and Shoulder

Matthew N. Fouse, M.D.,
Arthroscopy and Sports Medicine
James D. Granata, M.D.,
Knee and Ankle Surgery

William M. Hanson, M.D.,
Traumatic Surgery and Sports Medicine
Lawrence R. Huff, M.D.,
Total Reconstruction, Shoulder and Elbow

Christopher S. Kang, M.D.,
Arthroscopy, Total Joint Replacement
Michael L. Lee, M.D.,
Wrist and Upper Extremity Surgery

Michael Miao, M.D.,
Arthroscopy and Sports Medicine
C. Perry, Jr., M.D.,
Adult Pediatric Spinal Surgery

Ali Raissi, M.D.,
Knee and Ankle Surgery
Daniel Rutenberg, M.D.,
Arthroscopy and Sports Medicine

William T. Stewart, M.D.,
Traumatic Surgery and Hand Surgery
Cathy B. Sutherland, M.D.,
Arthroscopy of Knee and Shoulder

John V. Swanson, M.D.,
Total Joint Replacement
Craig T. Tingey, M.D.,
Arthroscopy and Sports Medicine

Robert S. Watson, M.D.,
Knee and Ankle Surgery, Arthroscopy
Richard P. Winder, M.D.,
Shoulder, Knee, Hip, Elbow
Sports Medicine

Michael F. Pendleton, J.D., CMPE
General Counsel
Leslie P. Washer II, CFA
Director of Finance

Robert B. Murchilli
Center of Operations
Appointments (702) 731-4088

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General Counsel
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Michael F. Pendleton, J.D., CMPE
General Counsel
Leslie P. Washer II, CFA
Director of Finance

Robert B. Murchilli
Center of Operations
Appointments (702) 731-4088

October 28, 2015

Nettles Law Firm
1389 Galleria Dr., #200
Henderson, NV 89014

Re: Yvonne O'Connell

Per our conversation, half day trial testimony regarding the above referenced patient has been tentatively scheduled for Thursday, November 12, 2015.

Pre-payment of \$5000 for half-day testimony is required seven days prior to the scheduled trial testimony and should be directed to Patricia Battaglia at the Desert Inn Address.

Please make the check payable to Thomas Dunn M.D. The tax ID number is 91-0858192.

Refund policy is as follows:

Full refund if cancelled 7 days prior
1/2 refund if cancelled > 24 hours prior
No refund if cancelled < 24 hours prior

Should you have any questions, please do not hesitate to call me at 702-370-0138.

Thank you,

Ann Marie Dunn

11/10/15 PAGE 02
✓ Ref TO
Dr. Dunn



DESERT ORTHOPAEDIC CENTER

Central Office

800 E. Desert Inn Rd., Suite 100
Las Vegas, Nevada 89121
(702) 731-1616 (Fax) 734-4900

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Las Vegas, NV 89149
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Wendy R. Huff, M.D.

Hand Reconstruction, Shoulder and Elbow

Arthroscopy and Sports Medicine

Arthroscopy, Total Joint Replacement

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Hand, Wrist and Upper Extremity Surgery

Michael Miao, M.D.

Arthroscopy and Sports Medicine

Michael C. Perry, Jr., M.D.

Adult and Pediatric Spinal Surgery

Dr. Rafiqi, M.D.

Foot and Ankle Surgery

Daniel Rotenberg, M.D.

Arthroscopy and Sports Medicine

William T. Stewart, M.D.

Orthopaedic Surgery and Hand Surgery

Timothy B. Sutherland, M.D.

Arthroscopy of Knee and Shoulder

David V. Swanson, M.D.

Hand Joint Replacement

Greg T. Tlokey, M.D.

Arthroscopy and Sports Medicine

Dr. S. Watson, M.D.

Foot and Ankle Surgery, Arthroscopy

David P. Winder, M.D.

Adult, Knee, Hip, Elbow

Sports Medicine

Michael F. Pendleton, J.D., CMPA

General Counsel

Dr. P. Washer II, CPA

Director of Finance

Dr. E. Marchitelli

Director of Operations

Appointments (702) 731-4088

desertdoc.com

November 10, 2015

Nettles Law Firm

1389 Galleria Dr., #200

Henderson, NV 89014

Re: Yvonne O'Connell

Per our conversation, additional half day trial testimony regarding the above referenced patient is scheduled for either November 12, 2015 or November 13, 2015.

Pre-payment of \$5000 for half-day testimony is required seven days prior to the scheduled trial testimony and should be directed to Patricia Battaglia at the Desert Inn Address.

Please make the check payable to Thomas Dunn M.D. The tax ID number is 91-0858192.

Refund policy is as follows:

Full refund if cancelled 7 days prior
1/2 refund if cancelled > 24 hours prior
No refund if cancelled < 24 hours prior

Should you have any questions, please do not hesitate to call me at 702-370-0138.

Thank you,


Ann Marie Dunn

PLTF 050

3 RA 464

LAW OFFICES OF BRIAN D NETTLES, INC.
OPERATING ACCOUNT
1389 GALLERIA DRIVE, SUITE 200
HENDERSON, NV 89014

17105
94-236/1224

O'Connell
Costs

DATE 11/3/2015

PAY TO THE ORDER OF Thomas Dunn, M.D.

\$ **5,000.00

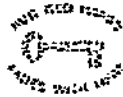
Five Thousand and 00/100*****

DOLLARS

Thomas Dunn, M.D.
2800 E. Desert Inn Road
Suite 100
Las Vegas, NV 89121

MEMO

Court appearance - Yvonne O'Connell



[Signature]

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

LAW OFFICES OF BRIAN D NETTLES, INC. - OPERATING ACCOUNT

Thomas Dunn, M.D.

11/3/2015

17105

5,000.00

Court appearance - Yvonne O'Connell

5,000.00

LAW OFFICES OF BRIAN D NETTLES, INC. - OPERATING ACCOUNT

Thomas Dunn, M.D.

11/3/2015

17105

5,000.00

Court appearance - Yvonne O'Connell

5,000.00

PLTF 047

LAW OFFICES OF BRIAN D NETTLE
OPERATING ACCOUNT
1389 GALLERIA DRIVE, SUITE 200
HENDERSON, NV 89014

B'Connell
Costs

17147
84-236/1224

DATE 11/11/2015

PAY TO THE
ORDER OF

Thomas Dunn, M.D.,

\$ **5,000.00

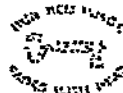
Five Thousand and 00/100*****

DOLLARS

Thomas Dunn, M.D.
2800 E. Desert Inn Road
Suite 100
Las Vegas, NV 89121

MEMO

Court appearance - Yvonne O'Connell



320

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

LAW OFFICES OF BRIAN D NETTLES, INC. - OPERATING ACCOUNT

Thomas Dunn, M.D.

11/11/2015

17147
5,000.00

Court appearance - Yvonne O'Connell

5,000.00

LAW OFFICES OF BRIAN D NETTLES, INC. - OPERATING ACCOUNT

Thomas Dunn, M.D.

11/11/2015

17147
5,000.00

Court appearance - Yvonne O'Connell

5,000.00

PLTF 049

Exhibit “3”

Exhibit “3”

1 person connected with the trial, or by any medium of
2 information, including, without limitation, newspaper,
3 television, radio, or internet, and you are not to form or
4 express an opinion on any subject connected with this case
5 until it's finally submitted to you.

6 You know, anticipate at least 15 minutes, probably.
7 It could be longer, but you know, if you're going to leave the
8 floor -- do we have any smokers in our -- no? Okay. So, the
9 marshal will tell you where you can smoke, but make sure you
10 do that in the next 15 minutes so you can get back to the
11 floor in case we need to call you.

12 THE MARSHAL: All rise for the jury, please. Follow
13 me, please.

14 (Outside the presence of the jury)

15 MR. SEMENZA: Your Honor, may I run to the restroom
16 very quickly?

17 THE COURT: Okay. So, we'll go off the record so
18 counsel can use the restroom, and then we'll go right back and
19 get Dr. Dunn on.

20 (Court recessed at 4:27 P.M. until 4:35 P.M.)

21 (Outside the presence of the jury)

22 THE MARSHAL: Follow me, okay? Remain standing,
23 face the clerk, raise your right hand.

24 //

25 //

1 DR. THOMAS DUNN, PLAINTIFF'S WITNESS, SWORN

2 THE CLERK: Please be seated, and then please state
3 and spell your first and last name.

4 THE WITNESS: Thomas Dunn; T-h-o-m-a-s, and D-u-n-n.

5 THE CLERK: Thank you.

6 THE COURT: And you may proceed.

7 MR. SEMENZA: Thank you.

8 (Testimony outside the presence of the jury)

9 DIRECT EXAMINATION

10 BY MR. SEMENZA:

11 Q Good afternoon, Dr. Dunn.

12 A Good afternoon.

13 Q Did you bring any materials with you today?

14 A Yes, I brought my chart.

15 Q May I examine those for a moment?

16 A Sure.

17 (Pause in the proceedings)

18 BY MR. SEMENZA:

19 Q Dr. Dunn, is this the complete medical chart that
20 you have in your possession relating to Ms. O'Connell?

21 A Well, it's the complete file that I have in my
22 possession, but there are, I believe, other doctors at Desert
23 Orthopedic Center have seen her, so I don't believe I have
24 their material in there.

25 Q Okay. When were these documents obtained?

1 telling him. That in and of itself I don't believe is
2 sufficient to link the causation in this particular case. He
3 was told X; it may or may not be true. Again, that's coming
4 from the plaintiff herself.

5 And what he did say is that there are essentially
6 objective findings that she had the physical condition prior
7 to the fall. And so, it's a function of symptomology, again,
8 which is even further back, which is subjective in nature as
9 far as what she's experiencing and what she isn't. And so, I
10 don't think it's appropriate that doctors --

11 THE COURT: Pain -- but reports of pain are always
12 subjective. They're -- you can't visualize pain.

13 MR. SEMENZA: Exactly. So --

14 THE COURT: All right, so but doctors have to --

15 MR. SEMENZA: So, that's the point.

16 THE COURT: Doctors do rely on reports. And if you
17 can show him other things, that's cross-examination. I mean,
18 if he wasn't given the proper tools to come up with a proper
19 causal diagnosis of her, you can show that, then do that, but
20 I don't think at this point he is kept from testifying.

21 MR. SEMENZA: But that's -- and Your Honor, I
22 understand your position on --

23 THE COURT: Okay, I've ruled. Let's go. Get this
24 jury back in here. What's your schedule look like for the
25 rest of the week?

1 THE WITNESS: Well, tomorrow, I'm in surgery, but
2 any other day of the week, I'm open.

3 MR. SEMENZA: And I can tell you I'm not going to be
4 done, Your Honor.

5 THE COURT: Well, okay, but he can come back
6 Thursday, he just told me.

7 MR. SEMENZA: Okay.

8 THE WITNESS: Or Wednesday. Whatever's easy.

9 THE COURT: Wednesday the --

10 THE WITNESS: But Tuesday is --

11 THE COURT: -- the courthouse is closed --

12 THE WITNESS: Oh, okay.

13 THE COURT: -- because of Veteran's Day.

14 THE WITNESS: No problem.

15 THE COURT: We can only go until 6:00.

16 THE MARSHAL: All rise for the jury, please.

17 (In the presence of the jury)

18 THE MARSHAL: Jury's all present, Your Honor.

19 THE COURT: Please be seated. And we have called
20 Dr. Thomas Dunn, who has already taken the stand. I'm going
21 to have the clerk swear you in again.

22 THE CLERK: Doctor, can you please stand again?

23 THE WITNESS: Oh, yes.

24 //

25 //

1 THE COURT: Okay. All right, let's just call it a
2 day. And you're able to return on Thursday? Is there --

3 THE WITNESS: Yes.

4 THE COURT: -- a time? All right.

5 THE WITNESS: Whatever the preference is here.

6 THE COURT: Okay, so you'll discuss that with, you
7 know, the subpoenaing lawyers, and about -- you're going to
8 come back on Thursday?

9 THE WITNESS: Yes.

10 THE COURT: Okay. All right. Ladies and gentlemen,
11 we're going to take an overnight recess. I'm going to see you
12 tomorrow at 8:30.

13 And during this recess, it's your duty not to
14 converse among yourselves or with anyone else on any subject
15 connected with the trial, or to read, watch, or listen to any
16 report of or commentary on the trial by any person connected
17 with the trial, or by any medium of information, including,
18 without limitation, newspaper, television, radio, or internet,
19 and you are not to form or express an opinion on any subject
20 connected with this case until it's finally submitted to you.

21 See you tomorrow morning at 8:30.

22 THE MARSHAL: All rise for the jury, please.

23 (Outside the presence of the jury)

24 THE COURT: All right, thank you. Jury has departed
25 the courtroom. And I think you need to get with Dr. Dunn

1 about when he will come back on Thursday, and let's try and
2 make sure it's not so late that we can't get done. I mean, we
3 need to give him plenty of time for cross. And thank you very
4 much for your testimony. So, you're excused. Anything
5 outside the presence at this point today?

6 MS. MORRIS: No.

7 MR. SEMENZA: No, I don't think so, Your Honor.

8 THE COURT: Okay. All right. 8:30 tomorrow, you
9 have a witness lined up for that?

10 MS. MORRIS: Yes.

11 THE COURT: Okay.

12 MS. MORRIS: Corey, correct?

13 MR. SEMENZA: Yes.

14 MS. MORRIS: Yes, we do.

15 THE COURT: Okay. I will see you tomorrow at 8:30.

16 MS. MORRIS: Thank you.

17 MR. SEMENZA: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. KIRCHER: Thank you.

20 (Court recessed at 6:03 p.m. until Tuesday,
21 November 10, 2015, at 8:29 a.m.)

22 * * * * *

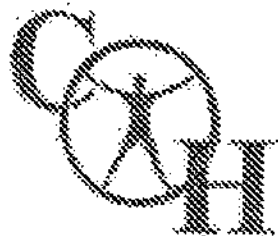
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24

25

Exhibit “4”

Exhibit “4”



CENTER FOR OCCUPATIONAL HEALTH & WELLNESS

LEGAL FEES AND MEDICAL FEE SCHEDULE

DEPOSITION: \$1000.00/HR

Payment is due at the time of the deposition. In the event that the deposition is cancelled by you, you must give 48 hours advanced notice of the date or the fee for a minimum of one hour is forfeited.

REVIEW OF CHARTS:

\$500.00 per hour for a minimum of one hour paid in advance

LEGAL REPORTS:

\$500.00 payable in advance along with a signed authorization for release of information and a statement of specific questions the doctor needs to address.

HALF DAY COURT APPEARANCE: \$2500.00

Payment of \$2500.00 paid two weeks in advance of the court appearance which is non-refundable.

FULL DAY COURT APPEARANCE: \$5000.00

Payment of \$5000.00 paid two weeks in advance of the court appearance which is non-refundable.

IMES:

\$1500.00 paid in advance. If appointment is a no show the fee is non-refundable.

VICTOR B. KLAUSNER, D.O.

801 South Rancho Dr., Ste F1
Las Vegas NV 89106
(702) 474-4454

PERSONAL DATA

Date of Birth: November 22, 1965
Place of Birth: Chicago, Illinois
Family: Wife, Cara and Daughter, Noa and Son, Ari

EDUCATION

Undergraduate: University of Illinois, Urbana, Illinois
B.S., Genetics, 1986

Elmhurst College, Elmhurst Illinois
B.S., Chemistry, 1990

Medical: Chicago College of Osteopathic Medicine, Downers Grove, Illinois
Doctor of Osteopathic Medicine, 1995

Chicago Osteopathic Health System, Northwestern University, Chicago, Illinois
Intern, 1995-1996

Columbia Olympia Fields Osteopathic Hospital, Northwestern University
Olympia Fields, Illinois
Resident, Family Medicine, 1996-1998

Columbia Olympia Fields Osteopathic Hospital, Northwestern University
Olympia Fields, Illinois
Fellowship, Sports Medicine, 1998-1999

UCLA Medical Acupuncture Course for Physicians, Santa Monica, California
Course completed 05/25/03

LICENSURE

1999 Nevada State License, #960
1999 California State License, #20A7589
1997 Illinois State License, #036-096141

CERTIFICATION

2000-present	Certified Medical Review Officer by Medical Review Officer Certification Council
1998	Board Certified in Family Practice Medicine by ACOFP
1996	National Board of Osteopathic Examiners, Intern Board (Part III)
1995	National Board of Osteopathic Examiners, Clinical Board (Part II)
1993	National Board of Osteopathic Examiners, Basic Sciences Board (Part I)

EMPLOYMENT

2005-present	Center For Occupational Health and Wellness, Las Vegas, Nevada Private Practice/Medical Director
2000-2004	Southwest Medical Associates, Las Vegas, Nevada Clinic Chief, Industrial and Preventive Medicine Clinic
1999-2000	Olympia Fields Osteopathic Hospital, Olympia Fields, Illinois Family Medicine Clinic
1998-2000	Olympia Fields Osteopathic Hospital, Olympia Fields, Illinois Industrial Medicine Clinic
1997-1998	Olympia Fields Osteopathic Hospital, Olympia Fields, Illinois Urgent Care Clinic

TEACHING ACTIVITIES

2001-2006	Lake Mead Hospital, North Las Vegas, Nevada Lecturer, Intern Lecture Series on Sports Medicine Topics
October 2002	American Osteopathic Association National Convention, Las Vegas, Nevada Lecturer, Treating The Most Common Low Back Pain Syndromes
March 2000	Tinley Park Community Education Series, Tinley Park, Illinois Lecturer, Performance Enhancing Nutritional Supplements
September 1999	Ward E. Perrin Clinical Refresher Course, Chicago, Illinois Lecturer, Treatment of Heart Disease With Nutritional Medicine
1998 and 1999	Illinois Association of Osteopathic Physicians Family Practice Review Course Lecturer, Common Upper Extremity Musculoskeletal Injuries
1998-1999	Midwestern University, Olympia Fields, Illinois Osteopathic Medicine Review Course for Family Medicine Residents Organized and Presented a Twelve Lecture Curriculum

1999-2000	Midwestern University, Olympia Fields, Illinois Musculoskeletal Medicine Review Course for Family Medicine Residents Organized and Presented a Four Lecture Curriculum
1995-2000	Midwestern University, Downers Grove, Illinois Osteopathic Manipulative Medicine Course for Medical Students
May 1997	Olympia Fields Osteopathic Hospital, National Leadership Forum Lecturer, Introduction to Osteopathic Medicine

SPECIAL POSITIONS

2011-present	President, Nevada Osteopathic Medical Association
2010-2011	Vice President, Nevada Osteopathic Medical Association
2005-present	Vice President, Nevada Board of Oriental Medicine
2002-2005	Member of Occupational Health and Safety Committee, Sierra Health Services
2001-2005	Member of Continuing Medical Education Committee, Sierra Health Services
2000-present	Assistant Clinical Instructor, Family Practice Medicine, Midwestern University
2000-present	Medical Review Officer: City of North Las Vegas, Southern NV Health District
1992-1995	Committee Chairman, Student Osteopathic Medical Association
1992-1993	President, Undergraduate American Academy of Osteopathy

PUBLISHED MANUSCRIPTS

1998	<i>Nutritional Impact on Lipid Oxidation and Coronary Artery Disease.</i> published in <u>Hospital Physician</u> , July 1999
1999	<i>The Sinus Tarsi Syndrome.</i> Published in <u>The Physician and Sports Medicine</u> , May 2000

JOURNAL CLUB ACTIVITIES

2003-2006	Moderator of monthly Occupational Medicine Journal Club, Las Vegas, NV
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AFFILIATIONS

1997-present	American Osteopathic Academy of Sports Medicine
1995-present	American College of Osteopathic Family Physicians
1991-present	American Academy of Osteopathy
1991-present	American Osteopathic Association

Exhibit “5”

Exhibit “5”

ANTHONY B. SERFUSTINI M.D., F.A.C.S.
501 SOUTH RANCHO DRIVE, SUITE I-65
LAS VEGAS, NEVADA 89106
(702) 733-7855
FAX (702) 733-6918

Forensic Fee Schedule 2015

Tax ID # 88-0132897

Independent Medical Examination	1500-prepayment (up to 1 inches of records) 125- per 1/4 hour
IME or Deposition No Show or cancellation (w/o 10 days notice)	300-
IME Administrative Record Review	40- per hour
Record Review	300- prepayment 125- per 1/4 hour Report will be released after payment for balance is received.
Deposition	1500-per hour for the 1 st hour (must be paid PRIOR to the depo) 250- per 1/4 hour over the 1 st hour (will bill for this time) deposition cancellation 25%
Arbitration Preparation Arbitration	500 - minimum - payment (1 hour) 1500-prepayment/250- per 1/4 hour over the 1 st hour 25% of agreed fee will be charged if the Arbitration is cancelled in less than 48 hrs of the schedule appearance / 72 hrs out of town
Trial Preparation	1000- minimum -prepayment (2 hours)
Testimony	4000-Half-day Minimum 8000-Full-day

ANTHONY B. SERFUSTINI M.D., F.A.C.S.
501 SOUTH RANCHO DRIVE, SUITE 1-65
LAS VEGAS, NEVADA 89106
(702) 733-7855
FAX (702) 733-6918

Forensic Fee Schedule 2015

Tax ID # 88-0132897

Short Trial Preparation	750- minimum -prepayment (1 hour)
Short Trial Testimony	2500 - 1 hour
Out of town Testimony	8000 full day minimum Airfare Hotel Accommodations Airport Transfers
Trial Cancellation	25% of agreed fee will be charged if the court appearance is cancelled in less than 48 hrs of the schedule appearance local / 72 hrs out of town

Curriculum Vitae of Anthony B. Serfustini

Address: 501 South Rancho Drive, Suite I-65
Las Vegas, NV 89106
(702)733-7855

Birthplace: Thomaston, GA
September 29, 1940

Licensure: Nevada (1974) #2851

Education: Troy High School 1954-1956
Troy, Alabama

Kenmore High School 1956-1958
Kenmore, New York

University of Buffalo 1958-1961
Buffalo, New York Major: Biology/Anthropology

State University of New York 1961-1966
Buffalo, New York
Medical School Degree: M.D.

Training: University of Utah
Salt Lake City, Utah
Internship (Med-Surg) 1966-1967
Residency (Orthopaedics) 1970-1973
Chief Resident (Ortho) 1973-1974

Board Certification: American Board of Orthopaedic Surgery 1975

Teaching Responsibilities: University of Nevada School of Medicine
Clinical Assistant Professor of Surgery 1980-1984
Clinical Associate Professor of Surgery 1985-1991
Director, Orthopaedic Trauma Conference 1980 - present
Professor of Surgery June 1991 - present
Clinical Professor, Western University of Health Sciences, PA Program 1998 - pr

Military: United States Navy, Capt., Medical Corps	
Flight Surgeon Training, NAS Medical Institute Pensacola, FL	1967-1968
Flight Surgeon, V.A. 225, Squadron A-6 Vietnam	1968-1969
Surgical Consultant Naval Hospital Danang, Vietnam German Hospital Ship, Helgoland Cherry Point Naval Hospital	1969-1970
Civilian Commendation German Red Cross	1969
Bronze Star - with combat "V" VIETNAM	1970
United States Navy,	1991
Recalled to Active Duty in support of Desert Storm. Assigned to 1 st Medical Battalion, 1 st FSSG in support of the 1 st Marine Division USMC Feb.- March, 1991. Resumed private practice in Las Vegas April 3, 1991 American Defense Ribbon (2 nd Award)	1991
United States Naval Reserve Operation Distant Runner, East Africa Orthopaedic surgeon, Alpha Co 4 th Med BN 4 th FSSG	1994 1993-1995
1 MACE Surgeon 4 MAW Surgeon 1AP 4 th Med BN FMF 1MACE Surgeon MCBCP	1995-1997 1 Nov 97-1 Sep 2000 1 Sep 2000-1Nov2001 2 Nov 2001-1Jan 2003
Recalled to active duty in support of Operation Iraqi Freedom Subject matter expert-far forward combat casualty care Senior Orthopaedic Consultant US Navy Forward Resuscitation Surgical System(FRSS TEAMS 1-6)	27JAN 2003 USNR-Mar95-Dec05 Jun 2002-Dec05
SURGEON GENERAL'S(US NAVY) RESERVE SPECIALTY LEADER-OPERATIONAL MEDICINE 1MACE SURGEON/MCBCP (CURRENT ASSIGNMENT)	Jun 03-Dec05 JUN-03 - Dec05
*Further military information by request	

Memberships:

American Medical Association (AMA)	1974 - present
Clark County Medical Society (CCMS)	1974 - present
American Board of Orthopaedic Surgery (ABOS)	1975 - present
American Academy of Orthopaedic Surgeons (AAOS)	1978 - present
Western Orthopaedic Association (WOA)	1979 - present
Nevada State Medical Association (NSMA)	1979 - present
American College of Surgeons (ACS)	1980 - present
Society of Military Orthopaedic Surgeons (SOMOS)	1993 - present
Nevada Orthopaedic Society	1998 - present

Appointments:**Active Staff - Las Vegas, Nevada Facilities:**

University Medical Center of Southern Nevada	1974 - present
Director Orthopaedic Surgical Services/UMC	1994 - Sep 2002
Director Pediatric and Adult Orthopaedic Clinics/UMC	1994-present

Courtesy Staff:

Desert Springs Hospital	1974 - 2005
Sunrise Hospital	1974 - 2005
Valley Hospital Medical Center	1974 - 2005
Lake Mead Hospital	1992 - 2005
Rehab Hospital	1993 - 2005

Emeritus Staff:

Desert Springs Hospital	2005
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Other:

Chairman Department of Orthopaedics	
University Medical Center, Las Vegas, NV	1984 - 2003
Consultant Air Force One	
(In case of personal injury to the President)	1989 - 1992
Consulting Team Physician	
University of Nevada, Las Vegas	1983 - 1990
Team Physician	
Las Vegas Americans Professional Soccer Team	1984 - 1986
Team Physician, Rodeo Team	
University of Nevada, Las Vegas	1986 - 1990
Associate Medical Director	
Professional Rodeo Cowboys Association	
National Finals Rodeo Las Vegas, Nevada	1985 - present
Founding Director Medical Advisory Board	
Nevada Donor Organ Referral Service	1985
Chief Proctor American Board of Orthopaedic Surgery	
Examination Las Vegas, NV	1986

Trustee Clark County Medical Society	2005
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Other Certifications:

Advanced Trauma Life Support	1993
Recertified	1997

Hospital Committees:

Quality Assurance	DSH	1979 - 1982
Surgery Committee	DSH	1979 - 1982
Executive Committee	DSH	1979 - 1982
Medical Care Evaluation Comm.	DSH	1979 - 1982
Division Heads Committee	DSH	1979 - 1982
Executive Committee	UMC	1982 - 2003
Surgery Committee	UMC	1984 - 1990
Medical Audit & Records Comm.	UMC	1984 - 2000
Quality Assurance	UMC	1986 - 2003
Medical Records Committee	UMC	1985 - 1989
Trauma Committee	UMC	1990 - 2003
Steering Committee	UMC	1995 - 2003

Community, County and State Level Committees:

Peer Review, Clark County Medical Society	1980 - 1985
Physician's State Review Organization	1980 - 1984
Medical/Legal Committee, Clark County	1980 - 1984
Nevada Physician's Review Organization	
Board of Directors	1984 - 1986
Consultant	1986 - 1995
State Rep. On Emergency Services Comm.	
AAOS Annual Meeting 1985	1984
Local Transportation Committee	
AAOS Annual Meeting 1985	1984
Regional Admissions Comm. #15 AAOS	1985 - 1991
Americare of Nevada	
Medical Advisory Committee	1986
Utilization Review	1986
Quality Assurance	1986
Health Insight (Physician PEER Review)	1995 - present
Clark County Medical - Legal Screening Panel	1996 - 2003

National Level Committees:

AAOS National Committee	1981
American Medical Political Action Comm.	1982
AAOS Exhibit Committee	1984
National Board of Medical Examiners	1986
AAOS Annual Meeting Press Relations Comm.	1989

International Level Activities:

Director: First Annual Cuban/North American Trauma Seminar, Havana, Cuba.	6/92
Orthopaedic Consultant to Hospital Ortopedico Docente "Frank Pais" Havana, Cuba.	1992 - present

Elected Hospital Positions:

Member at Large	DSH	1977 - 1978
Vice Chief of Staff	DSH	1979 - 1982
Chief of Orthopaedics	UMC	1982 - 2003
Vice Chief of Staff	UMC	1984 - 1986
Member at Large	UMC	1986 - 1988
Vice Chairman Trauma Department	UMC	2002-2003

Elected Positions: Nevada Chapter

Western Orthopaedic Association	Pres. Elect	1987 - 1988
Western Orthopaedic Association	President	1989 - 1990

Clinical Areas of Special Interest:

Management of Severe Trauma
 Indications and Usage of External Fixation
 Management of Pelvic Fractures
 Circular Ring Fixation (Ilizarov Method)
 Combat Casualty Care & Research
 Diagnostic and Operative Arthroscopy of the Knee

Allied Health Professional Responsibilities:

Advisor, Orthopaedic Nurses Association, SNC	1976 - 1979
On Site Evaluator, American Physical Therapy Association, University Division	1977 - 1985
Orthopaedic Consultant, U.S. Gymnast Association	1975
Advisor and Clinical Instructor Clark County EMT and Paramedic Training Clark County Community College	1975
Clinical Preceptor, Orthopaedic Surgery NAVHOS OPEN DETS19	1993 - 1995
Chairman, American Academy of Orthopaedics Surgeons "Update for Orthopaedic Physician Assistants" Las Vegas, NV	1995
Clinical Preceptor, Western University of Health Sciences	1999-present

Board of Directors and Executive Committee Experience:

Medical Advisory Board

Treasure Mountain Resort-Nov1966-may1967

Park City, Utah

Aircraft Accident Review Board

United States Navy

- | | |
|------------------------------------|-----------|
| 1. 2 nd Marine Air Wing | 1967-1968 |
| 2. 1 st Marine Air Wing | 1969 |
| 3. 2 nd Marine Air Wing | 1970 |

Executive Committee

Desert Springs Hospital

- | | |
|------------------------|-----------|
| 1. Member at Large | 1977-1979 |
| 2. Vice Chief of Staff | 1980-1982 |

Argon Research Corporation

Board Member	1979
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Executive Committee

University Medical Center of Southern Nevada

- | | |
|--|--------------|
| 1. Vice Chief of Staff | 1984-1986 |
| 2. Member at Large | 1986-1988 |
| 3. Orthopaedic Department Representative | 1984-present |

Nevada Physician's Review Organization

Board Member	1984-1986
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Founding Director

Nevada Organ Donor Referral Service	1985
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* National Level Meeting

** International Level Meeting

*** Published

Course or Lecture Presented:	Sponsored by:	Date:
Bone Tumors & Pathological Fractures	So. NV Tumor Board	1978
*Sprains, Strains & Common Athletic Injuries	AMA Winter Meeting	1978
*Role of the Orthopaedic Surgeon Team Approach	APTA	1978
The Unsolved Fracture of the Femoral Neck Conservative Surgical Approach	Univ. Utah Alumni	1978
*Post Operative Management of the Orthopaedic Patient	ONA	1978
*The Industrial Back Preventative Approach	APTA	1979
**Arthroscopic Meniscectomy	IAA	1979
*** Case Report		
*Basic Sciences	APTA	1979
*Immediate Treatment of Fractures	IEMSA	1979
Quality Assurance Inception to Implementation	DSH	1980
Arthroscopy of the Knee	Radiology Assoc.	1980
Rehabilitation of the Knee	NIC P.T. Dept.	1980
Obvious Fractures	SNMH Surgery Dept.	1980
Common Industrial Knee Injuries	So. NV Claims Assoc.	1981
*CT Scanning in Acetabular Fractures	WOA	1982
Trauma in Lower Extremities	JHC Rehab.	4/1982
External Fixation	Valley Hospital	6/1982
Orthopaedics	Univ. NV	10/1982
Orthopaedic Terminology	Medical Transcribers	11/1982
External Fixation	AORN	1/1983
Endoscopic Surgery of the Knee	ACS	1/1983
New Procedures in Orthopaedics	Rotary Club	3/1983
*What's New in Orthopaedics	Wayne State Univ.	4/1983
Orthopaedics	CCCC	4/1983
Arthroscopy	DSH	4/1983
*Management of Supracondylar Fractures of the Femur in the Multiply Traumatized Patient	WOA	5/1983
Spinal Considerations for the Modern Day Gymnast	U.S. Assoc. of Ind. Gym Clubs	8/1983
Care of the Orthopaedic Patient in the ICU	Crit. Care Nursing Course Las Vegas	10/1983
*Interlocking Nails of Lower Extremity	WOA	3/1984

Course or Lecture Presented:	Sponsored by:	Date:
*Pelvic Fracture Management	ATS	4/1984
Lower Extremity Trauma	APTA	4/1985
*Changing Face of Total Hip Arthroplasty	NAON - Snake River	4/1985
*Expanding the Horizons on Intramedullary Nails	NAON - Snake River	4/1985
Total Knee Arthroplasty - Cementless	Ortho Update Nursing	10/1985
*Rationale, Indications, Technique & Experience using the Gross-Kempf Tibial Interlocking Nail	Maricopa City. Medical Center	1/1986
*Rodeo Event Coverage - Medical - Legal Implications	Wrangler Sports Medical Seminar	6/1986
*Medical & Surgical Aspects of the Rodeo Sport Basic Fundamentals	Wrangler Sports Medical Seminar	6/1986
*Trauma to the Pelvis & Hip in the Child	Ann. Shrine Sc. Meeting	3/1997
Closed IM Nailing of Long Bone Fractures	AST	5/1987
Frostbite	NV Ortho. Soc.	4/1988
**1 st Annual Orthopaedic and Trauma Conference (Co-director)	Hospital Ortopedico Docente "Frank Pais" Havana, Cuba	6/1992
Refresher Training Ortho Surg Principles and Bio-Skills Workshop	Naval Reserve Center LV	7/1993
*Clinical Orthopaedics And Essential Bio-Skills FMF M. O. Course	Naval Aerospace and Operational Institute Pensacola, FL	7/1993
Voted Best Instructor FMF M. O. Course	Naval Aerospace and Operational Institute Pensacola, FL	7/1993
*Orthopaedic Aspects of Poly Trauma	Assoc. Of Surgical Technologists 25 th Annual Meeting	6/1994
*Current Concepts in Fracture Mgmt.	Rancho Bernardo San Diego, CA	1/14/95
*Treatment of Long Bone Fractures	AAOS Allied Health Las Vegas, NV	8/16/95
Orthopaedic Trauma	Loma Linda Univ. Loma Linda, CA	8/17/95

Course or Lecture Presented:	Sponsored by:	Date:
Anatomy Lab	Catapult Meetings	10/14/95
Management of Tibial Trauma	Cogmet MSU	5/8/96
	East Lansing, MI	
Treatment of Open Tibial Fractures	Biomet	9/96
Lower Extremity Trauma	Tampa, FL	
	JHC Rehab Center	9/12/96
	Las Vegas, NV	
Casualties of War/Historical Perspective	Trauma Update	10/11/96
	Oceanside, CA	
Gunfighters, Terrorists & Surgeons	Trauma Update	9/18/97
	Shock Trauma	
	Baltimore, MD	
Urban Warfare (Part II)	Winter Operational Medicine Symposium	2/11/00
	Point Loma, CA	
Urban Warfare Medical Aspects	AMSUS	11/09/00
Gunshot Wounds (Lab Proctor)	Las Vegas, NV	
	Trauma Update	11/11/00
	Las Vegas, NV	
Far Forward Orthopaedic Surgery	Camp Guadacanal, Kuwait	02/03
Upper Extremity Injuries	Camp Guadacanal, Kuwait	02/03
Lower Extremity Injuries	Camp Guadacanal, Kuwait	02/03
Pelvis Injuries	Camp Guadacanal, Kuwait	02/03
Far Forward Surgery/IRAQI WAR/OIF/03	Trauma Dept/UMC/LV, NV	08/03
Far Forward Surgery/Operation Iraqi Freedom	Grand Rounds/UMC/LV, NV	01/04
Far Forward Surgical Care Operation Iraq Freedom	Nevada Chapter American College of Surgeons	06/04
Operation Iraqi Freedom/Navy Medicine	UMC Ortho Trauma	2/10/05

Course or Lecture Presented:
Operation Iraqi Freedom 2003

Sponsored by:
UMC Medical Explorer Post 841

Date:
2/5/07

<u>CONTINUING EDUCATION</u>	Sponsored by:	Date:	CE:
Course or Lecture Attended :			
American Orthopaedic Society for Sports Medicine	AAOS	1978	
AAOS 45 TH Annual Meeting	AAOS	1978	
Amer Orthopaedic Soc. For Sports			
Medicine Lake Placid Meeting	AAOS/AOS	1978	
Operative Arthroscopy	UCLA	1978	
Arthroscopic Surgery of the Knee	SLC, UT Surg.Cen.	1978	
Utah Alumni Scientific Meeting	Shriners Hosp.	1979	
Advanced Operative Arthroscopy	IAA	1979	
International Seminar on Operative Arthroscopy	UCLA(ext)Hawaii	1979	
International Arthroscopy Assoc. Annual Meeting	IAA-Canada	1979	
AAOS 47 TH Meeting	AAOS Atlanta	1980	35
Amer.Orthopaedic Soc. For Sports Medicine	AAOS/AOS Atlanta	1980	12
Quality Assurance For Physicians	AHA	1980	10
Radiology Conference	DSH	1980	4
AMA Continuing Medical Education	SNMH	1980	2
2 ND International Seminar on Operative Arthroscopy	UCLA (ext)Hawaii	1980	38
Radiology Conference	DSH	1980	3
Tumor Board	DSHA	1980	2
AAOS 48 TH Meeting	AAOS-Las Vegas	2/81	35

<u>CONTINUING EDUCATION</u> Course or Lecture Attended	Sponsored by:	Date:	CE:
Integrating Hospital Quality Assurance	Interqual	1981	10
WOA 16 TH Annual Meeting	WOA-San Diego	1981	30
Radiology Conference	DSH	1981	6
Clinical Laboratory Test Concepts	DSH	6/81	1
Quality Assurance	DSH	1/82	15
Arthroscopic Surgery Of the Knee	SLC , UT Surg.Center	2/82	30
WOA 17 TH Annual Meeting	WOA -Palm Springs	4/82	13
External Fixation	UC Irvine	7/82	
Sports Medicine Seminar	Valley Hospital	11/82	1.5
Advanced Course in Operative Treatment of Fractures Nonunions	AO/ASIF Switzerland	12/82	36
Radiology Conference	DSH	1982	4
Nevada Chapter Meetings	ACS	1982	4
AAOS 50 TH Annual Meeting	AAOS - Anaheim	3/83	35
WOA 18 TH Annual Meeting	WOA	5/83	30
Current Techniques in External Fixation	Alpha Med Inc.	6/83	6
Anterior Cruciate Deficient Knee	AAOS-NY	8/83	19
Radiology Conference	DSH	1983	10
WOA 19 TH Annual Meeting	WOA - San Diego	3/84	30

Course or Lecture Attended :	Sponsored by:	Date :	CE:
Rationale and Techniques for implant Surgery	Depuy	5/84	8
Total Knee and Hip Arthroplasty "Hands On" Course	UC Irvine	10/84	20
Continuing Medical Education	SNMH	1984	20
Prosthetic Ligament Reconstruction of The Knee	UCLA (ext)	3/85	12
WOA 20 TH Annual Meeting	WOA -Arrowhead	5/85	30
Anterior Cruciate Ligament New Concepts	UC Irvine	10/85	10.5
AAOS 52 ND Annual Meeting	AAOS	1985	36
Continuing Medical Education	DSH	1985	2
Current Concepts & Techniques of the Gross -Kempf Intramedullary Locking Nail & the Hoffman Fixator	Maricopa Med. Center	1/86	6.5
AAOS 53 RD Annual Meeting	AAOS - New Orleans	1986	20
Hip & Knee Bioskills Workshop	Univ. UT MC	1/87	20.5
Arthroscopic Surgery 1987	Univ. UT Sc. Med.	2/87	21
Annual Shrine Scientific Meeting	Univ. UT Shrine	3/87	12
Orthopaedic Trauma Conference	UMC	1987	14
Orthopaedic Trauma Conference	UMC	1988	35

Course or Lecture Attended :	Sponsored by:	Date:	CE:
Nevada Orthopaedic Soc. Annual Out of Town Meeting	NV Ortho Soc.	4/88	12
Current Concept in Implant Fixation	Mt. Sinai MC	12/89	17
Orthopaedic Trauma Conference	UMC	1989	29
Essential Concepts & Methodology For Application of the Ilizarov Technique	Univ. Tenn .Sc.	6/90	33.5
The Lecco Experience : Ilizarov Methods	Ilizarov Method Course	4/91	37
Essential Concepts & Methodology for Application of the Ilizarov Technique	Univ. Arizona Sch. Of Med	11/91	20
7 th Annual Joint Replacement Symposium	Education Design	10/92	21
Management of Complex Fractures	Education Design	1/93	12
AAOS 60 TH Annual Meeting	AAOS San Fransico	2/93	30.5
Advanced Trauma Life Support	Amer. College Surg.	3/93	17
Management of Open Fractures	AAOS	5/93	8
Orthopaedic Residents Seminar	Univ. NE Med .Cen.	6/93	6
Fleet Marine Force Medical Officers Course	NAOMI, Pensacola,FL	7/93	78
Advanced Burn life Support	NAOMI, Pensacola ,FL	7/93	9
35 TH Annual Meeting ,SOMOS	Bethesda ,MD	12/93	6
Continuing Medical Education	Univ. Med .Center	6/93 & 12/93	4

Course or Lecture Attended	Sponsored by:	Date:	CE:
Curriculum Planning Conference FMF Med. Off. Ed.	Camp Lejeune, NC	1/94	0
Comprehensive Trauma Solutions	Phoenix, AZ	10/94	6
36 TH Annual Meeting Society of Military Orthopaedic Surgeons	SOMOS	11/94	10
AAOS 62 ND Annual Meeting	Orlando, FL	2/95	30
Continuing Medical Education	Univ. Med. Center	1/95-6/95	25
Continuing Medical Education	Univ. Med. Center	6/95-12/95	20
4 th Annual Management Of Complex Fractures Symposium	Education Design Vail, CO	1/96	12
AAOS 63 RD Annual Meeting	AAOS	2/96	30
Upper Extremity Surgeon Education Course	Orthofix -Indian Wells, CA	5/96	8
Trauma Update	Institute Medical Studies Dana Point, CA	6/96	5.5
Current Concepts in Fracture Management	Biomet, Inc Tampa, FL	9/96	12
37 th Annual Meeting Society Military Orthopaedic Surgeons	Univ. NV Sch. Med Oceanside, CA	10/96	7.75

Course or Lecture Attended	Sponsored by:	Date:	CE:
37 th Annual Meeting Society Military Orthopaedic Surgeons	Uniformed Services Univ. Health Sc.	11/96	13
Continuing Medical Education	University Medical Center	1996	46
11 th Annual Vail Orthopaedic Symposium	Education Design Vail, CO	1/97	13
Current Techniques in Upper & Lower Extremity Trauma	Columbia Univ. Snowbird, UT	3/97	7.5
Trauma Update	Education Design Baltimore, MD	1997	8.0
AAOS 64 th Annual Meeting	AAOS San Francisco, CA	2/97	29.5
Advanced Trauma Life Support	American College of Surgeons	4/97	5
Ortho Trauma	Univ. Medical Center	1997	21
Association of Military Surgeons of the US 105 th Annual Meeting	USUHS, San Antonio, TX	11/98	3
U.S Army Medical Command Special Operations Medical Conference	Tampa, Florida	12/98	8
Ortho Trauma	Univ. Medical Center	1998	17
Trauma Update	Vail, CO	1/99	15
Orthopaedic Trauma Conference	UMC/Las Vegas, NV	2&5/99	3
Live Interactive Surgical Form	Phoenix, AZ	3/99	6
Total Hip & Knee Arthroplasty	Phoenix, AZ	3/99	5
Management of Proximal Femur Fractures	Phoenix, AZ	3/99	5
Medical Ethics Conference	Univ. Medical Center	5/99	2
Cox-2 Inhibition	Univ. Texas SW Med Dallas, TX	6/99	1

Course or Lecture Attended :	Sponsored by:	Date:	CE:
Tenth International Zweymuller Symposium	Las Vegas , NV	5/00	
Orthopaedic Conference	UMC/Las Vegas NV	8/00	2
2000 Trauma Update	Las Vegas , NV	11/00	9
AMSUS	Las Vegas , NV	11/00	0
Ortho / Trauma Update	Steamboat Springs, CO	1/01	0
AAOS Annual Meeting	San Francisco , CA	2/01	25.5
Current Issues In Hip & Knee Reconstruction	Phoenix, AZ	4/02	8
A.B.L.S. Provider Course	Las Vegas , NV	8/02	7
Management Open Fractures / Current Concepts	AAOS-on line campus	6/03	4
Diabetic Foot(W0300006)	AAOS-on line campus	6/03	4
Ankle Injuries in Athletes (W0300010)	AAOS-on line campus	6/03	4
Proximal Humerus Fractures / Minimally Invasive Surgery vs Open Surgery (W0300008)	AAOS- on line campus	6/03	2
Treatment of Common Displaced and Unstable Hand Fractures	AAOS- on line campus	6/03	4
Management of Early Complications TKR	AAOS-on line campus	6/03	2
Surgeon General's (US NAVY) Leadership Conference (PRELIMINARY)	San Diego, CA	7/03	0
Physician Reporting , Patient Consent and Updates on Medical Practice Act	Clark County Medical Society	8/16/03	2
Medical Grand Rounds	UMC/Las Vegas , NV	01/04	1
AAOS Annual Meeting	San Francisco , CA	02/04	14

Course or Lecture Attended		Date:	CE:
Federation of Spine Associations 19 th Annual Specialty Day Meeting	San Francisco , CA	02/04	7.5
OTA/FRSS(USA/USAF EXHIBIT	San Francisco, CA	02/04	
Risk Management Update	Las Vegas , NV/VHMC	9/11/04	4
Medmal risk management seminar (NMIC)	Las Vegas, NV	04/05	2
AAOS Annual Meeting	Washington , DC	2/05	14
Medical Ethics	Las Vegas , NV	6/05	2
Expert Witness Tips & Insights	Las Vegas ,NV	10/05	5
AAOS Annual Meeting	Chicago, IL	03/06	8
Risk Management Update	Las Vegas, NV	03/06	0
Pediatric Forearm Fractures	OKO On Line	03/08	1
Definition and Classification of Pain	OKO On Line	03/08	1
Methods of Pain Management in Ortho	OKO OnLine	3/08	1
Medical Ethics 1012			
	AHC MEDIA ONLINE	4/08	1.5
Medical Ethics 1010	AHC MEDIA INLINE	4/08	1.5
Acromioclavicular Joints Injuries	OKO On Line	6/09	3
Minimally Invasive Lumbar Surgery	OKO On Line	6/09	3
Distal Radius Malunion	OKO On Line	6/09	4
Charcot Foot Osteoarthropathy	OKO On Line	6/09	2
Pediatric Tibial Shaft Fractures	OKO On Line	6/09	3

Course or Lecture Attended	OKO On Line	DATE	CE
Femoral Shaft Fractures	OKO On Line	6/09	4
Malignant Bone Tumors in Children	OKO On Line	6/09	3
Reconstruction for complications of Calcaneal fractures	OKO On Line	6/09	4
Myeloma	OKO On Line	6/09	1
Posterior Wall Acetabular Fractures Diagnosis, Treatment, Results	OKO On Line	6/09	3
Spondyloidid & Spondylolidthesis in Adolescents & Children	OKO On Line	6/11	3
Meniscal Tears	OKO On Line	7/11	2.5
Methods Of Pain Management	OKO On Line	7/11	2
Massive Rotator Cuff Tears: Current Concepts	OKO On Line	7/11	2
Carpal Tunnel Syndrome	OKO On Line	7/11	2
Mgmt Of Midfoot & Tarsometarsal Arthritis	OKO On Line	7/11	4
Drop- Foot	OKO On Line	7/11	3
Low Back Pain	OKO On Line	7/11	2.5
Clavicle Shaft Fractures	OKO On Line	7/11	2
Proximal Humerus Fractures	OKO On Line	7/11	2
Diagnosis & Mgmt of Internal shldr Impingement	OKO On Line	7/11	2

Course or Lecture Attended	UMC	DATE	CE
Pediatric Trauma Conference		8/11	4
Evaluation & Management of Acute Compartment Syndrome	OKO OnLine	6/12	2
Clinical & Surgical Approach To Benign Bone Tumors in Children	OKO OnLine	6/12	2
Minimally Invasive Lumbar Surgery	OKO OnLine	6/12	3
Malignant Bone Tumors in Children	OKO Online	6/12	3
Pain Medicine for the Non- Pain Specialist	Marco Island ,FL	3/14	15

		DATE	CE
Spine Ongoing CME			0
Navy National Trauma Conference	San Diego, CA	10/03	
Spinal Solutions - Global Perspective	Maui	01/04	14
Federation of Spine Associations 19 th Annual Specialty Day Meeting	San Francisco, CA	02/04	7.5
2005 Specialty Day AAOS Federation of Spine Associations	Washington, DC		7.5
2006 Specialty Day AAOS Federation of Spine Associations			6

Sponsored by:

Orthopaedic Knowledge Update/
American Academy of Orthopaedic
Surgeons 1-8/Section 6/Chapters 41
through 50

Section 7-Rehabilitation	1999 through 2005
Section 8-Pediatrics	1999 through 2007

Spine Review/Yearbook of Orthopaedics

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