

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

Jan 04 2018 01:29 p.m.

Eighth Jud. Dist. Ct.
Case No.: A-12-655992-C
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No.: 71789

RESPONDENT/APPELLANT'S REPLY APPENDIX ("RA")
Vol. 4; 4 RA 601-652

Brian D. Nettles, Esq. (7462)
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Attorneys for Respondent/Appellant
Yvonne O'Connell

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Plaintiff's Offer of Judgment to Defendant	September 3, 2015	1 RA 035- 1 RA 037
Plaintiff's Amended Verified Memorandum of Costs	December 21, 2015	1 RA 038- 1 RA 116
Order on Supplemental Briefing Relating to the Proposed Testimony of Dr. Dunn and Dr. Tingey	December 23, 2015	1 RA 117- 1 RA 119
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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	4 RA 636- 4 RA 652

DATED this 4th day of January, 2018.

NETTLES LAW FIRM

/s/ Christian M. Morris, Esq.
 Brian D. Nettles, Esq. (7462)
 Christian M. Morris, Esq. (11218)
 Edward J. Wynder, Esq. (13991)
Attorneys for Respondent/Appellant
Yvonne O'Connell

CERTIFICATE OF SERVICE

I certify that on the 4th day of January, 2018, I electronically filed **RESPONDENT/APPELLANT'S REPLY 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

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. 2nd Marine Air Wing

1967-1968

2. 1st Marine Air Wing

1969

3. 2nd 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

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

Founding Director

Nevada Organ Donor Referral Service

1985

* 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 Meniscoresis	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"	6/1992
Refresher Training	Havana, Cuba	
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 Switerland	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
Spondylolydis & Spondylolysis 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 & Tarsometatarsal 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		14
Spinal Solutions - Global Perspective	Maui	01/04		7.5
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			6
2006 Specialty Day AAOS Federation of Spine Associations				

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

UPDATED : 12/1/2014

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 ¼ 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 ¼ 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 ¼ 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



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-articular 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

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)

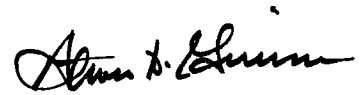
2000 – 2002

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

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 --

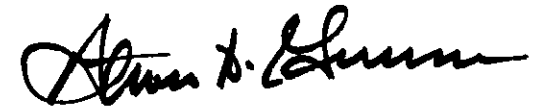
1 MR. SEMENZA: At the tentative?
2 THE COURT: No, at the -- of course they're not going to look at the
3 tentative --
4 MR. SEMENZA: Right.
5 THE COURT: -- because it's just tentative, but they're not going to read
6 the transcript initially --
7 MR. SEMENZA: Understood.
8 THE COURT: -- you know, so 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

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

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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

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

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.

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).

A. Legal Standards and Applicable Statutes

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

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