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| CASE NO: A755977 | TRIAL: February 12, 2018 |
| DEPT. NO. 14 | JUDGE: Honorable Adriana Escobar |
| | CLERK: Denise Husted |
| | RECORDER: Sandy Anderson |
| PLAINTIFF: Khiabani et al | |
| | |
| | COUNSEL FOR PLAINTIFF: Kemp / Christiansen |
| DEFENDANT: MCI; et al. | |
| | COUNSEL FOR DEFENDANT: Roberts / Barger |
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DEFENSE EXHIBITS*

| TX# | DOCUMENT DESCRIPTION | Bates | Date Offered | Objection | Date Admitted |
|------|---|---------------|--------------|-----------|---------------|
| | Robert Rucoba | | | | |
| 493. | Expert Job File: Rucoba | DISK | | | |
| 494. | Smith CV / Fee K / Testimony | | | | |
| 495. | Smith report | | | | |
| 496. | G388 Design drawings and product specifications | BELL 0384-411 | | | |
| 497. | Bicycle | Demonstrative | | | |
| 498. | Helmet | Demonstrative | | | |
| 499. | Bus engine module control data from subject bus | Demonstrative | | | |
| 500. | Bus brake data from subject bus | Demonstrative | | | |
| 501. | Exemplar - S-1 Guard <i>Box</i> | Demonstrative | 3/12/18 | No | 3/12/18 |
| 502. | Videotape of bus download | Demonstrative | | | |
| 503. | Photo | | 3/11/18 | No | 3/11/18 |
| 504. | Photo | | " | " | " |
| 505. | Photo | | " | " | " |
| 506. | Photo | | " | " | " |

M 501 A S-1 Guard 3/12/18
 B * Screws + Manual " " 3/12/18

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|------|--|-------------------------------|--------------|-----------|---------------|
| 507. | Photo | | 3/1/18 | No | 3/1/18 |
| 508. | Photo | | 3/2/18 | No | 3/2/18 |
| 509. | Photo | | " | " | " |
| 510. | Photo | | " | " | " |
| 511. | Photos from 511 ^{Admitted separately} | | | | |
| 512. | Photo | | 3/6/18 | No | 3/6/18 |
| 513. | Photo | | 3/6/18 | No | 3/6/18 |
| 514. | Photos (3) | 514.001 514.002 514.003 | 3/7/18 | No | 3/7/18 |
| 515. | Photo | | 3/12/18 | No | 3/12/18 |
| 516. | Photo | | ↓ | ↓ | ↓ |
| 517. | Photo | | ↓ | ↓ | ↓ |
| 518. | Photo | | ↓ | ↓ | ↓ |
| 519. | Photo | | ↓ | ↓ | ↓ |
| 520. | Photo | | ↓ | ↓ | ↓ |

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|----------------|----------------------|-------------|-------------------|---------------|-------------------|
| 511-2 | Photos from # 511 | | 3/5/18 | No | 3/5/18 |
| 511-3 | " | | " | " | " |
| 511-4 | " | | " | " | " |
| 511-5 | " | | " | " | " |
| 511-6 | " | | " | " | " |
| 511-7 | " | | " | " | " |
| 511-8 | " | | " | " | " |
| 511-9 | " | | " | " | " |
| 511-10 | " | | " | " | " |
| 511-11 | " | | " | " | " |
| 511-12 | " | | " | " | " |
| 511-13 | " | | " | " | " |
| 512 | Photo | | 3/6/18 | No | 3/6/18 |
| 513 | Photo | | 3/6/18 | No | 3/6/18 |
| | | | | | |

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|-----|----------------------|-------|--------------|-----------|---------------|
| 521 | Photo | | 3/12/18 | No | 3/12/18 |
| 522 | Photo | | | | |
| 523 | Photo | | | | |
| 524 | Photo | | | | |
| 525 | Photo | | | | |
| 526 | Photo | | | | |
| 527 | Photo | | | | |
| 528 | Photo | | | | |
| 529 | Photo | | | | |
| 530 | Photo | | | | |
| 531 | Photo | | | | |
| 532 | Photo | | | | |
| 533 | Photo | | | | |

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|-------|----------------------|-------|--------------|-----------|---------------|
| ✓ 534 | Photo | | 3/12/18 | No | 3/12/18 |
| ✓ 535 | Photo | | | | |
| ✓ 536 | Photo | | | | |
| ✓ 537 | Photo | | | | |
| ✓ 538 | Photo | | | | |
| ✓ 539 | Photo | | | | |
| ✓ 540 | Photo | | | | |
| ✓ 541 | Photo | | | | |
| ✓ 542 | Photo | | | | |
| ✓ 543 | Photo | | | | |
| ✓ 544 | Photo | | | | |
| ✓ 545 | Photo | | | | |
| ✓ 546 | Photo | | ✓ | ✓ | ✓ |

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|-----|----------------------|-------|--------------|-----------|---------------|
| 547 | Photo | | 3/12/18 | No | 3/12/18 |
| 548 | Photo | | | | |
| 549 | Photo | | | | |
| 550 | Photo | | | | |
| 551 | Photo | | | | |
| 552 | Photo | | | | |
| 553 | Photo | | | | |
| 554 | Photo | | | | |
| 555 | Photo | | | | |
| 556 | Photo | | | | |
| 557 | Photo | | | | |
| 558 | Photo | | | | |
| 559 | Photo | | ✓ | ✓ | ✓ |

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|-----|----------------------|-------|---------------------|-----------|---------------|
| 560 | Photo | | 3/12/18 | No | 3/12/18 |
| 561 | Photo | | | | |
| 562 | Photo | | | | |
| 563 | Photo | | | | |
| 564 | Photo | | | | |
| 565 | Photos- 4-61 | | | | |
| 566 | Photos- 4-71 | | | | |
| 567 | Thumb Drive | | Returned to Counsel | | |
| 568 | Photo- Int of Bus | | | | |
| 569 | Photo- " " " | | | | |
| 570 | Photo - Bus/Cycle | | | | |
| 571 | Photo - OPINIONS | | | | |
| 572 | Photo - ANGLE/TRAVEL | | | | |

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| 573 | CONCLUSIONS | | 3/19/18 | N/O | 3/19/18 |
| 574 | Bus Dimensions | | 3/19/18 | N/O | 3/19/18 |
| 575 | Stand. MCI QJ3 | | 3/19/18 | N/O | 3/19/18 |
| 576 | Thumb Drive (52, 69, 113, 119, 122, 135, 145, 137, 147) <i>Hand's already</i> | | 3/19/18 | N/O | 3/19/18 |
| 577 | EXRAY - Dr. Khiabani | | 3/15/18 | NO | 3/15/18 |
| 578 | DR. BANCOS OPINIONS | | 3/15/18 | OBJ | 3/15/18 |
| 579 | OPINIONS: DR. KRAUSS | | 3/19/18 | OBJ | 3/19/18 |
| 580 | PHOTO - BUS | | 3/19/18 | N/O | 3/19/18 |
| 581 | PHOTO - BUS w/ SEATS | | 3/19/18 | N/O | 3/19/18 |
| 582 | PLANTZ - EXHIBIT 12 | | 3/19/18 | N/O | 3/19/18 |
| 583 | EXHIBIT 17 - TO Depo - PLANTZ | | 3/19/18 | N/O | 3/19/18 |
| 584 | EXHIBIT 18 - TO Depo - PLANTZ | | 3/19/18 | N/O | 3/19/18 |
| 585 | PHOTO - BUS | | 3-20-18 | NO | 3-20-18 |
| 586 | PHOTO - BUS w/ SEATS | | 3-20-18 | NO | 3-20-18 |
| 587 | PHOTO - WINDOW / CAR | | 3-20-18 | NO | 3-20-18 |

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| 592. | Photo - Exponent Test and Engineering Center, Phoenix, AZ (1 pg) | DEMONSTRATIVE ONLY | 03/21/2018 | STIP | RETURNS |
| 593. | Summary of Work Performed and Summary of Opinions of Dr. M. Carhart (3 pgs) | 593 A. DEMONSTRATIVE 593 B. ADMITTED | 03/21/2018 RETURNS TO COUNSEL | | 3-21-18 593 B |
| ✓ 594. | Photo Right Front Side of Subject Coach and Photo of Scuff Mark on Right Front Side of Subject Coach (2 pgs) | | 03/21/2018 | | |
| ✓ 595. | 3 Photos of the Subject Bicycle (Handlebars) | | 03/21/2018 | | |
| ✓ 596. | 3 Photos of the Subject Bicycle (Body of Bicycle) | | 03/21/2018 | | |
| ✓ 597. | Diagram of Kayvan Khiabani's Injuries (1 pg) | | 03/21/2018 | | |
| ✓ 598. | 4 Photos of Kayvan Khiabani's Injuries | | 03/21/2018 | | |
| ✓ 599. | Kayvan Khiabani Head Injury Diagram (1 pg) | | 03/21/2018 | | |

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|-------|--|-------|--------------|-----------|---------------|
| 600. | 2 Autopsy photos of Kayvan Khiabani | | 03/21/2018 | STIP | 3-21-18 |
| 601. | Bicycle Riding Demonstrations - Instrumentation (1 pg) | | 03/21/2018 | | |
| 602. | Video - Motorcoach Passby THUMB DRIVE | | 03/21/2018 | | |
| 603. | Video - Bicyclist THUMB DRIVE Disturbance Wind Rider 2 | | 03/21/2018 | | |
| 604. | Video - Bicyclist THUMB DRIVE Disturbance Impulse Rider 2 THUMB DRIVE | | 03/21/2018 | | |
| 605. | Video - Turning Evaluation Combined THUMB DRIVE | | 03/21/2018 | | |
| 605 A | Video Still of Exhibit 605 | | 03/21/2018 | | |
| 605 B | Video Still of Exhibit 605 | | 03/21/2018 | | |
| 606. | Photos of Rider Next to Coach (t=0 sec, t=-1.2 sec) (5 pgs) | | 03/21/2018 | | |
| 607. | Inspection photographs of the subject helmet (9 pgs) | | 03/21/2018 | | |

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| 608. | Helmet CT Scans - X-ray Computed Tomography (CT) in Natick (1 pg) | | 03/21/2018 | STP | 3-21-18 |
| 609. | Video - 3D Exemplar Helmet THUMB DRIVE | | 03/21/2018 | | |
| 609 A | Video Still of Exhibit 609 | | 03/21/2018 | | |
| 610. | Video - Subject Helmet THUMB DRIVE | | 03/21/2018 | | |
| 610 A | Video Still of Exhibit 610 | | 03/21/2018 | | |
| 611. | Video - Subject and Exemplar Helmet Overlay T DRIVE | | 03/21/2018 | | |
| 611 A | Video Still of Exhibit 611 | | 03/21/2018 | | |
| 612. | Video - Subject and Exemplar Helmet Overlay (Lower View) THUMB DRIVE | | 03/21/2018 | | |
| 612 A | Video Still of Exhibit 612 | | 03/21/2018 | | |
| 613. | Graphic of Subject and Exemplar Helmet Overlay | | 03/21/2018 | ↓ | ↓ |

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|-------|--|--------------------|--------------|-----------|---------------|
| 614. | Box Containing Carhart Exemplar Helmet with Markings | DEMONSTRATIVE ONLY | 03/21/2018 | STIP | RETURNED |
| 614 A | Carhart Exemplar Helmet with Markings | DEMONSTRATIVE ONLY | 03/21/2018 | | RETURNED |
| 615. | Digital Exemplar with Markings (5 pgs) | | 03/21/2018 | | 3-21-18 |
| 616. | Helmet Alignment per Stalnaker (3 pgs) | DEMONSTRATIVE ONLY | 03/21/2018 | | RETURNED |
| 617. | Box Containing Carhart Sectioned Exemplar Helmet | DEMONSTRATIVE ONLY | 03/21/2018 | | RETURNED |
| 617 A | Carhart Sectioned Exemplar Helmet | DEMONSTRATIVE ONLY | 03/21/2018 | | RETURNED |
| 618. | Digital Liner Overlay (3 pgs) | | 03/21/2018 | | 3-21-18 |
| 619. | Digital Helmet Alignment with Pavement (6 pgs) | | 03/21/2018 | | |
| 620. | Video - Align Exemplar Helmet to Tire | DEMONSTRATIVE ONLY | 03/21/2018 | | RETURNED |
| 620 A | Video Still of Exhibit 620 | | 03/21/2018 | ↓ | 3-21-18 |

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| 621. | Video - Align Subject Helmet to Tire | <i>DEMONSTRATIVE ONLY</i> | 03/21/2018 | <i>STIP</i> | |
| <i>621 A</i> | Video Still of Exhibit 621 | | 03/21/2018 | | <i>3-21-18</i> |
| 622. | Video - Align Both (Exemplar and Subject Helmets) with Tire Rolling Forward | <i>DEMONSTRATIVE ONLY</i> | 03/21/2018 | | |
| <i>622 A</i> | Video Still of Exhibit 622 | | 03/21/2018 | | <i>3-21-18</i> |
| 623. | Helmet Interaction Filmstrip (10 pgs) | | 03/21/2018 | | |
| 624. | Carhart Inspection Photo Showing Dual Rear Wheels (2 pgs) | | 03/21/2018 | | |
| 625. | Loading Mechanism (10 pgs) | | 03/21/2018 | | |
| 626. | S-1 Gard Helmet Alignment (2 pgs) | | 03/21/2018 | | |
| 627. | S-1 Gard Installation Instructions with Diagram (3 pgs) | | 03/21/2018 | | |

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| 628. | Illustration of S-1 Gard Would Not Alter Helmet Overlap (4 pgs) | | 03/21/2018 | STIP | 3-21-18 |
| 629. | Stuntman Video Assessment STILL | | 03/21/2018 | | |
| 630. | Video - S-1 Gard Stuntman Video - Segment 3 - "Bicyclist hit. . ." THUMB DRIVE | | 03/21/2018 | | |
| 630 A | Video Still of Exhibit 630 | | 03/21/2018 | | |
| 631. | TCRP Report 215 - Guidebook for Mitigating Fixed-Route Bus-and-Pedestrian Collisions | | 03/21/2018 | | |
| 632. | Video - Exponet Sled Test with Helmet PURPLE THUMB DRIVE DEMONSTRATIVE | | 03/21/2018 | OBJ | RETURNED |
| 633. | Video - Exponet Sled Test without Helmet PURPLE THUMB DRIVE DEMONSTRATIVE | | 03/21/2018 | OBJ | RETURNED |
| 634. | S-1 Gards Hazards (Bolt) (4 pgs) DEMONSTRATIVE | | 03/21/2018 | OBJ | RETURNED |
| 635. | S-1 Gards Hazards (Entrapment) (6 pgs) DEMONSTRATIVE | | 03/21/2018 | OBJ | RETURNED |

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COURT'S EXHIBIT LIST

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Hearing / Trial Date: 2/12/18

Dept. No.: 14

Judge: Adriana Escobar

Court Clerk: Denise Husted

Plaintiff: Katayoun Barin

Recorder / Reporter: Sandra Anderson

Counsel for Plaintiff: W. Kemp, P. Christiansen, K. Works, E. Pepperman

vs.

Defendant: Motor Coach Industries

Counsel for Defendant: L. Roberts, D. Barger, M. Terry

TRIAL BEFORE THE COURT

COURT'S EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted |
|----------------|--|--------------|-----------|---------------|
| 1 | Note from juror #11-0830 | 2/23/18 | No | 2/23/18 |
| 2 | QUESTION FROM JUROR #11-830 | 2-26-18 | NO | 2-26-18 |
| 3 | " #11-926 | " | " | " |
| 4 | Question from Juror #11-0885 | 2/27/18 | No | 2/27/18 |
| 5 | Question from Juror #11-0830 | 2/28/18 | No | 2/28/18 |
| 6 | Question from Juror #11-1127 | 3/1/18 | No | 3/1/18 |
| 7 | Question from Juror #11-1229 | 3/1/18 | No | 3/1/18 |
| 8 | Question from Juror #11-1127 | 3/1/18 | No | 3/1/18 |
| 9 | Question from Juror #11-1127 (Not asked) | 3/1/18 | No | 3/1/18 |
| 10 | M. TERRY'S Opening Pictures | 3/2/18 | No | 3/2/18 |
| 11 | Plaintiff's Power Point-Opening | 3/2/18 | No | 3/2/18 |
| 12 | Question from Juror 11-1229 | 3/2/18 | No | 3/2/18 |
| 13 | Question from Juror 11-1229 | 3/2/18 | No | 3/2/18 |
| 14 | Question from Juror 11-0830 | 3/2/18 | No | 3/2/18 |
| 15 | Question from Juror 11-1229 | 3/2/18 | No | 3/2/18 |
| 16 | Question from Juror 11-1047 | 3/2/18 | No | 3/2/18 |
| 17 | Question from Juror 11-0926 | 3/2/18 | No | 3/2/18 |

COURT'S EXHIBIT LIST

Case No: A 755 977

Barin

VS.

MCI

Courts

EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted |
|----------------|------------------------------------|--------------|-----------|---------------|
| 18 | Question from Juror 11-1047 | 3/2/18 | No | 3/2/18 |
| 19 | Question from Juror 11-0937 | 3/2/18 | No | 3/2/18 |
| 20 | Question from Juror 11-0937 | 3/2/18 | No | 3/2/18 |
| 21 | Power Point (Christiansen) | 3/5/18 | No | 3/5/18 |
| 22 | Question from Juror 11-0830 | 3/6/18 | No | 3/6/18 |
| 23 | Question from Juror 11-0802 | 3/6/18 | No | 3/6/18 |
| 24 | Question from Juror 11-0830 | 3/7/18 | No | 3/7/18 |
| 25 | Question from Juror 11-0853 | 3/7/18 | No | 3/7/18 |
| 26 | Question from Juror 11-0937 | 3/7/18 | No | 3/7/18 |
| 27 | Euro Cyclist Analysis | 3/12/18 | No | 3/12/18 |
| 28 | Question from Juror 11-1229 | 3/13/18 | No | 3/13/18 |
| 29 | Question from Juror 11-0830 | 3/13/18 | No | 3/13/18 |
| 30 | JURY View Admonition | 3/13/18 | No | 3/13/18 |
| 31 | Question from Juror 11-0830 | 3/14/18 | No | 3/14/18 |
| 32 | Question from Juror - Not asked | 3/14/18 | No | 3/14/18 |
| 33 | Question from Juror - 11-0926 | 3/15/18 | No | 3/15/18 |
| 34 | Question from 11-1127 | 3/15/18 | No | 3/15/18 |
| 35 | Smith Economics Group Ltd. 1-20-16 | 3-16-18 | No | 3/16/18 |
| 36 | QUESTION BY JUROR #11-0830 | 3-21-18 | No | 3-21-18 |
| 37 | QUESTION BY JUROR #11-1127 | 3-21-18 | No | 3-21-18 |
| 38 | QUESTION BY JUROR #11-1229 | 3-21-18 | No | 3-21-18 |
| 39 | QUESTION BY JUROR #11-1127 | 3-21-18 | No | 3-21-18 |
| 40 | QUESTION BY JUROR #11-1127 | 3-21-18 | No | 3-21-18 |



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

DANIEL F. POLSENBERG, ESQ.
3993 HOWARD HUGHES PKWY., STE 600
LAS VEGAS, NV 89169

DATE: April 29, 2019
CASE: A-17-755977-C

RE CASE: KEON KHIABANI; ARIA KHIABANI; MARIA-CLAUDE RIGAUD; SIAMAK BARIN;
ESTATE OF KAYVAN KHIABANI, M.D.; ESTATE OF KATAYOUN BARIN, DDS vs. MOTOR
COACH INDUSTRIES, INC.; MICHELANGELO LEASING, INC. D/B/A RYAN'S ESPRESSO;
EDWARD HUBBARD; BELLS SPORTS, INC., D/B/A GIRO SPORT DESIGN; SEVENPLUS
BICYCLES, INC., D/B/A PRO CYCLERY

NOTICE OF APPEAL FILED: April 24, 2019

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☐ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☐ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☒ Notice of Entry of Order (*for Order filed 03/26/2019*)

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.**

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; JUDGMENT; NOTICE OF ENTRY OF JUDGMENT; FINDINGS OF FACT AND CONCLUSIONS OF LAW ON DEFENDANT'S MOTION TO RETAX; NOTICE OF ENTRY OF "FINDINGS OF FACT AND CONCLUSIONS OF LAW ON DEFENDANT'S MOTION TO RETAX"; COMBINE ORDER (1) DENYING MOTION FOR JUDGMENT AS A MATTER OF LAW AND (2) DENYING MOTION FOR LIMITED NEW TRIAL; NOTICE OF ENTRY OF COMBINE ORDER (1) DENYING MOTION FOR JUDGMENT AS A MATTER OF LAW AND (2) DENYING MOTION FOR LIMITED NEW TRIAL; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

KEON KHIABANI; ARIA KHIABANI;
MARIA-CLAUDE RIGAUD; SIAMAK
BARIN; ESTATE OF KAYVAN KHIABANI,
M.D.; ESTATE OF KATAYOUN BARIN,
DDS,

Plaintiff(s),

vs.

MOTOR COACH INDUSTRIES, INC.;
MICHELANGELO LEASING, INC. D/B/A
RYAN'S EXPRESS; EDWARD HUBBARD;
BELLS SPORTS, INC., D/B/A GIRO SPORT
DESIGN; SEVENPLUS BICYCLES, INC.,
D/B/A PRO CYCLERY,

Defendant(s),

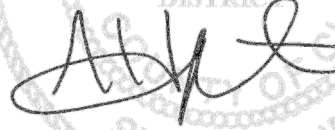
Case No: A-17-755977-C

Dept No: XIV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 29 day of April 2019.

Steven D. Grierson, Clerk of the Court

A handwritten signature in black ink, appearing to read 'A. Hampton', is written over a faint, circular court seal. The seal contains the text 'UNITED STATES DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT LAS VEGAS, NEVADA'.

Amanda Hampton, Deputy Clerk
A-17-755977-C

CHECK NO: 192594

| REF # | INVOICE # | DATE | DESCRIPTION | AMOUNT PAID |
|--------|-----------|----------|---------------------------|-------------|
| 786439 | 042519 | 04-25-19 | 131111-00002 - Filing Fee | 250.00 |

| |
|------------|
| CHECK DATE |
| 04/25/19 |

Phoenix Op Acct #3317939274

Lewis Roca
ROTHGERBER CHRISTIE

201 E Washington Street-Suite 1200
Phoenix, Arizona 85004-2595
Telephone (602) 262-5311

CHECK NO: 192594

WELLS FARGO
Main Office
Phoenix, Arizona


91-527/1221

| |
|---------------------|
| CHECK AMOUNT |
| \$250.00 |

TWO HUNDRED FIFTY AND 00/100 Dollars

**PAY
TO THE
ORDER OF**

Clerk of the Supreme Court of Nevada
201 South Carson Street, Suite 250
Carson City, NV 89701



PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|-----------|---|--------------|----------|---------------|
| 21 | 2008 Tour Bus manufactured by Motor Coach Industries, Inc., VIN 2M93JMH428W064555. Artifact | 2/26/18 | No | 2/26/18 |
| 22 | Bicycle. Artifact | 2/26/18 | No | 2/26/18 |
| 23 | Helmet. Artifact <i>Helmet bag</i> | 2/26/18 | No | 2/26/18 |
| 24 | Bus engine module control data from subject bus. Artifact <i>1 Disc</i> | 2/26/18 | No | 2/26/18 |
| 25 | Bus brake data from subject bus. Artifact <i>Marked 24-25</i> | 2/26/18 | No | 2/26/18 |
| 26 | 06/28/17 - Videotape of bus download | | | |
| 27 | Photographs of subject Bicycle and Miscellaneous taken by Kemp, Jones and Coulthard. P00287-P00352 | 2/26/18 | No | 2/26/18 |
| 28 | Photographs of subject Helmet taken by Kemp, Jones and Coulthard. P00353-P00382 | 2/26/18 | No | 2/26/18 |
| 29 | 6/1/16 - Safety Corner Article "Still Blaming Bus-Pedestrian contact on A-Pillar/Mirror Design? P00383-P00390 | | | |
| 30 | Brochure -Motor Coach Industries - MCI J4500. P00391-P00397 | 2/26/18 | No | 2/26/18 |
| 31 | 7/00/15 - July 2015 MCI Operators Manual 03-26-1035B. P00398-P00520 | | | |
| 32 | Video entitled "Mass Transmit-Stuntman." P00521 | 2/28/18 | Yes | 2/28/18 |
| 33 | Video entitled "Terrifying moment baby's buggy blown onto Tube tracks." P00522 | | | |

HA 23 A Helmet 2/26/18 No 2/26/18

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|-----------|---|--------------|----------|---------------|
| 34 | Video entitled "CNN Headline News." P00523 | | | |
| 35 | Video entitled "Fox News - New York." P00524 | | | |
| 36 | Video entitled "NY DOT." P00525 | | | |
| 37 | Video entitled "S-1 Gard Barrier." P00526 | | | |
| 38 | Video entitled "Plastic Surgery." P00527 | | | |
| 39 | Video entitled "Washington, D.C. - People Catchers." P00528 | | | |
| 40 | Video entitled "Sweden ABC." P00529 | | | |
| 41 | Video entitled "Cycle Eye Alerts Bus Driver." P00530 | | | |
| 42 | Video entitled "Volvo Cyclist Detection with Full Auto Brake." P00531 | | | |
| 43 | Brochure Volvo 9700. P00532-P00543 | | | |
| 44 | 12/2/08 - New Flyer letter from Brad Ellis to Ken Lutkus re Integrity of Chassis and Suspension with S-1 Gard Installed. P00544 | 3-7-18 | no | 3-7-18 |
| 45 | 1/8/08 - Letter from Tom Barrio to Ken Lutkus re S-1 Gard's Montebello Bus Lines. P00545-P00546 | | | |
| 46 | 06/20/07 - Memo from Frederick Goodline, Safety and Risk Management re S1-Gard. P00547 | | | |
| 47 | 11/21/06 - Memo from Daniel Holter, GM of Rochester City Lines re S-1 Guard. P00548 | | | |
| 48 | 6/21/11 - Nevada Bicycle Coalition - Promoting Safe Bicycling in Nevada | | | |

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|------------------|---|---------------------|-----------------|----------------------|
| | – "Three Foot Passing rule becomes law in Nevada." P00549-P00554 | | | |
| 49 | 5/18/17 - Nevada Bicycle and Pedestrian Advisory Board – Announcing meeting date of May 18, 2017. P00555-P00556 | | | |
| 50 | Nevada Department of Motor Vehicle – SWAP – Safe Walking and Pedaling - Bicycles Share the Road, Rules for Motorists, Rules for Cyclists, etc. P00557 | | | |
| 51 | 03/16/11 - Senate Bill No. 248-Senators Parks, Lee; Breeden, Copening, Denis, Horsford, Kihuen, Leslie, Manendo, Schneider and Wiener. P00558-P00560 | | | |
| 52 | 11/5/15 - Article "Many buses have built-in blind spots that make driving them dangerous." P00561-P00571 | | | |
| 53 | AB328 Information. P00572-P00573 | | | |
| 54 | 3/21/11 - Assembly Bill No. 328. P00574-P00585 | | | |
| 55 | 4/5/11 - Assembly Committee on Transportation Minutes. P00586-P00610 | | | |
| 56 | 4/12/11 - Assembly Committee on Transportation Minutes. P00611-P00619 | | | |
| 57 | Pages from Journal of Assembly AB328. P00620-P00638 | | | |
| 58 | 5/5/11 - Senate Committee on Transportation Minutes. P00639-P00678 | | | |
| 59 | 5/19/11 - Senate Committee on Transportation Minutes. P00679-P00681 | | | |

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|-----------|---|--------------|----------|---------------|
| 60 | Video - Simple Bus in Wind Tunnel Simulation (previously produced). P00682 | | | |
| 61 | Video - Duluth Barge Heading out (previously produced). P00683 | | | |
| 62 | Exemplar - S-1 Gard. Artifact <i>Box 45</i> | 3/12/18 | No | 3/12/18 |
| 63 | Photo of Volvo - Right side door (previously produced). P00684 | | | |
| 64 | 6/9/17 - Photos from front right bench of subject bus (previously produced). P00685 (1-4) | 2/26/18 | No | 2/26/18 |
| 65 | 6/9/17 - Photos of front left bench of subject bus (previously produced). P00686 | 2/26/18 | No | 2/26/18 |
| 66 | 6/9/17 - Miscellaneous photos of subject bus (previously produced). P00687 (1-5) | 2/26/18 | No | 2/26/18 |
| 67 | 2010-2016 - U.S. Individual Income Tax Returns for Kayvan Taghipour-Khiabani and Katayoun Barin from 2010 through 2016. P00688-P01184 | | | |
| 68 | 4/19/17 - Clark County Coroner/Medical Examiner's records. P01185-P01197 | | | |
| 69 | 4/18/17 - American Medical Response Billing and Medical Records. P01198-P01215 | | | |
| 70 | 8/9/17 - Inspection photographs taken August 9, 2017 by Robert Caldwell. P01216 (1-180) | 2/26/18 | No | 2/26/18 |
| 71 | 8/9/17 - Inspection photographs and videos taken August 9, 2017 by Joshua Cohen. P01217 (1-127) | | | |

AS 62 A - GARD - Piece 1 3/12/18 No 3/12/18
AS 62 B - GARD - Piece 2 " " " 6
AS 62 C - Bag of Bolts " " " "

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|-----------|---|--------------|----------|---------------|
| 72 | Three-D Bus diagrams of subject bus by Joshua Cohen. P01218 (1-2) | 2/26/18 | No | 2/26/18 |
| 73 | Clark County Coroner/Medical Examiner's Autopsy Photographs (1-76), Scene Photographs (1-99) and X-rays (1-18). P01219 | | | |
| 74 | Clark County Coroner's Records (toxicology). P01220-P01259 | | | |
| 75 | Clark County Fire Department Medical records. P01260-P01263 | 3/14/18 | No | 3/14/18 |
| 76 | University Medical Center Medical and Billing Records. P01264-P01301 | | | |
| 77 | 5/3/17 - Final Check stub for Kayvan Khiabani from University Medical Center for pay period ending April 30, 2017. P01302 | | | |
| 78 | Thermo Fisher Scientific Inc. document production. KHIABANI_TMO_Sub000001-Sub000016 | | | |
| 79 | 7/19/17 - FoundationOne Report for Katayoun Barin. K-BARIN00001-K-BARIN00038 | | | |
| 80 | 10/31/95 - United States Patent No. 5,462,324 Safety Guard. P01303-P01315 | | | |
| 81 | S-1 Gard Dangerzone Deflector Brochure. P01316-P01321 | | | |
| 82 | 06/00/01 - Journal of the National Academy of Forensic Engineers - Article entitled "The Causal Factor of Bus Wheel Injuries and a Remedial Method for Prevention of These Accidents - by James M. Green. P01322-P01326 | | | |
| 83 | 2011-2016 - W-2 Wage and Tax Statements for 2011-2016 for Kayvan Khiabani and Katy Barin. P01327-P01342 | | | |

hr 81 A Redacted S-1 Brochure 3/8/18 No 3/8/18
 7

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|-----------|--|--------------|----------|---------------|
| 84 | 2000 - 2000 Mercedes Operator's Manual. P01343-P01763 | | | |
| 85 | 2004 - 2004 Mercedes Operator's Manual. P01764-P02197 | | | |
| 86 | 4/23/17 - Receipt for Celebration of Life for Kayvan Khiabani. P02198-P02199 | 3/12/18 | No | 3/12/18 |
| 87 | 4/30/17 - Air Canada Flight Receipt in the amount of \$2,094.57. P02200-P02204 | 3/12/18 | No | 3/12/18 |
| 88 | 4/28/17 - Air Canada Flight Receipt in the amount of \$855.92. P02205-P02208 | 3/12/18 | No | 3/12/18 |
| 89 | 4/25/17 - Receipt from Montreal Gazette - Notice of Posting Obituary in the amount of \$862.08. P02209 | 3/12/18 | No | 3/12/18 |
| 90 | 4/25/17 - Air Canada Flight Receipt in the amount of \$2,736.00. P02219 (a-e) | 3/12/18 | No | 3/12/18 |
| 91 | 50-1 Detail Map of accident site, intersection and vicinity. P02219 (a-e) | 2/26/18 | No | 2/26/18 |
| 92 | Comprehensive Cancer Center medical records for Katy Barin. K-BARIN00039-K-BARIN00157 | | | |
| 93 | Driver's License of Katayoun Barin. K-BARIN00158-K-BARIN00159 | | | |
| 94 | Driver's License of Kayvan Khiabani. P02220 | | | |
| 95 | 4/26/17 - The Mount Royal Cemetery Receipt in the amount of \$7,939.02. P02221 | 3/12/18 | No | 3/12/18 |
| 96 | 07/20/17 - Mount Royal Commemorative Services Receipt in the | 3/12/18 | No | 3/12/18 |

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|-----------|---|--------------|----------|---------------|
| | amount of \$5,173.88. P02222-P02224 | | | |
| 97 | 07/20/17 - Mount Royal Commemorate Services Receipt - Monument Inscription in the amount of \$2,926.11. P02225-P02227 | 3/12/18 | No | 3/12/18 |
| 98 | 12/15/98 - Marriage Certificate of Kayvan Taghipour-Khiabani and Katayoun Barin. P02228 | 2/26/18 | No | 2/26/18 |
| 99 | 02/02/01 - Birth Certificate of Aria Khiabani. P02229 | 2/26/18 | No | 2/26/18 |
| 100 | 05/08/03 - Birth Certificate of Keon Khiabani. P02230 | 2/26/18 | No | 2/26/18 |
| 101 | 4/22/17 - Palm Mortuary Contract-Statement of Funeral Good and Services Selected/Purchase Agreement. P02231-P02234 | 3/12/18 | No | 3/12/18 |
| 102 | 4/24/17 - Single Cash Receipt from Palm Southwest Mortuary in the amount of \$11,645.57. P02235 | 3/12/18 | No | 3/12/18 |
| 103 | 5/9/17 - Single Cash Receipt from Palm Southwest Mortuary in the amount of \$372.90. P02236 | 3/12/18 | No | 3/12/18 |
| 104 | 5/25/17 - Single Cash Receipt from Palm Southwest Mortuary in the amount of \$297.69. P02237 | 3/12/18 | No | 3/12/18 |
| 105 | 8/30/17 - State of New York DMV - License System for Edward Hubbard. P02238-P02243 | | | |
| 106 | 04/18/17 - Clark County Incident Detail Report-Incident No. 041817-7115073. P02244-P02246 | | | |
| 107 | 04/18/17 - Clark County 911 Audio tape. P02247 | | | |
| 108 | 04/18/17 - State of Nevada Department of Motor Vehicle - Records | | | |

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|-----------|---|--------------|----------|---------------|
| | Division – Edward Hubbard. P02248-P02249 | | | |
| 109 | 04/18/17 - Billing records from University Medical Center for Kayvan Khiabani. P02250-P02251 | 3/12/18 | No | 3/12/18 |
| 110 | 7/25/12 - Article "World Premiere of the New Setra Comfort Class 500. P02252-P02270 | | | |
| 111 | SAE Technical Paper Series – A Field Evaluation of the S-1 Pedestrian Gard: Transit and Shuttle Bus Applications. P02271-P02275 | | | |
| 112 | 9/20/17 - Photo Stills from Red Rock Surveillance Video (28.jpg, 29.jpg, 30.jpg, 31.jpg, 32.jpg, 33.jpg, 34.jpg and 35.jpg). P02276 | | | |
| 113 | 9/17/17 - Las Vegas Metropolitan Police Department Photographs (159) | 2/26/18 | No | 2/26/18 |
| 114 | 8/9/17 - Inspection photographs (210) taken August 9, 2017 by Tom Flanagan. P02277 | 2/26/18 | No | 2/26/18 |
| 115 | AT&T Cell Phone and Land Line records for Edward Hubbard (previously produced). ATT00001-ATT01218 | | | |
| 116 | 6/17/17 - Ghost Bike Photographs (258). P02278 | | | |
| 117 | Kayvan Khiabani Funeral video. P02279 | | | |
| 118 | Photo of Headstone of Kayvan Khiabani and Katy Barin. P02280 | 2/26/18 | No | 2/26/18 |
| 119 | Family Photos of the Khiabani Family. P02281 | | | |
| 120 | Memo from North American Bus Industries, Inc. – "NABI has not been informed thru our warranty group of any structural damage due to impact of S1 guard." Also the S1 attaches to the NABI structure without | | | |

117 A > b1sc
 117 B - PROVIDED TO CLEK 3/23/18
 10
 2/7/18
 2/6/18 NO
 2/7/18
 2/7/18

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|-----------|---|--------------|----------|---------------------|
| | any effect on the bus frame structure." Signed by Ronnie O'Byrne. P02282 | | | |
| 121 | 11/21/06 - Letter from Holter of Rochester City Lines regarding S-1 Gard performance in snow and ice. P02283 | | | |
| 122 | Article "Prevention of Accidents Caused by Rotating Transit Bus Wheels by James M. Green, P.E., DEE. P02284-P02292 | | | |
| 123 | 2008 - TCRP Report 125 - Transit Cooperative Research Program-Guidebook for Mitigating Fixed-Route Bus-and-Pedestrian Collisions. P02293-P02368 | | | |
| 124 | S-1 Guard - Important Installation Instructions for Dangerzone Deflector and Maintenance of the S-1 Gard Dangerzone Deflector. P02369-P02373 | 3/12/18 | No | 3/12/18 |
| 125 | Brochure "Setra presents new US coach in Florida." P02374-P02376 | | | |
| 126 | 8/00/93 - MCI Engineering Test Report - Wind Tunnel (produced by Defendant MCI). MCI 039853-MCI 039950 | 2/23/18 | Stip. | Admitted 2/23/18 |
| 127 | 4/00/13 - Bendix Blindspotter Installation Guide (produced by Defendant MCI). MCI 002964-MCI 002992 | | | |
| 128 | 9/20/07 - Certificate of Origin for a Vehicle - MCI J4500 2008 and Agreement to Purchase between MCI and Ryan's Holdings, Inc. (produced by Defendant MCI). MCI 000001-MCI 000042 | | | |
| 129 | File Folder of Claude Sonny Hildreth (produced by Defendant MCI). Hildreth-000001-Hildreth-000201 | | | |
| 130 | Witness statement of Michael Plantz (produced by Defendant MCI). | | | |

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|-----------|--|--------------|----------|---------------|
| | PLANTZ-00001-PLANTZ-00004 | | | |
| 131 | Witness Statement of Robert Pears (produced by Defendant MCI). PEARs-000001-PEARs-000003 | | | |
| 132 | 8/25/16 - Email from Brad Lamothe to Larry Garstick re Blind Spot Detection System (produced by Defendant MCI). MCI 003022-MCI 003025 | | | |
| 133 | 6/8/17 - Email from Justin Miller re Blindspotter Installation Guide (produced by Defendant MCI). MCI 002963 | | | |
| 134 | A D R Systems Documents (produced by Defendant MCI). MCI 39554-MCI 39578 | | | |
| 135 | 2006 - MCI J4500/E4500 Operator's Manual (produced by Defendant MCI). MCI 000043-MCI 000202 | 2/26/18 | No | 2/26/18 |
| 136 | 8/20/98 - MCI - Daily Test Notes (produced by Defendant MCI). MCI 002960 | | | |
| 137 | 9/8/98 - MCI - Daily Test Notes (produced by Defendant MCI). MCI 002961-MCI 002962 | | | |
| 138 | 1985 - Article The Effect of Front Edge Rounding and Rear Edge Shaping on the Aerodynamic Drag of Bluff Vehicles in Ground Proximity. Kevin R. Cooper. P02377-P02412 | 3/5/18 | yes | 3/5/18 |
| 139 | 1981 - Aerodynamic Effects to a Bicycle Caused by a Passing Vehicle - Y. Kato. P02413-P02419 | 3/9/18 | No | 3/9/18 |
| 140 | 5/10/17 - Letter from Katy Barin to UMC re death of husband, Kayvan Khiabani, M.D. P02420-P02422 | | | |

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|------------------|---|---------------------|-----------------|----------------------|
| 141 | 5/3/17 - Letter from Dr. John Fildes, M.D./University Medical Center to Katy Barin. P02423 | | | |
| 142 | Demonstrative Slide of MCI Bus and Tesla Semi-Truck (Joshua Cohen and Robert Breidenthal). P02424-P02427 | | | |
| 143 | Article "Anheuser-Busch Orders 40 of Tesla's All Electric Trucks. P02428 | | | |
| 144 | Photo of Tesla Rating. P02429 | | | |
| 145 | 8/00/17 - Consumer Reports -Blind-Spot Warning. P02430-P02432 | | | |
| 146 | Cars: Collision Avoidance Safety Features Chart (from Tom Flanagan Expert file). P02433-P02436 | | | |
| 147 | Traffic Collision Report involving Jose Parada. P02437-P02441 | | | |
| 148 | US Department of Transportation - Quick Facts 2016. P02442-P02447 | | | |
| 149 | US Department of Transportation "Traffic Safety Facts 2015 Data - Bicyclists and Other Cyclists." P02448-P02456 | | | |
| 150 | 2017 - Autocar - First for Car News and Reviews - 2017 Volvo buses to gain pedestrian and cyclist detection tech. P02457-P02459 | | | |
| 151 | Fatality Analysis Report System (FARS) Encyclopedia. P02460-P02461 | | | |
| 152 | 2015 - Pedestrian & Bicycle Information Center "Pedestrian and Bicyclist Crash Statistics." P02462-P02467 | | | |
| 153 | List of Cyclist deaths in U.S. by year. P02468-P02469 | | | |

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|------------------|---|---------------------|-----------------|----------------------|
| 154 | 2005 - Pedestrian Detection in Transit Bus Application: Sensing Technologies and Safety Solutions – Fanping Bu - Conference Paper, July 2005. P02470-P02475 | | | |
| 155 | 6/4/07 - Press Release – Model Overview: 2008 Volvo S80. P02476-P02477 | | | |
| 156 | 6/4/07 - Video – Model Overview: 2008 Volvo S80. P02476A | | | |
| 157 | 2001 - Eaton Vorad Collision Warning System EVT-300 with Smartcruise: The System. P02478 | | | |
| 158 | 2007 - Bus & Motorcoach News, September 15, 2007 –Eliminate Dangerous Blind Spots with Voyager, the #1 Name in Bus Vision Safety. P02479 | | | |
| 159 | Billing and Medical Records of Katy Barin from Jennifer Baynosa, M.D. K-BARIN00160-K-BARIN00212 | | | |
| 160 | Photographs of CAT Irisbus Civis (2). P02480-P02481 | | | |
| 161 | MERITOR WABCO Onside Blind Spot Detection (produced by Defendant MCI). MCI 035108-MCI 035124 | | | |
| 162 | 12/1/15 - Security and Safety Article "New Collision avoidance technology for buses increases pedestrian, cyclist safety." P02482-P02486 | | | |
| 163 | 4/17/07 - United State Patent No: 7,206,678 B2. Motor Vehicle with a Pre-safe-System. Assignee: Daimler Chrysler AG. P02487-P02496 | | | |
| 164 | 3/27/14 - National Highway Traffic Safety Administration – New Manufacturers Handbook – Requirements for Manufacturers of Motor | | | |

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|-----------|---|--------------|----------|---------------|
| | Vehicles and Motor Vehicle Equipment. P02497-P02500 | | | |
| 165 | 10/18/16 - National Highway Traffic Safety Administration - New Manufacturers Handbook - Requirements for Manufacturers of Motor Vehicles and Motor Vehicle Equipment. P02501-P02520 | | | |
| 166 | 2001 - Eaton VORAD Collision Warning System - EVT-300 Technical Highlights. P02521-P02522 | | | |
| 167 | 8/9/17 - New Flyer 2017 Second Quarter Report. P02523-P02564 | | | |
| 168 | 10/1/17 - New Flyer 2017 Third Quarter Report. P02565-P02582 | | | |
| 169 | 8/22/17 - Co-Letters Testamentary in re <i>The Matter of the Estate of Kayvan Toghipour Khiabani</i> , Case No. P-17-091906-E. P02583-P02585 | 2/26/18 | No | 2/26/18 |
| 170 | 10/6/17 - Order Granting Ex Parte Petition for Appointment of Special Administrator, for Issuance of Letters of Special Administration, and Authority to Retain Counsel and Pursue Wrongful Death Action in re <i>The Matter of the Estate of Katayoun Katy Barin</i> , Case No. P-17-093373-E. P02586-P02588 | | | |
| 171 | 10/26/17 - Application for Custody of Minor Children, Parental Authority and Safeguard Order in re Katayoun (Katy) Barin and Babak Barin and Marie-Claude Rigaud, Case No. 2:17-cv-02674-RFB-CWH. P02589-P02595 | | | |
| 172 | 10/10/17 - Judgment for Custody of Minor Children, Parental Authority and Safeguard Order in re Katayoun (Katy) Barin and Babak Barin and Marie-Claude Rigaud, Case No. 2:17-cv-02674-RFB-CWH. P02596-P02597 | | | |
| 173 | 10/24/17 - Judgment for Custody of Minor Children, Parental Authority | | | |

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|------------------|--|---------------------|-----------------|----------------------|
| | and Safeguard Order in re Katayoun (Katy) Barin and Babak Barin and Marie-Claude Rigaud, Case No. 2:17-cv-02674-RFB-CWH. P02598-P02599 | | | |
| 174 | 11/1/17 - Letter from Steven Kalas, M.Th. of Character Way Counseling, Coaching & Consulting. P02600-P02600 | | | |
| 175 | 9/20/17 - Letter from Steven Day, PhD to D. Lee Roberts, Esq. re Survival in Stage IV Colon Cancer (Katayoun Barin) | | | |
| 176 | Video of Alexander LaRiviere riding a Penny Farthing bike. P02601 | | | |
| 177 | Article "A bus to Meet all Needs -The New Setra S531 DT of the TopClass 500 - Daimler ad. P02602-P02605 | | | |
| 178 | Brochure - Setra - The Upgraded Top Class S 417TC. P02606-P02625 | | | |
| 179 | 1/15/18 - 2018 MCI J4500- Bus & Motorcoach News. P02626 | | | |
| 180 | 1/2008 - Article "Pain Assessment and Management in Disorders of Consciousness". Current Opinions in Neurology. Schnaekers and Zasler. P02627-P02634 | | | |
| 181 | 9/2012 - Article "What about Pain in Disorders of Consciousness? The AAPs Journal, Vol. 14, No. 3. P02635-P02641 | | | |
| 182 | 1/17/18 - Trucks.Com - New Flyer Partners with L.A. Transit to Test Crash Avoidance Technology. P02642-P02647 | | | |
| 183 | 2012 - New Flyer Industries, Inc. 2012 Annual Report. P02648-P2711 | | | |
| 184 | 2013 - New Flyer Industries, Inc. 2013 Annual Report. P02712-P02784 | | | |

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|-----------|--|--------------|----------|---------------|
| 185 | 2014 - New Flyer Industries, Inc. 2014 Annual Report. P02785-P02853 | | | |
| 186 | 2017 - Katy Barin's Funeral Expenses in Las Vegas, Nevada in the amount of \$29,521.84. P02854-P02862 | | | |
| 187 | 2017 - Katy Barin's Funeral Expenses in Montreal, Canada in the amount of \$32,562.82. P02863-P02880 | | | |
| 188 | 2017 - Additional Travel and Funeral Costs for Kayvan Khiabani. P02881-P02887 | 3/12/18 | No | 3/12/18 |
| 189 | Fadi Braiteh, M.D. medical records for Katy Barin (produced by defendants). CCCN-00009-CCCN-00015, CCCN-00023-CCCN-00035, U - 00033-U - 00039 | | | |
| 190 | 6/20/17 - Stoberski Helmet Photos (produced by Defendant Bell). BELL000259-BELL000299 | | | |
| 191 | 7/18/17 - JCU Photos - Accident, location, helmet, bicycle and gear. (produced by Defendant Bell). BELL000300-BELL000352 | | | |
| 192 | 9/13/17 - Photographs taken by David Thom of Collision Dynamics on September 13, 2017 at the Helmet Inspection by Bell Sports. DRT_05527 - DRT_05633 | | | |
| 193 | 11/3/17 - Hand Drawing of Robert Breidenthal (Ex. 3) | 3/9/18 | No | 3/9/18 |
| 194 | 10/9/17 - Handwritten calculations of James Green (Ex. No. 7) | | | |
| 195 | Defendant's Expert Granat Vehicle Dimensions for MCI J4500 Coach ((4 pages produced with expert job file) | 2/26/18 | No | 2/26/18 |

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|-----------|---|--------------|----------|---------------|
| 196 | Claude "Sonny" Hildreth Privilege log. | | | |
| 197 | 7/2005 - Eaton VORAD Installation Guide VOIG-0035. P02888-P02917 | 3/2/18 | Obj | |
| 198 | 10/15/07 - Bus & Motorcoach News - "Findings the Answers...BCI Falcon 45." P02918-P02937 | 3/2/18 | Obj | 3/2/18 |
| 199 | 9/2009 - Motor Coach Industries Organizational Chart (produced by Defendant MCI). MCI 003556-MCI 003558 | | | |
| 200 | 1/2006 - Motor Coach Industries Organizational Chart (produced by Defendant MCI). MCI 003535-MCI 003555 | | | |
| 201 | Bicycle Accident Reconstruction for the Forensic Engineer by James Green, P.E. - Chapter 31 - The Causal Factor of Bus Wheel Injuries and a Remedial method for Prevention of These Accidents (Ex. 7) | 3/5/18 | Obj | 3/5/18 |
| 202 | 2015 - Motor Coach Industries 2015 Annual Report | | | |
| 203 | Motor Coach Industries 2016 Annual Report | | | |
| 204 | Video of Katy Barin's Funeral | | | |
| 205 | Reports, any and all Supplemental Reports, and any reliance documents of Alexander LaRiviere. SEE EXPERT LARIVIERE RELIANCE MATERIALS CD | | | |
| 205 | Certificate of Calibrations (4) (produced with Alex LaRiviere job file). SEE EXPERT EXPERT LARIVIERE RELIANCE MATERIALS CD | | | |
| 205 | Photographs taken by Alexander LaRiviere testing on exemplar Scott Racing bicycle (Expert Report of Alexander LaRiviere dated December 8, | | | |

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|------------------|---|---------------------|-----------------|----------------------|
| | 2017). SEE EXPERT EXPERT LARIVIERE RELIANCE MATERIALS CD | | | |
| 205 | 1/9/18 - Video and photographs taken of testing performed by Alexander Lariviere regarding Handlebar Leverage Testing of subject bike. SEE EXPERT EXPERT LARIVIERE RELIANCE MATERIALS CD | | | |
| 205 | Photographs taken by Alex Lariviere (197) (produced with Alex Lariviere job file) | | | |
| 206 | Reports, any and all Supplemental Reports, and any reliance documents of Robert Caldwell (previously produced by Plaintiffs). SEE EXPERT CALDWELL RELIANCE MATERIALS CD | | | |
| 206 | 10/16/17 - Slides prepared for Robert Caldwell (9) by Fat Pencil Studio (produced with expert job file). SEE EXPERT CALDWELL RELIANCE MATERIALS CD | | | |
| 206 | Robert Caldwell attachments to Report: Attachment 2 Aerial photo of the location of the event. Attachment 3. Contact mark located on the right side of the MCI bus. Attachment 4. 2017 Scott Solace 10 Disc post-accident photograph. Attachment 5. Southbound S Pavilion Center Drive. Attachment 6. Ponderosa scene scan. Attachment 7. Scene Investigation photo. Attachment 8. Ponderosa evidence diagram. Attachment 9. Red Rock Casino Resort & Spa security video screen shot. Attachment 10 – Graphic by Fat Pencil Studio (produced with expert job file). SEE EXPERT CALDWELL RELIANCE MATERIALS CD | | | |
| 206 | Robert Caldwell files: Aerial Photos, Drawings (with measurements), Cell Phone Video clips, Field Notes, Photo Modeler, Scan data, measurements of Scott Solace Bike, Security Video stills. (produced with expert job file). SEE EXPERT CALDWELL RELIANCE MATERIALS CD | | | |

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|------------------|---|---------------------|-----------------|----------------------|
| 206 | Demonstrative Power Point Presentation prepared by Robert J. Caldwell, P.E. SEE EXPERT CALDWELL RELIANCE MATERIALS CD | | | |
| 207 | Reports, any and all Supplemental Reports, and any reliance documents of Joshua Cohen (previously produced by Plaintiffs). SEE EXPERT COHEN RELIANCE MATERIALS CD | | | |
| 207 & 210 | Demonstrative proximity sensor slides prepared by Joshua Cohen for Tom Flanagan (16 jpg and 10 pdf). SEE EXPERT COHEN RELIANCE MATERIALS CD | | | |
| 207 | Demonstrative slides from Joshua Cohen Report of October 6, 2017 - Exhibit 1a, 1b, Exhibit 6, Exhibit 7a, Exhibit 7b, Exhibit 7c, Exhibit 7d, Exhibit 8a, Exhibit 8b, Exhibit 9a, Exhibit 9b, Exhibit 10a, Exhibit 10b, Exhibit 11, Exhibit 12A, Exhibit 12b, Exhibit 13a, b, c, d, e, Exhibit 14a, b, c, d, e, f, Exhibit 15a and b, Exhibit 16 a, b, c, Exhibit 17, Exhibit 18a, b, c, Exhibit 19, Exhibit 20. Additional slides, Lane change photos, stills from Red Rock Hotel Surveillance video, detailed map. SEE EXPERT COHEN RELIANCE MATERIALS CD | | | |
| 207 | Side by Side video of Red Rock Surveillance video and Sacarias accident video (produced with expert job file of Joshua Cohen. SEE EXPERT COHEN RELIANCE MATERIALS CD | | | |
| 208 | Reports, any and all Supplemental Reports, and any reliance documents of Brian Sherlock, Safety Specialist. SEE EXPERT SHERLOCK RELIANCE MATERIALS CD | | | |
| 208 | Demonstrative slides of Brian Sherlock Report of October 6, 2017 - Figure 1-10 (produced with expert Brian Sherlock job file). SEE EXPERT SHERLOCK RELIANCE MATERIALS CD | | | |

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|------------------|--|---------------------|-----------------|----------------------|
| 208 | Transit Bus Interior Air Quality – Respiratory Health Impacts on Passengers and Operators Power Point (produced with expert Brian Sherlock job file). SEE EXPERT SHERLOCK RELIANCE MATERIALS CD | | | |
| 208 | Transit Bus Structure and Operator Vision Power Point (produced with expert Brian Sherlock job file). SEE EXPERT SHERLOCK RELIANCE MATERIALS CD | | | |
| 208 | Rhode Island Accident file (produced with expert Brian Sherlock job file). SEE EXPERT SHERLOCK RELIANCE MATERIALS CD | | | |
| 209 | Reports, any and all Supplemental Reports, and any reliance documents of Jay Rosenthal, CCM. SEE EXPERT ROSENTHAL RELIANCE MATERIALS CD | | | |
| 209 | 10/2017 – Local Climatological Data Hourly Observations Phoenix Deer Valley Municipal Airport, AZ US 03184 (produced with expert Jay Rosenthal report). SEE EXPERT ROSENTHAL RELIANCE MATERIALS CD | | | |
| 210 | Reports, any and all Supplemental Reports, and any reliance documents of Tom Flanagan, BSME. SEE EXPERT FLANAGAN RELIANCE MATERIALS CD | | | |
| 210 | Proximity Sensor Charts and Backup (produced with expert Tom Flanagan job file). SEE EXPERT FLANAGAN RELIANCE MATERIALS CD | | | |
| 210 | Proximity Sensor Information (1992-2017) (produced with expert Tom Flanagan job file). SEE EXPERT FLANAGAN RELIANCE MATERIALS CD | | | |
| 211 | Reports, any and all Supplemental Reports, and any reliance documents of Larry Stokes, Ph.D (previously produced by Plaintiffs). SEE EXPERT STOKES RELIANCE MATERIALS | | | |

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|-----------|----------------------------|--------------|----------|---------------|
| 218 | Photo - Accident Scene | 2/23/18 | No | 2/23/18 |
| 219 | Photo - Accident Scene | 2/23/18 | No | 2/23/18 |
| 220 | Photo - RR 1 | 2/26/18 | No | 2/26/18 |
| 221 | Photo - RR 2 | " | " | " |
| 222 | Photo - RR 3 | " | " | " |
| 223 | Photo - RR 4 | " | " | " |
| 224 | Photo - RR 5 | " | " | " |
| 225 | Photo | " | " | " |
| 226 | Photo - Manual Speed Aval. | " | " | " |
| 216 A | Photo - From 216 Slide | " | " | " |
| 216 B | Photo - | 2/27/18 | No | 2/27/18 |
| 227 | Photo - Bus | 2/28/18 | No | 2/28/18 |
| 228 | Photo - Bus | 2/28/18 | No | 2/28/18 |
| 229 | Photo - Bus | 2/28/18 | No | 2/28/18 |
| 230 | Photo | 3/1/18 | " | 3/1/18 |
| 231 | Photo | " | " | " |
| 232 | Photo | " | " | " |

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|-----------|---------------------------------------|-------------------|---------------|-------------------|
| 233 | Photo | 3/1/18 | No | 3/1/18 |
| 234 | Photo | " | " | " |
| 235 | Photo | " | " | " |
| 236 | Photo | " | " | " |
| 237 | Photo | " | " | " |
| 208 A | Not Provided | | | |
| 208 B | " | | | |
| 208 C | " | | | |
| 238 | Photo - Bus No exhibit 238 | 3/5/18 | No | 3/5/18 |
| 239 | Photo - Bus | 3/5/18 | No | 3/5/18 |
| 240 | Photo | 3/5/18 | No | 3/5/18 |
| 241 | Photo | 3/5/18 | No | 3/5/18 |
| 242 | Photo | 3/5/18 | No | 3/5/18 |
| 243 | Photo | 3/5/18 | No | 3/5/18 |
| 244 | Photo | 3/5/18 | No | 3/5/18 |
| 245 | Photo | 3/5/18 | Yes | 3/5/18 |
| 246 | Photo | 3/6/18 | No | 3/6/18 |

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|-----------|---|--------------|----------|---------------|
| 212 | Reports, any and all Supplemental Reports, and any reliance documents of Jack Hubbard, PhD, M.D. (previously produced by Plaintiffs). CD | | | |
| 213 | Reports, any and all Supplemental Reports, and any reliance documents of Robert Edward Breidenthal, Jr. (previously produced by Plaintiffs). CD | | | |
| 214 | Reports, any and all Supplemental Reports, and any reliance documents of Robert J. Cuntz, Ph.D (previously produced by Plaintiffs). CD | | | |
| 215 | Reports, any and all Supplemental Reports, and any reliance documents of James Green, P.E. (previously produced by Plaintiffs). CD | | | |
| 216 | Reports, any and all Supplemental Reports, and any reliance documents of Richard Stalnaker, Ph.D (previously produced by Plaintiffs). CD | | | |
| 217 | MCI Engineering Drawings & Documents. MCI-003794-MCI004381 | | | |

218 Photo - Accident Scene 2/23/18 No 2/23/18
 219 Photo - Accident Scene 2/23/18 No 2/23/18
 220 Photo RR1 2/26/18 2/26/18
 221 Photo RR2 TRANSFERRED to page 23 2/26/18 2/26/18
 222 Photo RR3 2/26/18 2/26/18
 223 Photo RR4 2/26/18 2/26/18
 224 Photo RR5 2/26/18 2/26/18
 225 Photo 2/26/18 2/26/18
 226 Photo MCI Speed Analysis 2/26/18 2/26/18
 216 A - Photo (from slide) 2/26/18 2/26/18

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|-----------|-----------------------------|--------------|----------------------|---------------|
| 247 | Photo | 3/6/18 | No | 3/6/18 |
| 248 | Photo Upper Torso | " | " | " |
| 249 | Photo Withdrawn | " | Withdrawn | — |
| 250 | Photo | " | " | " |
| 251 | Photo | " | " | " |
| 252 | Photo | " | " | " |
| 253 | Photo | " | " | " |
| 254 | Photo | " | " | " |
| 255 | Illustration Photo | 3/6/18 | " | 3/6/18 |
| 256 | Illustration Photo | 3/6/18 | " | 3/6/18 |
| 257 | Photo - Helmet Tire Pattern | 3/6/18 | " | 3/6/18 |
| 258 | Photo - Illustration | 3/6/18 | " | 3/6/18 |
| 259 | Thumb Drive | | | |
| 259A | Photo - Barin Family | 3/9/18 | No | 3/9/18 |
| 259B | " | " | " | " |
| 259C | " | " | " | " |
| 259D | " | " | " | " |

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

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|-----------|--------------------------------|--------------|----------|---------------|
| 259 E | Photo - Barrio Family | 3/9/18 | No | 3/9/18 |
| 259 F | " " | " | " | " |
| 260 | Deirion Summary | 3/9/18 | yes | 3/9/18 |
| 259 G | Photo - Family | 3/12/18 | No | 3/12/18 |
| 259 H | " " | | | |
| 259 I | " " | | | |
| 259 J | " " | | | |
| 259 K | " " | | | |
| 259 L | " " | | | |
| 259 M | " " | | | |
| 259 N | " " | | | |
| 259 O | " " | | | |
| 259 P | " " | ✓ | ✓ | ✓ |
| 261 | Med + Funeral Exp. | 3/12/18 | No | 3/12/18 |
| 262 | Kateral Force Measurement Doc. | " | | |
| 263 | Local Climatological Data 10/7 | 3/16/18 | Stip | 3/16/18 |
| 264 | Local Climatological Data 10/8 | 3/16/18 | Stip | 3/16/18 |

| | |
|----------------------------------|---|
| CASE NO: A755977 | TRIAL: February 12, 2018 |
| DEPT. NO. 14 | JUDGE : Honorable Adriana Escobar |
| | CLERK : Denise Husted |
| | RECORDER : Sandy Anderson |
| PLAINTIFF: Khiabani et al | |
| | |
| | COUNSEL FOR PLAINTIFF: Kemp / Christiansen |
| DEFENDANT: MCI; et al. | |
| | COUNSEL FOR DEFENDANT: Roberts / Barger |
| | |

DEFENSE EXHIBITS*

ALL NOT ADMITTED EXHIBITS RETURNED

| TX# | DOCUMENT DESCRIPTION | Bates | Date Offered | Objection | Date Admitted |
|------|--|---------------------------------|--------------|-----------|---------------|
| D# | | TX - PG-PG | | | |
| | | | | | |
| 401. | LVMPD report | LVMPD 13-92 | | | |
| 402. | LVMPD Photos | LVMPD 93 - DISK | | | |
| 403. | Photos taken by Salisbury | SALISBURY 1-5 | | | |
| 404. | Dispatch Incident Report | MICH 0205-MICH00206); P2244-47. | | | |
| 405. | 50-1 Detail Map of accident site, intersection and vicinity | P 2219 (a-e) | | | |
| 406. | Photo Stills from Red Rock Surveillance video | P2276 | | | |
| 407. | Red Rock Casinos c/o Station Casinos response to Subpoena Duces Tecum, | RRC 1-2 + DISK | | | |
| 408. | Videotape from Red Rock Casino | P 0051 - DISK | | | |
| 409. | Photographs of subject bicycle and Misc. taken by KJC | P 0287-352 | | | |
| 410. | Photographs of subject Helmet taken by KJC | P 0353-382 | | | |

* Defendants reserve the right to supplement this list prior to trial. Defendants do not represent that they *will* use any of said exhibits at trial, only that they may. In addition, Defendants reserve the right to use any document identified in the exhibit list of any other party. Exhibits included on the list may become admissible if a proper foundation is laid for admissibility at trial. The presence of a document on this exhibit list does not constitute an admission that a document is admissible.

| | |
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| CASE NO: A755977 | TRIAL: February 12, 2018 |
| DEPT. NO. 14 | JUDGE : Honorable Adriana Escobar |
| | CLERK : Denise Husted |
| | RECORDER : Sandy Anderson |
| PLAINTIFF: Khiabani et al | |
| | |
| | COUNSEL FOR PLAINTIFF: Kemp / Christiansen |
| DEFENDANT: MCI; et al. | |
| | COUNSEL FOR DEFENDANT: Roberts / Barger |
| | |

DEFENSE EXHIBITS*

| TX# | DOCUMENT DESCRIPTION | Bates | Date Offered | Objection | Date Admitted |
|------|--|----------------------------------|--------------|-----------|---------------|
| 411. | Ughetta photos - accident location, helmet, bicycle and gear | BELL 0300-352 | | | |
| 412. | Stoberski Bus Inspection Photos | BELL 0799-838 | | | |
| 413. | Thirteen color photographs of the bus and accident scene | MICH 0192-MICH00204 | | | |
| 414. | Photos from front right bench of subject bus | P 0685 (1-4) | | | |
| 415. | Photos of front left bench of subject bus | P 0686 | | | |
| 416. | Clark County Coroner response to Subpoena Duces Tecum, | CCC 1-58 + DISK | | | |
| 417. | Clark County Fire Department response to Subpoena Duces Tecum, | CCFD 1-6; P 1260-1263. | | | |
| 418. | AMR billing and records | P 1198-1215; AMR 1-11 | | | |
| 419. | UMC billing and medical records | P 1264-1301; P2250-51; UMC 1-144 | | | |
| 420. | Certificate of Death | P 0001 | | | |
| 421. | Bus Download by Rimkus Consulting | DISK | | | |
| 422. | Trimble Report | MICH 0207-MICH00212 | | | |

412A Photo bus 3/7/18 No 3/7/18 ✓

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| | COUNSEL FOR DEFENDANT: Roberts / Barger |
| | |

DEFENSE EXHIBITS*

| TX# | DOCUMENT DESCRIPTION | Bates | Date Offered | Objection | Date Admitted |
|------|--|--------------------------------------|--------------|-----------|---------------|
| 423. | Silverado Stages NV Work Ticket | MICH 1230 | | | |
| 424. | Title | MCI 0001. | | | |
| 425. | Final Vehicle Record | MCI 0002-3 | | | |
| 426. | Agreement to Purchase | MCI 0004-10 | | | |
| 427. | Coach Specification, J08-FT-3, | MCI 0013-15. | | | |
| 428. | Final Vehicle Record | MCI 0030-31. | | | |
| 429. | Customer Order Option Report, | MCI 0032-38. | | | |
| 430. | Coach Delivery Record, | MCI 0039. | | | |
| 431. | Driver Pickup Sheet, | MCI 0040. | | | |
| 432. | Physical Inspection Form, | MCI 0041-42. | | | |
| 433. | Operators Manual for MCI 2008 J4500, | MCI 0043-202. | | | |
| 434. | Parts Manual for MCI 2008 J4500, | MCI 0203-1770 - DISK | | | |
| 435. | Maintenance Manual for MCI 2008 J4500, | MCI 1771-2955 - DISK | | | |
| 436. | Materials disclosed via RSPN to RfP | MCI 2956-35107 and the excel sheet - | | | |

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| | |
|----------------------------------|---|
| CASE NO: A755977 | TRIAL: February 12, 2018 |
| DEPT. NO. 14 | JUDGE : Honorable Adriana Escobar |
| | CLERK : Denise Husted |
| | RECORDER : Sandy Anderson |
| PLAINTIFF: Khiabani et al | |
| | |
| | COUNSEL FOR PLAINTIFF: Kemp / Christiansen |
| DEFENDANT: MCI; et al. | |
| | COUNSEL FOR DEFENDANT: Roberts / Barger |
| | |

DEFENSE EXHIBITS*

| TX# | DOCUMENT DESCRIPTION | Bates | Date Offered | Objection | Date Admitted |
|------|---|---------------------|--------------|-----------|---------------|
| | | MCI 333333 - DISK | | | |
| 437. | MCI Daily Test Notes | MCI 2960 | | | |
| 438. | MCI Daily Test Notes | MCI 2962 | | | |
| 439. | No Records from TPC | TPC 1 | | | |
| 440. | ATT Cell Phone and Land Line Records for E. Hubbard | ATT 1-1218 | | | |
| 441. | Michael Angelo Leasing's Incident File | MICH 0025-43 | | | |
| 442. | Classroom Learning Curriculum | MICH 0222-MICH00288 | | | |
| 443. | Driver Training and Employee New Hire Training | MICH 0289-MICH00367 | | | |
| 444. | Ergonomics Analysis Program | MICH 0368-MICH00375 | | | |
| 445. | Michelangelo Grounds Up Training-Driver without CDL | MICH 0376-MICH00532 | | | |
| 446. | Safety Policies and Procedures | MICH 0533-MICH00573 | | | |
| 447. | Safety Posters - Ex K to RFP | MICH 0574-588 | | | |
| 448. | Training Videos | MICH 0589-MICH00612 | | | |
| 449. | Operator Development Program | MICH 0613- | | | |

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DEFENSE EXHIBITS*

| TX# | DOCUMENT DESCRIPTION | Bates | Date Offered | Objection | Date Admitted |
|------|---|------------------------------|--------------|-----------|---------------|
| | | MICH00809 | | | |
| 450. | Personnel File for Edward Hubbard | MICH 0810-MICH00931 | | | |
| 451. | Michelangelo Employee Handbook | MICH 0932-MICH01023 | | | |
| 452. | Safety Articles | MICH 1199-1228 | | | |
| 453. | DEPO EX - Hubbard, Edward - Photo - EX 05 | | | | |
| 454. | DEPO EX - Hubbard, Edward - Photo - EX 06 | | | | |
| 455. | DEPO EX - Hubbard, Edward - Photo - EX 07 | | | | |
| 456. | Letter from Barin to UMC re death of husband | P 2420-2422 | | | |
| 457. | Ltr from Fildes / UMC to Barin | P 2423 | | | |
| 458. | Response from M. Barron to Subpoena DT | | | | |
| 459. | DEPO EX - Gavin - Coroner's file, EXHIBIT-00001 | | | | |
| 460. | DEPO EX - Hoogestraat, Virgil - Hand drawn diagram, EXHIBIT-00005 | | | | |
| 461. | Kayvan Khiabani cell phone records for April 2017 | Supboena DT Response pending | | | |

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| DEFENDANT: MCI; et al. | |
| | COUNSEL FOR DEFENDANT: Roberts / Barger |
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DEFENSE EXHIBITS*

| TX# | DOCUMENT DESCRIPTION | Bates | Date Offered | Objection | Date Admitted |
|--------|--|--------------------------|--------------|-----------|---------------|
| ✓ 462. | DEPO EX - Kolch, Samantha, Copy of Photograph, EX 01 | | 2/27/18 | No | 2/27/18 |
| 463. | DEPO EX - Nguyen - Declaration | | | | |
| 464. | DEPO EX - Pears - picture of bicycle - EXHIBIT-00007 | | | | |
| 465. | DEPO EX - Sacarias, Luis Fernando Pina, Exhibit 1, Drawing | | | | |
| 466. | DEPO EX - Sacarias, Luis Fernando Pina, Exhibit 2, Drawing | | | | |
| 467. | DEPO EX - Salisbury, Diagram, EXHIBIT-00021 | | | | |
| 468. | DEPO EX - Salisbury, Flashdrive, EXHIBIT-00022 | DISK | | | |
| 469. | DEPO EX - Wesson, Robert - G388 Labels, drawings, BOMs, EXHIBIT-00007 | | | | |
| 470. | Expert Report dated October 16, 2017 of Michael Baden, MD | | | | |
| 471. | Inspection photographs taken 08/09/17 by Robert Caldwell | P 1216 (1-180) - DISK | | | |
| 472. | Expert Report dated October 13, 2017 of Michael Carhart, PhD | | | | |
| 473. | Curriculum Vitae, List of Testimony and Fee Schedule of Michael Carhart, PhD | | | | |

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| PLAINTIFF: Khiabani et al | |
| | |
| | COUNSEL FOR PLAINTIFF: Kemp / Christiansen |
| DEFENDANT: MCI; et al. | |
| | COUNSEL FOR DEFENDANT: Roberts / Barger |
| | |

DEFENSE EXHIBITS*

| TX# | DOCUMENT DESCRIPTION | Bates | Date Offered | Objection | Date Admitted |
|------|---|-------|--------------|-----------|---------------|
| 474. | Expert Job file: Carhart(1) ^{474 of 479} | DISK | 3-21-18 | STIP | 3-21-18 |
| 475. | Expert Report dated October 19, 2017 of James Funk | | | | |
| 476. | Curriculum Vitae, List of Testimony and Fee Schedule of James Funk | | | | |
| 477. | Expert Job File: Funk | DISK | | | |
| 478. | DEPO EX - Granat, Aerodynamic Disturbance Testing EXHIBIT-00003 | | 3/14/18 | No | 3/14/18 |
| 479. | DEPO EX - Granat, article, 'Air Blast and the Science of Dynamic Pressure Measurements,' Walter EXHIBIT-00009 | | | | |
| 480. | DEPO EX - Granat, article, 'Prevention of Accidents Caused by Rotating Transit Bus Wheels,' Green EXHIBIT-00012 | | | | |
| 481. | DEPO EX - Granat, Granat report, Vehicle Dimensions MCI J4500 Coach EXHIBIT-00006 | | | | |

I Note that Expert Job Files will be attached as flashdrives, any materials expected to be used at the time of testimony will be provided to counsel prior to use with bates numbering and trial exhibit number applied as noted.

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EXHIBIT(S) LIST

Case No.: A755977

Hearing / Trial Date: 2/12/18

Dept. No.: XIV

Judge: ADRIANA ESCOBAR

Court Clerk: Denise Husted

Plaintiff: Khiabani

Recorder / Reporter: Sandra Anderson

Counsel for Plaintiff: Kemp/Christiansen/Works

VS.

Defendant: Motor Coach Industries

Counsel for Defendant: Roberts/Barger/Terry

TRIAL BEFORE THE COURT

DEFT'S EXHIBITS

[illegible]

| | |
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| CASE NO: A755977 | TRIAL: February 12, 2018 |
| DEPT. NO. 14 | JUDGE : Honorable Adriana Escobar |
| | CLERK : Denise Husted |
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| PLAINTIFF: Khiabani et al | |
| | |
| | COUNSEL FOR PLAINTIFF: Kemp / Christiansen |
| DEFENDANT: MCI; et al. | |
| | COUNSEL FOR DEFENDANT: Roberts / Barger |
| | |

DEFENSE EXHIBITS*

| TX# | DOCUMENT DESCRIPTION | Bates | Date Offered | Objection | Date Admitted |
|------|---|-------|--------------|-----------|---------------|
| 482. | DEPO EX - Granat, Kistler, Blast Pressure Measurement EXHIBIT-00008 | | | | |
| 483. | DEPO EX - Granat, 'Protecting Those Who Serve The Blast Gauge System* EXHIBIT-00007 | | | | |
| 484. | Expert Report dated October 18, 2017 of Kevin Granat | | | | |
| 485. | Curriculum Vitae, List of Testimony and Fee Schedule of Kevin Granat | | | | |
| 486. | Expert Job File: Granat | DISK | | | |
| 487. | DEPO EX - Krauss - Article, Travel in a whole new light, EXHIBIT-00006 | | | | |
| 488. | Expert Report dated October 16, 2017 of David Krauss, PhD | | | | |
| 489. | Curriculum Vitae, List of Testimony and Fee Schedule of David Krauss, PhD | | | | |
| 490. | Expert Job File: Krauss | DISK | | | |
| 491. | Expert Report dated October 16, 2017 of Robert Rucoba | | | | |
| 492. | Curriculum Vitae, List of Testimony and Fee Schedule of | | | | |

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1 facts would have been different had there been an adequate warning, as this would amount to
2 speculation; Plaintiffs need only provide the facts sufficient to allow the jury to draw the
3 conclusion that the presence of an adequate warning would have avoided the accident. As
4 noted above, Plaintiffs did so here. In line with the above, the Court disagrees that the jury's
5 verdict was "consistent with" judgment as a matter of law on causation, as the jury could have,
6 and evidently did, find that the lack of an adequate warning caused the accident. The Court
7 disagrees with Defendant's suggestion that the jury finding no liability on the defective design
8 claim means "when the jury was actually asked whether the allegedly defective design was the
9 legal cause of damage, the jury concluded that it was not." In reality, the jury found no
10 liability after being instructed that liability for defective design required both a design defect
11 and causation, so a simple "no" answer to the defective design question does not necessarily
12 mean the jury found causation to be lacking.

13 Defendant next argues that, "MCI was not required to make a coach that does not create
14 air disturbance," and therefore MCI was not required to provide a warning at all. While the
15 Court notes that this argument was not raised in MCI's NRCP 50(a) motion during trial, the
16 argument misstates the question actually posed to the jury. The failure-to-warn claim does not
17 ask whether the coach created an air disturbance, but rather whether the coach was
18 unreasonably dangerous due to the air disturbance it created. Thus, regardless of whether
19 MCI had a duty to minimize or remove any air disturbance from its product, there was
20 sufficient evidence for the jury to find that any air disturbance created by the coach was
21 unreasonably dangerous and that the injury could have been avoided by an adequate warning.

22 Finally, Defendant argues that Nevada's wrongful-death statute requires proof of fault,
23 while the nature of a strict liability claim does not require proving fault, and therefore that the
24 elements of a wrongful death claim could not be satisfied by allegations founded in strict
25 liability. The Court finds no support in Nevada case law for this notion, and indeed finds
26 myriad wrongful death actions founded in strict liability, and thus the Court will not apply the
27 law differently for this case. Moreover, Defendant's interpretation of the "wrongful act or
28 neglect" language in NRS 41.085(2) would lead to an absurd result: a defendant who, by no

1 intentional act or malice, creates an unreasonably dangerous product would still be held
2 strictly liable if a user were merely injured, but would no longer be held accountable if the
3 injuries were grave enough to end the user's life.

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants motion
5 for limited new trial is denied as none of the arguments presented by Defendant exhibit an
6 issue which "materially affect[ed] the substantial rights of an aggrieved party." NRCp 59(a).

7 First, Defendant argues that the jury was excused from considering causation of the
8 failure to warn claim because the verdict form did not mention this step of the analysis, and
9 instead allowed the jury to return a verdict in Plaintiffs' favor solely by finding that Defendant
10 failed to provide an adequate warning that would have been heeded. First, as noted above, the
11 Court disagrees with Defendant's position that Plaintiff must prove with specificity that an
12 adequate warning would have actually avoided the injury, or that the accident happened too
13 quickly for a jury to find that an adequate warning could have avoided the accident. However,
14 the Court also notes that the jury instructions sufficiently informed the jury on all findings
15 required for the jury to return a verdict in Plaintiffs' favor—including causation—and that this
16 remedied any potential errors with the verdict form.

17 Defendant prepared and submitted the jury instruction on causation, i.e., JI 31 providing
18 that: "If you find that warnings provided with the motor coach were inadequate, the defendant
19 cannot be held liable unless Plaintiffs prove by a preponderance of the evidence that the
20 individual who might have acted on any warning would have acted in accordance with the
21 warning, and that doing so would have prevented the injury in this case." The jury warnings
22 question on the verdict form reads as follows: "5) did MCI fail to provide an adequate
23 warning that would have been acted upon?" Taking into consideration the totality of the jury
24 instructions and the verdict form, the Court does not find that the alleged absence of causation
25 on the fifth question was prejudicial to Defendant. Finally, the Court finds no support for the
26 notion that the special verdict form was required to include a finding for every element of
27 every claim where JI 31 prepared and submitted by Defendant did so.

28 Second, the Court does not agree that precluding evidence of NRS 484B.270, the statute

1 requiring a motorist to maintain a three-foot distance from a bicyclist, constituted an error of
2 law that warrants a new trial. The safety statute in its current form did not exist at the time the
3 coach was sold, and the version of the statute that did exist at the time the coach was sold
4 contained only a mandate that a motorist passing a bicyclist do so safely, which does not offer
5 any support for Dr. Krauss's opinion that a warning was not needed because the law already
6 required vehicles to maintain a certain distance from bicycles. Thus, the existence of the
7 statute has no probative value as to why Defendant chose not to provide a warning with the
8 coach. Further, the Court maintains that JI 32, on "nondelegation," was rightfully included
9 due to evidence being presented at trial that at least one of Defendant's employees believed
10 another entity should warn drivers about the danger of the coach. If JI 32 caused any
11 prejudice to Defendant's case, the Court does not agree that it materially affected Defendant's
12 substantial rights.

13 Third, as noted in this Court's order denying Defendant's motion for post-trial
14 discovery, the Court does not agree that any newly discovered evidence warrants a new trial.
15 For the same reasons iterated in that order, the Court has not been convinced that the new
16 evidence could not have been found with reasonable diligence, so NRCP 59(a)(4) is not met
17 here. The Court is also not convinced by Defendant's argument that the difficulty in
18 discovering this evidence is exhibited by Plaintiffs' lack of knowledge, or that Defendant was
19 entitled to rely on Plaintiffs' duty to disclose such information. NRCP 16.1 requires a party to
20 disclose the identity of individuals likely to have discoverable information, but it does not
21 require a party to conduct discovery for the other parties. Here, it appears Plaintiffs disclosed
22 Dr. Khiabani's employer, which was sufficient to satisfy Plaintiffs' duty under NRCP 16.1;
23 Plaintiffs were under no duty to actually discover any information from Dr. Khiabani's
24 employer, just to enable Defendant to do so. As stated in the Court's prior order, Defendant
25 had access to the "new evidence" had it simply attempted to get it because Plaintiffs executed
26 an employment release prepared by Defendant on July 27, 2017—nearly five months before
27 the discovery cutoff and nearly seven months before the trial commenced on February 12,
28 2018. As also stated in the Court's prior order, Defendant "evidently has no explanation for

1 why this information was not actually sought after the authorization was given." Moreover,
2 even if the Court were to find that Plaintiffs lapsed on their discovery obligations, this Court
3 does not find that such a finding would render the "new evidence" undiscoverable with due
4 diligence, so a new trial is not warranted on these grounds.

5 Fourth, the Court does not agree that it erred by precluding evidence of the impact of
6 income taxes. While the Court recognizes the difference between damages for lost wages and
7 damages for loss of probable support, Nevada law is clear that evidence of tax implications are
8 not admissible in a wrongful death case. *See, e.g. Otis Elevator Co. v. Reid*, 101 Nev. 515
9 (1985). Defendant is correct that certain special circumstances allow jury instructions on tax
10 consequences, but only when tax issues are discussed at trial. *Id.* Here, tax issues were not
11 discussed at trial under the general rule that tax implications are not admissible, and thus there
12 was no indication that the jury would consider tax implications. Therefore, *Otis Elevator Co.*
13 *v. Reid*'s "special circumstances" exception does not apply, and Defendant's substantial rights
14 were not materially affected.

15
16 Dated this 31st day of January, 2019.

17
18
19 
20 Hon. Adriana Escobar
21
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28

CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed, a copy of this Order was electronically served to all registered parties in the Eighth Judicial District Court Electronic Filing Program and/or placed in the attorney's folder maintained by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties as follows:

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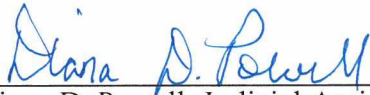
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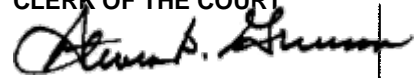
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9 *Attorneys for Plaintiffs*

10
11 **DISTRICT COURT**

12 **COUNTY OF CLARK, NEVADA**

13 KEON KHIABANI and ARIA KHIABANI,
14 minors by and through their natural mother,
KATAYOUN BARIN; KATAYOUN BARIN,
15 individually; KATAYOUN BARIN as
Executrix of the Estate of Kayvan Khiabani,
16 M.D. (Decedent), and the Estate of Kayvan
Khiabani, M.D. (Decedent),

17 Plaintiffs,

18 vs.

19 MOTOR COACH INDUSTRIES, INC.,
20 a Delaware corporation; et al.

21 Defendants.

Case No. A-17-755977-C

Dept. No. XIV

**NOTICE OF ENTRY OF COMBINED
ORDER (1) DENYING MOTION FOR
JUDGMENT AS A MATTER OF LAW
AND (2) DENYING MOTION FOR
LIMITED NEW TRIAL**

22
23 TO: All parties herein; and

24 TO: Their respective counsel;

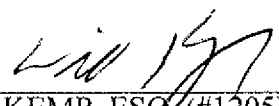
25 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the above-referenced
26 Order was entered in this matter. The Order was filed on February 1, 2019.

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

1 A copy of said Order is attached hereto.

2 DATED this 1st day of February, 2019.

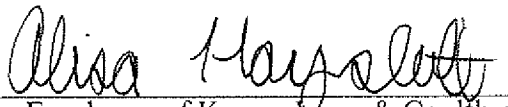
3 KEMP, JONES & COULTHARD, LLP

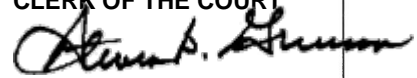
4
5 
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11 -and-
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14 CHRISTIANSEN LAW OFFICES
15 810 Casino Center Blvd.
16 Las Vegas, Nevada 89101
17 Attorneys for Plaintiffs

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on the 1st day of February, 2019, the foregoing **NOTICE OF ENTRY**
20 **OF COMBINED ORDER (1) DENYING MOTION FOR JUDGMENT AS A MATTER OF**
21 **LAW AND (2) DENYING MOTION FOR LIMITED NEW TRIAL** was served on all parties
22 currently on the electronic service list via the Court's electronic filing system only, pursuant to the
23 Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2.

24
25 
26 An Employee of Kemp, Jones & Coulthard.



FFCL

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,
minors, by and through their Guardian,
MARIE-CLAUDE RIGAUD; SIAMAK
BARIN, as Executor of the Estate of Kayvan
Khiabani, M.D. (Decedent), the Estate of
Kayvan Khiabani, M.D. (Decedent);
SIAMAK BARIN, as Executor of the Estate
of Katayoun Barin, DDS (Decedent); and the
Estate of Katayoun Barin, DDS (Decedent);

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC.,
a Delaware corporation; MICHELANGELO
LEASING INC. d/b/a RYAN'S EXPRESS,
an Arizona corporation; EDWARD
HUBBARD, a Nevada resident; BELL
SPORTS, INC. d/b/a GIRO SPORT
DESIGN, a Delaware corporation;
SEVENPLUS BICYCLES, INC. d/b/a PRO
CYCLERY, a Nevada corporation, DOES 1
through 20; and ROE CORPORATIONS 1
through 20.

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

**COMBINED ORDER (1) DENYING
MOTION FOR JUDGMENT AS A
MATTER OF LAW AND (2)
DENYING MOTION FOR LIMITED
NEW TRIAL**

This matter came before the Court on July 6, 2018, pursuant to Defendant's motion for judgment as a matter of law and Defendant's motion for limited new trial. Having considered the briefs and other pleadings and papers on file, the parties having waived oral argument on both motions, and with good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant's motion for judgment as a matter of law is denied for the following reasons:

Defendant cannot raise issues in the "Renewed" Rule 50 motion that were not first raised in the Rule 50 motion filed at the close of evidence. *Nelson v. Heer*, 123 Nev. 217, 163 P.2d

1 420, 424 n. 9 (Nev. 2007) ("See NRCP 50 (indicating within the drafter's note to the 2004
2 amendment that a motion filed under subdivision (b) is the renewal of a motion filed under
3 subdivision (a) and must have been preceded by a motion filed at the appropriate time under
4 subdivision (a) (2))." In the present case, Defendant presented its Rule 50(a) argument orally
5 the morning of March 22, 2018. The entire argument comprises 12 pages of transcript. (TT
6 3/22/18 12-24) Defendant made the following arguments in this order: (1) strict liability is
7 not available in wrongful death actions (3/22/18 12:24 to 20:4); (2) the evidence was
8 insufficient to establish a product defect, including warnings, because "it was too late at that
9 point for Mr. Hubbard to make an evasive maneuver" (3/22/18 20:5 to 22:9); (3) Plaintiffs did
10 not propose language for a warning (3/22/18 22:10 to 22:20); (4) an S-1 Gard argument
11 (3/22/18 22:21 to 23:10); and (5) strict liability does not extend to bystanders. (3/22/18 23).

12 However, absent in the Rule 50(a) motion was (1) the new argument that "Hubbard did
13 not testify about any particular warning or that a warning would have changed what he did"
14 (Mot. 50(b), 4:24 to 5:6), (2) the new argument that Plaintiffs should have explained "how it
15 [a warning] would have prevented Dr. Khiabani's death" (Mot. 50(b), 6:22 to 9:15 and 11:9
16 12:18)), (3) the new argument that Hubbard's heeding testimony "is insufficient to
17 demonstrate causation" and that Hubbard "never testified that he would have done anything
18 differently" (Mot. 50(b), 9:16), (4) the new "open and obvious" argument (Mot. 50(b), 10:10
19 to 11:8) and (5) the new attack on Plaintiff's warning expert (Cunitz) (Mot. 50(b), 12:19 to
20 13:26) Because the last 5 arguments were not made in the Rule 50(a) motion, they have not
21 been preserved and are denied as procedurally improper.

22 Defendant's first argument in the motion is that Plaintiffs failed to prove causation on the
23 failure to warn theory because the facts showed that Dr. Khiabani suddenly appeared in Mr.
24 Hubbard's peripheral vision, and the accident happened too quickly for a reasonable jury to
25 find that Mr. Hubbard could have avoided the accident. This argument ignores the full facts
26 as presented in the Plaintiffs' case-in-chief, specifically the testimony of Mr. Hubbard that he
27 observed the bicycle while both Dr. Khiabani and the coach were on Charleston, and saw the
28 bicycle turn onto Pavilion Center before Mr. Hubbard turned the coach onto Pavilion Center.

1 Thus, although Mr. Hubbard testified that he did not see Dr. Khiabani's bicycle for 450 feet
2 before the accident, the "split-second" that the accident occurred was not the first time Mr.
3 Hubbard was made aware of the bicycle's presence. Taking all inferences in Plaintiffs' favor,
4 Plaintiffs elicited sufficient evidence for a reasonable jury to find that, had Mr. Hubbard been
5 adequately warned about the dangerous nature of the coach, he would have driven differently
6 as early as when he turned onto Pavilion Center—for example by driving in the left lane
7 instead of the right lane, or by driving slower so as to not pass the bicycle—and that this
8 different action would have avoided the accident. Thus, the accident did not happen too
9 quickly for a reasonable jury to find that a warning would have made a difference.

10 The parties next dispute to what extent a plaintiff in a failure to warn claim must prove
11 causation. Defendant argues that insufficient evidence of causation was presented by
12 Hubbard's testimony that he "absolutely" heeds warnings he is given when he is trained about
13 something relative to safety, because Plaintiffs needed to additionally prove that the accident
14 would have been avoided by the user heeding the warning. Defendant cites to numerous other
15 jurisdictions for this notion, and argues that it is further supported by the Nevada Supreme
16 Court's *Rivera v. Philip Morris, Inc.* decision. This Court disagrees. It is undisputed that,
17 under *Rivera*, the Plaintiffs bear the burden of producing evidence demonstrating that, among
18 other things, the defect caused the injury. *Rivera* also held that "the burden of proving
19 causation can be satisfied in failure-to-warn cases by demonstrating that a different warning
20 would have altered the way the plaintiff used the product or would have prompted plaintiff to
21 take precautions to avoid the injury."

22 Taking all inferences in Plaintiffs' favor, the Court finds that Hubbard's testimony that
23 he would have complied with a warning, combined with the facts listed above regarding
24 Hubbard's perception of the events leading up to the accident, was sufficient to satisfy
25 Plaintiffs' burden of proving causation under Nevada law.

26 Similarly, the Court disagrees with Defendant's suggestion that "the open and obvious
27 nature of the danger reinforces the conclusion that a warning would have been superfluous."
28 Mot. 50(b) at 10. Taking all inferences in Plaintiffs' favor, the presence of testimony by

1 Hubbard, Mary Witherell, and some of Defendant's own employees that they were not aware
2 of the significance of the air displacement created by the coach's design refutes Defendant's
3 classification of the danger as "open and obvious." Further, even if the evidence enabled this
4 Court to find as a matter of law that Hubbard should have known generally of the "risk of
5 driving next to a bicyclist," which this Court has not done, no Nevada law holds that this
6 would prevent a reasonable jury from finding that an adequate warning would have avoided
7 the accident.

8 Next, Defendant suggests that Plaintiffs' duty to prove causation required Plaintiffs to
9 craft an adequate warning. Failure-to-warn claims can be classified as one of two types:
10 allegations that the warning given by the defendant was crafted in such a way to be ineffective
11 in preventing the injury; or allegations that the product is dangerous enough that a warning
12 should have been provided but the defendant did not provide any warning. In cases of the first
13 variety, the jury must consider whether the warning was adequate under the factors provided
14 in *Lewis v. Sea Ray Boats, Inc.* However, in the second category, the absence of any warning,
15 the lack of any warning, could not possibly be considered adequate under the *Sea Ray* factors,
16 and thus the only required findings are that the product was unreasonably dangerous and that
17 an adequate warning would have avoided the injury. This case falls into the second category,
18 where Defendant undisputedly did not provide any warnings about any of the alleged defects
19 which Plaintiffs alleged. In such a case, the Court finds no support for Defendant's assertion
20 that no reasonable jury could find that the product was unreasonably dangerous and that an
21 adequate warning would have avoided the injury without a specific warning being proposed
22 by the plaintiff. While it is true that providing a model warning to show what the defendant
23 could have done to make the product reasonably safe may be a helpful illustration for the
24 plaintiff's case, it is not required for the jury to find in Plaintiffs' favor. *Cf. Ford Motor Co. v.*
25 *Trejo* (in a design defect claim, "a plaintiff may choose to support their case with evidence
26 that a safer alternative design was feasible at the time of manufacture."). Furthermore,
27 Defendant did not propose a jury instruction requiring that Plaintiff provide proof of a specific
28 warning and instead only tendered JI 30 and JI 31. Plaintiffs need not prove precisely how the

1 facts would have been different had there been an adequate warning, as this would amount to
2 speculation; Plaintiffs need only provide the facts sufficient to allow the jury to draw the
3 conclusion that the presence of an adequate warning would have avoided the accident. As
4 noted above, Plaintiffs did so here. In line with the above, the Court disagrees that the jury's
5 verdict was "consistent with" judgment as a matter of law on causation, as the jury could have,
6 and evidently did, find that the lack of an adequate warning caused the accident. The Court
7 disagrees with Defendant's suggestion that the jury finding no liability on the defective design
8 claim means "when the jury was actually asked whether the allegedly defective design was the
9 legal cause of damage, the jury concluded that it was not." In reality, the jury found no
10 liability after being instructed that liability for defective design required both a design defect
11 and causation, so a simple "no" answer to the defective design question does not necessarily
12 mean the jury found causation to be lacking.

13 Defendant next argues that, "MCI was not required to make a coach that does not create
14 air disturbance," and therefore MCI was not required to provide a warning at all. While the
15 Court notes that this argument was not raised in MCI's NRCP 50(a) motion during trial, the
16 argument misstates the question actually posed to the jury. The failure-to-warn claim does not
17 ask whether the coach created an air disturbance, but rather whether the coach was
18 unreasonably dangerous due to the air disturbance it created. Thus, regardless of whether
19 MCI had a duty to minimize or remove any air disturbance from its product, there was
20 sufficient evidence for the jury to find that any air disturbance created by the coach was
21 unreasonably dangerous and that the injury could have been avoided by an adequate warning.

22 Finally, Defendant argues that Nevada's wrongful-death statute requires proof of fault,
23 while the nature of a strict liability claim does not require proving fault, and therefore that the
24 elements of a wrongful death claim could not be satisfied by allegations founded in strict
25 liability. The Court finds no support in Nevada case law for this notion, and indeed finds
26 myriad wrongful death actions founded in strict liability, and thus the Court will not apply the
27 law differently for this case. Moreover, Defendant's interpretation of the "wrongful act or
28 neglect" language in NRS 41.085(2) would lead to an absurd result: a defendant who, by no

1 intentional act or malice, creates an unreasonably dangerous product would still be held
2 strictly liable if a user were merely injured, but would no longer be held accountable if the
3 injuries were grave enough to end the user's life.

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants motion
5 for limited new trial is denied as none of the arguments presented by Defendant exhibit an
6 issue which "materially affect[ed] the substantial rights of an aggrieved party." NRCp 59(a).

7 First, Defendant argues that the jury was excused from considering causation of the
8 failure to warn claim because the verdict form did not mention this step of the analysis, and
9 instead allowed the jury to return a verdict in Plaintiffs' favor solely by finding that Defendant
10 failed to provide an adequate warning that would have been heeded. First, as noted above, the
11 Court disagrees with Defendant's position that Plaintiff must prove with specificity that an
12 adequate warning would have actually avoided the injury, or that the accident happened too
13 quickly for a jury to find that an adequate warning could have avoided the accident. However,
14 the Court also notes that the jury instructions sufficiently informed the jury on all findings
15 required for the jury to return a verdict in Plaintiffs' favor—including causation—and that this
16 remedied any potential errors with the verdict form.

17 Defendant prepared and submitted the jury instruction on causation, i.e., JI 31 providing
18 that: "If you find that warnings provided with the motor coach were inadequate, the defendant
19 cannot be held liable unless Plaintiffs prove by a preponderance of the evidence that the
20 individual who might have acted on any warning would have acted in accordance with the
21 warning, and that doing so would have prevented the injury in this case." The jury warnings
22 question on the verdict form reads as follows: "5) did MCI fail to provide an adequate
23 warning that would have been acted upon?" Taking into consideration the totality of the jury
24 instructions and the verdict form, the Court does not find that the alleged absence of causation
25 on the fifth question was prejudicial to Defendant. Finally, the Court finds no support for the
26 notion that the special verdict form was required to include a finding for every element of
27 every claim where JI 31 prepared and submitted by Defendant did so.

28 Second, the Court does not agree that precluding evidence of NRS 484B.270, the statute

1 requiring a motorist to maintain a three-foot distance from a bicyclist, constituted an error of
2 law that warrants a new trial. The safety statute in its current form did not exist at the time the
3 coach was sold, and the version of the statute that did exist at the time the coach was sold
4 contained only a mandate that a motorist passing a bicyclist do so safely, which does not offer
5 any support for Dr. Krauss's opinion that a warning was not needed because the law already
6 required vehicles to maintain a certain distance from bicycles. Thus, the existence of the
7 statute has no probative value as to why Defendant chose not to provide a warning with the
8 coach. Further, the Court maintains that JI 32, on "nondelegation," was rightfully included
9 due to evidence being presented at trial that at least one of Defendant's employees believed
10 another entity should warn drivers about the danger of the coach. If JI 32 caused any
11 prejudice to Defendant's case, the Court does not agree that it materially affected Defendant's
12 substantial rights.

13 Third, as noted in this Court's order denying Defendant's motion for post-trial
14 discovery, the Court does not agree that any newly discovered evidence warrants a new trial.
15 For the same reasons iterated in that order, the Court has not been convinced that the new
16 evidence could not have been found with reasonable diligence, so NRCP 59(a)(4) is not met
17 here. The Court is also not convinced by Defendant's argument that the difficulty in
18 discovering this evidence is exhibited by Plaintiffs' lack of knowledge, or that Defendant was
19 entitled to rely on Plaintiffs' duty to disclose such information. NRCP 16.1 requires a party to
20 disclose the identity of individuals likely to have discoverable information, but it does not
21 require a party to conduct discovery for the other parties. Here, it appears Plaintiffs disclosed
22 Dr. Khiabani's employer, which was sufficient to satisfy Plaintiffs' duty under NRCP 16.1;
23 Plaintiffs were under no duty to actually discover any information from Dr. Khiabani's
24 employer, just to enable Defendant to do so. As stated in the Court's prior order, Defendant
25 had access to the "new evidence" had it simply attempted to get it because Plaintiffs executed
26 an employment release prepared by Defendant on July 27, 2017—nearly five months before
27 the discovery cutoff and nearly seven months before the trial commenced on February 12,
28 2018. As also stated in the Court's prior order, Defendant "evidently has no explanation for

1 why this information was not actually sought after the authorization was given." Moreover,
2 even if the Court were to find that Plaintiffs lapsed on their discovery obligations, this Court
3 does not find that such a finding would render the "new evidence" undiscoverable with due
4 diligence, so a new trial is not warranted on these grounds.

5 Fourth, the Court does not agree that it erred by precluding evidence of the impact of
6 income taxes. While the Court recognizes the difference between damages for lost wages and
7 damages for loss of probable support, Nevada law is clear that evidence of tax implications are
8 not admissible in a wrongful death case. *See, e.g. Otis Elevator Co. v. Reid*, 101 Nev. 515
9 (1985). Defendant is correct that certain special circumstances allow jury instructions on tax
10 consequences, but only when tax issues are discussed at trial. *Id.* Here, tax issues were not
11 discussed at trial under the general rule that tax implications are not admissible, and thus there
12 was no indication that the jury would consider tax implications. Therefore, *Otis Elevator Co.*
13 *v. Reid's* "special circumstances" exception does not apply, and Defendant's substantial rights
14 were not materially affected.

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16 Dated this 31st day of January, 2019.

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20 Hon. Adriana Escobar
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed, a copy of this Order was electronically served to all registered parties in the Eighth Judicial District Court Electronic Filing Program and/or placed in the attorney's folder maintained by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties as follows:

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Inc. d/b/a Ryan's Express & Edward Hubbard*

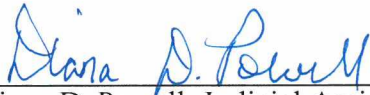
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*Attorneys for Motor Coach Industries,
10 Inc.*

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12 Diana D. Powell, Judicial Assistant
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THE SEALED DOCUMENT(S)
IN THIS CASE
WILL FOLLOW VIA
U.S. MAIL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability**COURT MINUTES****June 06, 2017**

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

| | | | |
|----------------------|-----------------|---------------------|---|
| June 06, 2017 | 12:30 AM | Minute Order | Ex-Parte Motion for Order Requiring Bus Company and Driver to Preserve and Immediately Turn Over Relevant Electronic Monitoring Information from Bus and Driver Cell Phone |
|----------------------|-----------------|---------------------|---|

HEARD BY: Escobar, Adriana**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Denise Husted**RECORDER:** Sandra Anderson**REPORTER:**

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Plaintiffs ex parte motion for order requiring bus company and driver to preserve and immediately turn over relevant electronic monitoring information from bus and driver cell phone was filed in Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on May 30, 2017.

The Court notes that the motion is not the appropriate method for seeking the requested relief, as Plaintiffs are essentially requesting a temporary restraining order and an order compelling production of evidence. Thus, the Court DENIES Plaintiffs motion, as each of these motions require additional procedural steps, such as an attempt at notice to the other party which have apparently

not been undertaken here. If Plaintiffs refile the request to preserve evidence as an application for temporary restraining order in line with NRCP 65(b), including making efforts to serve the Defendants with notice of that application, the Court will consider the matter at that time. The Court will not grant a motion to compel on an ex parte basis.

Finally, the Court notes that both parties have a common law duty to preserve documents, tangible items, and information relevant to litigation that are reasonably calculated to lead to the discovery of admissible evidence when litigation is reasonably foreseeable. See *Bass-Davis v. Davis*, 122 Nev. 442 (2006).

Plaintiffs are directed to submit a proposed order denying their motion, and to serve a copy of this minute order on Defendants.

CLERK'S NOTE: Copies of this minute order placed in the attorney folders of:

William Kemp (KEMP JONES & COULTHARD, LLP)
Peter S. Christiansen (CHRISTIANSEN LAW OFFICES)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

June 15, 2017

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

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| June 15, 2017 | 9:30 AM | Motion for Temporary Restraining Order | Per Pltf's App for TRO requiring Bus Co. & Driver to Preserve & Immediately Turn over Relevant Electronic Monitoring Information from Bus and Driver Cell Phone on OST. |
|----------------------|----------------|---|--|

HEARD BY: Escobar, Adriana

COURTROOM: RJC Courtroom 14C

COURT CLERK: Sharon Chun

RECORDER: Sandra Anderson

REPORTER:

PARTIES

| | | |
|-----------------|-------------------------|----------|
| PRESENT: | Christiansen, Peter S | Attorney |
| | Freeman, Eric O. | Attorney |
| | Kemp, William Simon | Attorney |
| | Pepperman, Eric | Attorney |
| | Russell, Howard J., ESQ | Attorney |
| | Stoberski, Michael E | Attorney |

JOURNAL ENTRIES

- Per Pltf's App for TRO requiring Bus Co. & Driver to Preserve & Immediately Turn over Relevant Electronic Monitoring Information from Bus and Driver Cell Phone on OST.

Eric Freeman, Esq. appeared by CourtCall on behalf of Defts Michelangelo Leasing Inc. d/b/a Ryan's Express and Edward Hubbard.

Judge Escobar disclosed that it had represented Mr. Kemp's firm prior to taking the Bench, but will be fair and impartial. There was no opposition from any counsel to this Court hearing this matter.

Following Mr. Kemp's argument in support of the Application for TRO, both Mr. Russell and Mr. Stoberski stated they had no opposition to the proposed changes to the order, but requested to review it prior to signing off.

Mr. Freeman presented his objection to the Temporary Restraining Order, arguing it was too broad. He also noted that Sevenplus Bicycles Inc., a defendant that it affects, was served but has made no appearance yet and they need to make an appearance. Mr. Kemp confirmed that Michelangelo and Hubbard were served and argued that they will need to look at the evidence and get started. Mr. Freeman responded that he needs the opportunity to discuss this with his potential client and reiterated his opposition to the TRO at this time, but he will work with counsel. Mr. Kemp reiterated his request for the TRO.

COURT STATED it has given a lot of thought to this and did find that the preservation of evidence is critical and required; however, the Court needs to read the changed Order. COURT ORDERED, Application for TRO GRANTED IN PART and DENIED IN PART. COURT STATED it did not find it was something it wanted to come without the other parties being informed. The preservation of evidence is critical and required. COURT STATED it has not yet read the changed order, but at this time read from its notes, citing the electronic information that Mr. Kemp believes the bus has in its possession.

COURT ORDERED within five business days, all of the cited items are to be preserved from the accident which occurred on 4/18/17. With respect to the Smart Phone, those items that Plaintiff requested are to be preserved. Under Bass-Davis, a party has the duty to preserve discoverable evidence, within five business days. COURT NOTED that the evidence already discussed may not be discoverable, but it is to be downloaded within five business days and is to be preserved by the Defendants; Mr. Freeman would have a duty to preserve this.

Defendants are not to discuss the evidence with Plaintiff's, or anyone else involved in the case, until the appropriate time. Mr. Kemp stated his concern is that all data is downloaded. COURT ADVISED it wants a Declaration from the experts who are proficient to download the data from the date of the accident. It was noted that there are two such experts who would be proficient to do that.

COURT ORDERED that the experts are to submit a Declaration to the Court as to what was downloaded and the dates of the data generation from the bus and the cell phone. The information will not be shared with Plaintiff until the appropriate time. Mr. Kemp noted that METRO may request the information. COURT REITERATED that the information is not to be shared with the Plaintiff, but METRO'S requests may be required.

Mr. Freeman stated he will cooperate with Mr. Kemp's office and requested Mr. Kemp to forward the proposed revised Order to him along with the information as to whom could download all of this and preserve the data. Mr. Freeman's contact information was provided at this time. COURT SO NOTED.

Mr. Kemp advised he will redraft the proposed Order, get it to all counsel, and then get it back to the Court within the next few days.

COURT REITERATED, the TEMPORARY RESTRAINING ORDER, GRANTED IN PART; DENIED AS TO IMMEDIATELY TURNING OVER THE INFORMATION/EVIDENCE.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability**COURT MINUTES****July 20, 2017**

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
 vs.
 Motor Coach Industries Inc, Defendant(s)

| | | | |
|----------------------|----------------|--|--|
| July 20, 2017 | 9:30 AM | Motion for Preferential Trial Setting | Plaintiff's Motion for Preferential Trial Setting Under NRS 16.025(2) |
|----------------------|----------------|--|--|

HEARD BY: Jones, Tierra**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Denise Husted**RECORDER:** Sandra Anderson**REPORTER:****PARTIES**

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Christiansen, Peter S | Attorney |
| | Kemp, William Simon | Attorney |
| | Nunez, Michael J. | Attorney |
| | Stoberski, Michael E | Attorney |
| | Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- Mr. Kemp argued that parties can be ready for trial in six months. He advised that the widow does not have long to live which necessitates an expedited trial setting. He further stated he listed all witnesses at the early case conference and will provide counsel all documents by noon today. Opposition by defense counsel. Colloquy regarding scheduling of depositions, dispositive motions and motions in limine. COURT ORDERED, motion is GRANTED; trial date is SET, with the understanding that it may not go, and a status check regarding trial readiness is SET in sixty days.

9/21/17 9:30 AM STATUS CHECK: TRIAL READINESS

11/2/17 9:30 AM CALENDAR CALL

11/20/17 9:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

September 21, 2017

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

September 21, 2017 9:30 AM

All Pending Motions

HEARD BY: Escobar, Adriana

COURTROOM: RJC Courtroom 14C

COURT CLERK: Haly Pannullo

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT:

| | |
|--------------------------|----------|
| Christiansen, Peter S | Attorney |
| Freeman, Eric O. | Attorney |
| Kemp, William Simon | Attorney |
| Roberts, D Lee, Jr. | Attorney |
| Stoberski, Michael E | Attorney |
| Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- TRIAL READINESS ... DEFENDANTS MICHELANGELO LEASING INC. AND EDWARD HUBBARD'S MOTION FOR RECONSIDERATION REGARDING THE COURT GRANTING PLAINTIFFS' MOTION FOR PREFERENTIAL TRIAL SETTING ... DEFENDANT SEVENPLUS BICYCLES, INC. DBA PRO CYCLERY'S JOINDER TO DEFENDANT RYAN'S EXPRESS AND EDWARD HUBBARD'S MOTION FOR RECONSIDERATION ... DEFENDANT MOTOR COACH INDUSTRIES, INC.'S JOINDER TO MICHELANGELO LEASING INC. AND EDWARD HUBBARD'S MOTION FOR RECONSIDERATION REGARDING THE COURT GRANTING PLAINTIFFS' MOTION FOR PREFERENTIAL TRIAL SETTING

Scott Tooney, Esq., present on behalf of Bell Sports Inc. Paul Stephen, Esq., appearing Pro Hac Vice on behalf of Motor Coach Industries Inc. Michael G. Terry, Esq., appearing Pro Hac Vice on behalf of Katayoun Barin.

Arguments by counsel regarding trial readiness and the Motion for Reconsideration. COURT STATED FINDINGS and ORDERED, trial and discovery is to move forward on the schedule that was set. Court noted the status of each Pro Hac Vice application. COURT FURTHER ORDERED, matter SET for Status Check regarding trial readiness.

CLERK'S NOTE: Subsequent to Court, COURT ORDERED, matter SET for Status Check on October 30, 2017 to monitor the progress of discovery closer to the trial date; Motions for Reconsideration CONTINUED. hvp/10/9/17

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

November 02, 2017

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

| | | | |
|--------------------------|----------------|----------------------------|---|
| November 02, 2017 | 9:30 AM | All Pending Motions | Plaintiff's Motion to Amend Cojmplaint to Substitute Parties on Order Shortening Time...Defendant's Opposition to Plaintiffs' Motion to Amend Complaint/Countertermotion to Set a Reasonable Trial Date Upon Changed Circumstance that Nullifies the Reason for Preferential Trial Setting |
|--------------------------|----------------|----------------------------|---|

HEARD BY: Escobar, Adriana

COURTROOM: RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Christiansen, Peter S | Attorney |
| | Henriod, Joel D. | Attorney |
| | Kemp, William Simon | Attorney |
| | Polsenberg, Daniel F. | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Russell, Howard J., ESQ | Attorney |
| | Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- Mr. Kemp stated that the amendment being sought is to replace the co-guardian into the case. He advised that Defendant's opposition is actually a request to continue the trial. He informed the Court the status of taking of depositions and argued opposition to Defendant's request for trial continuance. Mr. Polsenberg stated he does not want to try a case in which he is not prepared; a continuance is required to fully prepare. Following further arguments, COURT ORDERED, Plaintiff's Motion to Amend Complaint is GRANTED and Defendant's Countermotion to Set a Reasonable Trial Date is GRANTED. Trial, which is anticipated to take four weeks, is set to a Firm Setting.

1/18/18 9:30 AM CALENDAR CALL

2/12/18 9:30 AM JURY TRIAL - FIRM SETTING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

December 07, 2017

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

**December 07, 2017 9:30 AM Motion for Determination
of Good Faith Settlement**

HEARD BY: Escobar, Adriana

COURTROOM: RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Pepperman, Eric Attorney

JOURNAL ENTRIES

- COURT FINDS no collusion or fraud and the settlement negotiations were at arms length, and ORDERED, Good Faith Settlement is APPROVED. Ms. Igeleke to prepare the order to include Findings of Fact and Conclusions of Law, circulate proposed order to counsel and provide proposed order to Court's Chambers in Word format.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

January 18, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

January 18, 2018 9:30 AM Calendar Call

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Henriod, Joel D. Attorney
 Pepperman, Eric Attorney
 Roberts, D Lee, Jr. Attorney
 Works, Kendelea Leascher Attorney

JOURNAL ENTRIES

- Colloquy regarding trial date and the jury questionnaire. COURT ORDERED, trial date STANDS.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

January 23, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

January 23, 2018 9:30 AM All Pending Motions

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Christiansen, Peter S | Attorney |
| | Ferrario, Mark E., ESQ | Attorney |
| | Freeman, Eric O. | Attorney |
| | Henriod, Joel D. | Attorney |
| | Kemp, William Simon | Attorney |
| | Pepperman, Eric | Attorney |
| | Polsenberg, Daniel F. | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Russell, Howard J., ESQ | Attorney |
| | Stoberski, Michael E | Attorney |
| | Welch, Whitney L | Attorney |
| | Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- Following arguments by counsel, COURT ORDERED, the following:

Defendant's Motion for Summary Judgment on Forseeability of Bus Interaction with Pedestrians or Bicyclists (Including Sudden Bicycle Movement) is GRANTED.

Plaintiff's Motion for Determination of Good Faith Settlement with Defendants Michelangelo Leasing, Inc. dba Ryan's Express and Edward Hubble Only is GRANTED; Motion to Seal Settlement

GRANTED as well.

Defendant Bell Sports, Inc.'s Motion for Determination of Good Faith Settlement on OST is GRANTED; Motion to Seal GRANTED as well.

Plaintiff's Joinder to Defendant Bell Sports, Inc.'s Motion for Determination of Good Faith Settlement on Order Shortening Time is GRANTED.

Defendant's Motion for Summary Judgment on Punitive Damages is DENIED as Plaintiff provided sufficient evidence supporting punitive damages instruction.

Motor Coach Industries, Inc." Motion for Summary Judgment on All Claims Alleging a Product Defect is DENIED as the theories have issues of material fact remaining.

Defendant's Motion to Dismiss Wrongful Death Claim for Death of Katavoun Brain DDS is GRANTED.

Defendant Motor Coach Industries, Inc. Motion for Leave to File Third Party Complaint on OST is MOOT.

Defendant's Motion for Leave to File Third Party Complaint on OST is MOOT.

Non-Party New Flyer Industries Inc.'s Objection to Special Master Hale's January 23, 2018. Court informed parties that a minute order will issue.

Parties to prepare their respective orders.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability**COURT MINUTES****January 26, 2018**

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

| | | | |
|-------------------------|-----------------|---------------------|--|
| January 26, 2018 | 11:00 AM | Minute Order | Non-Party New Flyer Industries, Inc.'s Objection to Special Master Hales's 1/4/18 Order |
|-------------------------|-----------------|---------------------|--|

HEARD BY: Escobar, Adriana**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Denise Husted**RECORDER:****REPORTER:**

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Non-party New Flyer Industries, Inc. s Objection to Special Master Hale s January 4, 2018 Order came on for a hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on January 23, 2018.

After considering the pleadings and argument of counsel, the Court GRANTS IN PART and DENIES IN PART New Flyer s motion. Plaintiffs will be permitted to conduct a deposition of Mr. Asham by video conference, to last no more than two hours. However, the deposition will be for the limited purpose of discovery of the financial status of the Defendant, Motor Coach Industries. Plaintiffs are directed to prepare a proposed order for the Court s signature, and to submit the proposed order in Microsoft Word format, by e-mail to dept14lc@clarkcountycourts.us

Additionally, in regard to the various other motions heard on January 23, 2018, the Court directs Plaintiffs to prepare proposed orders for (1) Bell Sports Inc. s motion for determination of good faith settlement; (2) Michelangelo Leasing Inc. and Edward Hubbard s motion for determination of good

faith settlement; (3) Plaintiffs motion for summary judgment on foreseeability of bus interactions with pedestrians or bicyclists; (4) Defendant s motion for summary judgment on punitive damages; and (5) Defendant s motion for summary judgment on all claims alleging a product defect.

Defendant is directed to prepare proposed orders for (1) Defendant s motion to dismiss wrongful death claim for death of Katy Brain; and (2) Defendant s motion for leave to file third-party complaint. Each proposed order shall be reviewed by opposing counsel for approval as to form and content, should be submitted in Microsoft word format, by e-mail to dept14lc@clarkcountycourts.us, and must include detailed findings of fact and conclusions of law.

CLERK'S NOTE: Counsel notified via e-mail.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

January 29, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

January 29, 2018 9:30 AM All Pending Motions

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT:

| | |
|--------------------------|----------|
| Barger, Darrell | Attorney |
| Christiansen, Peter S | Attorney |
| Henriod, Joel D. | Attorney |
| Kemp, William Simon | Attorney |
| Pepperman, Eric | Attorney |
| Polsenberg, Daniel F. | Attorney |
| Roberts, D Lee, Jr. | Attorney |
| Russell, Howard J., ESQ | Attorney |
| Smith, Abraham G. | Attorney |
| Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- Michael Terry appearing for Motor Coach Industries.

Following arguments of counsel, COURT ORDERED, the following.

Plaintiff's Motion in Limine No.1 to Preclude Reference or Argument Regarding the Alleged Negligence of Third Parties (i.e.: Michelangelo and Hubbard). Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 2 to Preclude any Reference to settling Defendants (Including

Claims, Settlement and Amounts). Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 3 to Preclude Defendant MCI from Arguing that Decedent was Contributory Negligent. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 4 to Preclude MCI from Making Excessive Reference to the Fact that Plaintiffs are of Iranian or "Persian" Descent. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 5 to Preclude Defendants from Arguing or Suggesting that Plaintiffs Must Prove that the Bus had any Specific Defect. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 6 to Preclude Defendants from Mentioning that Defense Expert Dr. Michael Baden (OJ's Medical Examiner) Worked for the Christiansen Law Firm is GRANTED IN PART; Court will allow hypotheticals in for the case he has testified to in the past.

Plaintiff's Motion in Limine No. 7 to Preclude Defendant MCI from Arguing that the Alleged Lack of Proximity Sensors from a Third Party ("Commercial Availability") as a Defense Where the True Issue is Whether Proximity Sensors were Technologically "Feasible", Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 8 to Pre-Instruct the Jury with Standard Instructions for Product Liability Claims. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 9 to Preclude Metro Report and/or Opinions from Metro Officers. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 10 to Pre-Admit Funeral Video and Funeral Slide Show. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 11 Pre-Admit 1993 Generic Bus Wind Testing by MCI. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 12 to Preclude MCI Expert Rucoba from Offering Meteorologist Opinions Regarding Wind Speed at the Time of the Accident (Including but Not Limited to the Wildly Unsupported Claim that Wind Speeds at 10:30 am were (16 to 17 Miles Per Hour" and "Winds were Gusting to 30 MPH". Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 13 Preclude Defendants from Arguing or Referencing Rigged Air Blast Testing that is Not Substantially Similar Because it used Stationary Bike and not a Moving Bike. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 14 to Designate Virgil Hoogestraat as Managing Speaking Agent of MCI. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 15 to Designate Bryan Couch as Managing Speaking Agent of Motor. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 16 Pre-Admit June 2001 Article as Notice of Potential Rear Tire Suction Hazard and Need for Protective Guard is WITHDRAWN.

Plaintiff's Motion in Limine No. 17 to Admit Evidence of Fact Establishing Defendant's Consciousness of Responsibility . Court informed parties an order will be issued.

Plaintiff's Motion in Limine to Exclude the Testimony of Untimely Disclosed Expert Witness Robert Stahl, MD is MOOT.

Plaintiff's Motion in Limine to Exclude any Testimony on the Untimely Supplemental Expert Report Filed by Defense Expert Robert Stahl is irrelevant.

Defendant's Motion in Limine No. 1 to Limit Opinions by Plaintiff's Expert Robert Caldwell, CONTINUED to 1/31/18.

Defendant's Motion in Limine No. 2 to Exclude Illustrations by Plaintiff's Expert Joshua Cohen that Have No Basis in Fact, CONTINUED to 1/31/18.

Defendant's Motion in Limine No. 3 to Preclude Plaintiff's from Making Reference to a "Bullet Train", CONTINUED to 1/31/18.

Defendant's Motion in Limine No. 4 to Preclude Plaintiff's from Presenting Evidence that Proximity Sensors were a Safer Alternative Design CONTINUED to 1/31/18.

Defendant's Motion in Limine No. 5 to Exclude any Claims of Defect Based on S-1 Gard Motion in Limine, CONTINUED to 1/31/18.

Defendant's Motion in Limine NO. 6 to Exclude Reference to New Flyer Industries ((NFI Group), CONTINUED to 1/31/18.

Defendant's Motion Limine No. 7 to Exclude any Claims that the Subject Motor Coach was Defective Based on Alleged Dangerous "Air Blasts", CONTINUED to 1/31/18.

Defendant's Motion in Limine No. 8 to Exclude any Reference to Seatbelts, CONTINUED to 1/31/18.

Defendant's Motion in Limine No. 9 to Exclude Reference to the Ghost Bike Memorial, CONTINUED to 1/31/18.

Defendant's Motion in Limine No. 10 to Exclude Speculation as to Descendant's Thoughts about the Motor Coach, CONTINUED to 1/31/18.

Defendant's Motion in Limine No. 11 to Exclude Plaintiff's Expert Witness David Roger, CONTINUED to 1/31/18.

Defendant's Motion in Limine No. 12 to Exclude Reference to the Cost of the S-1 Gard or Proximity Sensors, CONTINUED to 1/31/18.

Defendant's Motion in Limine No. 13 to Exclude Plaintiff's Expert Witness Robert Cunitz, Ph.D. or in the Alternative, to Limit his Testimony, CONTINUED to 1/31/18.

Defendant's Motion in Limine No. 14 to Exclude Articles Regarding or Reference to Transit Buses, CONTINUED to 1/31/18.

Defendant's Motion in Limine No. 15 to Exclude Opinion Testimony from LV Witnesses on Causation and Engineering Principles, CONTINUED to 1/31/18.

Defendant's Motion in Limine No. 16 to Exclude Opinions by Plaintiff's Expert Dipak Panigrahy is WITHDRAWN as request of counsel.

Defendant's Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes, CONTINUED to 1/31/18.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

January 31, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

January 31, 2018 9:30 AM All Pending Motions

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Barger, Darrell | Attorney |
| | Christiansen, Peter S | Attorney |
| | Henriod, Joel D. | Attorney |
| | Kemp, William Simon | Attorney |
| | Pepperman, Eric | Attorney |
| | Polsenberg, Daniel F. | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Russell, Howard J., ESQ | Attorney |
| | Smith, Abraham G. | Attorney |
| | Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- Following arguments of counsel, COURT ORDERED, the following:

Defendant's Motion in Limine No. 1 to Limit Opinions by Plaintiff's Expert Robert Caldwell. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 2 to Exclude Illustrations by Plaintiff's Expert Joshua Cohen that have No Basis in Fact. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 3 to Preclude Plaintiffs from Making Reference to a "Bullet Train."

Court informed parties an order will be issued.

Defendant's Motion in Limine No. 4 to Preclude Plaintiffs from Presenting Evidence that Proximity Sensors were a Safer Alternative Design. Court informed parties an order will be issued.

Defendant's Motion i Limine No. 5 to Exclude any Claims of Defect Based on S-1 Gard Motion in Limine. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 6 to Exclude Reference to New Flyer Industries ((NFI Group). Court informed parties an order will be issued.

Defendant's Motion in Limine No. 7 to Exclude any Claims that the Subject Motor Coach was Defective Based on Alleged Dangerous "Air Blasts." Court informed parties an order will be issued.

Defendant's Motion in Limine No. 8 to Exclude any Reference to Seatbelts. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 9 to Exclude Reference to the Ghost Bike Memorial. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 10 to Exclude Speculation as to Decedent's Thoughts about the Motor Coach. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 11 to Exclude Plaintiff's Expert Witness David Roger. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 12 to Exclude Reference to the Cost of the S-1 Gard of Proximity Sensors. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 13 to Exclude Plaintiff's Expert Witness Robert Cunitz, Ph.D. or in the Alternative, to Limit his Testimony. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 14 to Exclude Articles Regarding or Reference to Transit Buses. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 15 to Exclude Opinion Testimony from LV Witnesses on Causation and Engineering Principles. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 16 to Exclude Opinions by Plaintiff's Expert Dipak Panigrahy. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes. Court informed parties an order will be issued.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability**COURT MINUTES****February 06, 2018**

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
 vs.
 Motor Coach Industries Inc, Defendant(s)

February 06, 2018 3:00 PM Minute Order

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Defendant Motor Coach Industries, Inc. filed an objection to media request on January 31, 2018, in light of the impending trial and the media request and order filed on January 10, 2018 from Courtroom View Network.

Under Supreme Court Rule 230(2), a court considering whether to allow electronic coverage of a trial shall consider several factors. Defendant has asserted that the media request should be denied in consideration of these factors, as the coverage will impact Defendant's right to a fair trial, will impact the Defendant's right of privacy over confidential information, and will likely distract trial participants. The Court notes there is a presumption that court documents be open to the public, but in some cases a significant competing interest may outweigh the public right to access. *Howard v. State*, 128 Nev. 736, 291 P.3d 137, 139 (2012).

Here the Court finds that none of Defendant's claimed prejudices is sufficient to close the courtroom to public access. The Court has limited media access to one camera at a time, so the Court finds there is minimal risk of distracting jurors or witnesses. Further, the Court finds there is little practical danger of jurors viewing pre-trial announcements of the intention to televise the trial, much less any likelihood that viewing such announcements alone would impute sufficient knowledge that a juror should be disqualified, as the trial will not be broadcast by any major media source. Finally, to the

extent that the trial will involve confidential information that is subject to a stipulated protective order, the Court finds that concerns of avoiding dissemination of this information is not sufficiently significant to outweigh the presumption of public access.

February 07, 2018

**PARTIES
PRESENT:**

PRINT DATE: 04/29/2019 Page 26 of 91 Minutes Date: June 06, 2017

slideshow from Katy Brain's funeral and Aria's speech from Katy's funeral are depictions of the value of Katy Brain's life and the impact of her death on Aria, but these issues are not relevant to the claims at issue, considering the Court dismissed the cause of action for wrongful death of Katy Brain. The remaining video, of the slideshow showed at Kayvan Khiabani's funeral, will not be pre-admitted. The Court finds that some photographs in the slideshow may have probative value of proving the loss of companionship, society, comfort, and consortium felt by the decedent's heirs, however because the slideshow is over sixteen minutes long and shows the value of Kayvan Khiabani's life in general, including his own positive experiences in travel and other activities, to the extent the slideshow is slightly probative of any of these categories, the Court finds any probative value of the slideshow as a whole is substantially outweighed by danger of unfair prejudice, confusion of issues, and undue delay, especially considering the wrongful death statute does not allow recovery based on the quality of the decedent's life generally. If Plaintiffs seek to utilize individual photographs at trial, the Court will entertain requests on an individual basis, but the slideshow video will not be pre-admitted.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

February 09, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

**February 09, 2018 2:00 PM Status Check: Trial
Readiness**

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Barger, Darrell Attorney
Christiansen, Peter S Attorney
Kemp, William Simon Attorney
Roberts, D Lee, Jr. Attorney
Works, Kendelea Leascher Attorney

JOURNAL ENTRIES

- Colloquy regarding jury selection and scheduling for the upcoming jury trial. The Court informed counsel that an order will be issued regarding jury selection regarding the order of seating and the alternates. Additionally, the Court directed counsel to provide a list of any jury instructions they have stipulated to.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

February 12, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

February 12, 2018 7:00 AM Minute Order

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The parties appeared before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on February 9, 2018, for a status check on trial readiness. Counsel asked the Court whether the parties would be allowed more than one peremptory challenge in light of the agreement to utilize five alternate jurors. The Court will not allow more than five peremptory challenges per side four which can be used only for potential regular jurors (seats 1 through 16), and one of which can be used only for a potential alternate jurors (seats 17, 18, 19, 20, 21, 22, or 23). If a party does not use all four regular juror challenges, that party may not use one of those challenges as a second alternate juror challenge, and the unused challenge will be waived.

CLERK'S NOTE: Parties notified via e-mail.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

February 12, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

February 12, 2018 9:30 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Barger, Darrell Attorney
Christiansen, Peter S Attorney
Kemp, William Simon Attorney
Roberts, D Lee, Jr. Attorney
Works, Kendelea Leascher Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY. Counsel stipulated to waive the reading of potential witnesses to the jurors as they were listed in the jury questionnaire. Exclusionary rule invoked, however counsel stipulated that expert witnesses may remain in court. IN THE PRESENCE OF THE JURY. Roll of jurors called by the clerk. Counsel stipulated to the presence of the jury. OUTSIDE THE PRESENCE OF THE JURY. The Court reminded counsel to keep voir dire relevant and not to use one juror to educate the others. IN THE PRESENCE OF THE JURY. Jury selection. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding jury selection. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

February 13, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

February 13, 2018 12:00 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Barger, Darrell Attorney
Christiansen, Peter S Attorney
Kemp, William Simon Attorney
Roberts, D Lee, Jr. Attorney
Works, Kendelea Leascher Attorney

JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. Roll of jurors called. Counsel stipulated to the presence of the jury. Jury selection. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

February 14, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

February 14, 2018 9:30 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Barger, Darrell Attorney
Christiansen, Peter S Attorney
Kemp, William Simon Attorney
Roberts, D Lee, Jr. Attorney
Works, Kendelea Leascher Attorney

JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. Roll of jurs called. Voir dire/jury selection commenced. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

February 15, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

February 15, 2018 1:00 PM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Barger, Darrell Attorney
Christiansen, Peter S Attorney
Kemp, William Simon Attorney
Roberts, D Lee, Jr. Attorney
Works, Kendelea Leascher Attorney

JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding jury selection. IN THE PRESENCE OF THE JURY. Roll of jurors called. Jury selection. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

February 16, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

February 16, 2018 9:30 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Barger, Darrell Attorney
Christiansen, Peter S Attorney
Kemp, William Simon Attorney
Roberts, D Lee, Jr. Attorney
Works, Kendelea Leascher Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding jury selection. IN THE PRESENCE OF THE JURY. Jury selection continued. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

February 20, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

February 20, 2018 12:00 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Barger, Darrell | Attorney |
| | Christiansen, Peter S | Attorney |
| | Kemp, William Simon | Attorney |
| | Pepperman, Eric | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Jury selection. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

February 21, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

February 21, 2018 9:30 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted
Kathy Thomas

RECORDER: Sandra Anderson

REPORTER:

PARTIES

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Barger, Darrell | Attorney |
| | Christiansen, Peter S | Attorney |
| | Henriod, Joel D. | Attorney |
| | Kemp, William Simon | Attorney |
| | Polsenberg, Daniel F. | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Jury selection.

2:00 PM -COURT CLERK: Kathy Klein;

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Court explained based on the Court's review of the Summary Judgment on unforeseeability it appears we may need a clear order; It was oral, However not effective until an order is written/submitted. Court was provided the opposition and reply and both trial briefs earlier and suggested we continue the trial and begin in the morning. Mr. Roberts requested a brief recess to discuss the Courts suggestion regarding the evening break with each other. Court trailed matter.

Later recalled: Mr. Roberts stated after confiring with his counsel, they would agree not to proceed with the trial until a written order is completed.

PROSPECTIVE JURY PANEL PRESENT: Court informed the jury panel they would return tomorrow and admonished the Jury Panel for the evening recess.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Jurors #1155 (E.M.), 110926 (E.T.) & 110798 (B.L.), upon inqiury of the Court, the Jurors provided phone numbers of their supervisors/managers and available times to be reached. Jurors to return tomorrow.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Mr. Roberts argued regarding Mr. Christiansen's voir dire of saftey conscience individuals. Colloquy regarding the proposed jury instrcution. Mr. Kemp suggested eliminating the practicality argument in the instruction. Arguments by Counsel. Court noted its concerns and stated the instruction is not to refer to the Doctor being negligent in any way. Counsel to submit the instruction to ask to follow the law or that they would ask for a higher burden. Mr. Roberts to prepare the instruction.

Evening recess.

02/22/18 12:30 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

February 22, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

February 22, 2018 12:30 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Barger, Darrell | Attorney |
| | Christiansen, Peter S | Attorney |
| | Kemp, William Simon | Attorney |
| | Pepperman, Eric | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Jury SELECTED and SWORN. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

February 23, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

February 23, 2018 9:30 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Barger, Darrell | Attorney |
| | Christiansen, Peter S | Attorney |
| | Kemp, William Simon | Attorney |
| | Pepperman, Eric | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Exclusionary rule invoked. Opening statements by Mr. Kemp. Opening statements by Mr. Terry. OUTSIDE THE PRESENCE OF THE JURY. Mr. Kemp stated there were procedural violations during Mr. Terry's opening statements. He requested that a curative instruction be given to the jury. Opposition by Mr. Henriod. COURT FINDS, there were only statements regarding causation and ORDERED, motion DENIED. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding scheduling. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability**COURT MINUTES****February 26, 2018**

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
 vs.
 Motor Coach Industries Inc, Defendant(s)

February 26, 2018 9:30 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Barger, Darrell | Attorney |
| | Christiansen, Peter S | Attorney |
| | Kemp, William Simon | Attorney |
| | Pepperman, Eric | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Russell, Howard J., ESQ | Attorney |
| | Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- 9:30 AM - Court Clerk Denise Husted present.

OUTSIDE THE PRESENCE OF THE JURY. Mr. Kemp moved to admit selected Plaintiff's exhibits (see worksheet). There being no opposition, COURT ORDERED, exhibits are admitted. Mr. Barger noted that Plaintiff's exhibit #126 was previously admitted, but requested that his objection to that admission be noted on the record. Court so noted. IN THE PRESENCE OF THE JURY. Roll of jurors called by the Clerk. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding the designated deposition selection of Mr. Hoogestraat discussed on the record. Court stated its findings and informed counsel a minute order regarding this issue is forthcoming. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet.

4:00 PM - Court Clerk Phyllis Irby present.

Testimony and exhibits presented (see worksheet). Jury questions asked and answered. The Court thanked and recessed the jury for the evening. OUTSIDE THE PRESENCE OF THE JURY. Colloquy between the Court and counsel regarding pre-trial Motions in Limine. Mr. Pepperman requested to have Plaintiff's witness give testimony via video conference. COURT ORDERED, TRIAL CONTINUED.

CLERK'S NOTE: Court's ruling regarding deposition of Mr. Hoogestraat is as follows:

After hearing the oral argument of counsel and upon further consideration, the Court has determined that the designated deposition selections between 34:24 and 44:21 are all admissible. Because Mr. Hoogestraat was designated as Defendant's person most knowledgeable on hazard identification and reduction/mitigation/elimination on MCI buses, Mr. Hoogestraat's testimony on the existence of air displacement around a coach bus is within the scope of his 30(b)(6) testimony. Further, the Court finds Mr. Hoogestraat may be designated as managing-speaking agent for Defendant in regard to these statements, and no other reason not to admit the testimony has been presented. Thus, in addition to those noted during the hearing, Plaintiff will be permitted to present the video testimony of the following lines:

35:3-24, 36:15-25, 37:1-20, 38:8-25, 39:1-15, 40:18-25, 41:1-25, 42:1-8 and 44:9-21. dh 2/27/18

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability**COURT MINUTES****February 27, 2018**

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
 vs.
 Motor Coach Industries Inc, Defendant(s)

February 27, 2018 11:00 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|-------------------------|----------|
| PRESENT: | Barger, Darrell | Attorney |
| | Christiansen, Peter S | Attorney |
| | Kemp, William Simon | Attorney |
| | Pepperman, Eric | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Works, Kendele Leascher | Attorney |

JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Mr. Kemp stated opposition to Mr. Robert's questioning of witness Mary Witherell. He argued that the questions asked violated Motion in Limine #1, and the Court's previous ruling. Mr. Lee advised the photograph used was taken from the Plaintiff's exhibits and that he didn't feel he violated the Court's ruling. Following further arguments by counsel, the Court advised that a curative statement will be given to the jury. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding scheduling of witnesses. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

February 28, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

February 28, 2018 9:30 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Barger, Darrell | Attorney |
| | Christiansen, Peter S | Attorney |
| | Kemp, William Simon | Attorney |
| | Pepperman, Eric | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding witness depositions and agreement regarding line by line testimony to be allowed. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability**COURT MINUTES****March 01, 2018**

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
 vs.
 Motor Coach Industries Inc, Defendant(s)

March 01, 2018 1:00 PM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Barger, Darrell | Attorney |
| | Christiansen, Peter S | Attorney |
| | Henriod, Joel D. | Attorney |
| | Kemp, William Simon | Attorney |
| | Pepperman, Eric | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- Michael Terry, Esq. appearing for Motor Coach Industries.

OUTSIDE THE PRESENCE OF THE JURY. Upon Court's inquiry, Mr. Pepperman stated he relied on the fact that Mr. Lamont is in Canada and couldn't be subpoenaed to appear. Colloquy regard deposition testimony. IN THE PRESENCE OF THE JURY. Roll of jurors called by the Clerk. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Mr. Roberts questioned witness Larry Stokes regarding testimony pertaining to issues concerning taxes. Mr. Henriod asked to clarify the questions he could ask with the upcoming witness. Statement by Mr. Kemp. The Court advised that questioning has to be consistent with previous ruling regarding not discussing any parties involved in the litigation. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

March 02, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

March 02, 2018 9:30 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES

PRESENT: Barger, Darrell Attorney
 Christiansen, Peter S Attorney
 Pepperman, Eric Attorney
 Roberts, D Lee, Jr. Attorney
 Works, Kendelea Leascher Attorney

JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Mr. Kemp stated objections to exhibits 508, 509 & 510. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability**COURT MINUTES****March 05, 2018**

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
 vs.
 Motor Coach Industries Inc, Defendant(s)

March 05, 2018 9:30 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 03F

COURT CLERK: Denise Husted

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Barger, Darrell | Attorney |
| | Christiansen, Peter S | Attorney |
| | Kemp, William Simon | Attorney |
| | Pepperman, Eric | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Works, Kendelee Leascher | Attorney |

JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding exhibits numbered next in order. Mr. Terry stated objections regarding certain questions being asked of Plaintiff's witness Joshua Cohen. Mr. Kemp advised he wants to show pictures with Mr. Cohen rather than Dr. Stalnecker. COURT ORDERED, objection is SUSTAINED; foundation must be laid in questioning the doctor. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

March 06, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

March 06, 2018 12:00 AM Jury Trial

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES

PRESENT: Barger, Darrell Attorney
 Christiansen, Peter S Attorney
 Pepperman, Eric Attorney
 Roberts, D Lee, Jr. Attorney
 Works, Kendelea Leascher Attorney

JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. OUTSIDE THE PRESENCE OF THE JURY. Mr. Roberts objected to playing the gardener's video during Dr. Gavin's testimony as her testimony should be limited to the scope of her treatment. Arguments by Mr. Kemp. The Court sustained Mr. Robert's objection. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding scheduling. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

March 07, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

March 07, 2018 9:30 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT:

| | |
|--------------------------|----------|
| Barger, Darrell | Attorney |
| Christiansen, Peter S | Attorney |
| Kemp, William Simon | Attorney |
| Pepperman, Eric | Attorney |
| Roberts, D Lee, Jr. | Attorney |
| Russell, Howard J., ESQ | Attorney |
| Works, Kendelee Leascher | Attorney |

JOURNAL ENTRIES

- Court Clerk, Denise Husted present.

Michael Terry, representing Motor Coach Industries also present.

IN THE PRESENCE OF THE JURY: Testimony and exhibits presented per worksheet.

Court Clerk, Louisa Garcia present.

OUTSIDE THE PRESENCE OF THE JURY: Arguments by counsel regarding video clips of David Dorr and Mr. Pears.

JURY PRESENT: Plaintiffs called witness David Dorr through video deposition. (See worksheet).

COURT ORDERED, TRIAL CONTINUED.

CONTINUED TO 3/8/18 1:00 P.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability**COURT MINUTES****March 08, 2018**

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
 vs.
 Motor Coach Industries Inc, Defendant(s)

March 08, 2018 12:00 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Barger, Darrell | Attorney |
| | Christiansen, Peter S | Attorney |
| | Kemp, William Simon | Attorney |
| | Pepperman, Eric | Attorney |
| | Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding jury view of the bus. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding the video deposition of Katy Brain. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

March 09, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

March 09, 2018 9:30 AM Jury Trial

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES

PRESENT:

| | |
|-------------------------|----------|
| Barger, Darrell | Attorney |
| Christiansen, Peter S | Attorney |
| Kemp, William Simon | Attorney |
| Pepperman, Eric | Attorney |
| Roberts, D Lee, Jr. | Attorney |
| Works, Kendele Leascher | Attorney |

JOURNAL ENTRIES

- Michael Terry, representing Motor Coach Industries also present.

IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding jury instructions. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability**COURT MINUTES****March 12, 2018**

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
 vs.
 Motor Coach Industries Inc, Defendant(s)

March 12, 2018 9:30 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Barger, Darrell | Attorney |
| | Christiansen, Peter S | Attorney |
| | Henriod, Joel D. | Attorney |
| | Kemp, William Simon | Attorney |
| | Pepperman, Eric | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding exhibits. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Mr. Roberts stated that during the video testimony of Katy Brain, she stated that her children feared they were broke after the death of their father. He requested that he be allowed to question further and bring in the other settlement amounts as her testimony opened the door regarding this issue. Opposition by Mr. Kemp regarding the motion in limine granted by the Court disallowing mentioning settlement amounts. Additionally, he stated that Ms. Brain's testimony has been available and an objection could have been made by the defense much sooner than this. Mr. Roberts stated the jurors have been misled by this particular statement. COURT FINDS, after reviewing applicable law, and being consistent with Court rules, no discussion about settlement will be allowed. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the

presence of the jury. Plaintiff RESTED. OUTSIDE THE PRESENCE OF THE JURY. Mr. Henriod argued for a directed verdict. COURT FINDS, the Plaintiff has shown sufficient evidence that a jury could decide this case. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability**COURT MINUTES****March 13, 2018**

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
 vs.
 Motor Coach Industries Inc, Defendant(s)

March 13, 2018 12:00 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Barger, Darrell | Attorney |
| | Christiansen, Peter S | Attorney |
| | Pepperman, Eric | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. OUTSIDE THE PRESENCE OF THE JURY. Arguments by counsel regarding the motion for jury to view the bus. COURT FINDS, there will be no out of Court experiments, such as line of sight experiments allowed, and ORDERED, jury view will be allowed. Counsel agreed to the wording of the admonition to be given to the jury prior to viewing the bus. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. At 3:00 PM, the Court, counsel, jurors and staff left to view the bus. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

March 14, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

March 14, 2018 9:30 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Barger, Darrell Attorney
 Christiansen, Peter S Attorney
 Pepperman, Eric Attorney
 Roberts, D Lee, Jr. Attorney
 Works, Kendelea Leascher Attorney

JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding scheduling. Evening recess. MATTER CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability**COURT MINUTES****March 15, 2018**

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
 vs.
 Motor Coach Industries Inc, Defendant(s)

March 15, 2018 12:00 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

| | | |
|-----------------|-------------------------|----------|
| PRESENT: | Barger, Darrell | Attorney |
| | Christiansen, Peter S | Attorney |
| | Henriod, Joel D. | Attorney |
| | Kemp, William Simon | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Works, Kendele Leascher | Attorney |

JOURNAL ENTRIES

- Court Clerk Denise Husted present. Michael Terry present for Motor Coach Industries. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet.

Court Clerk Katherine Streuber present: Michael Terry Esq, Pro Hac Vice present on behalf of Defendant Motor Coach Industries Inc. CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. OUTSIDE THE PRESENCE OF THE JURY. Court noted examination and cross examination cannot be cumulative although there are two Plaintiffs with different counsel. Arguments by counsel regarding constitutional right and ethical rules. Court advised it will look into the matter and make a determination. Mr. Kemp argued defense had a "shadow jury" watching the trial and noted a shadow juror had spoken with an actual juror in this trial. Statement by the Court. Court Marshal advised Juror had actually approached the

shadow juror in the restroom and asked "How their day was going." Argument by Mr. Barger stating they do not know who the shadow jurors are, advised they do hire an independent company who controls the shadow jurors, believed they would have been instructed not to speak with any trial jurors and assured the Court and counsel they would contact the company to have the shadow jury removed. Court believed the discussion between the actual juror and shadow juror did not rise to the level of a mistrial and cautioned there would be sanctions imposed for any rule infractions. Court then advised it would do research and make a ruling in regards to examination and cross examination when there are more than one client with separate counsel. JURY PRESENT. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. COURT ORDERED, matter CONTINUED.

03-16-18 9:30 AM TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability**COURT MINUTES****March 16, 2018**

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
 vs.
 Motor Coach Industries Inc, Defendant(s)

March 16, 2018 9:30 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Katrina Hernandez

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Henriod, Joel D. Attorney
 Kemp, William Simon Attorney
 Roberts, D Lee, Jr. Attorney
 Works, Kendelea Leascher Attorney

JOURNAL ENTRIES

- Michael Terry, Esq., out of state Counsel, also present on behalf of Defendant Motor Coach Industries, Inc.

OUTSIDE THE PRESENCE OF THE JURY. Court noted it reviewed its rulings on the motion in limine as it applies to the depositions at issue. Colloquy regarding scheduling settling of jury instructions. Court further noted its comments under the 403 analysis and advised it received trial briefs from Plaintiff and Court noted nothing received from Defense who advised they would file a brief this weekend. Arguments by Ms. Works as to why the issue needs to be decided today. Court stated it would take him outside the presence of the jury. Mr. Kemp and Mr. Terry stipulated to the admittance of Exhibits 263 and 264.

JURY PRESENT. Continued testimony and exhibits presented. (See worksheet.)

OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding Dr. Smith's report regarding criticism of Dr. Stokes. Colloquy regarding witness scheduling and settling jury instructions. Court recessed

for the evening.

CONTINUED TO: 3/19/18 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

March 19, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

March 19, 2018 9:30 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Linda Skinner

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Christiansen, Peter S Attorney
Henriod, Joel D. Attorney
Kemp, William Simon Attorney
Pepperman, Eric Attorney
Roberts, D Lee, Jr. Attorney
Works, Kendele Leascher Attorney

JOURNAL ENTRIES

- Michael Terry, out-of-State counsel for Defense, also present.

9:50 AM OUTSIDE PRESENCE OF THE JURY: Statements by Mr. Christiansen as to the proposed exhibit #579 and feels it is outside the Order of the Court. Statements by Mr. Roberts. Court advised it will allow the statement in question. Continued arguments by Mr. Christiansen, Mr. Kemp and Mr. Roberts. Court noted the exhibit will be admitted.

10:23 AM JURY PRESENT: Roll call by Clerk. Counsel stipulated to the presence of the Jury. Testimony and exhibits continued (see worksheets). 10:47 AM BREAK.

11:28 AM OUTSIDE PRESENCE OF THE JURY: Statements by Mr. Roberts in response to the objections by Mr. Kemp and Mr. Christiansen as to exhibit #579. Court stated its findings. Continued arguments by Mr. Henriod and Mr. Kemp. 12:04 PM JURY PRESENT: Counsel

stipulated to the presence of the Jury. Testimony and exhibits continued (see worksheets). 1:38 PM LUNCH BREAK.

2:48 PM OUTSIDE PRESENCE OF THE JURY: Statements by Ms. Works and Mr. Barger as to video deposition of Mr. Plantz. Court noted it has been resolved. 3:12 PM JURY PRESENT: Counsel stipulated to the presence of the Jury. Testimony and exhibits continued (see worksheets). 3:49 PM BREAK. OUTSIDE PRESENCE OF JURY: Ms. Works advised that they had agreed that certain statements would not come in during Mr. Plantz video deposition, however, there was a reference to "left turn" that was not in the written transcript and would request it be stricken. Mr. Barger concurred and had no objection. COURT ORDERED, that portion is STRICKEN.

4:04 PM OUTSIDE PRESENCE OF JURY: Statements by Mr. Kemp, Mr. Barger, Mr. Henriod and Mr. Pepperman as to the testimony of Mr. Hoogestraat. Mr. Kemp argued that Mr. Hoogestraat is not an expert and his testimony should be limited. Mr. Barger argued that Mr. Hoogestraat is an engineer. Continued arguments by counsel. Following, COURT ORDERED, Mr. Hoogestraat can only testify as to personal knowledge as he was not designated as an expert. Mr. Henriod advised at some point they will need to do an offer of proof. Court so noted.

4:47 PM JURY PRESENT: Counsel stipulated to the presence of the Jury. Court admonished Jury who were released and directed to return tomorrow at 1:00 PM. EVENING RECESS.

OUTSIDE PRESENCE OF THE JURY: Colloquy as to procedures for next day. Additionally, exhibits #573-576 used during Mr. Granite's testimony were offered by Mr. Roberts. Mr. Kemp had no objection. COURT ORDERED, these exhibits are admitted. Court directed counsel return at 12:30 to discuss any issues prior to the Jury arriving. EVENING RECESS.

... CONTINUED 3/20/18 1:00 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

March 20, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

March 20, 2018 1:00 PM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Phyllis Irby

RECORDER: Sandra Anderson

REPORTER:

PARTIES

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Christiansen, Peter S | Attorney |
| | Henriod, Joel D. | Attorney |
| | Kemp, William Simon | Attorney |
| | Pepperman, Eric | Attorney |
| | Polsenberg, Daniel F. | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY.

Colloquy regarding the 30(b)6 witness an offer of proof.

JURY PRESENT

Testimony and exhibits presented (see worksheet).

Jury recessed for the evening. COURT ORDERED, TRIAL CONTINUED.

OUTSIDE THE PRESENCE OF THE JURY.

Argument of counsel regarding designated witness. Jury instructions proposed verdict forms submitted by both sides to the Court.

3-21-18 9:00 AM JURY TRIAL (DEPT. XIV)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

March 21, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

March 21, 2018 9:00 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Phyllis Irby

RECORDER: Sandra Anderson

REPORTER:

PARTIES

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Barger, Darrell | Attorney |
| | Christiansen, Peter S | Attorney |
| | Henriod, Joel D. | Attorney |
| | Kemp, William Simon | Attorney |
| | Pepperman, Eric | Attorney |
| | Polsenberg, Daniel F. | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Works, Kendelee Leascher | Attorney |

JOURNAL ENTRIES

- JURY PRESENT

Testimony and exhibits presented (see worksheet).

OUTSIDE THE PRESENCE OF THE JURY.

Argument of counsel regarding limits on damages and exhibits being admitted.

JURY PRESENT

Testimony and exhibits presented (see worksheet). Lunch break.

OUTSIDE THE PRESENCE OF THE JURY

Argument of counsel regarding taxes.

JURY PRESENT

Testimony and exhibits presented (see worksheet). Jury recessed for the evening. COURT ORDERED, TRIAL CONTINUED.

OUTSIDE THE PRESENCE OF THE JURY

Colloquy regarding jury instructions. Colloquy regarding closing arguments. Colloquy regarding special verdict forms, legal cause issue being put on form, Plaintiff's damages will be at the end.

3-22-18 9:00 AM JURY TRIAL (DEPT. XIV)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability**COURT MINUTES****March 22, 2018**

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
 vs.
 Motor Coach Industries Inc, Defendant(s)

March 22, 2018 9:00 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Phyllis Irby

RECORDER: Sandra Anderson

REPORTER:

PARTIES

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Barger, Darrell | Attorney |
| | Christiansen, Peter S | Attorney |
| | Henriod, Joel D. | Attorney |
| | Kemp, William Simon | Attorney |
| | Pepperman, Eric | Attorney |
| | Polsenberg, Daniel F. | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Smith, Abraham G. | Attorney |
| | Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY.

Colloquy regarding Mr. Henriod requesting there be two attorneys for closing argument. The Court stated it would consider one attorney arguing compensatory damages and the other liability and punitive damages but, it will not be a cumulative argument. Parties stipulate to closing argument.

Mr. Smith made an oral motion regarding 50(b) motion. Mr. Kemp made his objections to the motion. COURT ORDERED, MOTION DENIED. The Court will issue a minute order at a later date.

JURY PRESENT

The Court gives instruction to the jury. Plaintiff's give closing arguments. Lunch break.

OUTSIDE THE PRESENCE OF THE JURY

Colloquy regarding Defense closing arguments.

JURY PRESENT

Defendants give their closing arguments. Plaintiff's give rebuttal argument.

JURY TO DELIBERATE at 6:15 PM.

OUTSIDE THE PRESENCE OF THE JURY

Colloquy regarding not admitted exhibits being picked up.

JURY PRESENT

The Court recessed the jury for the evening. COURT ORDERED, TRIAL CONTINUED.

3-23-18 9:00 AM JURY TRIAL (DEPT. XIV)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

March 23, 2018

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

March 23, 2018 9:00 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Phyllis Irby

RECORDER: Sandra Anderson

REPORTER:

PARTIES

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Barger, Darrell | Attorney |
| | Christiansen, Peter S | Attorney |
| | Henriod, Joel D. | Attorney |
| | Kemp, William Simon | Attorney |
| | Pepperman, Eric | Attorney |
| | Polsenberg, Daniel F. | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Smith, Abraham G. | Attorney |
| | Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- JURY PRESENT

Deliberations continued by the jury at 9:30 am.

VERDICT REACHED at 2:04 pm.

All parties present. Verdict read by the Clerk.

The Court thanked and excused the jury.

TRIAL ENDED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability**COURT MINUTES****May 04, 2018**

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

| | | | |
|---------------------|----------------|------------------|--|
| May 04, 2018 | 1:00 PM | Objection | Defendant Motor Coach Ind. Objection to Special Master Order Staying Post- Trial Discovery Including 5/2/18 Depo of the Custodian of Records of the Board of Regents NSHE and Alternatively, Motion for Limited Post-Trial Discovery on OST |
|---------------------|----------------|------------------|--|

HEARD BY: Escobar, Adriana**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Denise Husted**RECORDER:** Sandra Anderson**REPORTER:****PARTIES**

| | | |
|-----------------|--------------------------|----------|
| PRESENT: | Christiansen, Peter S | Attorney |
| | Henriod, Joel D. | Attorney |
| | Kemp, William Simon | Attorney |
| | Pepperman, Eric | Attorney |
| | Russell, Howard J., ESQ | Attorney |
| | Works, Kendelea Leascher | Attorney |

JOURNAL ENTRIES

- Mr. Henriod stated there is a Motion to Seal and under the circumstances of this hearing, he feels that it should be granted. Mr. Kemp concurred. COURT ORDERED, the motion is GRANTED.

PRINT DATE: 04/29/2019 Page 70 of 91 Minutes Date: June 06, 2017

Arguments by Mr. Henriod in support of the Objection to Special Master's Order Staying Post-Trial Discovery and Motion for Limited Post-Trial Discovery. He stated that recent revelations by the news media undermine the integrity of the judgment. He further advised that the required information would not have been identified by forwarding the releases. Mr. Kemp argued that the releases were signed and executed on 7/26/17. The release for the employment file was not forwarded by the defense and is the same discovery they are now seeking. He further argued that the post judgment discovery standard is exceedingly high and has not been met. The Court STATED ITS FINDINGS, and ORDERED, motion is DENIED. FURTHER, the subpoena is QUASHED and no post judgment discovery will be allowed. The Court informed parties that an order/minute order will follow with full findings.

May 23, 2018

PRINT DATE: 04/29/2019 Page 72 of 91 Minutes Date: June 06, 2017

redacting pages 5 8, all of page 9 except lines 7 20, all of page 10 except lines 3 13, all of page 11 except lines 4 20, all of page 12 except lines 22 26, all of page 13 except lines 1 2, page 14, and lines 1 5 of page 15, and omitting all attached exhibits. Additionally, the hearing on this motion is to be sealed for the same reasons. The unredacted version of the motion with all exhibits and the hearing must remain under seal until June 1, 2028.

Second, the Court agrees that the motion to alter or amend judgment contains settlement terms that are confidential by agreement of the parties, that the settling defendants have a compelling interest in maintaining the confidentiality of these terms which outweighs the presumption that court documents be open to the public, and that the redacted version of the motion filed on May 7, 2018 is reasonably redacted to balance both the interests of the Defendants and the public. The Court therefore GRANTS the second motion to seal, and orders that the sealed version of the motion to alter or amend judgment, filed on May 8, 2018, remain under seal until June 1, 2028.

Third, the Court agrees that Defendant s motion for a limited new trial contains the same unconfirmed and scandalous assertions which bear directly on the character of the deceased as are present in the Defendant s objection to the special master order and motion for post-trial discovery. The Court finds that the Plaintiffs compelling privacy interests outweigh the presumption that court documents be open to the public, and that reasonable redaction is possible to protect Plaintiffs privacy. The Court further finds the redacted version of the motion filed by Defendant on May 7, 2018 and the accompanying appendix omitting exhibits G L and O are reasonably redacted to balance both the interests of the Plaintiffs and the public. The Court therefore GRANTS the third motion to seal, and orders that the sealed version of the motion for a limited new trial and accompanying appendix, both filed on May 8, 2018, remain under seal until June 1, 2028.

Defendant is directed to prepare a proposed order and to circulate it to opposing counsel for approval as to form and content before submitting it to chambers for signature.

CLERK'S NOTE: Counsel notified via e-mail.

Joel Henriod (JHenriod@LRRC.com)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability**COURT MINUTES****July 06, 2018**

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

July 06, 2018 10:30 AM All Pending Motions

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Nicole McDevitt

RECORDER: Sandra Anderson

REPORTER:

PARTIES

| | | |
|-----------------|-------------------------|----------|
| PRESENT: | Barrett, Whitney | Attorney |
| | Christiansen, Peter S | Attorney |
| | Henriod, Joel D. | Attorney |
| | Kemp, William Simon | Attorney |
| | Polsenberg, Daniel F. | Attorney |
| | Roberts, D Lee, Jr. | Attorney |
| | Russell, Howard J., ESQ | Attorney |

JOURNAL ENTRIES

- Mr. Kemp stated parties have agreed to submit three of the motions now without oral argument, Motor Coach Industries Inc's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim, Motor Coach Industries Inc's Motion for a Limited New Trial, and Defendant's Motion to Retax Costs; as to Motor Coach Industries Inc's Motion to Alter or Amend Judgment to Offset Settlement Proceedings Paid By Other Defendants, it should be put off until after the projected funding date. Upon inquiry by the Court regarding the motions to strike, counsel stated those could be submitted too. COURT ORDERED, Motor Coach Industries Inc's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim, Motor Coach Industries Inc's Motion for a Limited New Trial, Defendant's Motion to Retax Costs, Motor Coach Industries, Inc.'s (MCI) Motion to Strike Plaintiffs' "Combined Opposition to Motion for a Limited New Trial, and MCI's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim", and Opposition to Untimely Motion to Exceed Page Limited on OST, and Motor Coach Industries, Inc.'s Motion to Strike

Plaintiffs' "Combined Opposition to Motion for a Limited New Trial and MCI's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim" and Opposition to Untimely Motion to Exceed Page Limit and Request for Order Shortening Time TAKEN UNDER ADVISEMENT;
Motor Coach Industries Inc's Motion to Alter or Amend Judgment to Offset Settlement Proceedings Paid By Other Defendants CONTINUED.

Motor Coach Industries Inc's Motion to Alter or Amend Judgment to Offset Settlement Proceedings Paid By Other Defendant's CONTINUED TO 8/28/2018 10:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability**COURT MINUTES****August 27, 2018**

A-17-755977-C Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

| | | | |
|------------------------|----------------|---------------------|--|
| August 27, 2018 | 8:00 AM | Minute Order | Defendant MCI's Motion to Retax Costs, Motion to Alter or Amend Judgment to Offset Settlement Proceeds, Motion for Limited New Trial, Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim, Motion to Strike Plaintiffs' Combined Opposition...Plaintiff s' Motion to Exceed Page Limit as to Combined Opposition |
|------------------------|----------------|---------------------|--|

HEARD BY: Escobar, Adriana**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Denise Husted**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Defendant MCI s motion to retax costs, motion to alter or amend judgment to offset settlement

PRINT DATE: 04/29/2019

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Minutes Date: June 06, 2017

proceeds, motion for limited new trial, renewed motion for judgment as a matter of law regarding failure to warn claim, and motion to strike Plaintiffs combined opposition, as well as Plaintiffs motion to exceed page limit as to combined opposition came on for a hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on July 6, 2018. Upon the stipulation of counsel, all motions were submitted on the briefs without oral argument except for Defendant's motion to alter or amend judgment, which was continued to August 28, 2018, at 10:30 AM. Therefore, after considering the briefs of the parties, the Court holds as follows:

A. Motion to strike combined opposition and Plaintiffs motion to exceed page limit

First, the Court GRANTS Plaintiffs motion to exceed page limit as to combined opposition and DENIES Defendant's motion to strike Plaintiffs combined opposition. The Court notes that Plaintiffs combined opposition contains one facts section with separate arguments and conclusions responding to two motions (Defendant's motion for limited new trial and Defendant's renewed motion for judgment as a matter of law), that the combined opposition is fifty three pages long, and that Plaintiffs did seek leave of court to file a brief in excess of thirty pages, albeit after the brief was already filed. Considering the complexity of this case and the legal arguments presented by Defendant's motions, as well as the significant factual overlap of these two particular motions, the Court finds an opposition in excess of thirty pages is warranted. The proper procedure would have been for the Plaintiffs to seek leave of court before filing the over-long opposition, or at least to include a motion to exceed page limit at the beginning of the opposition. However, the Court finds Defendant suffered little prejudice from the untimely motion or from Plaintiffs filing their oppositions together so as not to repeat eight pages of facts, and thus the Court will not impose the grave penalty of striking the opposition.

B. Renewed motion for judgment as a matter of law

The Court DENIES Defendant's renewed motion for judgment as a matter of law regarding failure to warn claim.

Defendant first argues that Plaintiffs failed to prove causation on this theory because the facts showed that Dr. Khiabani suddenly appeared in Mr. Hubbard's peripheral vision, and the accident happened too quickly for a reasonable jury to find that Mr. Hubbard could have avoided the accident. This argument ignores the full facts as presented in the Plaintiffs case-in-chief, specifically the testimony of Mr. Hubbard that he observed the bicycle while both Dr. Khiabani and the coach were on Charleston, and saw the bicycle turn onto Pavilion Center before Mr. Hubbard turned the coach onto Pavilion Center. Thus, although Mr. Hubbard testified that he did not see Dr. Khiabani's bicycle for 450 feet before the accident, the split-second that the accident occurred was not the first time Mr. Hubbard was made aware of the bicycle's presence. Taking all inferences in Plaintiffs favor, Plaintiffs elicited sufficient evidence for a reasonable jury to find that, had Mr. Hubbard been adequately warned about the dangerous nature of the coach, he would have driven differently as early as when he turned onto Pavilion Center for example by driving in the left lane instead of the right lane, or by driving slower so as to not pass the bicycle and that this different action would have avoided the accident. Thus, the accident did not happen too quickly for a reasonable jury to find that a warning would have made a difference.

The parties next dispute to what extent a plaintiff in a failure to warn claim must prove causation.

Defendant argues that insufficient evidence of causation was presented by Hubbard's testimony that he absolutely heeds warnings he is given when he is trained about something relative to safety, because Plaintiffs needed to additionally prove that the accident would have been avoided by the user heeding the warning. Defendant cites to numerous other jurisdictions for this notion, and argues that it is further supported by the Nevada Supreme Court's *Rivera v. Philip Morris, Inc.* decision. This Court disagrees. It is undisputed that, under *Rivera*, the Plaintiffs bear the burden of producing evidence demonstrating that, among other things, the defect caused the injury. *Rivera* also held that the burden of proving causation can be satisfied in failure-to-warn cases by demonstrating that a different warning would have altered the way the plaintiff used the product or would have prompted plaintiff to take precautions to avoid the injury. Taking all inferences in Plaintiffs' favor, the Court finds that Hubbard's testimony that he would have complied with a warning, combined with the facts listed above regarding Hubbard's perception of the events leading up to the accident, was sufficient to satisfy Plaintiffs' burden of proving causation under Nevada law.

Similarly, the Court disagrees with Defendant's suggestion that the open and obvious nature of the danger reinforces the conclusion that a warning would have been superfluous. Mot. at 10. Taking all inferences in Plaintiffs' favor, the presence of testimony by Hubbard, Mary Witherell, and some of Defendant's own employees, that they were not aware of the significance of the air displacement created by the coach's design refutes Defendant's classification of the danger as open and obvious. Further, even if the evidence enabled this Court to find as a matter of law that Hubbard should have known generally of the risk of driving next to a bicyclist, which this Court has not done, no Nevada law holds that this would prevent a reasonable jury from finding that an adequate warning would have avoided the accident.

Next, Defendant suggests that Plaintiffs' duty to prove causation required Plaintiffs to craft an adequate warning. Failure-to-warn claims can be classified as one of two types: allegations that the warning given by the defendant was crafted in such a way to be ineffective in preventing the injury; or allegations that the product is dangerous enough that a warning should have been provided but the defendant did not provide any warning. In cases of the first variety, the jury must consider whether the warning was adequate under the factors provided in *Lewis v. Sea Ray Boats, Inc.*, However, in the second category, the warning provided nothing could not possibly be considered adequate under the *Sea Ray* factors, and thus the only required findings are that the product was unreasonably dangerous and that an adequate warning would have avoided the injury. This case falls into the second category, where MCI undisputedly did not provide any warnings about any of the alleged defects which Plaintiffs alleged. In such a case, the Court finds no support for Defendant's assertion that no reasonable jury could find that the product was unreasonably dangerous and that an adequate warning would have avoided the injury without a specific warning being proposed by the plaintiff. While it is true that providing a model warning to show what the defendant could have done to make the product reasonably safe may be a helpful illustration for the plaintiff's case, it is not required for the jury to find in Plaintiffs' favor. Cf. *Ford Motor Co. v. Trejo* (in a design defect claim, a plaintiff may choose to support their case with evidence that a safer alternative design was feasible at the time of manufacture.). Plaintiffs need not prove precisely how the facts would have been different had there been an adequate warning, as this would amount to speculation; Plaintiffs need only provide the facts sufficient to allow the jury to draw the conclusion that the presence of an

adequate warning would have avoided the accident. As noted above, Plaintiffs did so here. In line with the above, the Court disagrees that the jury's verdict was consistent with judgment as a matter of law on causation, as the jury could have, and evidently did, find that the lack of an adequate warning caused the accident. The Court disagrees with Defendant's suggestion that the jury finding no liability on the defective design claim means when the jury was actually asked whether the allegedly defective design was the legal cause of damage, the jury concluded that it was not. In reality, the jury found no liability after being instructed that liability required both a design defect and causation, so a simple "no" answer does not necessarily mean the jury found causation to be lacking.

Defendant next argues that, MCI was not required to make a coach that does not create air disturbance, and therefore MCI was not required to provide a warning at all. While the Court notes that this argument was not raised in MCI's NRCP 50(a) motion during trial, the argument misstates the question actually posed to the jury.

The failure-to-warn claim does not ask whether the coach created an air disturbance, but rather whether the coach was unreasonably dangerous due to the air disturbance it created. Thus, regardless of whether MCI had a duty to minimize or remove any air disturbance from its product, there was sufficient evidence for the jury to find that any air disturbance created by the coach was unreasonably dangerous and that the injury could have been avoided by an adequate warning. Finally, Defendant argues that Nevada's wrongful-death statute requires proof of fault, while the nature of a strict liability claim does not require proving fault, and therefore that the elements of a wrongful death claim could not be satisfied by allegations founded in strict liability. The Court finds no support in Nevada case law for this notion, and indeed finds myriad wrongful death actions founded in strict liability, and thus the Court will not apply the law differently for this case. Moreover, Defendant's interpretation of the "wrongful act or neglect" language in NRS 41.085(2) would lead to an absurd result: A defendant who, by no intentional act or malice, creates an unreasonably dangerous product would still be held strictly liable if a user were merely injured, but would no longer be held accountable if the injuries were grave enough to end the user's life.

C. Motion for limited new trial

The Court DENIES Defendant's motion for limited new trial, as none of the arguments presented by Defendant exhibits an issue which materially affect[ed] the substantial rights of an aggrieved party. NRCP 59(a).

First, Defendant argues that the jury was excused from considering causation of the failure to warn claim because the verdict form did not mention this step of the analysis, and instead allowed the jury to return a verdict in Plaintiffs' favor solely by finding that Defendant failed to provide an adequate warning that would have been heeded. First, as noted above, the Court disagrees with Defendant's position that Plaintiff must prove that an adequate warning would have actually avoided the injury, or that the accident happened too quickly for a jury to find that an adequate warning could have avoided the accident. However, the Court also notes that the jury instructions sufficiently informed the jury on all findings required for the jury to return a verdict in Plaintiffs' favor including causation and that this remedied any potential errors with the verdict form. Taking into consideration the totality of the jury instructions and the verdict form, the Court does not find that the absence of causation on the fifth question was prejudicial to Defendant. Finally, the Court finds no support for

the notion that the special verdict form was required to include a finding for every element of every claim.

Second, the Court does not agree that precluding evidence of NRS 484B.270, the statute requiring a motorist to maintain a three-foot distance from a bicyclist, constituted an error of law that warrants a new trial. The safety statute in its current form did not exist at the time the coach was sold, and the version of the statute that did exist at the time the coach was sold contained only a mandate that a motorist passing a bicyclist do so safely, which does not offer any support for Dr. Krauss's opinion that the law already required vehicles to maintain a certain distance from bicycles. Thus, the existence of the statute has no probative value as to why Defendant chose not to provide a warning with the coach. Further, the Court maintains that the JI 32, on nondelegation, was rightfully included due to evidence being presented at trial that at least one of Defendant's employees believed another entity would warn drivers about the danger of the coach. If JI 32 caused any prejudice to Defendant's case, the Court does not agree that it materially affected Defendant's substantial rights.

Third, as noted in this Court's order denying Defendant's motion for post-trial discovery, the Court does not agree that any newly discovered evidence warrants a new trial. For the same reasons iterated in that order, the Court has not been convinced that the new evidence could not have been found with reasonable diligence, so NRCP 59(a)(4) is not met here. The Court is also not convinced by Defendant's argument that the difficulty in discovering this evidence is exhibited by Plaintiffs' lack of knowledge, or that Defendant was entitled to rely on Plaintiffs' duty to disclose such information. NRCP 16.1 requires a party to disclose the identity of individuals likely to have discoverable information, but it does not require a party to conduct discovery for the other parties.

Here, it appears Plaintiffs disclosed Dr. Khiabani's employer, which was sufficient to satisfy Plaintiffs' duty under NRCP 16.1; Plaintiffs were under no duty to actually discover any information from Dr. Khiabani's employer, just to enable Defendant to do so. As stated in the Court's prior order, Defendant had access to the new evidence had it simply attempted to get it. Moreover, even if the Court were to find that Plaintiffs lapsed on their discovery obligations, this Court does not find that such a finding would render the new evidence undiscoverable with due diligence, so a new trial is not warranted on these grounds.

Fourth, the Court does not agree that it erred by precluding evidence of the impact of income taxes. While the Court recognizes the difference between damages for lost wages and damages for loss of probable support, Nevada law is clear that evidence of tax implications is not admissible in a wrongful death case. See, e.g. *Otis Elevator Co. v. Reid*, 101 Nev. 515 (1985). Defendant is correct that certain special circumstances allow jury instructions on tax consequences, but only when tax issues are discussed at trial. *Id.* Here, tax issues were not discussed at trial under the general rule that tax implications are not admissible, and thus there was no indication that the jury would consider tax implications. Therefore, *Otis Elevator Co. v. Reid*'s special circumstances exception does not apply, and Defendant's substantial rights were not materially affected.

D. Motion to Retax

The Court is unable to award costs under NRS 18.005 unless the prevailing party provides justifying documentation to demonstrate how such [claimed costs] were necessary to and incurred in the present action. *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352 (1998) and *Cadle Co. v. Woods & Erickson, LLP*, 345 P.3d 1049 (Nev. 2015). The Nevada Supreme Court will reverse an award of costs as an abuse of discretion if the party does not provide evidence, such as a declaration of counsel, that

explains how the [costs] were necessary and incurred rather than simply telling the district court that the costs were reasonable and necessary. *Matter of DISH Network Derivative Litigation*, 133 Nev. Adv. Op. 16, 401 P.3d 1081 (2017).

Here, Plaintiffs provided a detailed and verified memorandum of costs, over 1,300 pages of documentation including itemized lists and invoices, and a declaration of counsel in support of the memorandum of costs which discusses (1) the expert fees being sought; (2) reporter s fees for depositions and deposition transcripts; (3) online legal research; (4) trial support services; and (5) other necessary and unavoidable costs including photocopies, travel expenses for necessary fact and expert witness depositions, postage, witness fees, juror fees, process server fees, official court reporter fees, and run services for delivery of time sensitive documents and filing. Although the Court finds that Plaintiffs opposition to Defendant s motion to retax provides some argument for why many costs were reasonable or necessary, and further that many of Plaintiffs claimed costs appear reasonable and necessary based on the Court s own experience and knowledge of this case, binding case law precludes this Court from awarding costs for which Plaintiffs have not provided sufficient documentation.

In light of the above, the Court GRANTS Defendant s motion to retax IN PART, as to the following items:

1. \$70.00 cost for a paralegal to file a subpoena. Paralegal time is not a cost of litigation under NRS 18.005, and is more appropriately categorized as legal fees. See, e.g. *Las Vegas Metropolitan Police Department v. Yeghiazarian*, 129 Nev. 760, 770 (2013) (concluding that reasonable attorney s fees includes charges for persons such as paralegals and law clerks).
2. \$22,553.75 for videography services and related expedite fees. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.
3. \$5,075.00 for synchronized DVD costs. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.
4. \$1,736.00 for rough drafts of depositions. NRS 18.005(2) provides for one copy of each deposition, but does not provide for rough drafts, and Plaintiffs have not shown in its declaration how this service was necessary.
5. \$3,450.00 for Live Note and Zoom connection fees. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.
6. \$4,550.00 for videoconference costs. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.
7. \$100.00 for After 5 PM charges. These costs are not specifically allowed under NRS 18.005, and

thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.

8. \$185.00 for flash drives, apparently for depositions of expert witnesses. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.

9. \$300.00 for video files for expert witnesses. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.

10. \$1,385.40 for conference rooms for depositions of various witnesses. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.

11. \$100.00 for read and sign fees. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.

12. \$315.00 for equipment rental. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.

13. \$100.00 for non-writing wait time for two witnesses. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.

14. \$79.00 for parking for depositions. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.

15. \$356.40 for food provided at depositions. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.

16. \$1,050.00 for professional fees for Dr. Gavin. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.

17. \$140.00 for duplicate service on Portia Hubbard. In examining the documents provided by

Plaintiffs, it appears Ms. Hubbard was served with a subpoena on both on 8/26/2017 and on 10/1/2017, with no explanation for why the second subpoena was necessary. NRS 18.005(7) does not allow costs for service which the Court finds to be unnecessary. Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.

18. \$35.00 for wait time of process server(s). This cost is not enumerated in NRS 18.005(7), and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.

19. \$61.60 for faxes. While reasonable costs for telecopies are allowed under NRS 18.005(11), under Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1352 (1998) and Cadle Co. v. Woods & Erickson, LLP, 345 P.3d 1049 (Nev. 2015), the documentation submitted is insufficient for the Court to find that the costs were reasonable or necessary, because Plaintiffs have provided no information stating what documents were faxed, and in most cases provide no information of who the fax was sent to. Further, Plaintiffs have offered no explanation for why certain faxes have a higher per-page cost than others. Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary or reasonable.

20. \$4,141.77 for scanning (internal and outside vendor). NRS 18.005 does not provide for costs of scanning, and Plaintiffs have not provided any information about how costs were incurred at all due to internal scanning, or how each scan was necessary. While the Court agrees that the DISH Network Court found the party in that case provided the district court with sufficient justifying documentation to support the award of costs for photocopying and scanning under NRS 18.005(12), Plaintiffs here have provided no such documentation explaining the reasonableness or necessity of these costs.

21. \$39.00 for an unsubstantiated Las Vegas Metropolitan Police Department cost. Defendant's motion states that this cost appears to be either for a police report or for a subpoena, and Plaintiffs do not offer any opposition to this cost being retaxed. Moreover, while Plaintiffs provided documentation showing that these costs were incurred, these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.

22. \$1,219.98 for hotels for trial witnesses. NRS 18.005(15) only includes travel and lodging incurred while conducting discovery, and while Plaintiffs provided documentation showing that these costs were incurred, the declaration of counsel only discusses the necessity of costs incurred in travel expenses for depositions. Plaintiffs thus provided no documentation explaining how the costs were necessary.

23. \$30,018.77 in legal research. As stated in DISH Network, the reasonable and necessary expenses for computerized services for legal research allowed in NRS 18.005(17) pertain to costs incurred in the process of electronic discovery. The declaration of Plaintiffs' counsel states that these costs were incurred to provide the Court with the most recent applicable caselaw on various points of dispute throughout pre-trial motions and during the course of trial... The argument contained in Plaintiffs' opposition to the motion to retax reinforces that these costs were incurred not as a part of discovery,

but rather to assist Plaintiffs' counsel in making legal arguments in motion practice and at trial. Further, the itemized list of research provided in Plaintiffs' appendix of documents provides only the date and cost of each transaction. Thus, under DISH Network's holding that this expense does not fall under NRS 18.005(17), this cost is not taxable.

In total, the Court reduces Plaintiffs' taxable costs by \$77,061.67.

As to the remaining specific costs Defendant seeks to retax, the Court finds that each cost falls under NRS 18.005(17) as an expense that is reasonable, necessary, and actually incurred, based on the documentation and declaration of counsel. This conclusion contemplates that the parties conducted discovery on an extremely expedited schedule due to the preferential trial setting. Further, the complex nature of the claims and gravity of damages at issue required Plaintiffs to expend costs that may be considered luxuries in different cases, such as oversize color printing and trial support services. Finally, the Court examined in detail the requested expert fees under *Frazier v. Drake*, 357 P.3d 365 (Nev. App. 2015) and found that the fees in excess of \$1,500 for each witness was warranted in light of the factors enumerated in *Frazier*.

Counsel for Plaintiffs is directed to prepare a proposed order including detailed findings of fact and conclusions of law on Defendant's motion for judgment as a matter of law, Defendant's motion for new trial, Defendant's motion to strike Plaintiffs' opposition, and Plaintiffs' motion to exceed page limit. Counsel for Defendant is directed to prepare a separate proposed order including detailed findings of fact and conclusions of law on Defendant's motion to retax. Both proposed orders are to be approved by opposing counsel as to form and content prior to submitting the order to chambers in Microsoft Word format, by e-mail to dept14lc@clarkcountycourts.us

CLERK'S NOTE: Counsel notified via e-mail:

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Eric Pepperman (e.pepperman@kempjones.com)

THE SEALED PORTION
OF THESE MINUTES
WILL FOLLOW VIA
U.S. MAIL.

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| | | | |
|---|--|---|--|
| Trial Date: February 12, 2018 9:30 a.m. | | Clerk: Denise Husted | |
| Dept. No. XIV Judge: Adriana Escobar | | Recorder: Sandra Anderson | |
| Plaintiffs: KEON KHIABANI and ARIA KHIABANI, minors, by and through their Guardian, MARIE-CLAUDE RIGAUD; SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani, M.D. (Decedent), the Estate of Kayvan Khiabani, M.D. (Decedent); SIAMAK BARIN, as Executor of the Estate of Katayoun Barin, DDS (Decedent); and the Estate of Katayoun Barin, DDS (Decedent); | | Counsel for Plaintiff: WILL KEMP, ESQ. ERIC M. PEPPERMAN, ESQ. PETER J. CHRISTIANSEN, ESQ. KENDELEE L. WORKS, ESQ. | |
| vs. Defendants: MOTOR COACH INDUSTRIES, INC., a Delaware corporation; MICHELANGELO LEASING INC. d/b/a RYAN'S EXPRESS, an Arizona corporation; EDWARD HUBBARD, a Nevada resident; BELL SPORTS, INC. d/b/a GIRO SPORT DESIGN, a Delaware corporation; SEVENPLUS BICYCLES, INC. d/b/a PRO CYCLERY, a Nevada corporation, DOES 1 through 20; and ROE CORPORATIONS 1 through 20. | | Counsel for Motor Coach Industries: | |

ALL EXHIBITS NOT ADMITTED RETURNED

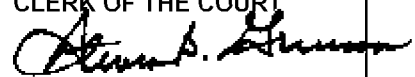
| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|-----------|--|--------------|----------|---------------|
| 1 | 4/18/17 - Certificate of Death of Kayvan Taghipour Khiabani. P00001 | 2/26/18 | No | 2/26/18 |
| 2 | 4/18/17 - Medical Records from University Medical Center of Kayvan Khiabani (identified as Lubbock Doe). P00002-P00050 | | | RETURNED |
| 3 | 4/18/17 - Videotape from Red Rock Casino. P00051 | 2/23/18 | No | 2/23/18 |
| 4 | 4/18/17 - Videotape of post-accident. P00052 | 2/23/18 | No | 2/23/18 |

PLAINTIFFS' EXHIBIT LIST

Case No. A-17-755977

| Exhibit # | Description of Documents | Date Offered | Objected | Date Admitted |
|-----------|---|--------------|----------|---------------|
| 5 | Videotape involving Truck sideswiping Bicyclist. P00053 | 2/28/18 | No | 2/28/18 |
| 6 | Stills of Truck sideswiping Bicyclist. P00053A (1-85) | | | |
| 7 | Videotape – behind the Scenes – Bell Helmet Test Lab. P00054 | | | |
| 8 | Videotape – GIRO and MIPS. P00055 | | | |
| 9 | 6/7/07 - Giro Owner's Manual. P00056-P00091 | | | |
| 10 | 2/26/14 - Giro Owner's Manual. P00092-P00127 | | | |
| 11 | 12/25/15 - Giro Owner's Manual. P00128-P00148 | | | |
| 12 | 10/4/16 - Receipt from Pro Cyclery in the amount of \$3,460.79 for the purchase of a Scott Solace 10 Disc Bicycle and bag. P00149 | | | |
| 13 | Scott Bike User Manual 2016. P00150-P00175 | | | |
| 14 | 6/10/17 - Kayvan Memorial Ride Flyer. P00176 | | | |
| 15 | 5/00/17 - Letter from Mayor. P00177 | | | |
| 16 | 6/17/17 - June 2017 Ghost Bike Memorial Ceremony. P00178 | | | |
| 17 | 6/19/17 - Letter from Governor. P00179 | | | |
| 18 | 12/15/16 - Article entitled "Bus & Motor Coach News." P00180-P00181 | | | |
| 19 | 2015 - New Flyer Industries, Inc. 2015 Annual Report. P00182-P00247 | | | |
| 20 | 2016 - New Flyer Industries, Inc. 2016 Report. P00248-P00286 | | | |

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*Additional Counsel Listed on
Signature Block*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KEON KHIABANI and ARIA KHIABANI,
minors by and through their Guardian,
MARIE-CLAUDE RIGAUD; SIAMAK BARIN, as
Executor of the Estate of Kayvan
Khiabani, M.D. (Decedent); the ESTATE OF
KAYVAN KHIABANI, M.D. (Decedent);
SIAMAK BARIN, as Executor of the Estate
of Katayoun Barin, DDS (Decedent); and
the ESTATE OF KATAYOUN BARIN, DDS
(Decedent);

Plaintiffs,

v.

MOTOR COACH INDUSTRIES, INC., a
Delaware corporation; MICHELANGELO
LEASING INC. d/b/a RYAN'S EXPRESS, an
Arizona corporation; EDWARD HUBBARD, a
Nevada resident; BELL SPORTS, INC. d/b/a
GIRO SPORT DESIGN, a Delaware
corporation; SEVENPLUS BICYCLES, INC.
d/b/a PRO CYCLERY, a Nevada corporation,
DOES 1 through 20; and ROE
CORPORATIONS 1 through 20,

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

NOTICE OF APPEAL

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of April, 2019, a true and correct copy of the foregoing "Notice of Appeal" was served by e-service, in accordance with the Electronic Filing Procedures of the Eight Judicial District Court.

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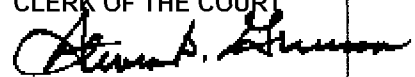
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***Attorney for Defendants
Michelangelo
Leasing Inc. d/b/a Ryan's Express
and
Edward Hubbard***

/s/ Adam Crawford
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

EXHIBIT A

EXHIBIT A



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9 *Attorneys for Plaintiffs*

10
11 **DISTRICT COURT**

12 **COUNTY OF CLARK, NEVADA**

13 KEON KHIABANI and ARIA KHIABANI,
14 minors by and through their natural mother,
KATAYOUN BARIN; KATAYOUN BARIN,
15 individually; KATAYOUN BARIN as
Executrix of the Estate of Kayvan Khiabani,
16 M.D. (Decedent), and the Estate of Kayvan
Khiabani, M.D. (Decedent),

17 Plaintiffs,

18 vs.

19 MOTOR COACH INDUSTRIES, INC.,
20 a Delaware corporation; et al.

21 Defendants.

Case No. A-17-755977-C

Dept. No. XIV

NOTICE OF ENTRY OF JUDGMENT

22
23 TO: All parties herein; and

24 TO: Their respective counsel;

25 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that a Judgment was entered
26 in the above entitled matter on April 17, 2018.

27 //

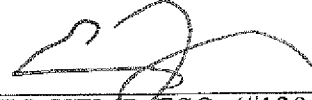
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Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

1 A copy of said Judgment is attached hereto.

2 DATED this 18th day of April, 2018.

3 KEMP, JONES & COULTHARD, LLP

4 

5 WILL KEMP, ESQ. (#1205)
6 ERIC PEPPERMAN, ESQ. (#11679)
7 KEMP, JONES & COULTHARD, LLP
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10 -and-
11 PETER S. CHRISTIANSEN, ESQ. (#5254)
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13 CHRISTIANSEN LAW OFFICES
14 810 Casino Center Blvd.
15 Las Vegas, Nevada 89101
16 *Attorneys for Plaintiffs*

17 **CERTIFICATE OF SERVICE**

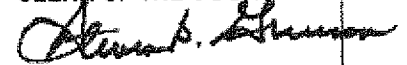
18 I hereby certify that on the 18th day of April, 2018, the foregoing NOTICE OF ENTRY OF
19 JUDGMENT was served on all parties currently on the electronic service list via the Court's
20 electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules,
21 Administrative Order 14-2.

22 

23 An Employee of Kemp, Jones & Coulthard.

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Steven D. Grierson
CLERK OF THE COURT



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15 Las Vegas, Nevada 89101
16 *Attorneys for Plaintiffs*

DISTRICT COURT
CLARK COUNTY, NEVADA

12 KEON KHIABANI and ARIA KHIABANI,
13 minors, by and through their Guardian,
14 MARIE-CLAUDE RIGAUD; SIAMAK
15 BARIN, as Executor of the Estate of Kayvan
16 Khiabani, M.D. (Decedent), the Estate of
17 Kayvan Khiabani, M.D. (Decedent);
18 SIAMAK BARIN, as Executor of the Estate
19 of Katayoun Barin, DDS (Decedent); and the
20 Estate of Katayoun Barin, DDS (Decedent);

Plaintiffs,

vs.

20 MOTOR COACH INDUSTRIES, INC.,
21 a Delaware corporation; et al.

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

JUDGMENT

24 The above-captioned action having come before the Court for a jury trial
25 commencing on February 12, 2018, the Honorable Adriana Escobar, District
26 Judge, presiding, and the issues having been duly tried, and the jury having duly
27 rendered its special verdict,
28

1 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that, pursuant
2 to the jury's verdict, judgment is entered in favor of Plaintiffs, KEON KHIABANI
3 and ARIA KHIABANI, minors, by and through their Guardian MARIE-CLAUDE
4 RIGAUD, and SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani,
5 M.D. (Decedent) and as Executor of the Estate of Katayoun ("Katy") Barin, DDS
6 (Decedent), and against Defendant MOTOR COACH INDUSTRIES, INC.
7 ("MCI"), as follows:

8 **KEON KHIABANI DAMAGES**

| | |
|--|----------------|
| 9 Past Grief and Sorrow, Loss of Companionship, 10 Society, and Comfort: | \$1,000,000.00 |
| 11 Future Grief and Sorrow, Loss of Companionship, 12 Society, and Comfort: | \$7,000,000.00 |
| 13 Loss of Probable Support: | \$1,200,000.00 |
| 14 Pain and Suffering of Decedent, 15 Dr. Kayvan Khiabani: | \$333,333.34 |
| 16 | |
| 17 TOTAL | \$9,533,333.34 |

18
19 **ARIA KHIABANI DAMAGES**

| | |
|--|----------------|
| 20 Past Grief and Sorrow, Loss of Companionship, 21 Society, and Comfort: | \$1,000,000.00 |
| 22 Future Grief and Sorrow, Loss of Companionship, 23 Society, and Comfort: | \$5,000,000.00 |
| 24 Loss of Probable Support: | \$1,000,000.00 |
| 25 Pain and Suffering of Decedent, 26 Dr. Kayvan Khiabani: | \$333,333.33 |
| 27 | |
| 28 TOTAL | \$7,333,333.33 |

THE ESTATE OF KATY BARIN DAMAGES

| | |
|---|----------------------|
| Greif and Sorrow, Loss of Companionship, Society, Comfort, and Consortium suffered by Katy Barin before her October 12, 2017 death: | \$1,000,000.00 |
| Loss of Probable Support before her October 12, 2017 death ³³ | \$500,000.00 |
| Pain and Suffering of Decedent, Dr. Kayvan Khiabani: | \$333,333.33 |
| | TOTAL \$1,833,333.33 |

THE ESTATE OF KAYVAN KHIABANI COMPENSATORY DAMAGES

| | |
|------------------------------|-------------|
| Medical and Funeral Expenses | \$46,003.62 |
|------------------------------|-------------|

| | |
|--|------------------------|
| PLAINTIFFS' COMBINED TOTAL DAMAGES AWARD: | \$18,746,003.62 |
|--|------------------------|

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that, under
 Nev. Rev. Stat. § 18.020, Plaintiffs shall also recover all costs reasonably and
 necessarily incurred in this action in an amount to be determined.

///

///

1 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that, pursuant
2 to Nev. Rev. Stat. § 17.130, Plaintiffs shall receive prejudgment interest, accruing
3 from June 1, 2017, at the rate provided by law, on \$4,546,003.62 of the combined
4 total damages award, as this amount represents past damages for: (i) the grief and
5 sorrow and loss of companionship, society, and comfort suffered by Keon
6 Khiabani (\$1,000,000.00); (ii) the grief and sorrow and loss of companionship,
7 society, and comfort suffered by Aria Khiabani (\$1,000,000.00); (iii) the grief and
8 sorrow and loss of companionship, society, comfort, consortium, and probable
9 support suffered by Katy Barin before her October 12, 2017 death
10 (\$1,500,000.00); (iv) the pain and suffering of Decedent Dr. Kayvan Khiabani
11 (\$1,000,000.00); and (v) the medical and funeral expenses incurred by Decedent
12 Dr. Kayvan Khiabani (\$46,003.62). As of April 11, 2018, the total amount of
13 accrued prejudgment interest is \$246,480.55.¹

14 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiffs'
15 total judgment shall bear post-judgment interest at the rate provided by law, which
16 is currently 6.5%/year, until satisfied.

17 IN SUM, judgment upon the verdict in favor of Plaintiffs is hereby given
18 for Eighteen Million Seven Hundred Forty-Six Thousand Three and 62/100
19 Dollars (\$18,746,003.62) against Defendant MCI, with prejudgment interest, as
20 described above, and with post-judgment interest continuing to accrue on the total
21 judgment amount from the date this Judgment is entered until it is fully satisfied.

22 Dated this 17th day of April, 2018.

23
24 
25 DISTRICT COURT JUDGE

26
27 ¹ 06/01/2017 - 06/30/2017 \$21,484.53(30 days @ \$716.15/daily @ 5.750%/year);
28 07/01/2017 - 12/31/2017 \$143,230.23(184 days @ \$778.43/daily @ 6.250%/year);
1/01/2018 - 04/11/2018 \$81,765.78(101 days @ \$809.56/daily @ 6.500%/year)

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1 Respectfully Submitted by:
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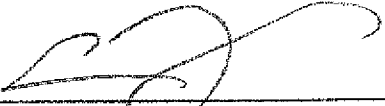
3
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9 -and-
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EXHIBIT B

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*Additional Counsel Listed on
Signature Block*

DISTRICT COURT

CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,
minors, by and through their guardian,
MARIE-CLAUDE RIGAUD; SIAMAK
BARIN, as executor of the ESTATE OF
KAYVAN KHIABANI, M.D., (Decedent);
the ESTATE OF KAYVAN KHIABANI, M.D.
(Decedent); SIAMAK BARIN, as executor of
the ESTATE OF KATAYOUN BARIN, DDS
(Decedent); and the Estate of KATAYOUN
BARIN, DDS (Decedent),

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC., a
Delaware corporation; MICHELANGELO
LEASING INC. d/b/a RYAN'S EXPRESS, an
Arizona corporation; EDWARD HUBBARD,
a Nevada resident; BELL SPORTS, INC.
d/b/a GIRO SPORT DESIGN, a Delaware
corporation; SEVENPLUS BICYCLES, INC.
d/b/a PRO CYCLERY, a Nevada
corporation, DOES 1 through 20; and ROE
CORPORATIONS 1 through 20,

Defendants.

Case No. A755977

Dept. No. 14

**NOTICE OF ENTRY OF "FINDINGS
OF FACT AND CONCLUSIONS OF
LAW ON DEFENDANT'S MOTION
TO RETAX"**

1 Please take notice that on the 23rd day of April, 2019, a “Findings of Fact
2 and Conclusions of Law on Defendant’s Motion to Retax” was entered in this
3 case. A copy of the order is attached.

4 Dated this 24th day of April, 2019.

5 LEWIS ROCA ROTHGERBER CHRISTIE LLP
6

7 By /s/ Joel D. Henriod

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Attorneys for Defendant Motor Coach Industries, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of April, 2019, a true and correct copy of the foregoing notice of entry was served by e-service, in accordance with the Electronic Filing Procedures of the Eight Judicial District Court.

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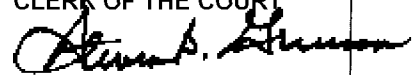
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Leasing Inc. d/b/a Ryan's Express and*

Edward Hubbard

/s/ Adam Crawford
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

EXHIBIT A

EXHIBIT A



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Attorneys for Motor Coach Industries, Inc,

DISTRICT COURT
CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,
minors by and through their Guardian,
MARIE-CLAUDE RIGAUD; SIAMAK BARIN,
as Executor of the Estate of Kayvan
Khiabani, M.D. (Decedent); the ESTATE
OF KAYVAN KHIABANI, M.D. (Decedent);
SIAMAK BARIN, as Executor of the
Estate of Katayoun Barin, DDS
(Decedent); and the ESTATE OF
KATAYOUN BARIN, DDS (Decedent),

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC., a
Delaware corporation; MICHELANGELO
LEASING INC. d/b/a RYAN'S EXPRESS, an
Arizona corporation; EDWARD
HUBBARD, a Nevada resident; BELL
SPORTS INC. d/b/a GIRO SPORT DESIGN,
a Delaware corporation; SEVENPLUS
CYCLES, INC. d/b/a PRO CYCLERY, a
Nevada corporation; DOES 1 through
20; and ROE CORPORATIONS 1 through
20,

Defendants.

Case No. A-17-755977-C

Dept. No. 14

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON
DEFENDANT'S MOTION TO RETAX**

Hearing Date: July 6, 2018
Hearing Time: 10:30 a.m.

1 Defendant Motor Coach Industries, Inc.'s ("MCI") "Motion to Retax Costs"
2 came on for hearing on July 6, 2018 at 10:30 a.m. Upon stipulation of the
3 parties, the motion was submitted on the briefs without oral argument. Having
4 reviewed the briefing, being duly advised on the premises, and good cause
5 appearing therefor, this Court now issues these findings of fact and conclusions
6 of law:

7 I.

8 PROCEDURAL HISTORY

9 1. On March 23, 2018, following a 23-day trial, the jury rendered a
10 special verdict awarding plaintiffs a combined total of \$18,746,003.62 in
11 compensatory damages.

12 2. On April 17, 2018, this Court entered judgment in favor of
13 plaintiffs.

14 3. On April 24, 2018, plaintiffs' filed their "Verified Memorandum of
15 Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110,"
16 "Declaration of Peter S. Christiansen, Esq." in support of the memorandum, and
17 supporting appendix volumes. Mr. Christiansen amended his declaration on
18 April 25, 2018. Plaintiffs filed a supplemental memorandum on May 9, 2018.

19 4. MCI filed its "Motion to Retax Costs" on April 30, 2018. Plaintiffs
20 filed their opposition on May 14, 2018, and MCI filed its reply on June 29, 2018.

21 5. After considering the briefing, this Court issued a detailed minute
22 order on August 24, 2018 granting MCI's motion in part, and directing MCI's
23 counsel to prepare this formal order.

24 II.

25 FINDINGS OF FACT

26 6. Plaintiffs provided a detailed and verified memorandum of costs,
27 over 1,300 pages of documentation, including itemized lists and invoices, and a
28 declaration of counsel in support of the memorandum of costs, which discusses

1 (1) the expert fees being sought; (2) reporter's fees for depositions and
2 deposition transcripts; (3) online legal research; (4) trial support services; and
3 (5) other "necessary and unavoidable costs," including "photocopies, travel
4 expenses for necessary fact and expert witness depositions, postage, witness
5 fees, juror fees, process server fees, official court reporter fees, and run services
6 for delivery of time sensitive documents and filing." (*See generally*, Pls.' Memo
7 and Opp.)

8 7. Plaintiffs requested costs incurred by their two law firms, Kemp,
9 Jones & Coulthard, LLP ("KJP") and Christiansen Law Offices ("CLO"), totaling
10 \$619,888.71. (Pls.' Supp. Memo, at 2–3.)

11 8. Any of the foregoing findings of fact which constitute conclusions of
12 law shall be deemed as conclusions of law.

13 CONCLUSIONS OF LAW

14 9. The Court is unable to award costs under NRS 18.005 unless the
15 prevailing party provides justifying documentation to "demonstrate how such
16 [claimed costs] were necessary to and incurred in the present action." *Bobby*
17 *Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 386 (1998) and
18 *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049
19 (2015). The Nevada Supreme Court will reverse an award of costs as an abuse
20 of discretion if the party does not provide evidence, such as a declaration of
21 counsel, that "explains how the [costs] were necessary and incurred rather than
22 simply telling the district court that the costs were reasonable and necessary."
23 *In re Dish Network Deriv. Litig.*, 133 Nev. Adv. Op. 16, 401 P.3d 1081 (2017).

24 10. Although the Court finds that plaintiffs' opposition to MCI's motion
25 to retax provides some argument for why many costs were reasonable or
26 necessary, and further that many of plaintiffs' claimed costs appear reasonable
27 and necessary based on the Court's own experience and knowledge of this case,
28 binding case law precludes this Court from awarding costs for which plaintiffs

1 have not provided sufficient documentation.

2 ***Retaxed Costs***

3 11. \$70.00 cost for a paralegal to file a subpoena. Paralegal time is not
4 a “cost” of litigation under NRS 18.005, and is more appropriately categorized
5 as legal fees. *See, e.g. Las Vegas Metropolitan Police Dept. v. Yeghiazarian*, 129
6 Nev. 760, 770, 312 P.3d 503, 510 (2013) (concluding that “reasonable attorney’s
7 fees” includes charges for persons such as paralegals and law clerks).

8 12. \$22,553.75 for videography services and related fees to expedite.
9 These costs are not specifically allowed under NRS 18.005, and thus would only
10 be recoverable under NRS 18.005(17). Plaintiffs provided documentation
11 showing that these costs were incurred, but these costs are not discussed in the
12 declaration of counsel. Plaintiffs thus provided no documentation explaining
13 how the costs were necessary.

14 13. \$5,075.00 for synchronized DVD costs. These costs are not
15 specifically allowed under NRS 18.005, and thus would only be recoverable
16 under NRS 18.005(17). Plaintiffs provided documentation showing that these
17 costs were incurred, but these costs are not discussed in the declaration of
18 counsel. Plaintiffs thus provided no documentation explaining how the costs
19 were necessary.

20 14. \$1,736.00 for rough drafts of depositions. NRS 18.005(2) provides
21 for one copy of each deposition, but does not provide for rough drafts, and
22 plaintiffs have not shown in counsel’s declaration how this service was
23 necessary.

24 15. \$3,450.00 for “Live Note” and “Zoom” connection fees. These costs
25 are not specifically allowed under NRS 18.005, and thus would only be
26 recoverable under NRS 18.005(17). Plaintiffs provided documentation showing
27 that these costs were incurred, but these costs are not discussed in the
28 declaration of counsel. Plaintiffs thus provided no documentation explaining

1 how the costs were necessary.

2 16. \$4,550.00 for videoconference costs. These costs are not specifically
3 allowed under NRS 18.005, and thus would only be recoverable under NRS
4 18.005(17). Plaintiffs provided documentation showing that these costs were
5 incurred, but these costs are not discussed in the declaration of counsel.
6 Plaintiffs thus provided no documentation explaining how the costs were
7 necessary.

8 17. \$100.00 for "After 5 PM charges." These costs are not specifically
9 allowed under NRS 18.005, and thus would only be recoverable under NRS
10 18.005(17). Plaintiffs provided documentation showing that these costs were
11 incurred, but these costs are not discussed in the declaration of counsel.
12 Plaintiffs thus provided no documentation explaining how the costs were
13 necessary.

14 18. \$185.00 for flash drives, apparently for depositions of expert
15 witnesses. These costs are not specifically allowed under NRS 18.005, and thus
16 would only be recoverable under NRS 18.005(17). Plaintiffs provided
17 documentation showing that these costs were incurred, but these costs are not
18 discussed in the declaration of counsel. Plaintiffs thus provided no
19 documentation explaining how the costs were necessary.

20 19. \$300.00 for video files for expert witnesses. These costs are not
21 specifically allowed under NRS 18.005, and thus would only be recoverable
22 under NRS 18.005(17). Plaintiffs provided documentation showing that these
23 costs were incurred, but these costs are not discussed in the declaration of
24 counsel. Plaintiffs thus provided no documentation explaining how the costs
25 were necessary.

26 20. \$1,385.40 for conference rooms for depositions of various witnesses.
27 These costs are not specifically allowed under NRS 18.005, and thus would only
28 be recoverable under NRS 18.005(17). Plaintiffs provided documentation

1 showing that these costs were incurred, but these costs are not discussed in the
2 declaration of counsel. Plaintiffs thus provided no documentation explaining
3 how the costs were necessary.

4 21. \$100.00 for "read and sign" fees. These costs are not specifically
5 allowed under NRS 18.005, and thus would only be recoverable under NRS
6 18.005(17). Plaintiffs provided documentation showing that these costs were
7 incurred, but these costs are not discussed in the declaration of counsel.
8 Plaintiffs thus provided no documentation explaining how the costs were
9 necessary.

10 22. \$315.00 for equipment rental. These costs are not specifically
11 allowed under NRS 18.005, and thus would only be recoverable under NRS
12 18.005(17). Plaintiffs provided documentation showing that these costs were
13 incurred, but these costs are not discussed in the declaration of counsel.
14 Plaintiffs thus provided no documentation explaining how the costs were
15 necessary.

16 23. \$100.00 for "non-writing wait time" for two witnesses. These costs
17 are not specifically allowed under NRS 18.005, and thus would only be
18 recoverable under NRS 18.005(17). Plaintiffs provided documentation showing
19 that these costs were incurred, but these costs are not discussed in the
20 declaration of counsel. Plaintiffs thus provided no documentation explaining
21 how the costs were necessary.

22 24. \$79.00 for parking for depositions. These costs are not specifically
23 allowed under NRS 18.005, and thus would only be recoverable under NRS
24 18.005(17). Plaintiffs provided documentation showing that these costs were
25 incurred, but these costs are not discussed in the declaration of counsel.
26 Plaintiffs thus provided no documentation explaining how the costs were
27 necessary.

28 25. \$356.40 for food provided at depositions. These costs are not

1 specifically allowed under NRS 18.005, and thus would only be recoverable
2 under NRS 18.005(17). Plaintiffs provided documentation showing that these
3 costs were incurred, but these costs are not discussed in the declaration of
4 counsel. Plaintiffs thus provided no documentation explaining how the costs
5 were necessary.

6 26. \$1,050.00 for “professional fees” for Dr. Gavin. This cost is not
7 specifically allowed under NRS 18.005, and thus would only be recoverable
8 under NRS 18.005(17). Plaintiffs provided documentation showing that this
9 cost was incurred, but this cost is not discussed in the declaration of counsel.
10 Plaintiffs thus provided no documentation explaining how the cost was
11 necessary.

12 27. \$140.00 for duplicate service on Portia Hubbard. In examining the
13 documents provided by plaintiffs, it appears Ms. Hubbard was served with a
14 subpoena on both on August 26, 2017 and on October 1, 2017, with no
15 explanation for why the second subpoena was necessary. NRS 18.005(7) does
16 not allow costs for service which the Court finds to be unnecessary. Plaintiffs
17 provided documentation showing that these costs were incurred, but these costs
18 are not discussed in the declaration of counsel. Plaintiffs thus provided no
19 documentation explaining how the costs were necessary.

20 28. \$35.00 for wait time of process server(s). This cost is not
21 enumerated in NRS 18.005(7), and thus would only be recoverable under NRS
22 18.005(17). Plaintiffs provided documentation showing that this cost was
23 incurred, but this costs is not discussed in the declaration of counsel. Plaintiffs
24 thus provided no documentation explaining how the cost was necessary.

25 29. \$61.60 for faxes. While “reasonable costs for telecopies” are allowed
26 under NRS 18.005(11), under *Bobby Berosini*, 114 Nev. at 1352 and *Cadle Co.*,
27 345 P.3d at 1049, the documentation submitted is insufficient for the Court to
28 find that the costs were reasonable or necessary, because plaintiffs have

1 provided no information stating what documents were faxed, and in most cases
2 provide no information of who the fax was sent to. Further, plaintiffs have
3 offered no explanation for why certain faxes have a higher per-page cost than
4 others. Plaintiffs provided documentation showing that these costs were
5 incurred, but these costs are not discussed in the declaration of counsel.
6 Plaintiffs thus provided no documentation explaining how the costs were
7 necessary or reasonable.

8 30. \$4,141.77 for scanning (internal and outside vendor). NRS 18.005
9 does not provide for costs of scanning, and plaintiffs have not provided any
10 information about how costs were incurred at all due to internal scanning, or
11 how each scan was necessary. While the Court agrees that the *DISH Network*
12 court found the party in that case “provided the district court with sufficient
13 justifying documentation to support the award of costs for photocopying and
14 scanning under NRS 18.005(12),” plaintiffs here have provided no such
15 documentation explaining the reasonableness or necessity of these costs.

16 31. \$39.00 for an unsubstantiated Las Vegas Metropolitan Police
17 Department cost. MCI observes that this cost appears to be either for a police
18 report or for a subpoena, and plaintiffs do not offer any opposition to this cost
19 being retaxed. Moreover, while plaintiffs provide documentation showing that
20 this cost was incurred, this cost is not discussed in the declaration of counsel.
21 Plaintiffs thus provided no documentation explaining how the cost was
22 necessary.

23 32. \$1,219.98 for hotels for trial witnesses. NRS 18.005(15) only
24 includes travel and lodging incurred while conducting discovery. While
25 plaintiffs provide documentation showing that these costs were incurred, the
26 declaration of counsel only discusses the necessity of costs incurred in travel
27 expenses for depositions. Plaintiffs thus provide no documentation explaining
28 how the costs were necessary.

1 33. \$30,018.77 in legal research. As stated in *DISH Network*, the
2 “reasonable and necessary expenses for computerized services for legal
3 research” allowed in NRS 18.005(17) pertain to costs incurred in the
4 process of electronic discovery. 133 Nev., Adv. Op. at ___, 401 P.3d at 1093.
5 The declaration of plaintiffs’ counsel states that these costs were incurred “to
6 provide the Court with the most recent applicable caselaw on various points of
7 dispute throughout pre-trial motions and during the course of trial...” The
8 argument contained in plaintiffs’ opposition to the motion to retax reinforces
9 that these costs were incurred not as a part of discovery, but rather to assist
10 plaintiffs’ counsel in making legal arguments in motion practice and at trial.
11 Further, the “itemized” list of research provided in plaintiffs’ appendix of
12 documents provides only the date and cost of each transaction. Thus, under
13 *DISH Network’s* holding that this expense does not fall under NRS 18.005(17),
14 these costs are not taxable.

15 ***Taxed Costs***

16 34. As to the remaining specific costs MCI seeks to retax, the Court
17 finds that each cost falls under NRS 18.005(17) as an expense that is
18 reasonable, necessary, and actually incurred, based on the documentation and
19 declaration of counsel. This conclusion contemplates that the parties conducted
20 discovery on an extremely expedited schedule due to the preferential trial
21 setting.

22 35. Further, the complex nature of the claims and gravity of damages
23 at issue required plaintiffs to expend costs that may be considered luxuries in
24 different cases, such as oversize color printing and trial support services.

25 36. Finally, the Court examined in detail the requested expert fees
26 under *Frazier v. Drake*, 357 P.3d 365 (Nev. App. 2015) and found that the fees
27 in excess of \$1,500 for each witness was warranted in light of the factors
28 enumerated in *Frazier*.

37. Because NRS 18.005(5) allows a court to award “a larger fee after determining that the circumstances surrounding the expert’s testimony were of such necessity as to require the larger fee,” the Court has determined that an award exceeding the cap for each of plaintiffs’ five experts is reasonable given plaintiffs’ declaration of counsel, supporting documentation, and the *Frazier* factors, and therefore taxes the entire amount claimed for each of them.

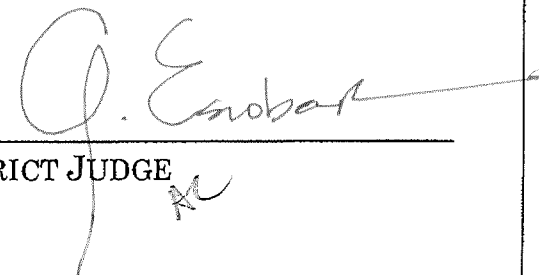
38. In total, the Court reduces plaintiffs’ taxable costs by \$77,061.87 for a total award of **\$542,826.84**. Those costs are summarized below:

| NRS | Definition of Cost | Claimed Amount | Awarded Amount |
|------------|---|---------------------|---------------------|
| 18.005(1) | Filing/Clerk Fees | \$1,956.00 | \$1,886.00 |
| 18.005(2) | Reporter’s Fees for Depositions/Deposition Transcript | \$87,861.77 | \$46,526.22 |
| 18.005(3) | Jurors’ Fees | \$15,828.82 | \$15,828.82 |
| 18.005(4) | Witness Fees | \$1,291.18 | \$1,291.18 |
| 18.005(5) | Expert Witness Fees | \$237,076.61 | \$237,076.61 |
| | Robert Caldwell | \$81,296.19 | \$81,296.19 |
| | Joshua Cohen | \$35,084.67 | \$35,084.67 |
| | Robert Cunitz | \$62,599.18 | \$62,599.18 |
| | Richard Stalnaker | \$33,069.88 | \$33,069.88 |
| | Larry Stokes | \$25,026.69 | \$25,026.69 |
| 18.005(6) | Interpreter Fees | \$620.76 | \$620.76 |
| 18.005(7) | Process Server Fees | \$3,094.50 | \$2,919.50 |
| 18.005(8) | Official Reporter Fees | \$49,625.42 | \$49,625.42 |
| 18.005(9) | Cost of Bond | | |
| 18.005(10) | Bailiff Overtime | \$406.88 | \$406.88 |
| 18.005(11) | Telecopies (Faxes) | \$61.80 | \$0 |
| 18.005(12) | Photocopies/Printing/Scans | \$44,301.61 | \$40,120.84 |
| 18.005(13) | Long Distance Telephone | \$909.16 | \$909.16 |
| 18.005(14) | Postage/Fed Ex | \$1,812.48 | \$1,812.48 |
| 18.005(15) | Travel Expense (Air, Hotel, Car, Meals) | \$14,036.65 | \$12,816.67 |
| 18.005(16) | Fees Charged Pursuant to NRS 19.0335 | | |
| Other | Legal Research | \$30,018.77 | \$0 |
| Other | Run Service | \$1,887.00 | \$1,887.00 |
| Other | Trial Support | \$129,099.30 | \$129,099.30 |
| | TOTAL | \$619,888.71 | \$542,826.84 |


39. If any conclusions of law are properly findings of fact, they shall be treated as if appropriately identified and designated.

1 IT IS SO ORDERED.

2 Dated this 2 day of January, 2018

3 
4 DISTRICT JUDGE

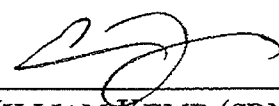
5 Submitted by:
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15 *Attorneys for Defendant Motor Coach Industries, Inc.*

16 Approved as to form and content by:

17 KEMP, JONES & COULTHARD, LLP

18
19 By: 
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ERIC PEPPERMAN (SBN 11,679)
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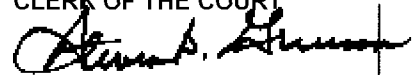
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23 KENDELEE L. WORKS (SBN 9611)
CHRISTIANSEN LAW OFFICES
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24 Las Vegas, NV 89101

25 *Attorneys for Plaintiffs*

26
27 ¹ Although MCI submits this order, the order expresses the Court's reasoning
28 and conclusions. MCI does not agree with much of the reasoning articulated in
this order.

EXHIBIT C

EXHIBIT C



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11 **DISTRICT COURT**

12 **COUNTY OF CLARK, NEVADA**

13 KEON KHIABANI and ARIA KHIABANI,
14 minors by and through their natural mother,
KATAYOUN BARIN; KATAYOUN BARIN,
15 individually; KATAYOUN BARIN as
Executrix of the Estate of Kayvan Khiabani,
16 M.D. (Decedent), and the Estate of Kayvan
Khiabani, M.D. (Decedent),

17 Plaintiffs,

18 vs.

19 MOTOR COACH INDUSTRIES, INC.,
20 a Delaware corporation; et al.

21 Defendants.

Case No. A-17-755977-C

Dept. No. XIV

**NOTICE OF ENTRY OF COMBINED
ORDER (1) DENYING MOTION FOR
JUDGMENT AS A MATTER OF LAW
AND (2) DENYING MOTION FOR
LIMITED NEW TRIAL**

23 TO: All parties herein; and

24 TO: Their respective counsel;

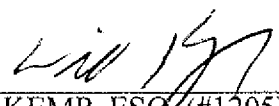
25 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the above-referenced
26 Order was entered in this matter. The Order was filed on February 1, 2019.

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(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

1 A copy of said Order is attached hereto.

2 DATED this 1st day of February, 2019.

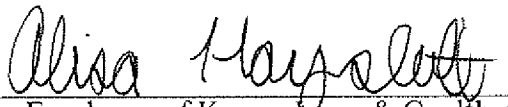
3 KEMP, JONES & COULTHARD, LLP

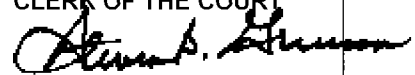
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17 Attorneys for Plaintiffs

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on the 1st day of February, 2019, the foregoing **NOTICE OF ENTRY**
20 **OF COMBINED ORDER (1) DENYING MOTION FOR JUDGMENT AS A MATTER OF**
21 **LAW AND (2) DENYING MOTION FOR LIMITED NEW TRIAL** was served on all parties
22 currently on the electronic service list via the Court's electronic filing system only, pursuant to the
23 Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2.

24
25 
26 An Employee of Kemp, Jones & Coulthard.



FFCL

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,
minors, by and through their Guardian,
MARIE-CLAUDE RIGAUD; SIAMAK
BARIN, as Executor of the Estate of Kayvan
Khiabani, M.D. (Decedent), the Estate of
Kayvan Khiabani, M.D. (Decedent);
SIAMAK BARIN, as Executor of the Estate
of Katayoun Barin, DDS (Decedent); and the
Estate of Katayoun Barin, DDS (Decedent);

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC.,
a Delaware corporation; MICHELANGELO
LEASING INC. d/b/a RYAN'S EXPRESS.
an Arizona corporation; EDWARD
HUBBARD, a Nevada resident; BELL
SPORTS, INC. d/b/a GIRO SPORT
DESIGN, a Delaware corporation;
SEVENPLUS BICYCLES, INC. d/b/a PRO
CYCLERY, a Nevada corporation, DOES 1
through 20; and ROE CORPORATIONS 1
through 20.

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

**COMBINED ORDER (1) DENYING
MOTION FOR JUDGMENT AS A
MATTER OF LAW AND (2)
DENYING MOTION FOR LIMITED
NEW TRIAL**

This matter came before the Court on July 6, 2018, pursuant to Defendant's motion for judgment as a matter of law and Defendant's motion for limited new trial. Having considered the briefs and other pleadings and papers on file, the parties having waived oral argument on both motions, and with good cause appearing therefor,

IT IS HEREBY ORDERED. ADJUDGED. AND DECREED that Defendant's motion for judgment as a matter of law is denied for the following reasons:

Defendant cannot raise issues in the "Renewed" Rule 50 motion that were not first raised in the Rule 50 motion filed at the close of evidence. *Nelson v. Heer*, 123 Nev. 217, 163 P.2d

1 420, 424 n. 9 (Nev. 2007) ("See NRCP 50 (indicating within the drafter's note to the 2004
2 amendment that a motion filed under subdivision (b) is the renewal of a motion filed under
3 subdivision (a) and must have been preceded by a motion filed at the appropriate time under
4 subdivision (a) (2))." In the present case, Defendant presented its Rule 50(a) argument orally
5 the morning of March 22, 2018. The entire argument comprises 12 pages of transcript. (TT
6 3/22/18 12-24) Defendant made the following arguments in this order: (1) strict liability is
7 not available in wrongful death actions (3/22/18 12:24 to 20:4); (2) the evidence was
8 insufficient to establish a product defect, including warnings, because "it was too late at that
9 point for Mr. Hubbard to make an evasive maneuver" (3/22/18 20:5 to 22:9); (3) Plaintiffs did
10 not propose language for a warning (3/22/18 22:10 to 22:20); (4) an S-1 Gard argument
11 (3/22/18 22:21 to 23:10); and (5) strict liability does not extend to bystanders. (3/22/18 23).

12 However, absent in the Rule 50(a) motion was (1) the new argument that "Hubbard did
13 not testify about any particular warning or that a warning would have changed what he did"
14 (Mot. 50(b), 4:24 to 5:6), (2) the new argument that Plaintiffs should have explained "how it
15 [a warning] would have prevented Dr. Khiabani's death" (Mot. 50(b), 6:22 to 9:15 and 11:9
16 12:18)), (3) the new argument that Hubbard's heeding testimony "is insufficient to
17 demonstrate causation" and that Hubbard "never testified that he would have done anything
18 differently" (Mot. 50(b), 9:16), (4) the new "open and obvious" argument (Mot. 50(b), 10:10
19 to 11:8) and (5) the new attack on Plaintiff's warning expert (Cunitz) (Mot. 50(b), 12:19 to
20 13:26) Because the last 5 arguments were not made in the Rule 50(a) motion, they have not
21 been preserved and are denied as procedurally improper.

22 Defendant's first argument in the motion is that Plaintiffs failed to prove causation on the
23 failure to warn theory because the facts showed that Dr. Khiabani suddenly appeared in Mr.
24 Hubbard's peripheral vision, and the accident happened too quickly for a reasonable jury to
25 find that Mr. Hubbard could have avoided the accident. This argument ignores the full facts
26 as presented in the Plaintiffs' case-in-chief, specifically the testimony of Mr. Hubbard that he
27 observed the bicycle while both Dr. Khiabani and the coach were on Charleston, and saw the
28 bicycle turn onto Pavilion Center before Mr. Hubbard turned the coach onto Pavilion Center.

1 Thus, although Mr. Hubbard testified that he did not see Dr. Khiabani's bicycle for 450 feet
2 before the accident, the "split-second" that the accident occurred was not the first time Mr.
3 Hubbard was made aware of the bicycle's presence. Taking all inferences in Plaintiffs' favor,
4 Plaintiffs elicited sufficient evidence for a reasonable jury to find that, had Mr. Hubbard been
5 adequately warned about the dangerous nature of the coach, he would have driven differently
6 as early as when he turned onto Pavilion Center—for example by driving in the left lane
7 instead of the right lane, or by driving slower so as to not pass the bicycle—and that this
8 different action would have avoided the accident. Thus, the accident did not happen too
9 quickly for a reasonable jury to find that a warning would have made a difference.

10 The parties next dispute to what extent a plaintiff in a failure to warn claim must prove
11 causation. Defendant argues that insufficient evidence of causation was presented by
12 Hubbard's testimony that he "absolutely" heeds warnings he is given when he is trained about
13 something relative to safety, because Plaintiffs needed to additionally prove that the accident
14 would have been avoided by the user heeding the warning. Defendant cites to numerous other
15 jurisdictions for this notion, and argues that it is further supported by the Nevada Supreme
16 Court's *Rivera v. Philip Morris, Inc.* decision. This Court disagrees. It is undisputed that,
17 under *Rivera*, the Plaintiffs bear the burden of producing evidence demonstrating that, among
18 other things, the defect caused the injury. *Rivera* also held that "the burden of proving
19 causation can be satisfied in failure-to-warn cases by demonstrating that a different warning
20 would have altered the way the plaintiff used the product or would have prompted plaintiff to
21 take precautions to avoid the injury."

22 Taking all inferences in Plaintiffs' favor, the Court finds that Hubbard's testimony that
23 he would have complied with a warning, combined with the facts listed above regarding
24 Hubbard's perception of the events leading up to the accident, was sufficient to satisfy
25 Plaintiffs' burden of proving causation under Nevada law.

26 Similarly, the Court disagrees with Defendant's suggestion that "the open and obvious
27 nature of the danger reinforces the conclusion that a warning would have been superfluous."
28 Mot. 50(b) at 10. Taking all inferences in Plaintiffs' favor, the presence of testimony by

1 Hubbard, Mary Witherell, and some of Defendant's own employees that they were not aware
2 of the significance of the air displacement created by the coach's design refutes Defendant's
3 classification of the danger as "open and obvious." Further, even if the evidence enabled this
4 Court to find as a matter of law that Hubbard should have known generally of the "risk of
5 driving next to a bicyclist," which this Court has not done, no Nevada law holds that this
6 would prevent a reasonable jury from finding that an adequate warning would have avoided
7 the accident.

8 Next, Defendant suggests that Plaintiffs' duty to prove causation required Plaintiffs to
9 craft an adequate warning. Failure-to-warn claims can be classified as one of two types:
10 allegations that the warning given by the defendant was crafted in such a way to be ineffective
11 in preventing the injury; or allegations that the product is dangerous enough that a warning
12 should have been provided but the defendant did not provide any warning. In cases of the first
13 variety, the jury must consider whether the warning was adequate under the factors provided
14 in *Lewis v. Sea Ray Boats, Inc.* However, in the second category, the absence of any warning,
15 the lack of any warning, could not possibly be considered adequate under the *Sea Ray* factors,
16 and thus the only required findings are that the product was unreasonably dangerous and that
17 an adequate warning would have avoided the injury. This case falls into the second category,
18 where Defendant undisputedly did not provide any warnings about any of the alleged defects
19 which Plaintiffs alleged. In such a case, the Court finds no support for Defendant's assertion
20 that no reasonable jury could find that the product was unreasonably dangerous and that an
21 adequate warning would have avoided the injury without a specific warning being proposed
22 by the plaintiff. While it is true that providing a model warning to show what the defendant
23 could have done to make the product reasonably safe may be a helpful illustration for the
24 plaintiff's case, it is not required for the jury to find in Plaintiffs' favor. *Cf. Ford Motor Co. v.*
25 *Trejo* (in a design defect claim, "a plaintiff may choose to support their case with evidence
26 that a safer alternative design was feasible at the time of manufacture."). Furthermore,
27 Defendant did not propose a jury instruction requiring that Plaintiff provide proof of a specific
28 warning and instead only tendered JI 30 and JI 31. Plaintiffs need not prove precisely how the

1 facts would have been different had there been an adequate warning, as this would amount to
2 speculation; Plaintiffs need only provide the facts sufficient to allow the jury to draw the
3 conclusion that the presence of an adequate warning would have avoided the accident. As
4 noted above, Plaintiffs did so here. In line with the above, the Court disagrees that the jury's
5 verdict was "consistent with" judgment as a matter of law on causation, as the jury could have,
6 and evidently did, find that the lack of an adequate warning caused the accident. The Court
7 disagrees with Defendant's suggestion that the jury finding no liability on the defective design
8 claim means "when the jury was actually asked whether the allegedly defective design was the
9 legal cause of damage, the jury concluded that it was not." In reality, the jury found no
10 liability after being instructed that liability for defective design required both a design defect
11 and causation, so a simple "no" answer to the defective design question does not necessarily
12 mean the jury found causation to be lacking.

13 Defendant next argues that, "MCI was not required to make a coach that does not create
14 air disturbance," and therefore MCI was not required to provide a warning at all. While the
15 Court notes that this argument was not raised in MCI's NRCP 50(a) motion during trial, the
16 argument misstates the question actually posed to the jury. The failure-to-warn claim does not
17 ask whether the coach created an air disturbance, but rather whether the coach was
18 unreasonably dangerous due to the air disturbance it created. Thus, regardless of whether
19 MCI had a duty to minimize or remove any air disturbance from its product, there was
20 sufficient evidence for the jury to find that any air disturbance created by the coach was
21 unreasonably dangerous and that the injury could have been avoided by an adequate warning.

22 Finally, Defendant argues that Nevada's wrongful-death statute requires proof of fault,
23 while the nature of a strict liability claim does not require proving fault, and therefore that the
24 elements of a wrongful death claim could not be satisfied by allegations founded in strict
25 liability. The Court finds no support in Nevada case law for this notion, and indeed finds
26 myriad wrongful death actions founded in strict liability, and thus the Court will not apply the
27 law differently for this case. Moreover, Defendant's interpretation of the "wrongful act or
28 neglect" language in NRS 41.085(2) would lead to an absurd result: a defendant who, by no

1 intentional act or malice, creates an unreasonably dangerous product would still be held
2 strictly liable if a user were merely injured, but would no longer be held accountable if the
3 injuries were grave enough to end the user's life.

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants motion
5 for limited new trial is denied as none of the arguments presented by Defendant exhibit an
6 issue which "materially affect[ed] the substantial rights of an aggrieved party." NRCP 59(a).

7 First, Defendant argues that the jury was excused from considering causation of the
8 failure to warn claim because the verdict form did not mention this step of the analysis, and
9 instead allowed the jury to return a verdict in Plaintiffs' favor solely by finding that Defendant
10 failed to provide an adequate warning that would have been heeded. First, as noted above, the
11 Court disagrees with Defendant's position that Plaintiff must prove with specificity that an
12 adequate warning would have actually avoided the injury, or that the accident happened too
13 quickly for a jury to find that an adequate warning could have avoided the accident. However,
14 the Court also notes that the jury instructions sufficiently informed the jury on all findings
15 required for the jury to return a verdict in Plaintiffs' favor—including causation—and that this
16 remedied any potential errors with the verdict form.

17 Defendant prepared and submitted the jury instruction on causation, i.e., JI 31 providing
18 that: "If you find that warnings provided with the motor coach were inadequate, the defendant
19 cannot be held liable unless Plaintiffs prove by a preponderance of the evidence that the
20 individual who might have acted on any warning would have acted in accordance with the
21 warning, and that doing so would have prevented the injury in this case." The jury warnings
22 question on the verdict form reads as follows: "5) did MCI fail to provide an adequate
23 warning that would have been acted upon?" Taking into consideration the totality of the jury
24 instructions and the verdict form, the Court does not find that the alleged absence of causation
25 on the fifth question was prejudicial to Defendant. Finally, the Court finds no support for the
26 notion that the special verdict form was required to include a finding for every element of
27 every claim where JI 31 prepared and submitted by Defendant did so.

28 Second, the Court does not agree that precluding evidence of NRS 484B.270, the statute

1 requiring a motorist to maintain a three-foot distance from a bicyclist, constituted an error of
2 law that warrants a new trial. The safety statute in its current form did not exist at the time the
3 coach was sold, and the version of the statute that did exist at the time the coach was sold
4 contained only a mandate that a motorist passing a bicyclist do so safely, which does not offer
5 any support for Dr. Krauss's opinion that a warning was not needed because the law already
6 required vehicles to maintain a certain distance from bicycles. Thus, the existence of the
7 statute has no probative value as to why Defendant chose not to provide a warning with the
8 coach. Further, the Court maintains that JI 32, on "nondelegation," was rightfully included
9 due to evidence being presented at trial that at least one of Defendant's employees believed
10 another entity should warn drivers about the danger of the coach. If JI 32 caused any
11 prejudice to Defendant's case, the Court does not agree that it materially affected Defendant's
12 substantial rights.

13 Third, as noted in this Court's order denying Defendant's motion for post-trial
14 discovery, the Court does not agree that any newly discovered evidence warrants a new trial.
15 For the same reasons iterated in that order, the Court has not been convinced that the new
16 evidence could not have been found with reasonable diligence, so NRCP 59(a)(4) is not met
17 here. The Court is also not convinced by Defendant's argument that the difficulty in
18 discovering this evidence is exhibited by Plaintiffs' lack of knowledge, or that Defendant was
19 entitled to rely on Plaintiffs' duty to disclose such information. NRCP 16.1 requires a party to
20 disclose the identity of individuals likely to have discoverable information, but it does not
21 require a party to conduct discovery for the other parties. Here, it appears Plaintiffs disclosed
22 Dr. Khiabani's employer, which was sufficient to satisfy Plaintiffs' duty under NRCP 16.1;
23 Plaintiffs were under no duty to actually discover any information from Dr. Khiabani's
24 employer, just to enable Defendant to do so. As stated in the Court's prior order, Defendant
25 had access to the "new evidence" had it simply attempted to get it because Plaintiffs executed
26 an employment release prepared by Defendant on July 27, 2017—nearly five months before
27 the discovery cutoff and nearly seven months before the trial commenced on February 12,
28 2018. As also stated in the Court's prior order, Defendant "evidently has no explanation for

1 why this information was not actually sought after the authorization was given." Moreover,
2 even if the Court were to find that Plaintiffs lapsed on their discovery obligations, this Court
3 does not find that such a finding would render the "new evidence" undiscoverable with due
4 diligence, so a new trial is not warranted on these grounds.

5 Fourth, the Court does not agree that it erred by precluding evidence of the impact of
6 income taxes. While the Court recognizes the difference between damages for lost wages and
7 damages for loss of probable support, Nevada law is clear that evidence of tax implications are
8 not admissible in a wrongful death case. *See, e.g. Otis Elevator Co. v. Reid*, 101 Nev. 515
9 (1985). Defendant is correct that certain special circumstances allow jury instructions on tax
10 consequences, but only when tax issues are discussed at trial. *Id.* Here, tax issues were not
11 discussed at trial under the general rule that tax implications are not admissible, and thus there
12 was no indication that the jury would consider tax implications. Therefore, *Otis Elevator Co.*
13 *v. Reid*'s "special circumstances" exception does not apply, and Defendant's substantial rights
14 were not materially affected.

15
16 Dated this 31st day of January, 2019.

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Hon. Adriana Escobar

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on or about the date signed, a copy of this Order was electronically
3 served to all registered parties in the Eighth Judicial District Court Electronic Filing Program
4 and/or placed in the attorney's folder maintained by the Clerk of the Court and/or transmitted
5 via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties as
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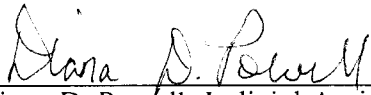
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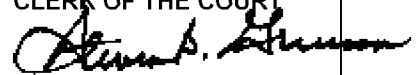
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10 Inc.*

11 

12 Diana D. Powell, Judicial Assistant
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EXHIBIT D

EXHIBIT D



1 **ORDR**

2
3 **EIGHTH JUDICIAL DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5 KEON KHIABANI and ARIA KHIABANI, minors, by
6 and through their Guardian, MARIE-CLAUDE
7 RIGAUD; SIAMAK BARIN, as Executor of the Estate
8 of Kayvan Khiabani, M.D. (Decedent), the Estate of
9 Kayvan Khiabani, M.D. (Decedent); SIAMAK BARIN,
10 as Executor of the Estate of Katayoun Barin, DDS
11 (Decedent); and the Estate of Katayoun Barin, DDS
12 (Decedent);

Case No.: A-17-755977-C

Dept. No.: XIV

ORDER

13
14 Plaintiffs,

15 vs.

16 MOTOR COACH INDUSTRIES, INC.,
17 a Delaware corporation; MICHELANGELO LEASING
18 INC. d/b/a RYAN'S EXPRESS, an Arizona
19 corporation; EDWARD HUBBARD, a Nevada resident;
20 BELL SPORTS, INC. d/b/a GIRO SPORT DESIGN, a
21 Delaware corporation; SEVENPLUS BICYCLES, INC.
22 d/b/a PRO CYCLERY, a Nevada corporation, DOES 1
23 through 20; and ROE CORPORATIONS 1 through 20.

24 Defendants.

25 Defendant's Motion to Alter or Amend Judgment to Offset Settlement Proceeds paid by
26 other defendants came on for a hearing before Department XIV of the Eighth Judicial District
27 Court, the Honorable Adriana Escobar presiding, on September 25, 2018.

28 After considering the moving papers and argument of counsel, the Court **DENIES**
Defendants' motion.

In this matter, the Plaintiffs settled with Defendants Michelangelo Leasing Inc., Edward
Hubbard, Bell Sports Inc., and SevenPlus Bicycles Inc. for a total settlement of \$5,110,000.00.
Plaintiffs and the remaining defendant, Motor Coach Industries ("MCI"), proceeded to trial. The
jury awarded \$18,746,003.62 in favor of the Plaintiffs.

Defendant MCI moved to offset the jury award by the settlement proceeds pursuant to
NRS 17.245(1)(a). Specifically, it asked the court to reduce the jury award (\$18,746,003.62) by

1 the total settlement proceeds (\$5,110,000.00) for a total reduced judgment resulting in
2 \$13,636,003.62.

3 Under NRS 17.245(1)(a), “when a release ... is given in good faith to one of two or more
4 persons liable in tort for the same injury or the same wrongful death...it reduces the claim
5 against the others to the extent of any amount stipulated by the release or the covenant...”

6 MCI is not entitled to an offset under NRS 17.245 because defendants that are liable for
7 strict products liability, such as MCI, have no right to contribution from any other defendants.
8 *Norton v. Fergstrom*, 2001 WK 1628302 *5 (Nev. Nov. 9, 2001); see also *Andrews v. Harley*
9 *Davidson*, 106 Nev. 533, 537-38, 796 P.2d 1092, 1094 (1990); *Central Telephone Co. v.*
10 *Fixtures Mfg.*, 103 Nev. 298, 299, 738 P.2d 510, 511 (1987); NRS 17.225, NRS 41.141. While
11 *Norton* is unpublished and cannot be used as precedent because it was decided prior to 2016, the
12 Court finds its rationale persuasive and agrees with the Nevada Supreme Court’s rationale.
13 *Norton* was decided in 2001, after NRS 17.245 was enacted in 1973 and amended in 1997.
14 NRS 41.141 was enacted in 1973, and amended in 1979, 1987, and 1989, and also precedes the
15 Court’s decision in *Norton*. Contributory negligence is not a defense in strict products liability.
16 *Andrews v. Harley Davidson*, 796 P.2d 1092 (Nev. 1990). Because contributory negligence is
17 not a defense in strict products liability, MCI is not entitled to contribution. *Id.*

18 MCI has no right to contribution from the settling Defendants because plaintiff’s
19 judgment against MCI is based on strict products liability failure to warn and strict products
20 liability has no right to contribution. To the extent that MCI would have otherwise been able to
21 assert contribution claims against the settling defendants, those claims would have necessarily
22 been premised on contributory negligence. Because contributory negligence is not a defense to
23 a strict products liability claim, MCI has no right to receive contribution from the settling
24 defendants.

25 NRS 17.245 applies to joint tortfeasors, but is silent concerning an offset for defendants
26 found liable in strict products liability. But, it follows logically, that similar to NRS 17.255,
27 which bars intentional tortfeasors from contribution, a defendant found liable in strict products
28 liability would also be barred from receiving contribution from the other defendants. Unlike

1 other products liability cases where defendants receive offsets, here, none of the other
2 defendants in this case acted in concert with MCI in manufacturing the coach.

3 MCI also argues it is entitled to an offset under NRS 41.141. Pursuant to NRS 41.141,
4 defendants are responsible for 100% of plaintiff's injuries if their liability arises from a claim
5 based on strict liability, an intentional tort, or any of the other enumerated categories. *Café*
6 *Moda v. Palma*, 272 P.3d 137 (Nev. 2012).

7 Because the jury found against MCI based on strict liability failure to warn, MCI is not
8 entitled to an offset under NRS 41.141. Any alleged fault of the settling defendants had nothing
9 to do with this failure to warn. Thus, MCI is not entitled to apportion any percentage of its
10 responsibility to the settling defendants.

11 Plaintiffs analogized this matter to *Evans v. Dean Witter Reynolds, Inc.*, 5 P.3d 1043
12 (Nev. 2000). In *Evans*, the Court enforced the principle that although offsets are typically
13 allowed in a case that involves joint tortfeasors, there is a carve-out for intentional torts.
14 Intentional tortfeasors "may not apply credits from settlements by their joint tortfeasors in
15 reduction of judgments against them arising from their intentional misconduct. *Id.* Moreover,
16 equitable offsets are based on a right to contribution and intentional tortfeasors have no right to
17 contribution under NRS 17.255. *Id.*

18 Just like the intentional tortfeasors in *Evans*, MCI has no right to contribution from the
19 settling defendants. See *Andrews, Norton Co., Café Moda*, and NRS 41.141, *supra*. As in
20 *Evans*, MCI has no right to receive contribution from the settling defendants – either directly
21 through a contribution claim or indirectly through a post-judgment offset. MCI was never
22 entitled to seek contribution or indemnity from any other tortfeasors. NRS 17.245 cannot and
23 did not bar MCI from pursuing contribution claims that never existed in the first place; and MCI
24 is not entitled to indirectly receive a nonexistent right to contribution under the guise of an
25 "offset."

26 MCI also asserts that Plaintiffs will receive a double recovery if no offset is granted.
27 For the foregoing reasons, an offset is not permissible, thus no double recovery will occur.

28

1 Finally, MCI argues that Plaintiffs are judicially estopped from asserting that the
2 defendant has no right to offset. Plaintiff's motion for good faith settlement stated:

3 Indeed, the proposed settlement is favorable to any remaining defendants.
4 Plaintiffs' remaining claims will be reduced by the settlement amounts
5 contributed by Michelangelo and Hubbard. NRS 17.245(1)(a). As set forth
above, the remaining defendants will receive a contribution toward any
future judgment entered against them.

6 When considering a claim of judicial estoppel, Nevada's courts look for the following
7 five elements: (1) the same party has taken two positions; (2) the positions were taken in
8 judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting
9 the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two
10 positions are totally inconsistent; and (5) the first position was not taken as a result of
11 ignorance, fraud, or mistake. *Matter of Frei Irrevocable Tr. Dated Oct. 29, 1996*, 133 Nev. 8,
12 390 P.3d 646, 652 (2017). All five elements are necessary to sustain a finding of judicial
13 estoppel. *Id.*

14 Here, element three is not met. The plaintiff did not successfully assert their prior
15 position because the Court granted the motion for good faith settlement based on Plaintiff's
16 assertion that the non-settling defendants will receive an offset. When conducting the analysis
17 of Plaintiff's good faith settlement, the Court considered the relative liability of the defendants
18 and determined that the settlement amount was proper. The Court did not adopt the plaintiff's
19 argument that the non-settling defendant would be entitled to an offset. Further, the jury verdict
20 was based on failure to warn, which has absolutely no bearing on the plaintiffs' claim against
21 the other defendants - the settling defendants. Now, considering the jury verdict, it appears that
22 the settling defendants might have paid even more than their fair share of the liability.

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1 Collectively, the defendants settled for \$5,110,000.00 which constitutes almost 30% of
2 the total award in this matter. When looking at the potential liability of all defendants, the Court
3 finds that MCI was responsible for a large majority of the damages. Thus, judicial estoppel does
4 not apply here.

5 **IT IS SO ORDERED.**

6 Dated this 26th day of March, 2019.

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9 ADRIANA ESCOBAR
10 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed, a copy of this Order was electronically served to all registered parties in the Eighth Judicial District Court Electronic Filing Program and/or placed in the attorney's folder maintained by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties as follows:

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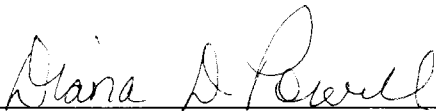
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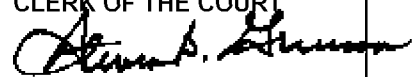
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*Additional Counsel Listed on
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

KEON KHIABANI and ARIA KHIABANI,
minors by and through their Guardian,
MARIE-CLAUDE RIGAUD; SIAMAK BARIN, as
Executor of the Estate of Kayvan
Khiabani, M.D. (Decedent); the ESTATE OF
KAYVAN KHIABANI, M.D. (Decedent);
SIAMAK BARIN, as Executor of the Estate
of Katayoun Barin, DDS (Decedent); and
the ESTATE OF KATAYOUN BARIN, DDS
(Decedent);

Plaintiffs,

v.

MOTOR COACH INDUSTRIES, INC., a
Delaware corporation; MICHELANGELO
LEASING INC. d/b/a RYAN'S EXPRESS, an
Arizona corporation; EDWARD HUBBARD, a
Nevada resident; BELL SPORTS, INC. d/b/a
GIRO SPORT DESIGN, a Delaware
corporation; SEVENPLUS BICYCLES, INC.
d/b/a PRO CYCLERY, a Nevada corporation,
DOES 1 through 20; and ROE
CORPORATIONS 1 through 20,

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

CASE APPEAL STATEMENT

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Defendant MOTOR COACH INDUSTRIES, INC.

2. Identify the judge issuing the decision, judgment, or order appealed from:

THE HONORABLE ADRIANA ESCOBAR

3. Identify each appellant and the name and address of counsel for each appellant:

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4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Attorneys for Respondents Keon Khiabani and Aria Khiabani, minors by and through their guardian, Marie-Claude Rigaud; Siamak Barin, as executor of the Estate of Kayvan Khiabani, M.D. (Decedent); the Estate of Kayvan Khiabani, M.D. (Decedent); Siamak Barin, as Executor of the Estate of Katayoun Barin, DDS (Decedent); and the Estate of Katayoun Barin, DDS (Decedent)

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- 8 5. Indicate whether any attorney identified above in response to question 3
9 or 4 is not licensed practice law in Nevada and, if so, whether the district
10 court granted that attorney permission to appear under SCR 42 (attach a
copy of any district court order granting such permission):

11 Darrell L. Barger, John C. Dacus, Brian Rawson, and Michael
12 G. Terry are not licensed to practice law in Nevada. The orders
granting them permission to appear are attached as Exhibit A.

- 13 6. Indicate whether appellant was represented by appointed or retained
counsel in the district court:

14 Retained counsel

- 15 7. Indicate whether appellant is represented by appointed or retained
16 counsel on appeal:

17 Retained counsel

- 18 8. Indicate whether appellant was granted leave to proceed in forma
19 pauperis, and the date of entry of the district court order granting such
leave:

20 N/A

- 21 9. Indicate the date the proceedings commenced in the district court, *e.g.*,
date complaint, indictment, information, or petition was filed:

22 "Complaint and Demand for Jury," filed May 25, 2017

- 23 10. Provide a brief description of the nature of the action and result in the
24 district court, including the type of judgment or order being appealed and
the relief granted by the district court:

25 This is a strict-liability action arising from the death of a
26 bicyclist who swerved into the path of a moving motor coach in
27 traffic. The jury returned a verdict in favor of plaintiffs. Defendant
appeals from the judgment on the jury verdict, the order granting
costs to the prevailing party, and the orders denying post-trial
28 relief.

11. Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding.

Motor Coach Industries, Inc. v. A.K., et al. – Case No. 75953

12. Indicate whether this appeal involves child custody or visitation:

This case does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

The parties already participated in the Nevada Supreme Court's settlement program. The effort was not fruitful.

DATED this 24th day of April, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of April, 2019, a true and correct copy of the foregoing "Case Appeal Statement" was served by e-service, in accordance with the Electronic Filing Procedures of the Eight Judicial District Court.

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and
Edward Hubbard***

/s/ Adam Crawford
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

EXHIBIT A

EXHIBIT A

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DISTRICT COURT

CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,
minors by and through their natural mother,
KATAYOUN BARIN; and KATAYOUN
BARIN, individually; KATAYOUN BARIN as
Executrix of the Estate of Kayvan Khiabani,
M.D. (Decedent), and the Estate of Kayvan
Khiabani, M.D. (Decedent),

Plaintiffs.

v.

MOTOR COACH INDUSTRIES, INC., a
Delaware corporation; MICHELANGELO
LEASING INC. d/b/a RYAN'S EXPRESS, an
Arizona corporation; EDWARD HUBBARD, a
Nevada resident; BELL SPORTS, INC. d/b/a
GIRO SPORT DESIGN, a Delaware corporation;
SEVENPLUS BICYCLES, INC. d/v/a PRO
CYCLERY, a Nevada corporation, DOES 1
through 20; and ROE CORPORATIONS 1
through 20,

Defendants.

Case No.: A-17-755977-C

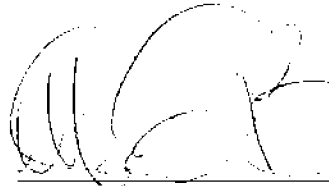
Dept. No.: XIV

**NOTICE OF ENTRY OF ORDER
ADMITTING TO PRACTICE**

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1 YOU WILL PLEASE TAKE NOTICE that an Order Admitting to Practice was filed on
2 August 24, 2017 in the above-captioned matter. A copy of the Order is attached hereto.

3
4 DATED this 25th day of August, 2017.



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*Attorneys for Defendant
Motor Coach Industries, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of August, 2017, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER ADMITTING TO PRACTICE** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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efreeman@selmanlaw.com

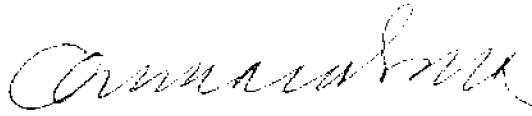
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Leasing Inc. d/b/a Ryan's Express and
Edward Hubbard*

Michael J. Nunez, Esq.
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Las Vegas, NV 89145
mnunez@murchisonlaw.com

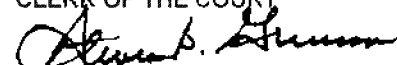
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Edward Hubbard*



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DISTRICT COURT

CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,
minors by and through their natural mother,
KATAYOUN BARIN; and KATAYOUN
BARIN, individually; KATAYOUN BARIN as
Executrix of the Estate of Kayvan Khiabani,
M.D. (Decedent), and the Estate of Kayvan
Khiabani, M.D. (Decedent),

Plaintiffs,

Case No.. A-17-755977-C

Dept. No.: XIV

MOTOR COACH INDUSTRIES, INC., a
Delaware corporation; MICHELANGELO
LEASING INC. d/b/a RYAN'S EXPRESS, an
Arizona corporation; EDWARD HUBBARD, a
Nevada resident; BELL SPORTS, INC. d/b/a
GIRO SPORT DESIGN, a Delaware corporation.
SEVENPLUS BICYCLES, INC. d/v/a PRO
CYCLERY, a Nevada corporation, DOES 1
through 20; and ROE CORPORATIONS 1
through 20,

Defendants.

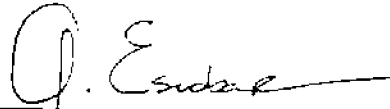
ORDER ADMITTING TO PRACTICE

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
(702) 938-3838


1 Michael G. Terry having filed a Motion to Associate Counsel under Nevada Supreme Court
2 Rule 42, together with a Verified Application for Association of Counsel, "Certificate of Good
3 Standing"; and the State Bar of Nevada Statement; said application having been noticed, the Court
4 having considered this matter, and the Court being fully apprised in the premises, and good cause
5 appearing:

6 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that said application is
7 granted and Michael G. Terry is hereby admitted to practice in the above-entitled Court for the
8 purposes for the above-entitled matter only.

9 DATED this 23 day of August, 2017.

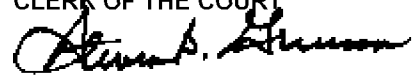
10
11
12 
13 DISTRICT COURT JUDGE
14

15 Submitted by

16 
17 D. Lee Roberts, Jr., Esq.
18 Howard J. Russell, Esq.
19 Marisa Rodriguez, Esq.
20 WEINBERG, WHEELER, HUDGINS,
21 GUNN & DIAL, LLC
22 6385 S. Rainbow Blvd., Suite 400
23 Las Vegas, Nevada 89118

24 *Attorneys for Defendant*
25 *Motor Coach Industries, Inc.*
26
27
28

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Telephone: (702) 938-3838
Facsimile: (702) 938-3864

*Attorneys for Defendant
Motor Coach Industries, Inc.*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KEON KHIABANI and ARIA KHIABANI,
minors by and through their natural mother,
KATAYOUN BARIN; and KATAYOUN
BARIN, individually; KATAYOUN BARIN as
Executrix of the Estate of Kayvan Khiabani,
M.D. (Decedent), and the Estate of Kayvan
Khiabani, M.D. (Decedent),

Plaintiffs,

v.

MOTOR COACH INDUSTRIES, INC., a
Delaware corporation; MICHELANGELO
LEASING INC. d/b/a RYAN'S EXPRESS, an
Arizona corporation; EDWARD HUBBARD, a
Nevada resident; BELL SPORTS, INC. d/b/a
GIRO SPORT DESIGN, a Delaware
corporation; SEVENPLUS BICYCLES, INC.
d/v/a PRO CYCLERY, a Nevada corporation,
DOES 1 through 20; and ROE
CORPORATIONS 1 through 20,

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

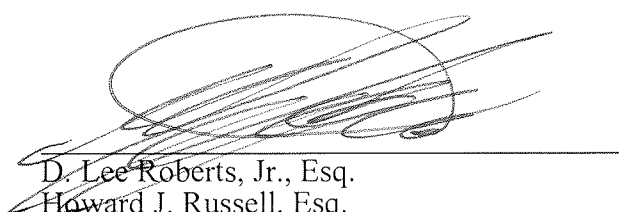
**NOTICE OF ENTRY OF ORDER
ADMITTING TO PRACTICE**

YOU WILL PLEASE TAKE NOTICE that an Order Admitting to Practice was filed on
July 11, 2017 in the above-captioned matter. A copy of the Order is attached hereto.

///

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
(702) 938-3838

1 DATED this 11th day of July, 2017.


D. Lee Roberts, Jr., Esq.
Howard J. Russell, Esq.
Michael S. Valiente, Esq.
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6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118

*Attorneys for Defendant
Motor Coach Industries, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of July, 2017, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER ADMITTING TO PRACTICE** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

| | |
|--|--|
| <p>Will Kemp, Esq. Eric Pepperman, Esq. KEMP, JONES & COULTHARD, LLP 3800 Howard Hughes Pkwy., 17th Floor Las Vegas, NV 89169 e.pepperman@kempjones.com</p> <p><i>Attorneys for Plaintiffs</i></p> | <p>Peter S. Christiansen, Esq. Kendele L. Works, Esq. CHRISTIENSEN LAW OFFICES 810 S. Casino Center Blvd. Las Vegas, NV 89101 pete@christiansenlaw.com kworks@christiansenlaw.com</p> <p><i>Attorneys for Plaintiffs</i></p> |
| <p>Keith Gibson, Esq. LITTLETON JOYCE UGHETTA PARK & KELLY LLP The Centre at Purchase 4 Manhattanville Rd., Suite 202 Purchase, NY 10577 Keith.Gibson@LittletonJoyce.com</p> <p><i>Attorney for Defendant Bell Sports, Inc. d/b/a Giro Sport Design</i></p> | <p>Michael E. Stoberski, Esq. Joslyn Shapiro, Esq. OLSON CANNON GORMLEY ANGULO & STOBERSKI 9950 W. Cheyenne Ave. Las Vegas, NV 89129 mstoberski@ocgas.com jshapiro@ocgas.com</p> <p><i>Attorneys for Defendant Bell Sports, Inc. d/b/a Giro Sport Design</i></p> |
| <p>Eric O. Freeman, Esq. Selman Breitman LLP 3993 Howard Hughes Pkwy., Suite 200 Las Vegas, NV 89169 efreeman@selmanlaw.com</p> <p><i>Attorney for Defendants Michelangelo Leasing Inc. d/b/a Ryan's Express and Edward Hubbard</i></p> | <p>Michael J. Nunez, Esq. MURCHISON & CUMMING, LLP 6900 Westcliff Dr., Suite 605 Las Vegas, NV 89145</p> <p><i>Attorney for Defendant SevenPlus Bicycles, Inc. d/b/a Pro Cyclery</i></p> |



An Employee of WEINBERG, WHEELER,
HUDGINS, GUNN & DIAL, LLC



1 **ORDR**

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8 Michael S. Valiente, Esq.

9 Nevada Bar No. 14293

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14 Las Vegas, Nevada 89118

15 Telephone: (702) 938-3838

16 Facsimile: (702) 938-3864

17 *Attorneys for Defendant*

18 *Motor Coach Industries, Inc.*

19 **DISTRICT COURT**

20 **CLARK COUNTY, NEVADA**

21 KEON KHIABANI and ARIA KHIABANI,
22 minors by and through their natural mother,
23 KATAYOUN BARIN; and KATAYOUN
24 BARIN, individually; KATAYOUN BARIN as
25 Executrix of the Estate of Kayvan Khiabani,
M.D. (Decedent), and the Estate of Kayvan
Khiabani, M.D. (Decedent),

Plaintiffs,

v.

MOTOR COACH INDUSTRIES, INC., a
Delaware corporation; MICHELANGELO
LEASING INC. d/b/a RYAN'S EXPRESS, an
Arizona corporation; EDWARD HUBBARD, a
Nevada resident; BELL SPORTS, INC. d/b/a
GIRO SPORT DESIGN, a Delaware
corporation; SEVENPLUS BICYCLES, INC.
d/v/a PRO CYCLERY, a Nevada corporation,
DOES 1 through 20; and ROE
CORPORATIONS 1 through 20,

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

ORDER ADMITTING TO PRACTICE

Darrell L. Barger, John C. Dacus and Brian Rawson having filed a Motion to Associate
Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for
Association of Counsel, "Certificate of Good Standing"; and the State Bar of Nevada Statement;

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
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(702) 938-3838

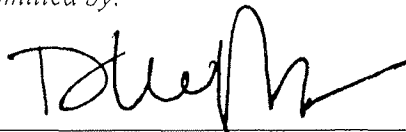
1 said application having been noticed, the Court having considered this matter, and the Court being
2 fully apprised in the premises, and good cause appearing:

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that said applications are
4 granted and Darrell L. Barger, John C. Dacus and Brian Rawson are hereby admitted to practice in
5 the above-entitled Court for the purposes for the above-entitled matter only.

6
7 DATED this 7 day of July, 2017.

8
9
10 
11 DISTRICT COURT JUDGE
12 *g*

13 Submitted by:

14 
15

16 D. Lee Roberts, Jr., Esq.
17 Howard J. Russell, Esq.
18 Michael S. Valiente, Esq.
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20 GUNN & DIAL, LLC
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22 Las Vegas, Nevada 89118

23 *Attorneys for Defendant*
24 *Motor Coach Industries, Inc.*
25
26
27
28

CASE SUMMARY**CASE NO. A-17-755977-C**

Estate of Katayoun Barin, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

§
§
§
§
§
§

Location: **Department 14**
 Judicial Officer: **Escobar, Adriana**
 Filed on: **05/25/2017**
 Case Number History:
 Cross-Reference Case **A755977**
 Number:
 Supreme Court No.: **75953**

CASE INFORMATION**Statistical Closures**

10/24/2017 Transferred (before trial)

Case Type: **Product Liability**

Case Status: **11/16/2017 Reopened**













DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-17-755977-C
 Court Department 14
 Date Assigned 05/30/2017
 Judicial Officer Escobar, Adriana

PARTY INFORMATION

| | | |
|------------------|---|--|
| Plaintiff | Estate of Katayoun Barin | Barrett, Whitney <i>Retained</i> 702-240-7979(W) |
| | Estate of Kayvan Khibani M.D. | Kemp, William Simon <i>Retained</i> 7023856000(W) |
| Defendant | Bell Sports Inc Removed: 10/17/2018 Dismissed | Stoberski, Michael E <i>Retained</i> 7023844012(W) |
| | Bell Sports, Inc | Stoberski, Michael E <i>Retained</i> 7023844012(W) |
| | Hubbard, Edward Removed: 08/22/2018 Dismissed | |
| | Michelangelo Leasing Inc Removed: 08/22/2018 Dismissed | |
| | Motor Coach Industries Inc | Polsenberg, Daniel F. <i>Retained</i> 702-949-8200(W) |
| | Sevenplus Bicycles Inc Removed: 10/17/2018 Dismissed | Nunez, Michael J. <i>Retained</i> 7023603956(W) |
| | Vista Outdoor Inc Removed: 06/06/2017 Inactive | |
| Guardian | Claude-Rigaud, Marie | |

CASE SUMMARY**CASE NO. A-17-755977-C****Special Master** **Hale, Floyd****Hale, Floyd A.**
Retained
7023821414(W)**Subject Minor** **Khiabani, Aria****Kemp, William Simon**
Retained
7023856000(W)**Khiabani, Keon****Kemp, William Simon**
Retained
7023856000(W)

| DATE | EVENTS & ORDERS OF THE COURT | INDEX |
|------------|--|-------|
| | <u>EVENTS</u> | |
| 05/25/2017 |  Complaint With Jury Demand Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin <i>Complaint and Demand for Jury Trial</i> | |
| 05/25/2017 |  Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i> | |
| 05/26/2017 |  Summons <i>Summons Edward Hubbard</i> | |
| 05/26/2017 |  Summons <i>Summons Michelangelo Leasing, Inc.</i> | |
| 05/26/2017 |  Summons <i>Summons Motor Coach Industries, Inc.</i> | |
| 05/26/2017 |  Summons <i>Summons Vista Outdoor, Inc., d/b/a Giro Sport Design</i> | |
| 05/26/2017 |  Peremptory Challenge Filed by: Plaintiff Estate of Katayoun Barin <i>Peremptory Challenge</i> | |
| 05/30/2017 |  Notice of Department Reassignment <i>Notice of Department Reassignment</i> | |
| 05/30/2017 |  Ex Parte Motion Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin <i>Ex Parte Motion for Order Requiring Bus Company and Driver to Preserve and Immediately Turn Over Relevant Electronic Monitoring Information from Bus and Driver Cell Phone</i> | |
| 06/06/2017 |  Acceptance of Service <i>Acceptance of Service</i> | |
| 06/06/2017 |  Amended Complaint Filed By: Plaintiff Estate of Katayoun Barin <i>Amended Complaint and Demand for Jury Trial</i> | |
| 06/06/2017 |  Initial Appearance Fee Disclosure | |

CASE SUMMARY

CASE NO. A-17-755977-C

Filed By: Plaintiff Estate of Katayoun Barin
Initial Appearance Fee Disclosure (NRS Chapter 19)

| | |
|------------|---|
| 06/09/2017 |  Summons Electronically Issued - Service Pending <i>Summons</i> |
| 06/09/2017 |  Summons Electronically Issued - Service Pending <i>Summons Bell Sports, Inc.</i> |
| 06/12/2017 |  Acceptance of Service Filed By: Plaintiff Estate of Katayoun Barin <i>Acceptance of Service for Bell Sports, Inc.</i> |
| 06/12/2017 |  Application Filed By: Subject Minor Khiabani, Keon <i>Application for TRO</i> |
| 06/12/2017 |  Motion for Preferential Trial Setting Filed By: Subject Minor Khiabani, Keon <i>Plaintiffs' Motion for Preferential Trial Setting Under NRS 16.025(2)</i> |
| 06/14/2017 |  Summons Filed by: Subject Minor Khiabani, Keon <i>Summons</i> |
| 06/14/2017 |  Summons Filed by: Subject Minor Khiabani, Keon <i>Summons</i> |
| 06/14/2017 |  Summons Filed by: Subject Minor Khiabani, Keon <i>Summons</i> |
| 06/20/2017 |  Summons Filed by: Subject Minor Khiabani, Keon <i>Summons</i> |
| 06/20/2017 |  Order <i>Order Denying Without Prejudice Plaintiffs' Ex Parte Motion for Order Requiring Bus Company and Bus Driver to Preserve and Immediately Turn Over Relevant Electronic Monitoring Information From Bus and Drive Cell Phone</i> |
| 06/22/2017 |  Notice of Entry <i>Notice of Entry of Order Denying Without Prejudice Plaintiffs' Ex Parte Motion for Order Requiring Bus Company and Bus Driver to Preserve and Immediately Turn Over Relevant Electronic Monitoring Information from BUs and Driver Cell Phone</i> |
| 06/28/2017 |  Answer to Amended Complaint Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward <i>Defendants Michelangelo Leasing Inc. dba Ryan's Express and Edward Hubbard's Answer to Plaintiffs' Amended Complaint</i> |
| 06/28/2017 |  Initial Appearance Fee Disclosure Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward |

CASE SUMMARY

CASE NO. A-17-755977-C

Initial Appearance Fee Disclosure

| | |
|------------|--|
| 06/28/2017 |  Demand for Jury Trial Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward <i>Demand for Jury Trial</i> |
| 06/29/2017 |  Opposition Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward <i>Defendants Michelangelo Leasing Inc. dba Ryan's Express and Edward Hubbard's Opposition to Plaintiffs' Motion for Preferential Trial Setting</i> |
| 06/29/2017 |  Opposition to Motion Filed By: Defendant Bell Sports Inc <i>Defendant Bell Sports, Inc.'s Opposition To Plaintiffs' Motion For Preferential Trial Setting Under NRS 16.025(2)</i> |
| 06/30/2017 |  Answer to Amended Complaint Filed By: Defendant Motor Coach Industries Inc <i>Defendant Motor Coach Industries, Inc.'s Answer to Plaintiffs' Amended Complaint</i> |
| 06/30/2017 |  Initial Appearance Fee Disclosure Filed By: Defendant Motor Coach Industries Inc <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i> |
| 06/30/2017 |  Answer to Amended Complaint Filed By: Defendant Sevenplus Bicycles Inc <i>Defendant Sevenplus Bicycles, Inc d/b/a Pro Cyclery's Answer to Plaintiff's Amended Complaint</i> |
| 06/30/2017 |  Initial Appearance Fee Disclosure <i>Defendant Sevenplus Bicycles Inc. d/b/a Pro Cyclery's Initial Apperance Fee Disclosure</i> |
| 06/30/2017 |  Demand for Jury Trial <i>Defendant Sevenplus Bicycles, Inc . d/b/a Pro Cyclery's Demand for Jury Trial</i> |
| 06/30/2017 |  Opposition to Motion Filed By: Defendant Motor Coach Industries Inc <i>Defendant Motor Coach Industries, Inc.'s Opposition to Plaintiff's Motion for Preferential Trial Setting Under NRS 16.025(2)</i> |
| 06/30/2017 |  Notice of Early Case Conference Filed By: Plaintiff Estate of Katayoun Barin <i>Notice of Early Case Conference</i> |
| 07/03/2017 |  Answer to Amended Complaint Filed By: Defendant Bell Sports Inc <i>Defendant Bell Sports, Inc.'s Answer To Plaintiff's Amended Complaint</i> |
| 07/03/2017 |  Initial Appearance Fee Disclosure Filed By: Defendant Bell Sports Inc <i>Defendant Bell Sports, Inc.'s Initial Appearance Fee Disclosure</i> |
| 07/03/2017 |  Demand for Jury Trial Filed By: Defendant Bell Sports Inc |

CASE SUMMARY

CASE NO. A-17-755977-C


Defendant Bell Sports, Inc.'s Demand For Jury Trial

| | |
|------------|--|
| 07/05/2017 |  Order Filed By: Plaintiff Estate of Katayoun Barin <i>Order Granting in Part and Denying in Part Plaintiffs' Application Under NRCP 65(b) for Temporary Restraining Order</i> |
| 07/07/2017 |  Amended Notice of Early Case Conference Filed By: Plaintiff Estate of Katayoun Barin <i>Amended Notice of Early Case Conference</i> |
| 07/07/2017 |  Joinder Filed By: Defendant Sevenplus Bicycles Inc <i>Defendant Sevenplus Bicycles Inc dba Pro Cyclery's Joinder to Defendant Bell Sport Inc's Opposition to Plaintiffs' motion for Preferential Trial Setting Under NRS 16.025(2)</i> |
| 07/07/2017 |  Joinder Filed By: Defendant Sevenplus Bicycles Inc <i>Defendant Sevenplus Bicycles Inc dba pro Cyclery's Joinder to Defendant Motion Coach Industries Inc's Opposition to Plaintiffs' Motion for Preferential Trial Setting Under NRS 16.025(2)</i> |
| 07/07/2017 |  Joinder Filed By: Defendant Sevenplus Bicycles Inc <i>Defendant Sevenplus Bicycles Inc dba Pro Cyclery's Joinder to Defendant michelangelo Leasing Inc dba Ryan's Express and Edward Hubbard's Opposition to Plaintiffs' Motion for Preferential Trial Setting</i> |
| 07/11/2017 |  Notice of Entry of Order Filed By: Plaintiff Estate of Katayoun Barin <i>Notice of Entry of Order</i> |
| 07/11/2017 |  Order Admitting to Practice Filed By: Defendant Motor Coach Industries Inc <i>Order Admitting to Practice</i> |
| 07/11/2017 |  Motion to Associate Counsel Filed By: Defendant Motor Coach Industries Inc <i>Motion to Associate Counsel on Order Shortening Time (Darrell L Barger, John C Dacus and Brian Rawson)</i> |
| 07/11/2017 |  Notice of Entry of Order Filed By: Defendant Motor Coach Industries Inc <i>Notice of Entry of Order Admitting to Practice</i> |
| 07/13/2017 |  Notice of Early Case Conference Filed By: Plaintiff Estate of Katayoun Barin <i>Notice of Continued Early Case Conference</i> |
| 07/13/2017 |  Reply to Opposition Filed by: Plaintiff Estate of Katayoun Barin <i>Plaintiffs' Combined Reply to Defendants Three Oppositions to Motion for Preferential Trial Setting</i> |
| 07/19/2017 |  Supplemental Brief |

CASE SUMMARY

CASE NO. A-17-755977-C

Filed By: Defendant Motor Coach Industries Inc
Defendant Motor Coach Industries, Inc.'s Supplemental Brief in Opposition to Plaintiffs' Request for Preferential Trial Setting

| | |
|------------|--|
| 07/20/2017 |  Order <i>Order Granting Plaintiffs' Motion for Preferential Trial Setting</i> |
| 07/20/2017 |  Notice of Entry of Order <i>Notice of Entry of Order Granting Plaintiffs' Motion for Preferential Trial Setting</i> |
| 07/24/2017 |  Special Master Order Filed by: Special Master Hale, Floyd <i>Special Master Report re: July 24, 2017 hearing</i> |
| 07/25/2017 |  Special Master Order <i>Special Master Report</i> |
| 07/25/2017 |  Notice of Special Master Hearing Filed By: Other Hale, Floyd <i>Notice of Special Master Hearing</i> |
| 07/25/2017 |  Application for Issuance of Commission to Take Deposition Party: Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <i>Application for Issuance of Commission to Take Deposition Out of State of Custodian of Records of Keck Hospital of USC (Pathology)</i> |
| 07/26/2017 |  Commission to Take Deposition Outside the State of Nevada <i>Commission to Take Deposition Out of State Of Custodian Records of Keck Hospital of USC</i> |
| 07/31/2017 |  Commissioners Decision on Request for Exemption - Granted <i>Commissioner's Decision on Request for Exemption - Granted</i> |
| 08/02/2017 |  Disclosure Statement Party: Defendant Bell Sports Inc <i>Defendant Bell Sports, Inc.'s Rule 7.1 Disclosure Statement</i> |
| 08/03/2017 |  Disclosure of Documents and Witnesses Pursuant to NRCP 16.1 Filed By: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Initial Disclosure Pursuant to NRCP 16.1</i> |
| 08/03/2017 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Objections to Plaintiffs' Early Case Conference Disclosures Pursuant to NRCP 16.1(a)(1)</i> |
| 08/03/2017 |  Motion to Reconsider Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward <i>Defendants Michelangelo Leasing Inc. and Edward Hubbard's Motion for Reconsideration Regarding the Court Granting Plaintiffs' Motion for Preferential Trial Setting</i> |
| 08/07/2017 |  Notice of Special Master Hearing <i>Notice of Special Master Hearing</i> |
| 08/10/2017 |  Disclosure Statement Party: Defendant Motor Coach Industries Inc |

CASE SUMMARY

CASE NO. A-17-755977-C

Motor Coach Industries, Inc.'s NRCP 7.1 Disclosure

08/11/2017



Order Admitting to Practice

Filed By: Defendant Bell Sports Inc

Order Admitting to Practice - Brian Keith Gibson

08/11/2017



Order Admitting to Practice

Filed By: Defendant Bell Sports Inc

Order Admitting to Practice - C. Scott Toomey

08/14/2017



Joinder

Filed By: Defendant Sevenplus Bicycles Inc

Defendant SevenPlus Bicycles, Inc. dba Pro Cyclery's Joinder to Defendant Ryan's Express and Edward Hubbard's Motion for Reconsideration

08/14/2017



Joinder

Filed By: Defendant Motor Coach Industries Inc

Defendant Motor Coach Industries, Inc.'s Joinder to Michelangelo Leasing Inc. and Edward Hubbard's Motion for Reconsideration Regarding the Court Granting Plaintiffs' Motion for Preferential Trial Setting

08/16/2017



Notice of Deposition

Notice of Deposition of Custodian of Records Only Of Cricket Communications, Inc., In C/O Neustar

08/16/2017



Subpoena Duces Tecum

Subpoena Duces Tecum To Custodian of Records of Cricket Communications, Inc., In C/o Neustar

08/16/2017



Application for Issuance of Commission to Take Deposition

Application for Issuance of Commission TO Take Deposition Out of State Of Custodian Of Records of Cricket Communications, Inc., In C/o Neustar

08/16/2017



Supplement to List of Witnesses & Documents

Party: Defendant Motor Coach Industries Inc

Motor Coach Industries, Inc.'s First Supplement to Initial Disclosure Pursuant to NRCP 16.1

08/16/2017



Case Management Order

Case Management Order

08/17/2017



Commission to Take Deposition Outside the State of Nevada

Filed By: Subject Minor Khiabani, Keon

Commission to Take Deposition Out of State Of Custodian of Records of Cricket Communications, Inc., In C/O Neustar

08/18/2017



Opposition

Plaintiffs' Opposition to Defendants Michelangelo Leasing Inc. and Edward Hubbard's Motion for Reconsideration Regarding the Court Granting Plaintiffs' Motion for Preferential Trial Setting and All Joinders Thereto

08/18/2017



Notice of Entry of Order

Notice of Entry of Order (CMO)

08/18/2017



Supplement to List of Witnesses & Documents

Party: Defendant Motor Coach Industries Inc

CASE SUMMARY

CASE NO. A-17-755977-C

Motor Coach Industries, Inc.'s Second Supplement to Initial Disclosure Pursuant to NRCP 16.1

| | |
|------------|---|
| 08/18/2017 |  Subpoena Electronically Issued Filed by: Defendant Motor Coach Industries Inc <i>Subpoena Duces Tecum to the Custodian of Records of Nevada State Board of Medical Examiners</i> |
| 08/18/2017 |  Special Master Order <i>Special Master Order</i> |
| 08/21/2017 |  Notice of Entry of Order Filed By: Defendant Bell Sports Inc <i>Notice of Entry of Order Admitting to Practice - Gibson</i> |
| 08/21/2017 |  Notice of Entry of Order Filed By: Defendant Bell Sports Inc <i>Notice of Entry of Order Admitting to Practice - Toomey</i> |
| 08/21/2017 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Objections to Defendant Bell Sports, Inc.'s Initial Early Case Conference Disclosure of Witnesses and Documents</i> |
| 08/22/2017 |  Notice of Special Master Hearing <i>Notice of Special Master Hearing</i> |
| 08/23/2017 |  Order Admitting to Practice Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward <i>Order Admitting to Practice</i> |
| 08/23/2017 |  Amended Subpoena Duces Tecum Filed By: Subject Minor Khiabani, Keon <i>Amended Subpoena Duces Tecum to Custodian of Records of Cricket Communications, Inc., in c/o Neustar</i> |
| 08/23/2017 |  Notice of Entry Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward <i>Notice of Entry of Order</i> |
| 08/24/2017 |  Special Master Order <i>Special Master Report</i> |
| 08/24/2017 |  Stipulation and Order Filed by: Defendant Motor Coach Industries Inc <i>Stipulated Protective Order</i> |
| 08/24/2017 |  Order Filed By: Defendant Motor Coach Industries Inc <i>Order Admitting to Practice</i> |
| 08/24/2017 |  Motion to Associate Counsel Filed By: Defendant Motor Coach Industries Inc <i>Motion to Associate Counsel on Order Shortening Time</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

| | |
|------------|---|
| 08/24/2017 |  Motion to Associate Counsel Filed By: Defendant Bell Sports Inc <i>Motion to Associate Counsel on Order Shortening Time - Ughetta</i> |
| 08/25/2017 |  Order Admitting to Practice Filed By: Defendant Bell Sports Inc <i>Order Admitting to Practice - Ughetta</i> |
| 08/25/2017 |  Notice of Entry of Order Filed By: Defendant Bell Sports Inc <i>Notice of Entry of Order Admitting to Practice - James Ughetta</i> |
| 08/25/2017 |  Notice of Entry of Order Filed By: Defendant Motor Coach Industries Inc <i>Notice of Entry of Stipulated Protective Order</i> |
| 08/25/2017 |  Notice of Entry of Order Filed By: Defendant Motor Coach Industries Inc <i>Notice of Entry of Order Admitting to Practice</i> |
| 08/29/2017 |  Motion to Associate Counsel Filed By: Defendant Motor Coach Industries Inc <i>Motion to Associate Counsel</i> |
| 08/29/2017 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Objections to Plaintiffs' First Supplemental Disclosures Pursuant to NRCP 16.1(a)(1)</i> |
| 08/30/2017 |  Reply to Opposition Filed by: Defendant Sevenplus Bicycles Inc <i>Defendant SevenPlus Bicycles, Inc. d/b/a Pro Cyclery's Reply to Plaintiffs' Opposition to Ryan's Express and Edward Hubbard's Mtn for Reconsideration</i> |
| 08/31/2017 |  Errata Filed By: Defendant Sevenplus Bicycles Inc <i>Defendant SevenPlus Bicycles, Inc. d/b/a Pro Cyclery's ERRATA to Reply to Plaintiffs' Opposition to Defendant Ryan's Express and Edward Hubbard's Motion for Reconsideration Regarding the Court Granting Plaintiffs' Motion for Preferential Trial Setting and All Joinders Thereto</i> |
| 08/31/2017 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Objections to Plaintiffs' Second Supplemental Disclosures Pursuant to NRCP 16.1(a)(1)</i> |
| 09/01/2017 |  Notice of Deposition <i>Amended Notice of Videotape/Video-Conference Deposition of Porcia Hubbard</i> |
| 09/01/2017 |  Deposition Subpoena <i>Subpoena</i> |
| 09/01/2017 |  Application for Issuance of Commission to Take Deposition <i>Application for Issuance of Commission to Take Deposition Out of State of Porcia Hubbard</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

| | |
|------------|--|
| 09/01/2017 |  Commission Issued Filed by: Subject Minor Khiabani, Keon <i>Commission to Take Deposition Out of State of Porcia Hubbard</i> |
| 09/01/2017 |  Commission to Take Deposition Outside the State of Nevada <i>Commission to Take Deposition Out of State of Porcia Hubbard</i> |
| 09/06/2017 |  Order Admitting to Practice Filed By: Defendant Motor Coach Industries Inc <i>Order Admitting to Practice</i> |
| 09/06/2017 |  Stipulation and Order Filed by: Defendant Motor Coach Industries Inc <i>Stipulation and Order to Continue Hearing on Motion for Reconsideration</i> |
| 09/07/2017 |  Notice of Entry of Order Filed By: Defendant Motor Coach Industries Inc <i>Notice of Entry of Order Admitting to Practice</i> |
| 09/07/2017 |  Notice of Entry of Order Filed By: Defendant Motor Coach Industries Inc <i>Notice of Entry of Stipulation and Order to Continue Hearing on Motion for Reconsideration</i> |
| 09/08/2017 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Objections to Michaelangelo Leasing, Inc. dba Ryan's Express and Edward Hubbard's Initial 16.1 Disclosure of Witnesses and Documents</i> |
| 09/11/2017 |  Notice of Change of Address Filed By: Defendant Sevenplus Bicycles Inc <i>Notice of Change of Address</i> |
| 09/11/2017 |  Supplement to List of Witnesses & Documents Party: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Third Supplement to Initial Disclosure Pursuant to NRCP 16.1</i> |
| 09/11/2017 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Objections to Plaintiffs' Third Supplemental Disclosures Pursuant to NRCP 16.1(a)(1)</i> |
| 09/11/2017 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Objections to Plaintiffs' Notice of Filing Partial Expert Report of Larry D. Stokes, Ph.D.</i> |
| 09/12/2017 |  Special Master Order <i>Special Master Report and Order Allowing Motor Coach Industries to Commence Edward Hubbard Deposition</i> |
| 09/12/2017 |  Notice of Special Master Hearing <i>Notice of Special Master Hearing</i> |
| 09/14/2017 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Objections to Plaintiffs' Notice of Filing Second Partial Expert Report of Larry D. Stokes,</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

Ph.D.

09/14/2017



Notice of Deposition

Notice of Video Conference / Videotape Deposition of Pablo Fierros

09/14/2017



Deposition Subpoena

Subpoena

09/14/2017



Application for Issuance of Commission to Take Deposition

Application for Issuance of Commission to Take Deposition Out of State of Pablo Fierros

09/18/2017



Objection

Filed By: Defendant Motor Coach Industries Inc

Objections to Plaintiffs' Notice of Filing Third Partial Expert Report of Larry D. Stokes, Ph.D.

09/19/2017



Supplement

Plaintiffs' Supplement to Opposition to Defendants Michelangelo Leasing Inc. and Edward Hubbard's Motion for Reconsideration Regarding the court Granting Plaintiffs' Motion for Preferential Trial Setting and All Joinders Thereto

09/19/2017



Brief

Filed By: Defendant Bell Sports Inc

Bell Sports, Inc's Brief In Support of Discovery Status

09/19/2017



Commission Issued

Commission to Take Deposition Out of State of Pablo Fierros

09/20/2017



Objection

Filed By: Defendant Motor Coach Industries Inc

Objections to Plaintiffs' Fourth Supplemental Disclosures Pursuant to NRCP 16.1(a)(1)

09/20/2017



Supplement

Filed by: Defendant Motor Coach Industries Inc

Supplement to Motor Coach Industries, Inc.'s Joinder to Michelangelo Leasing Inc. and Edward Hubbard's Motion for Reconsideration Regarding the Court Granting Plaintiffs' Motion for Preferential Trial Setting

09/21/2017



Supplement to List of Witnesses & Documents

Party: Defendant Motor Coach Industries Inc

Motor Coach Industries, Inc.'s Fourth Supplement to Initial Disclosure Pursuant to NRCP 16.1

09/22/2017



Motion for Good Faith Settlement

Filed By: Defendant Sevenplus Bicycles Inc

Defendant SevenPlus Bicycles, Inc d/b/a Pro Cyclery's Motion for Determination of Good Faith Settlement

09/25/2017



Objection

Filed By: Defendant Motor Coach Industries Inc

Objections to Plaintiffs' Fifth Supplemental Disclosures Pursuant to NRCP 16.1(a)(1)

09/27/2017















Special Master Order

Special Master Report

CASE SUMMARY

CASE NO. A-17-755977-C

| | |
|------------|---|
| 09/27/2017 |  Notice of Special Master Hearing <i>Notice of Special Master Hearing</i> |
| 09/28/2017 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Objections to Defendant Bell Sports, Inc.'s First Supplement to Initial Early Case Conference Disclosure of Witnesses and Documents</i> |
| 10/03/2017 |  Special Master Order <i>Special Master Report Regarding Dr. Jack E. Hubbard Deposition</i> |
| 10/05/2017 |  Motion to Compel Filed By: Defendant Motor Coach Industries Inc <i>Defendant Motor Coach Industries, Inc.'s Motion to Compel Production of Documents by Las Vegas Metropolitan Police Department on Order Shortening Time</i> |
| 10/05/2017 |  Reporters Transcript Filed By: Defendant Motor Coach Industries Inc; Plaintiff Estate of Katayoun Barin <i>Reporter's Transcription of Motion for Temporary Restraining Order - June 15, 2017</i> |
| 10/05/2017 |  Reporters Transcript Filed By: Defendant Motor Coach Industries Inc; Plaintiff Estate of Katayoun Barin <i>Reporter's Transcription of Motion for Preferential Trial Setting - July 20, 2017</i> |
| 10/05/2017 |  Reporters Transcript Filed By: Defendant Motor Coach Industries Inc; Plaintiff Estate of Katayoun Barin <i>Reporter's Transcription of Motion of Status Check and Motion for Reconsideration with Joinder - September 21, 2017</i> |
| 10/06/2017 |  Notice of Hearing Filed By: Defendant Motor Coach Industries Inc <i>Notice of Hearing on Defendant Motor Coach Industries, Inc.'s Motion to Compel Production of Documents By Las Vegas Metropolitan Police Department on Order Shortening Time</i> |
| 10/09/2017 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Objections to Defendant Bell Sports, Inc.'s Second Supplement to Initial Early Case Conference Disclosure of Witnesses and Documents</i> |
| 10/09/2017 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Objections to Michelangelo Leasing, Inc. dba Ryan's Express and Edward Hubbard's First Supplemental 16.1 Disclosure of Witnesses and Documents</i> |
| 10/09/2017 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Objections to Plaintiffs' Sixth Supplemental Disclosures Pursuant to NRCP 16.1(a)(1)</i> |
| 10/10/2017 |  Notice of Special Master Hearing Filed By: Other Hale, Floyd <i>Notice of Special Master Hearing</i> |
| 10/10/2017 |  Special Master Order <i>Special Master Report</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

| | |
|------------|---|
| 10/10/2017 |  Motion <i>Plaintiffs' Motion to Allow Plaintiffs To Present a Jury Questionnaire Prior to Voir Dire On Order Shortening Time</i> |
| 10/10/2017 |  Supplement to List of Witnesses & Documents Party: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Fifth Supplement to Initial Disclosure Pursuant to NRCP 16.1</i> |
| 10/13/2017 |  Declaration Filed By: Subject Minor Khiabani, Keon <i>Declaration of service Detective Kenneth Salisbury</i> |
| 10/16/2017 |  Notice of Special Master Hearing <i>Notice of Rescheduled Special Master Hearing</i> |
| 10/16/2017 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Objections to Plaintiffs' Expert Witness Disclosure Pursuant to NRCP 16.1(a)(2) (Damages Only)</i> |
| 10/16/2017 |  Designation of Expert Witness Filed By: Defendant Motor Coach Industries Inc <i>Designation of Expert Witnesses</i> |
| 10/16/2017 |  Special Master Order <i>Special Master Order</i> |
| 10/17/2017 |  Designation of Expert Witness Filed By: Defendant Motor Coach Industries Inc <i>First Supplement to Designation of Expert Witnesses</i> |
| 10/17/2017 |  Notice of Association of Counsel <i>Notice of Association of Counsel</i> |
| 10/17/2017 |  Notice <i>Notice of Submittal</i> |
| 10/17/2017 |  Notice of Removal Filed By: Defendant Motor Coach Industries Inc <i>Defendant's Notice of Filing Notice of Removal</i> |
| 10/24/2017 |  Order to Statistically Close Case <i>Civil Order to Statistically Close Case</i> |
| 10/25/2017 |  Notice of Special Master Hearing Filed By: Other Hale, Floyd <i>Notice of Cancellation of Special Master Hearing</i> |
| 10/27/2017 |  Motion for Summary Judgment Filed By: Plaintiff Estate of Katayoun Barin <i>Motion for Summary Judgment On Foreseeability of Bus Interaction With Pedestrians or Bicyclists (Including Sudden Bicycle Movement)</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

| | |
|------------|--|
| 10/27/2017 |  Motion in Limine Filed By: Plaintiff Estate of Katayoun Barin <i>Motion In Limine No. 1 To Preclude Reference Or Argument Regarding The Alleged Negligence of Third Parties (I.E., Michelangelo and Hubbard)</i> |
| 10/27/2017 |  Motion in Limine <i>Motion In Limine No. 2 To Preclude Any Reference To Settling Defendants (Including Claims, Settlement and Amounts)</i> |
| 10/27/2017 |  Motion in Limine <i>Motion In Limine No. 3 To Preclude Defendant MCI from Arguing That Decedent Was Contributorily Negligent</i> |
| 10/27/2017 |  Motion in Limine Filed By: Plaintiff Estate of Katayoun Barin <i>Motion In Limine No. 4 To Preclude MCI From Making Excessive Reference to the Fact that Plaintiffs Are of Iranian or "Persian" Descent</i> |
| 10/27/2017 |  Motion in Limine Filed By: Plaintiff Estate of Katayoun Barin <i>Motion In Limine No. 5 To Preclude Defendants From Arguing Or Suggesting That Plaintiffs Must Prove That The Bus Had Any Specific Defect</i> |
| 10/27/2017 |  Motion in Limine Filed By: Plaintiff Estate of Katayoun Barin <i>Motion In Limine No. 6 To Preclude Defendants From Mentioning That Defense Expert Dr. Michael Baden ("OJ's Medical Examiner") Worked For the Christiansen Law Firm</i> |
| 10/27/2017 |  Motion in Limine Filed By: Plaintiff Estate of Katayoun Barin <i>Motion In Limine No. 7 To Preclude Defendant MCI From Arguing That The Alleged Lack of Proximity Sensors From A Third party ("Commercial Availability") As A Defense Where the True Issue Is Whether Proximity Sensors Were Technologically "Feasible"</i> |
| 10/27/2017 |  Motion in Limine Filed By: Plaintiff Estate of Katayoun Barin <i>Motion In Limine No. 8 To Pre Instruct The Jury With Standard Instructions For Product Liability Claims</i> |
| 10/27/2017 |  Motion in Limine Filed By: Plaintiff Estate of Katayoun Barin <i>Motion In Limine No. 9 To Preclude Metro Report And/Or Opinions From Metro Officers</i> |
| 10/27/2017 |  Motion in Limine Filed By: Plaintiff Estate of Katayoun Barin <i>Motion In Limine No. 10 To Pre Admit Funeral Video and Funeral Slide Show</i> |
| 10/27/2017 |  Motion in Limine Filed By: Plaintiff Estate of Katayoun Barin <i>Motion In Limine No. 11 Pre Admit 1993 Generic Bus Wind Testing By MCI</i> |
| 10/27/2017 |  Motion in Limine <i>Motion In Limine No. 12 To Preclude MCI Expert Rucoba From Offering Meteorologist Opinions Regarding Wind Speed At The Time Of the Accident (Including But Not Limited To The Wildly Unsupported Claim That Wind Speeds At 10:30 a.m. Were "16 to 17 Miles Per Hours" And "Winds Were Gusting to 30 Miles Per Hour"</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

| | |
|------------|--|
| 10/27/2017 |  Motion in Limine <i>Motion In Limine No. 13 Preclude Defendants From Arguing Or Referencing Rigged Air Blast Testing That Is Not Substantially Similar Because It Used Stationary Bike and Not A Moving Bike</i> |
| 10/27/2017 |  Motion in Limine <i>Motion In Limine No. 14 To Designate Virgil Hoogestraat As Managing Speaking Agent of MCI</i> |
| 10/27/2017 |  Motion in Limine Filed By: Plaintiff Estate of Katayoun Barin <i>Motion In Limine No. 15 To Designate Bryan Couch as Managing Speaking Agent Of Motor Coach Industries, Inc.</i> |
| 10/27/2017 |  Motion in Limine <i>Motion In Limine No. 16 To Pre Admit June 2001 Article As Notice of Potential Rear Tire Suction Hazard And Need For Protective Guard</i> |
| 10/30/2017 |  Notice of Hearing Filed By: Defendant Sevenplus Bicycles Inc <i>Notice of Hearing on Defendant SevenPlus Bicycles, Inc d/b/a Pro Cyclery's Motion for Determination of Good Faith Settlement</i> |
| 10/31/2017 |  Motion Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria <i>Plaintiffs' Motion to Amend Complaint to Substitute Parties on Order Shortening Time</i> |
| 11/01/2017 |  Opposition and Countermotion <i>Opposition to Plaintiffs' Motion to Amend Complaint and Countermotion to Set a Reasonable Date Upon Changed Circumstance that Nullifies the Reason for Preferential Trial Setting</i> |
| 11/07/2017 |  Supplement to List of Witnesses & Documents Party: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Sixth Supplement to Initial Disclosure Pursuant to NRCP 16.1</i> |
| 11/13/2017 |  Designation of Expert Witness Filed By: Defendant Motor Coach Industries Inc <i>Fourth Supplement to Designation of Expert Witnesses</i> |
| 11/13/2017 |  Application Filed By: Defendant Motor Coach Industries Inc <i>Application to Issue Commission to Serve Subpoena Duces Tecum Outside the State of Nevada</i> |
| 11/14/2017 |  Commission Issued Filed by: Defendant Motor Coach Industries Inc <i>Commission to Serve Subpoena Duces Tecum Outside the State of Nevada</i> |
| 11/14/2017 |  Application Filed By: Defendant Motor Coach Industries Inc <i>Application to Issue Commission to Serve Subpoena Duces Tecum Outside the State of Nevada</i> |
| 11/14/2017 |  Commission Issued Filed by: Defendant Motor Coach Industries Inc <i>Commission to Serve Subpoena Duces Tecum Outside the State of Nevada</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

| | |
|------------|---|
| 11/15/2017 |  Supplement to List of Witnesses & Documents Party: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Seventh Supplement to Initial Disclosure Pursuant to NRCP 16.1</i> |
| 11/17/2017 |  Amended Complaint Filed By: Plaintiff Estate of Katayoun Barin <i>Second Amended Complaint And Demand for Jury Trial</i> |
| 11/17/2017 |  Order <i>Order Regarding "Plaintiffs' Motion to Amend Complaint to Substitute Parties" and "Countermotion to Set a Reasonable Trial Date Upon Changed Circumstance that Nullifies the Reason for Preferential Trial Setting"</i> |
| 11/17/2017 |  Application Filed By: Defendant Motor Coach Industries Inc <i>Application to Issue Commission to Serve Subpoena Duces Tecum Outside the State of Nevada</i> |
| 11/20/2017 |  Commission Issued Filed by: Defendant Motor Coach Industries Inc <i>Commission to Serve Subpoena Duces Tecum Outside the State of Nevada</i> |
| 11/20/2017 |  Notice of Deposition <i>Notice of Video tape/Video Conference Deposition of Jose Parada</i> |
| 11/20/2017 |  Deposition Subpoena <i>Subpoena to Jose Parada</i> |
| 11/20/2017 |  Application for Issuance of Commission to Take Deposition <i>Application for Issuance of Commission to Take Deposition Out of State of Jose Parada</i> |
| 11/20/2017 |  Commission Issued <i>Commission to Take Deposition Out of State of Jose Parada</i> |
| 11/20/2017 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Objections to Plaintiffs' Eighth Supplemental Disclosures Pursuant to NRCP 16.1(a)(1)</i> |
| 11/21/2017 |  Deposition Subpoena <i>Amended Subpoena to Jose Parada</i> |
| 11/21/2017 |  Commission to Take Deposition Outside the State of Nevada <i>Commission to Take Deposition Out of State of Jose Parada</i> |
| 11/22/2017 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Objections to Plaintiffs' Addendum to Report of Rebuttal Expert Witness Jay Rosenthal, CCM</i> |
| 12/01/2017 |  Notice <i>Notice of Briefing Schedule and Stay of December 8, 2017, Deposition of Glenn Asham and Notice of Special Master Hearing</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

| | |
|------------|--|
| 12/01/2017 |  Motion for Summary Judgment Filed By: Defendant Motor Coach Industries Inc <i>Motion for Summary Judgment on Punitive Damages</i> |
| 12/01/2017 |  Appendix Filed By: Defendant Motor Coach Industries Inc <i>Volume I: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages</i> |
| 12/01/2017 |  Appendix Filed By: Defendant Motor Coach Industries Inc <i>Volume II: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages</i> |
| 12/01/2017 |  Appendix Filed By: Defendant Motor Coach Industries Inc <i>Volume III: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages</i> |
| 12/04/2017 |  Motion for Summary Judgment Filed By: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Motion for Summary Judgment on All Claims Alleging a Product Defect</i> |
| 12/06/2017 |  Notice of Special Master Hearing <i>Notice of Special Master Hearing</i> |
| 12/07/2017 |  Designation of Expert Witness Filed By: Defendant Motor Coach Industries Inc <i>Fifth Supplement to Designation of Expert Witnesses</i> |
| 12/07/2017 |  Motion in Limine Filed By: Defendant Motor Coach Industries Inc <i>Defendant's Motion in Limine No. 2 to Exclude Illustrations by Plaintiffs' Expert Joshua Cohen That Have No Basis in Fact</i> |
| 12/07/2017 |  Motion in Limine Filed By: Defendant Motor Coach Industries Inc <i>Defendant's Motion in Limine No. 3 to Preclude Plaintiffs From Making Reference To a "Bullet Train"</i> |
| 12/07/2017 |  Motion in Limine Filed By: Defendant Motor Coach Industries Inc <i>Defendant's Motion in Limine No. 13 to Exclude Plaintiffs' Expert Witness Robert Cunitz, Ph.D., or in the Alternative, to Limit His Testimony</i> |
| 12/07/2017 |  Motion to Dismiss Filed By: Defendant Motor Coach Industries Inc <i>Defendant's Motion to Dismiss Wrongful Death Claim for Death of Katayoun Barin, DDS</i> |
| 12/07/2017 |  Motion in Limine Filed By: Defendant Motor Coach Industries Inc <i>Defendant's Motion in Limine No. 14 to Exclude Articles Regarding or Reference to Transit Buses</i> |
| 12/07/2017 |  Motion in Limine Filed By: Defendant Motor Coach Industries Inc |

CASE SUMMARY

CASE NO. A-17-755977-C

Defendant's Motion in Limine No. 7 to Exclude Any Claims That the Subject Motor Coach Was Defective Based on Alleged Dangerous "Air Blasts"

12/07/2017



Appendix

Filed By: Defendant Motor Coach Industries Inc
Appendix of Exhibits to Defendant's Motion in Limine No. 13 to Exclude Plaintiffs' Expert Witness Robert Cunitz, Ph.D., or in the Alternative, to Limit His Testimony

12/07/2017



Motion in Limine

Filed By: Defendant Motor Coach Industries Inc
Defendant's Motion in Limine No. 16 to Exclude Opinions by Plaintiffs' Expert Dipak Panigrahy

12/07/2017



Supplement to List of Witnesses & Documents

Party: Defendant Motor Coach Industries Inc
Motor Coach Industries, Inc.'s Eighth Supplement to Initial Disclosure Pursuant to NRCP 16.1

12/07/2017



Motion in Limine

Filed By: Defendant Motor Coach Industries Inc
Defendant's Motion in Limine No. 15 to Exclude Opinion Testimony From Lay Witnesses on Causation and Engineering Principles

12/07/2017



Appendix

Filed By: Defendant Motor Coach Industries Inc
Appendix of Exhibits to Defendant's Motion in Limine No. 7 to Exclude Any Claims That the Subject Motor Coach Was Defective Based on Alleged Dangerous "Air Blasts"

12/08/2017



Motion in Limine

Filed By: Defendant Motor Coach Industries Inc
Defendant's Motion in Limine No. 1 to Limit Opinions by Plaintiffs' Expert Robert Caldwell

12/08/2017



Motion in Limine

Filed By: Defendant Motor Coach Industries Inc
Defendant's Motion in Limine No. 5 to Exclude Any Claim of Defect Based on S-I Gard

12/08/2017



Motion in Limine

Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
Plaintiff's Motion in Limine No. 18 to Preclude the Admission of Prejudicial and Irrelevant Information Regarding Unrelated Disputes

12/08/2017



Motion in Limine

Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
Plaintiffs' Motion in Limine No. 17 To Admit Evidence of Facts Establishing Defendant's Consciousness of Responsibility

12/08/2017



Motion in Limine

Motion in Limine No. 4 to Preclude Plaintiffs from Presenting Evidence that Proximity Sensors were a Safer Alternative Design

12/08/2017



Motion in Limine

Motion in Limine No. 6 to Exclude Reference to New Flyer Industries, Inc. (NFI Group)

12/08/2017



Motion in Limine

CASE SUMMARY

CASE NO. A-17-755977-C

Defendant's Motion in Limine No. 11 to Exclude Plaintiffs' Expert Witness David Roger

12/08/2017



Motion in Limine

Motion in Limine No. 8 to Exclude Any Reference to Seatbelts

12/08/2017



Motion in Limine

Plaintiffs' Motion In Limine To Exclude The Testimony Of Untimely Disclosed Expert Witness Robert Stahl, MD

12/08/2017



Appendix

Filed By: Defendant Motor Coach Industries Inc
Appendix of Exhibits to Defendant's Motion in Limine No. 5 to Exclude Any Claim of Defect Based on S-1 Gard

12/08/2017



Exhibits

Exhibits to Plaintiffs' Motion In Limine To Exclude The Testimony of Untimely Disclosed Expert Witness Robert Stahl, MD

12/08/2017



Motion in Limine

Filed By: Defendant Motor Coach Industries Inc
Defendant's Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes

12/08/2017



Motion in Limine

Motion in Limine No. 10 to Exclude Speculation as to Decendent's Thoughts About the Motor Coach

12/08/2017



Motion in Limine

Motion in Limine No. 9 to Exclude Reference to the Ghost Bike Memorial

12/08/2017



Motion in Limine

Motion in Limine No. 12 to Exclude Reference to the Cost of the S-1 Gard or Proximity Sensors

12/08/2017



Motion in Limine

Plaintiffs' Motion In Limine To Exclude Any Testimony On The Untimely Supplemental Expert Report Filed By Defense Expert Carhart

12/11/2017



Objection

Filed By: Defendant Motor Coach Industries Inc
Objections to Plaintiffs' 8th Supplemental Expert Witness Disclosure of Robert Breidenthal and Joshua Cohen and/or Disclosure of Demonstrative Exhibits

12/13/2017



Transcript of Proceedings

Transcript of Proceedings taken on November 2, 2017

12/19/2017



Application for Issuance of Commission to Take Deposition

Party: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria
Application for Issuance of Commission to Take Deposition of Steven M. Day, PhD

12/19/2017



Commission to Take Deposition Outside the State of Nevada

Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria
Commission to Take Out of State Deposition of Steven M. Day, PhD

CASE SUMMARY

CASE NO. A-17-755977-C

| | |
|------------|---|
| 12/20/2017 |  Supplement to List of Witnesses & Documents Party: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Ninth Supplement to Initial Disclosure Pursuant to NRCP 16.1</i> |
| 12/21/2017 |  Designation of Expert Witness Filed By: Defendant Motor Coach Industries Inc <i>Sixth Supplement to Designation of Expert Witnesses</i> |
| 12/21/2017 |  Supplement to List of Witnesses & Documents Party: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Tenth Supplement to Initial Disclosure Pursuant to NRCP 16.1</i> |
| 12/21/2017 |  Opposition <i>Plaintiffs' Joint Opposition to MCI Motion For Summary Judgment On All Claims Alleging A Product Defect and to MCI Motion for Summary Judgment on Punitive Damages</i> |
| 12/21/2017 |  Appendix <i>Appendix of Exhibits to Plaintiffs' Joint Opposition To MCI Motion For Summary Judgment On All Claims Alleging A Product Defect And to MCI Motion for Summary Judgment On Punitive Damages</i> |
| 12/22/2017 |  Notice of Special Master Hearing <i>Notice of Rescheduled Special Master Hearing</i> |
| 12/22/2017 |  Notice of Hearing Filed By: Defendant Motor Coach Industries Inc <i>Notice of Hearing on Defendant's Motion for Leave to File Third Party Complaint on Order Shortening Time</i> |
| 12/22/2017 |  Motion for Leave to File Party: Defendant Motor Coach Industries Inc <i>Defendant's Motion for Leave to File Third Party Complaint on Order Shortening Time</i> |
| 12/26/2017 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Objections to Plaintiffs' 9th Supplemental Expert Disclosure of Thomas P. Flanagan</i> |
| 12/26/2017 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Objections to Plaintiffs' Amended Rebuttal Report of Alexander Lariviere</i> |
| 12/27/2017 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Objections to Plaintiffs' Ninth Supplemental Disclosures Pursuant to NRCP 16.1(a)(1)</i> |
| 12/27/2017 |  Opposition to Motion For Summary Judgment Filed By: Defendant Motor Coach Industries Inc <i>Opposition to "Motion for Summary Judgment on Foreseeability of Bus Interaction with Pedestrians of Bicyclists (Including Sudden Bicycle Movement)"</i> |
| 01/05/2018 |  Finding of Fact and Conclusions of Law Filed By: Defendant Sevenplus Bicycles Inc <i>Findings of Fact Conclusions of Law and Order on Motion for Determination of Good Faith Settlement</i> |





CASE SUMMARY

CASE NO. A-17-755977-C

| | |
|------------|---|
| 01/08/2018 |  Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Defendant Bell Sports Inc <i>Notice of Entry of Findings of Fact Conslusions of Law and Order on Motion for Determination of Good Faith Settlement</i> |
| 01/08/2018 |  Opposition to Motion in Limine Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Kayvan Khibani M.D. <i>Plaintiffs Opposition to Defendant s Motion in Limine No. 9 To Exclude Reference to the "Ghost Bike" Memorial</i> |
| 01/08/2018 |  Opposition to Motion in Limine <i>Plaintiffs' Opposition to Defendant's Motion In Limine No. 13 To Exclude Plaintiffs' Expert Witness Robert Cunitz, Ph.D. Or In The Alternative TO Limit His Testimony</i> |
| 01/08/2018 |  Opposition to Motion in Limine Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Kayvan Khibani M.D. <i>Plaintiffs Opposition to Defendant s Motion in Limine No. 10 to Exclude Speculation as to Decedent s Thoughts About the Motor Coach</i> |
| 01/08/2018 |  Opposition to Motion in Limine Filed By: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Partial Opposition to Plaintiffs' Motion in Limine No. 2 to Preclude Any Reference to Settling Defendants (Including Claim Settlement and Amounts)</i> |
| 01/08/2018 |  Opposition to Motion in Limine Filed By: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 6 to Preclude Defendants from Mentioning That Defense Expert Dr. Michael Baden ("OJ's Medical Examiner") Worked for the Christiansen Law Firm</i> |
| 01/08/2018 |  Opposition to Motion in Limine <i>Plaintiffs' Joint Opposition to Defendant's Motion In Limine No. 3 To Preclude Plaintiffs From Making Reference To A "Bullet Train" And To Defendant's Motion In Limine No. 7 To Exclude Any Claims That The Motor Coach Was Defective Based On Alleged Dangerous "Air Blasts"</i> |
| 01/08/2018 |  Opposition to Motion in Limine Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Kayvan Khibani M.D. <i>Plaintiffs Opposition to Defendant s Motion in Limine No. 11 to Exclude Plaintiffs Expert Witness David Roger</i> |
| 01/08/2018 |  Opposition to Motion in Limine Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Kayvan Khibani M.D. <i>Plaintiffs Opposition to Defendant s Motion in Limine No. 6 to Exclude Reference to New Flyer Industries, Inc. (NFI Group)</i> |
| 01/08/2018 |  Opposition to Motion in Limine Filed By: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 8 to Pre-Instruct the Jury With Standard Instructions for Product Liability Claims</i> |
| 01/08/2018 |  Opposition to Motion in Limine |

CASE SUMMARY

CASE NO. A-17-755977-C

| | |
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| | <p>Filed By: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 9 to Preclude Metro Report and/or Opinions from Metro Officer</i></p> |
| 01/08/2018 | <p> Opposition to Motion in Limine Filed By: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 11 to Pre-Admit 1993 Generic Bus Wind Testing by MCI</i></p> |
| 01/08/2018 | <p> Opposition to Motion in Limine Filed By: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Joint Opposition to Plaintiffs' Motion in Limine No. 14 to Designate Virgil Hoogestraat as Managing Speaking Agent of MCI and Motion in Limine No. 15 to Designate Bryan Couch as Managing Speaking Agent of Motor Coach Industries, Inc.</i></p> |
| 01/08/2018 | <p> Opposition to Motion in Limine Filed By: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 18 to Preclude the Admission of Irrelevant Information Regarding Unrelated Disputes</i></p> |
| 01/08/2018 | <p> Opposition to Motion in Limine Filed By: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine to Exclude Any Testimony of the Untimely Supplemental Expert Report Filed by Defense Expert Carhart</i></p> |
| 01/08/2018 | <p> Opposition to Motion in Limine Filed By: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine to Exclude the Testimony of Untimely Disclosed Expert Witness Robert Stahl, M.D.</i></p> |
| 01/08/2018 | <p> Opposition to Motion in Limine Filed By: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 16 to Pre-Admit June 2011 Article as Notice of Potential Rear Tire Suction Hazard and Need for Protective Guard</i></p> |
| 01/08/2018 | <p> Opposition to Motion in Limine Filed By: Subject Minor Khiabani, Keon <i>Plaintiffs' Opposition to Defendants' Motion In Limine No. 5 to Exclude Any Claim of Defect Based on S1 Gard</i></p> |
| 01/08/2018 | <p> Opposition to Motion in Limine Filed By: Subject Minor Khiabani, Keon <i>Plaintiffs' Opposition to Defendant's Motion In Limine No. 12 to Exclude Reference To The Cost of The S-1 Gard Or Proximity Sensors</i></p> |
| 01/08/2018 | <p> Opposition to Motion in Limine Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Kayvan Khibani M.D. <i>Plaintiffs Opposition to Defendant s Motion in Limine No. 14 to Exclude Articles Regarding or Reference to Transit Buses</i></p> |
| 01/08/2018 | <p> Opposition to Motion to Dismiss Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <i>Plaintiffs Opposition To Defendant s Motion To Dismiss Wrongful Death Claim For Death Of Katayoun Barin, DDS</i></p> |

CASE SUMMARY

CASE NO. A-17-755977-C

| | |
|------------|--|
| 01/08/2018 |  Opposition to Motion in Limine <i>Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 1 to Preclude Reference or Argument Regarding the Alleged Negligence of Third Parties (i.e. Michaelangelo and Hubbard)</i> |
| 01/08/2018 |  Opposition to Motion in Limine <i>Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 3 to Preclude Defendant MCI from Arguing that Decedent was Contributorily Negligent</i> |
| 01/08/2018 |  Opposition to Motion in Limine <i>Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 4 to Preclude MCI from Making Excessive Reference to the Fact that Plaintiffs are of Iranian or "Persian" Descent</i> |
| 01/08/2018 |  Opposition to Motion in Limine <i>Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 5 to Preclude Defendant from Arguing or Suggesting that Plaintiffs Must Prove that the Bus had any Specific Defect</i> |
| 01/08/2018 |  Opposition to Motion in Limine <i>Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 7 to Preclude Defendant MCI from Arguing that the Alleged Lack of Proximity Sensors from a Third Party ("Commercial Availability") as a Defense where the True Issue is Whether Proximity Sensors were Technologically "Feasible"</i> |
| 01/08/2018 |  Opposition to Motion in Limine <i>Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 10 (To Pre-Admit the Entire One-And-A-Half-Hour Funeral and Slide Show)</i> |
| 01/08/2018 |  Opposition to Motion in Limine <i>Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 17 to Admit Evidence of Facts Establishing Defendants' Consciousness of Responsibility</i> |
| 01/08/2018 |  Opposition to Motion in Limine Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <i>Plaintiffs Opposition to Defendant s Motion in Limine No. 4 to Preclude Plaintiffs From Presenting Evidence that Proximity Sensors Were a Safer Alternative Design</i> |
| 01/09/2018 |  Errata Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <i>Errata to Plaintiffs Opposition to Defendant s Motion in Limine No. 4 to Preclude Plaintiffs From Presenting Evidence that Proximity Sensors Were a Safer Alternative Design</i> |
| 01/09/2018 |  Opposition to Motion in Limine <i>Plaintiffs' Opposition to Defendant's Motion In Limine No. 17 To Exclude Claim of Lost Income, Including The August 28 Expert Report of Larry Stokes</i> |
| 01/09/2018 |  Opposition to Motion in Limine <i>Plaintiffs' Opposition to Defendant's Motion In Limine No. 1 to Limit Opinions By Plaintiffs' Expert Robert Caldwell</i> |
| 01/09/2018 |  Opposition to Motion in Limine Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of |

CASE SUMMARY

CASE NO. A-17-755977-C

Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.

Plaintiffs Opposition to Defendant s Motion in Limine No. 8 to Exclude Any Reference to Seatbelts

01/10/2018



Media Request and Order

Media Request And Order Allowing Camera Access To Court Proceedings

01/11/2018



Opposition to Motion in Limine

Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.

Plaintiffs Opposition to Defendant s Motion in Limine No. 15 to Exclude Opinion Testimony from Lay Witnesses on Causation and Engineering Principles

01/11/2018



Objection

Filed By: Defendant Motor Coach Industries Inc

Objections to Plaintiffs' Tenth Supplemental Disclosures Pursuant to NRCP 16.1(a)(1)

01/11/2018



Opposition to Motion in Limine

Filed By: Defendant Motor Coach Industries Inc

Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 12 to Preclude Expert Witness Robert Rucoba from Offering Meteorological Opinions Regarding Wind Speed at the Time of the Accident

01/11/2018



Opposition to Motion in Limine

Filed By: Defendant Motor Coach Industries Inc

Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 13 to Preclude Defendants from Arguing or Referencing Rigged Air Blast Testing That is Not Substantially Similar Because it Used a Stationary Bike and Not a Moving Bike

01/11/2018



Opposition to Motion in Limine

Filed By: Plaintiff Estate of Katayoun Barin

Plaintiffs' Opposition to Defendant's Motion in Limine No. 2 to Exclude Illustrations by Plaintiffs' Expert Joshua Cohen That Have No Basis in Fact

01/11/2018



Opposition to Motion in Limine

Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.

Plaintiffs Opposition to Defendant s Motion in Limine No. 16 to Exclude Opinions by Plaintiffs Expert Witness Dipak Panigrahy

01/12/2018



Motion to Seal/Redact Records

Filed By: Defendant Bell Sports Inc

Defendant Bell Sports, Inc.'s Ex Parte Motion To Seal Record

01/12/2018



Opposition to Motion

Plaintiffs' Opposition to Defendant Motorcoach Industries, Inc.'s Motion For Leave To File Third Party Complaint

01/12/2018



Objection

Non-Party New Flyer Industries, Inc.'s Objection to Special Master Hale's January 4, 218 Order

01/12/2018



Initial Appearance Fee Disclosure

Filed By: Other New Flyer Industries, Inc.

Initial Appearance Fee Disclosure - New Flyer Industries, Inc.

CASE SUMMARY

CASE NO. A-17-755977-C

| | |
|------------|---|
| 01/16/2018 |  Stipulation and Order <i>Stipulation and Order Allowing Jury Questionnaire</i> |
| 01/16/2018 |  Reply to Opposition <i>Reply to Opposition to Motion for Summary Judgment On Foreseeability Of Bus Interaction With Pedestrians Or Bicyclists (Including Sudden Bicycle Movement)</i> |
| 01/17/2018 |  Notice of Entry of Stipulation and Order <i>Notice of Entry of Stipulation and Order Allowing Jury Questionnaire</i> |
| 01/17/2018 |  Addendum <i>Plaintiffs' Addendum to Reply to Opposition to MOTion For Summary Judgment On Foreseeability of Bus Interaction With Pedestrians Or Bicyclists (Including Sudden Bicycle Movement)</i> |
| 01/17/2018 |  Reply to Opposition Filed by: Defendant Motor Coach Industries Inc <i>Reply to Plaintiffs' Opposition to Motion to Dismiss Wrongful Death Claim for Death of Katayoun Barin, DDS</i> |
| 01/17/2018 |  Reply to Opposition Filed by: Defendant Motor Coach Industries Inc <i>Reply to Plaintiffs' Opposition to Motion for Summary Judgment on Punitive Damages</i> |
| 01/17/2018 |  Reply to Opposition Filed by: Defendant Motor Coach Industries Inc <i>Reply to Plaintiffs' Opposition to Motion for Leave to File Third Party Complaint on Order Shortening Time</i> |
| 01/17/2018 |  Reply in Support <i>Motor Coach Industries, Inc.'s Reply in Support of its Motion for Summary Judgment on All Claims Alleging a Product Defect</i> |
| 01/17/2018 |  Declaration <i>Declaration of Service Steven Day PhD</i> |
| 01/17/2018 |  Motion for Determination of Good Faith Settlement Filed By: Defendant Bell Sports Inc <i>Defendant Bell Sports, Inc.'s Motion For Determination Of Good Faith Settlement On Order Shortening Time</i> |
| 01/18/2018 |  Joinder <i>Plaintiffs' Joinder to Defendant Bell Sports, Inc.'s Motion for Determination of Good Faith Settlement On Order Shortening Time</i> |
| 01/18/2018 |  Motion <i>Plaintiffs' Motion for Determination of Good Faith Settlement With Defendants Michelangelo Leasing Inc. d/b/a Ryan's Express and Edward Hubbard Only and Order Shortening Time</i> |
| 01/19/2018 |  Designation of Expert Witness Filed By: Defendant Motor Coach Industries Inc <i>Seventh Supplement to Designation of Expert Witnesses</i> |
| 01/19/2018 |  Pre-Trial Disclosure |

CASE SUMMARY

CASE NO. A-17-755977-C

Party: Defendant Motor Coach Industries Inc
Motor Coach Industries, Inc.'s Pre-Trial Disclosure Pursuant to NRCP 16.1(a)(3)

01/19/2018



Supplement to List of Witnesses & Documents

Party: Defendant Motor Coach Industries Inc
Motor Coach Industries, Inc.'s Eleventh Supplement to Initial Disclosure Pursuant to NRCP 16.1

01/21/2018



Opposition

Filed By: Subject Minor Khiabani, Keon
Plaintiffs' Opposition to New Flyer Industries Inc.'s Objection to Special Master Hale's January 4, 2018 Order

01/22/2018



Reply to Opposition

Filed by: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
Reply to Defendant Motor Coach Industries, Inc. s Opposition to Plaintiffs Motion in Limine No. 9 to Preclude Metro Report and/or Opinions from Metro Officer

01/22/2018



Reply to Opposition

Plaintiffs' Reply to Opposition to Motion In Limine No. 1 to Preclude Reference or Argument Regarding the Alleged Negligence of Third Parties (I.E., Michelangelo and Hubbard)

01/22/2018



Reply to Opposition

Plaintiffs' Reply to Opposition to Motion In LImine No. 2 to Preclude Any Reference To Settling Defendants (Including Claims, Settlement and Amounts)

01/22/2018



Reply to Opposition

Plaintiffs' Reply to Opposition to Motion In LImine No. 3 To Preclude Defendant MCI From Arguing That Decedent Was Contributorily Negligent

01/22/2018



Reply to Opposition

Plaintiffs' Reply to Opposition to Motion In Limine No. 5 To Preclude Defendants From Arguing Or Suggesting That Plaintiffs Must Prove That THE Bus Had Any Specific Defect

01/22/2018



Reply to Opposition

Plaintiffs' Reply to Defendant's Opposition to Motion In Limine No. 8 To Pre-Instruct The Jury With Standard Instructions For Product Liability Claims

01/22/2018



Reply to Opposition

Plaintiffs' Reply to Opposition to Motion In LImine No. 11 To Pre-Admit 1993 Generic Bus Wind Testing by MCI

01/22/2018



Reply to Opposition

Plaintiffs' Reply to Opposition To Motion In LImine No. 13 To Preclude Defendants From Arguinig Or Referencing Rigged Air Blast Testing That Is Not Substantially Similar Because It Used Stationary Bike and Not a Moving Bike

01/22/2018



Reply to Opposition

Plaintiffs' Reply to Defendant's Opposition to Motion In Limine To Exclude The Testimony Of Untimely Disclosed Expert Witness Robert Stahl, M.D.

01/22/2018



Reply to Opposition

Plaintiffs' Reply to Defendants' Opposition to Motion In Limine To Exclude Any Testimony On The Untimely Supplemental Expert Report Filed by Defense Expert Carhart

CASE SUMMARY

CASE NO. A-17-755977-C

01/22/2018



Reply to Opposition

Filed by: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
Reply to Defendant Motor Coach Industries, Inc. s (MCI) Opposition to Plaintiffs Motion in Limine No. 18 to Preclude the Admission of Irrelevant Information Regarding Unrelated Disputes

01/22/2018



Reply to Opposition

Joint Reply to Joint Opposition to Motion In Limine No. 14 to Designate Virgil Hoogestraat as Managing Speaking Agent and Motion In Limine No. 15 to Designate Bryan Couch As Managing Speaking Agent

01/22/2018



Reply to Opposition

Plaintiffs' Reply to Opposition to Motion In Limine No. 12 To Preclude MCI Expert Rucoba From Offering Meteorologist Opinions Regarding Wind Speed At The Time of the Accident, Etc.

01/22/2018



Reply to Opposition

Filed by: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
Reply to Defendant Motor Coach Industries, Inc. s (MCI) Opposition to Plaintiffs Motion in Limine No. 4 to Preclude MCI from Making Excessive Reference to the Fact that Plaintiffs Are of Iranian or Persian Descent

01/22/2018



Reply to Opposition

Filed by: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
Reply to Defendant Motor Coach Industries, Inc. s (MCI) Opposition to Plaintiffs Motion in Limine No. 6 to Preclude Defendants from Mentioning that Defense Expert Dr. Michael Baden (OJ s Medical Examiner) Worked for the Christiansen Law Firm and Opposition to Countermotion to Preclude Reference to O.J. Simpson

01/22/2018



Reply to Opposition

Filed by: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
Reply to Defendant Motor Coach Industries, Inc. s (MCI) Opposition to Plaintiffs Motion in Limine No. 10 to Pre-Admit Funeral Video and Slide Show

01/22/2018



Reply in Support

Filed By: Defendant Motor Coach Industries Inc
Defendant's Reply in Support of Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes

01/22/2018



Reply in Support

Filed By: Defendant Motor Coach Industries Inc
Motor Coach Industries, Inc.'s Reply in Support of Its Motion in Limine No. 10 to Exclude Speculation as to Decedent's Thoughts About the Motor Coach

01/22/2018



Reply to Opposition

Filed by: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
Reply to Motor Coach Industries, Inc. s (MCI) Opposition to Plaintiffs Motion in Limine No. 16 to Pre-Admit June 2001 Article as Notice of Potential Rear Tire Suction Hazard and Need for Protective Guard

01/22/2018



Reply in Support

Filed By: Defendant Motor Coach Industries Inc

CASE SUMMARY

CASE NO. A-17-755977-C

Defendant's Reply in Support of Motion in Limine No. 1 to Limit Opinions by Plaintiffs' Expert Robert Caldwell

01/22/2018



Reply in Support

Filed By: Defendant Motor Coach Industries Inc

Defendant's Reply in Support of Motion in Limine No. 2 to Exclude Illustrations by Plaintiffs' Expert Joshua Cohen That Have No Basis in Fact

01/22/2018



Reply in Support

Filed By: Defendant Motor Coach Industries Inc

Defendant's Reply in Support of Motion in Limine No. 3 to Preclude Plaintiffs From Making Reference to a "Bullet Train"

01/22/2018



Reply in Support

Filed By: Defendant Motor Coach Industries Inc

Defendant's Reply in Support of Motion in Limine No. 7 to Exclude Any Claims that the Subject Motor Coach Was Defective Based on Alleged Dangerous "Air Blasts"

01/22/2018



Reply in Support

Filed By: Defendant Motor Coach Industries Inc

Defendant's Reply in Support of Motion in Limine No. 13 to Exclude Plaintiffs' Expert Witness Robert Cunitz, Ph.D., or in the Alternative, to Limit His Testimony

01/22/2018



Reply in Support

Filed By: Defendant Motor Coach Industries Inc

Defendant's Reply in Support of Motion in Limine No. 14 to Exclude Articles Regarding or Reference to Transit Buses

01/22/2018



Reply in Support

Filed By: Defendant Motor Coach Industries Inc

Defendant's Reply in Support of Motion in Limine No. 15 to Exclude Opinion Testimony From Lay Witnesses on Causation and Engineering Principles

01/22/2018



Reply in Support

Filed By: Defendant Motor Coach Industries Inc

Defendant's Reply in Support of Motion in Limine No. 16 to Exclude Opinions by Plaintiffs' Expert Dipak Panigrahy

01/22/2018



Reply in Support

Motor Coach Industries, Inc.'s Reply in Support of its Motion in Limine No. 4 to Preclude Plaintiffs from Presenting Evidence that Proximity Sensors were a Safer Alternative Design

01/22/2018



Reply in Support

Motor Coach Industries, Inc.'s Reply in Support of its Motion in Limine No. 6 to Exclude Reference to New Flyer Industries, Inc. (NFI Group)

01/22/2018



Reply in Support

Motor Coach Industries, Inc.'s Reply in Support of its Motion in Limine No. 8 to Exclude Any Reference to Seatbelts

01/22/2018



Reply in Support

Motor Coach Industries, Inc.'s Reply in Support of its Motion in Limine No. 9 to Exclude Reference to the "Ghost Bike" Memorial

01/22/2018



Reply in Support

Motor Coach Industries, Inc.'s Reply in Support of its Motion in Limine No. 11 to Exclude

CASE SUMMARY

CASE NO. A-17-755977-C

Plaintiffs' Expert Witness David Roger

01/22/2018



Reply in Support

Motor Coach Industries, Inc.'s Reply in Support of its Motion in Limine No. 12 to Exclude Reference to the Cost of the S-1 Gard or Proximity Sensors

01/22/2018



Reply to Opposition

Filed by: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
Reply to Defendant Motor Coach Industries, Inc. s (MCI) Opposition to Plaintiffs Motion in Limine No. 17 to Admit Evidence of Facts Establishing Defendant s Consciousness of Responsibility

01/22/2018



Reply to Opposition

Plaintiffs' Reply To Opposition to Motion In Limine No. 7 To Preclude Defendant MCI From Arguing That The Alleged Lack of Proximity Sensors From A THird Party ("Commercial Availability") As A Defense Where The True Issue Is Whether Proximity Sensors Were Technologically "Feasible"

01/22/2018



Joinder

Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward
Defendants Michelangelo Leasing, Inc. dba Ryan's Express and Edward Hubbard's Joinder to Plaintiffs' Motion for Determination of Good Faith Settlement with Michelangelo Leasing, Inc. dba Ryan's Express and Edward Hubbard

01/24/2018



Reply in Support

Filed By: Defendant Motor Coach Industries Inc
Defendant's Reply in Support of Motion in Limine No. 5 to Exclude Any Claim of Defect Based on S-1 Gard

01/25/2018



Supplemental

Filed by: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
Plaintiffs' Supplemental Reply to Defendant Motor Coach Industries, Inc. s Opposition to Plaintiffs Motion in Limine No. 17 to Admit Evidence of Facts Establishing Defendant s Consciousness of Responsibility

01/29/2018



Response

Filed by: Defendant Motor Coach Industries Inc
MCI's Response to "Supplemental Reply" in Support of Plaintiffs' Motion (MIL#17) Requesting Leave to Inflamm the Jury by Demonizing Legitimate Legislation Proceudre

01/29/2018



Objection

Filed By: Defendant Motor Coach Industries Inc
Objections to Plaintiffs' Tenth Supplemental Expert Disclosure

01/29/2018



Objection

Filed By: Defendant Motor Coach Industries Inc
Objections to Plaintiffs' Eleventh Supplemental Disclosures Pursuant to NRCP 16.1(a)(1)

01/30/2018



Designation of Expert Witness

Filed By: Defendant Motor Coach Industries Inc
Eighth Supplement to Designation of Expert Witnesses

01/31/2018



Objection

Filed By: Defendant Motor Coach Industries Inc

CASE SUMMARY

CASE NO. A-17-755977-C

Motor Coach Industries, Inc.'s Objection to Media Request

02/02/2018



Objection

Filed By: Defendant Motor Coach Industries Inc
Objections to Plaintiffs' Twelfth Supplemental Disclosures Pursuant to NRCP 16.1(a)(1)

02/02/2018



Findings of Fact, Conclusions of Law and Order

Findings of Fact, Conclusions of Law, and Order

02/05/2018



Findings of Fact, Conclusions of Law and Order

Supplemental Findings of Fact, Conclusions of Law and Order

02/06/2018



Answer

Filed By: Defendant Motor Coach Industries Inc
Motor Coach Industries, Inc.'s Answer to Second Amended Complaint

02/08/2018



Objection

Filed By: Defendant Motor Coach Industries Inc
Motor Coach Industries, Inc.'s Objections to Plaintiffs' 1st, 2nd and 3rd Supplemental Pretrial Disclosures Pursuant to NRCP 16.1(a)(3)(C)

02/08/2018



Joint Pre-Trial Memorandum

Joint Pretrial Memorandum

02/09/2018



Miscellaneous Filing

Filed by: Subject Minor Khiabani, Keon
Plaintiffs' Page and Line Designations

02/09/2018



Brief

Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
Plaintiffs Trial Brief Regarding Direct and Cross-Examination of Adverse Witnesses

02/09/2018



Brief

Plaintiffs' Trial Brief Regarding Voir Dire

02/09/2018



Notice of Entry

Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
Notice of Entry of Order

02/09/2018



Errata

Errata to Plaintiffs' Trial Brief Regarding Voir Dire

02/13/2018



Objection

Filed By: Defendant Motor Coach Industries Inc
Defendant Motor Coach Industries, Inc.'s Objections and Cross-Designations to Plaintiffs' Deposition Designations and Defendant Motor Coach Industries, Inc.'s Deposition Designations

02/14/2018



Trial Subpoena

Filed by: Defendant Motor Coach Industries Inc
Trial Subpoena - Edward Hubbard

CASE SUMMARY

CASE NO. A-17-755977-C

| | |
|------------|--|
| 02/14/2018 |  Trial Subpoena Filed by: Defendant Motor Coach Industries Inc <i>Trial Subpoena - Erica Bradley</i> |
| 02/14/2018 |  Trial Subpoena Filed by: Defendant Motor Coach Industries Inc <i>Trial Subpoena - Dale Horba</i> |
| 02/14/2018 |  Trial Subpoena Filed by: Defendant Motor Coach Industries Inc <i>Trial Subpoena - Tiffiny Brown, M.D.</i> |
| 02/14/2018 |  Trial Subpoena Filed by: Defendant Motor Coach Industries Inc <i>Trial Subpoena - Luis Saccarias</i> |
| 02/14/2018 |  Trial Subpoena Filed by: Defendant Motor Coach Industries Inc <i>Trial Subpoena: Det. Kenneth Salisbury</i> |
| 02/15/2018 |  Brief <i>Bench Brief On Contributory Negligence</i> |
| 02/16/2018 |  Response Filed by: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Response to "Bench Brief on Contributory Negligence"</i> |
| 02/20/2018 |  Brief Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <i>Plaintiffs' Trial Brief Regarding Prospective Juror No. 11-1222</i> |
| 02/20/2018 |  Brief Filed By: Defendant Motor Coach Industries Inc <i>Defendant's Trial Brief in Support of a Level Playing Field</i> |
| 02/20/2018 |  Trial Subpoena <i>Trial Subpoena Erika Bradley</i> |
| 02/20/2018 |  Trial Subpoena <i>Trial Subpoena Luis Fernando Sacarias Pina</i> |
| 02/20/2018 |  Motion to Seal/Redact Records Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward <i>Motion to Seal Findings of Fact and Conclusions of Law and Order on Motion for Determination of Good Faith Settlement</i> |
| 02/20/2018 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Defendant Motor Coach Industries, Inc.'s Supplemental Objections to Plaintiffs' Deposition Designation of Mark Barron</i> |
| 02/21/2018 |  Miscellaneous Filing <i>Plaintiffs' Page and Line Designations of Bryan Couch</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

| | |
|------------|--|
| 02/22/2018 |  Findings of Fact, Conclusions of Law and Order <i>Findings of Fact, Conclusions of Law and Order</i> |
| 02/22/2018 |  Brief Filed By: Plaintiff Estate of Kayvan Khibani M.D. <i>Bench Brief in Support of Preinstructing the Jury that Contributory Negligence is Not a Defense in a Product Liability Action</i> |
| 02/22/2018 |  Jury List |
| 02/23/2018 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Defendant Motor Coach Industries, Inc.'s Objections and Cross-Designations to Plaintiffs' Page and Line Designations of Bryan Couch</i> |
| 02/23/2018 |  Miscellaneous Filing <i>Plaintiffs' Response to Defendants' Objection to Virgil Hoogesraat Page and Line</i> |
| 02/26/2018 |  Miscellaneous Filing Filed by: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <i>Plaintiffs' Page and Line Designations of Aria Khiabani</i> |
| 02/26/2018 |  Miscellaneous Filing Filed by: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <i>Plaintiffs' Page and Line Designations of Keon Khiabani</i> |
| 02/26/2018 |  Miscellaneous Filing Filed by: Subject Minor Khiabani, Keon <i>Plaintiffs' Response to Defendants' Objections to Page and Lines of Brad Lamothe, Pablo Fierros and Mary Witherell</i> |
| 02/26/2018 |  Miscellaneous Filing <i>Plaintiffs' Response to Defendants' Objections to Page and Line of Jose Parada</i> |
| 02/26/2018 |  Order Granting Motion Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward <i>Order Granting Defendants Michelangelo Leasing, Inc. dba Ryan's Express and Edward Hubbard's Motion to Seal Findings of Fact and Conclusions of Law and Order on Motion to for Determination of Good Faith Settlement</i> |
| 02/26/2018 |  Miscellaneous Filing <i>Notice of Filing of Plaintiffs' Power Point Slides From Motions for Summary Judgment Hearings Part 1</i> |
| 02/26/2018 |  Miscellaneous Filing <i>Notice of Filing of Plaintiffs' Power Point Slides From Motions for Summary Judgment Hearings Part 2</i> |
| 02/26/2018 |  Miscellaneous Filing <i>Notice of Filing of Plaintiffs' Power Point Slides From Motions for Summary Judgment Hearings Part 3</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

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|------------|---|
| 02/26/2018 |  Miscellaneous Filing <i>Notice of Filing of Plaintiffs' Power Point Slides From Motions for Summary Judgment Hearings Part 4</i> |
| 02/26/2018 |  Miscellaneous Filing Filed by: Subject Minor Khiabani, Keon <i>Notice of Filing Plaintiffs' Power Point Slides From Defendants' Motions In Limine Hearings Part 1</i> |
| 02/26/2018 |  Miscellaneous Filing Filed by: Subject Minor Khiabani, Keon <i>Notice of Filing Plaintiffs' Power Point Slides From Defendants' Motions In Limine Hearings Part 2</i> |
| 02/26/2018 |  Miscellaneous Filing Filed by: Subject Minor Khiabani, Keon <i>Notice of Filing Plaintiffs' Power Point Slides From Defendants' Motions In Limine Hearings Part 3</i> |
| 02/26/2018 |  Miscellaneous Filing Filed by: Subject Minor Khiabani, Keon <i>Notice of Filing Plaintiffs' Power Point Slides From Defendants' Motions In Limine Hearings Part 4</i> |
| 02/26/2018 |  Miscellaneous Filing Filed by: Subject Minor Khiabani, Keon <i>Notice of Filing Plaintiffs' Power Point Slides From Defendants' Motions In Limine Hearings Part 5</i> |
| 02/26/2018 |  Miscellaneous Filing <i>Notice of Filing Plaintiffs' Power Point Slides From Opening Statements Part 1</i> |
| 02/26/2018 |  Miscellaneous Filing <i>Notice of Filing Plaintiffs' Power Point Slides From Opening Statements Part 2</i> |
| 02/26/2018 |  Miscellaneous Filing <i>Notice of Filing Plaintiffs' Power Point Slides From Opening Statements Part 3</i> |
| 02/26/2018 |  Miscellaneous Filing <i>Notice of Filing Plaintiffs' Power Point Slides From Opening Statements Part 4</i> |
| 02/26/2018 |  Miscellaneous Filing <i>Notice of Filing Plaintiffs' Power Point Slides From Opening Statements Part 5</i> |
| 02/27/2018 |  Notice of Entry Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward <i>Notice of Entry of Order</i> |
| 02/27/2018 |  Miscellaneous Filing Filed by: Subject Minor Khiabani, Keon <i>Notice of Filing Plaintiffs' Power Point Slides From Plaintiffs' Motions In Limine Hearings</i> |
| 02/27/2018 |  Brief Filed By: Subject Minor Khiabani, Keon |

CASE SUMMARY

CASE NO. A-17-755977-C

Bench Brief on Substantial Similarity of S1 Gard Demonstration Video

02/28/2018



Miscellaneous Filing

Notice of Filing Plaintiffs' Power Point Slides From Plaintiffs' Motions In Limine Hearings

02/28/2018



Response

Filed by: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.

Responses to Defendant's Objections to Plaintiffs' Page and Line Designations of Brad Ellis

02/28/2018



Miscellaneous Filing

Plaintiffs' Response to Defendants' Objections to Page and Line of Mark Barron

03/01/2018



Miscellaneous Filing

Filed by: Subject Minor Khiabani, Keon

Plaintiffs' Page and Line Designations of David Dorr

03/02/2018



Miscellaneous Filing

Filed by: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.

Plaintiffs' Page and Line Designations of Robert Anthony Pears

03/03/2018



Objection

Filed By: Defendant Motor Coach Industries Inc

Defendant Motor Coach Industries, Inc's Objections to Plaintiffs' Page and Line Designations of Keon Khiabani and Aria Khiabani and Supplemental Objections to Designations of Brad Lamothe

03/05/2018



Objection

Filed By: Defendant Motor Coach Industries Inc

Defendant Motor Coach Industries, Inc.'s Objections and Cross-Designations to Plaintiffs' Page and Line Designations of Dave Dorr

03/05/2018



Addendum

Filed By: Defendant Motor Coach Industries Inc

Addendum to Stipulated Protective Order

03/05/2018



Miscellaneous Filing

Filed by: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.

Plaintiffs Page and Line Designations of Marie-Claude Rigaud

03/05/2018



Miscellaneous Filing

Filed by: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.

Plaintiffs Page and Line Designations of Siamak Barin

03/07/2018



Miscellaneous Filing

Filed by: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.

Responses to Defendant Motor Coach Industries, Inc. s Objections to Plaintiffs Page and Line Designations of Katayoun Katy Barin

03/07/2018



Request

Filed by: Subject Minor Khiabani, Keon

CASE SUMMARY

CASE NO. A-17-755977-C

Audiovisual Transmission Equipment Appearance Request

| | |
|------------|--|
| 03/07/2018 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Defendant Motor Coach Industries, Inc.'s Objections to Plaintiffs' Page and Line Designations of Marie-Claude Rigaud</i> |
| 03/07/2018 |  Objection Filed By: Defendant Motor Coach Industries Inc <i>Defendant Motor Coach Industries, Inc.'s Objections to Plaintiffs' Page and Line Designations of Siamak Barin</i> |
| 03/07/2018 |  Amended Notice Filed By: Subject Minor Khiabani, Keon <i>Amendment to Notice of Filing Plaintiffs' Power Point Slides from Opening Statements Part 4</i> |
| 03/07/2018 |  Brief <i>DEFENDANT S TRIAL BRIEF ON DR. JACK HUBBARD AND ALLOWABILITY OF OPINIONS ON UNCONSCIOUS PAIN</i> |
| 03/08/2018 |  Response <i>Plaintiffs' Response to Defendants' Objections to Page and Line of Dave Dorr</i> |
| 03/08/2018 |  Notice Filed By: Subject Minor Khiabani, Keon <i>Notice of Submission of Plaintiffs' Responses to Defendants' Objections to Page and Line</i> |
| 03/11/2018 |  Brief Filed By: Subject Minor Khiabani, Keon <i>Plaintiffs' Bench Brief on the Two-Week Juror Funding Agreement</i> |
| 03/12/2018 |  Brief <i>Motor Coach Industries, Inc.'s Brief in Support of Oral Motion for Judgment as a Matter of Law (NRCP 50(a))</i> |
| 03/12/2018 |  Trial Brief Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <i>Plaintiffs' Trial Brief Regarding Admissibility of Taxation Issues and Gross Versus Net Lost Income</i> |
| 03/13/2018 |  Brief <i>Motor Coach Industries, Inc.'s Bench Brief in Support of Jury View of Interior of Motor Coach</i> |
| 03/13/2018 |  Response Filed by: Defendant Motor Coach Industries Inc <i>Defendant Motor Coach Industries, Inc.'s Response to Plaintiffs' Bench on the Two-Week Funding Agreement</i> |
| 03/13/2018 |  Brief <i>Plaintiffs' Trial Brief Regarding Jury Bus View</i> |
| 03/13/2018 |  Objection Filed By: Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin <i>Plaintiffs Objections and Cross-Designations to Defendant s Page and Line Designations of</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

Robert Pears and Michael Plantz

| | |
|------------|---|
| 03/14/2018 |  Brief <i>Plaintiffs Response to Defendant s Trial Brief on Dr. Jack Hubbard and Allowability of Opinions on Unconscious Pain</i> |
| 03/14/2018 |  Filed Under Seal Filed By: Defendant Michelangelo Leasing Inc <i>Findings of Fact and Conclusions of Law and Order on Motion for Determination of Good Faith Settlement</i> |
| 03/14/2018 |  Miscellaneous Filing Filed by: Subject Minor Khiabani, Keon <i>Plaintiff's Page and Line Designations of Claude "Sony" Hildreth</i> |
| 03/18/2018 |  Brief Filed By: Subject Minor Khiabani, Keon <i>Bench Brief Regarding Limitations on the Testimony of Virgil Hoogestraat</i> |
| 03/18/2018 |  Brief Filed By: Defendant Motor Coach Industries Inc <i>MOTOR COACH INDUSTRIES, INC. S OPPOSITION TO PLAINTIFFS TRIAL BRIEF REGARDING ADMISSIBILITY OF TAXATION ISSUES AND GROSS VERSUS NET LOST INCOME</i> |
| 03/19/2018 |  Notice of Entry Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward <i>Notice of Entry of Order</i> |
| 03/20/2018 |  Miscellaneous Filing Filed by: Plaintiff Estate of Katayoun Barin <i>Plaintiffs Trial Brief Regarding Testimony Of Defendant s Expert Stan Smith, Ph.D</i> |
| 03/20/2018 |  Opposition Filed By: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Trial Brief Regarding Virgil Hoogestraat</i> |
| 03/21/2018 |  Brief Filed By: Defendant Motor Coach Industries Inc <i>DEFENDANT MOTOR COACH INDUSTRIES, INC. S TRIAL BRIEF ON LAY WITNESS OPINIONS</i> |
| 03/23/2018 |  Proposed Jury Instructions Not Used At Trial <i>Proposed Jury Instructions Not Given</i> |
| 03/23/2018 |  Amended Jury List |
| 03/23/2018 |  Special Jury Verdict <i>Special Verdict</i> |
| 03/23/2018 |  Jury Instructions |
| 03/26/2018 |  Proposed Verdict Forms Not Used at Trial |

CASE SUMMARY

CASE NO. A-17-755977-C

Party: Defendant Motor Coach Industries Inc
Proposed Jury Verdict Form Not Used at Trial

03/30/2018



Jury Instructions

Party: Subject Minor Khiabani, Keon

Jury Instructions Reviewed with the Court on March 21, 2018

04/17/2018



Judgment

Judgment

04/17/2018



Notice of Special Master Hearing

Notice of Emergency Special Master Hearing

04/18/2018



Notice of Entry of Judgment

Notice of Entry of Judgment

04/24/2018



Special Master Order

Special Master Order Staying Post-Trial Discovery Including May 2, 2018, Deposition of the Custodian of Records of the Board of Regents NSHE

04/24/2018



Memorandum of Costs and Disbursements

Filed By: Subject Minor Khiabani, Keon

Plaintiffs' Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110

04/24/2018



Appendix

Filed By: Subject Minor Khiabani, Keon

Appendix of Exhibits in Support of Plaintiffs' Verified Memorandum of Costs (Volume 2 of 2)

04/24/2018



Appendix

Filed By: Subject Minor Khiabani, Keon

Appendix of Exhibits in Support of Plaintiffs' Verified Memorandum of Costs (Volume 1 of 2)

04/24/2018



Order

Order Regarding Deposition Designations and Objections Relating to Brad Ellis, Brad Lamothe and Bryan Couch

04/25/2018



Notice of Entry of Order

Notice of Entry of Order Regarding Deposition and Objections Relating to Brad Ellis, Brad Lamothe and Bryan Couch

04/25/2018



Declaration

Amended Declaration of Peter S. Christiansen, Esq. In Support of Plaintiffs' 4/24/18 Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110

04/30/2018



Motion to Retax

Motion to Retax Costs

05/03/2018



Filed Under Seal

Filed By: Defendant Motor Coach Industries Inc

SEALED PER MINUTE ORDER 05/23/18 Objection to Special Master Order Staying Post-Trial Discovery Including May 2, 2018 Deposition of The Custodian of Records of the Board of Regents NSHE and, Alternatively, Motion for Limited Post-Trial Discovery On Order Shortening Time

CASE SUMMARY

CASE NO. A-17-755977-C

| | |
|------------|--|
| 05/03/2018 |  Opposition to Motion <i>Opposition to Motion for Limited Post-Trial Discovery</i> |
| 05/03/2018 |  Motion to Seal/Redact Records <i>Motion to Seal "Motor Coach Industries, Inc's Objections to 'Special Master Order Staying Post-Trial Discovery Including May 2, 2018 Deposition of Custodian of Records of the Board of Regents NSHE,' and Alternatively, Motion for Limited Post-Trial Discovery"</i> |
| 05/07/2018 |  Appendix Filed By: Defendant Motor Coach Industries Inc <i>Appendix of Exhibits to: Motor Coach Industries, Inc.'s Motion for New Trial</i> |
| 05/07/2018 |  Motion to Seal/Redact Records Filed By: Defendant Motor Coach Industries Inc <i>Motion to Seal and Redact "Motor Coach Industries, Inc.'s Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants" and Accompanying Exhibits</i> |
| 05/07/2018 |  Motion to Amend Judgment Filed By: Defendant Motor Coach Industries Inc <i>Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants (Redacted)</i> |
| 05/07/2018 |  Motion to Seal/Redact Records Filed By: Defendant Motor Coach Industries Inc <i>Motion to Seal and Redact "Motor Coach Industries, Inc.'s Motion for New Trial" and Accompanying Exhibits G-L and O</i> |
| 05/07/2018 |  Motion for Judgment Filed By: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim</i> |
| 05/07/2018 |  Motion for New Trial Filed By: Defendant Motor Coach Industries Inc <i>Motor Coach Industries, Inc.'s Motion for a Limited New Trial (Redacted)</i> |
| 05/08/2018 |  Filed Under Seal Filed By: Defendant Motor Coach Industries Inc <i>Motor Coach Industries Inc's Motion to Alter or Amend Judgment to Offset Settlement Proceedings Paid By Other Defendant's</i> |
| 05/08/2018 |  Filed Under Seal Filed By: Defendant Motor Coach Industries Inc <i>Motor Coach Industries Inc's Motion for a Limited New Trial</i> |
| 05/08/2018 |  Filed Under Seal Filed By: Defendant Motor Coach Industries Inc <i>Appendix of Exhibits to: Motor Coach Industries Inc's Motion for a Limited New Trial</i> |
| 05/08/2018 |  Supplement <i>Supplement to Motor Coach Industries, Inc. s Motion for a Limited New Trial</i> |
| 05/08/2018 |  Notice of Hearing <i>Notice of Hearing</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

| | |
|------------|---|
| 05/09/2018 |  Supplement <i>Plaintiff's Supplemental Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110</i> |
| 05/14/2018 |  Opposition to Motion <i>Opposition to Defendant's Motion to Retax Costs</i> |
| 05/18/2018 |  Notice of Appeal Filed By: Defendant Motor Coach Industries Inc <i>Notice of Appeal</i> |
| 05/18/2018 |  Case Appeal Statement <i>Case Appeal Statement</i> |
| 05/23/2018 |  Order <i>Order</i> |
| 06/06/2018 |  Opposition to Motion <i>Plaintiff's Opposition to MCI's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid By Other Defendants</i> |
| 06/08/2018 |  Petition for Compromise of Minors Claim <i>Verified Petition to Compromise Minors' Claims Against Defendants Michelangelo Leasing, Inc., Edward Hubbard, Bell Sports, Inc., and Sevenplus Bicycles, Inc. Only and to Approve Partial Payment of Attorneys' Fees and Costs</i> |
| 06/08/2018 |  Opposition to Motion <i>Combined Opposition to Motion for A Limited New Trial and MCI's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim</i> |
| 06/13/2018 |  Motion to Seal/Redact Records Filed By: Subject Minor Khiabani, Keon <i>Plaintiff's Motion to Seal and/or Redact: (1) The Exhibits to the Verified Petition to Compromise Minors' Claims Against Defendants Michelangelo Leasing, Inc., Edward Hubbard, Bell Sports, Inc., and Sevenplus Bicycles, Inc. Only and to Approve Partial Payment of Attorney's Fees and Costs, and (2) The Order Compromising the Minors' Claims Against Defendants Michelangelo Leasing, Inc., Edward Hubbard, Bell Sports, Inc., and Sevenplus Bicycles, Inc. Only</i> |
| 06/13/2018 |  Motion <i>Plaintiffs Motion to Exceed Page Limit as to Combined Opposition to Motion for Limited New Trial and MCI s Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim</i> |
| 06/20/2018 |  Motion to Strike <i>Motor Coach Industries, Inc.'s Motion to Strike Plaintiffs' "Combined Opposition to Motion for a Limited New Trial and MCI's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim" and Opposition to Untimely Motion to Exceed Page Limit and Request for Order Shortening Time</i> |
| 06/26/2018 |  Order Granting Motion <i>Order Granting Motion to Seal and/or Redact Exhibits and Order Regarding Minors' Compromise</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

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|------------|---|
| 06/26/2018 |  Transcript of Proceedings <i>Recorder's Transcript of Hearing Defendant's Motion for Summary Judgment on All Claims Alleging A Product Defect heard on January 23, 2018</i> |
| 06/26/2018 |  Notice of Entry of Order <i>Notice of Entry of Order Granting Motion to Seal And/Or Redact Exhibits and Order Regarding Minors' Compromise</i> |
| 06/27/2018 |  Filed Under Seal Filed By: Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <i>Exhibits to Verified Petition to Compromise Minors' Claims Against Defendant s Michaelangelo Leasing, Inc., Edward Hubbard, Bell Sports, Inc., and Sevenplus Bicycles, Inc. Only and to Approve Partial Payment of Attorneys' Fees and Costs (Filed Under Sealed)</i> |
| 06/27/2018 |  Filed Under Seal Filed By: Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <i>Order Compromising Minors' Claims Against Defendants Michaelangelo Leasing, Inc., Edward Hubbard, Bell Sports, Inc., and Sevenplus Bicycles, Inc. Only and Approving Partial Payment of Attorneys' Fees and Costs (Filed Under Seal)</i> |
| 06/28/2018 |  Order Compromising Minors Claim <i>Order Compromising Minors' Claims Against Defendants Michelangelo Leasing, Inc., Edward Hubbard, Bell Sports, Inc., and Sevenplus Bicycles, Inc. Only and Approving Partial Payment of Attorneys' Fees and Costs</i> |
| 06/29/2018 |  Reply <i>Motor Coach Industries, Inc.'s Reply in Support of Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim</i> |
| 06/29/2018 |  Reply <i>Motor Coach Industries, Inc.'s Reply in Support of Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants (Filed Under Seal)</i> |
| 06/29/2018 |  Reply <i>Reply on Motion to Retax Costs</i> |
| 06/29/2018 |  Reply in Support Filed By: Defendant Motor Coach Industries Inc <i>Reply in Support of Motion for a Limited New Trial (Redacted)</i> |
| 06/29/2018 |  Motion Filed By: Defendant Motor Coach Industries Inc <i>Motion to Seal and Redact "Reply in Support of Motion for a Limited New Trial"</i> |
| 06/29/2018 |  Motion Filed By: Defendant Motor Coach Industries Inc <i>Motion to Seal and Redact "Motor Coach Industries, Inc.'s Reply in Support of Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants"</i> |
| 07/02/2018 |  Filed Under Seal <i>Reply in Support of Motion for a Limited New Trial</i> |
| 07/02/2018 |  Filed Under Seal <i>Motor Coach Industries, Inc.'s Reply in Support of Motion to Alter or Amend Judgment to Offset Settlement Proceed's Paid by Other Defendants</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

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|------------|---|
| 07/02/2018 |  Opposition to Motion Filed By: Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <i>Plaintiffs Opposition to Motor Coach Industries, Inc. s Motion to Strike Plaintiffs Combined Opposition and Reply to Opposition to Untimely Motion to Exceed Page Limit</i> |
| 07/23/2018 |  Notice of Entry of Order <i>Notice of Entry of Order Compromising Minors' Claims Against Defendants Michelangelo Leasing, Inc., Edward Hubbard, Bell Sports, Inc., and Sevenplus Bicycles, Inc. Only and Approving Partial Payment of Attorneys' Fees and Costs</i> |
| 08/20/2018 |  Order Granting Motion <i>Order Granting Motions to Seal and Redact</i> |
| 08/22/2018 |  Stipulation and Order Filed by: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward <i>Stipulation and Order Dismissing Plaintiffs' Claims Against Defendants Michelangelo Leasing, Inc. and Edward Hubbard Only</i> |
| 08/23/2018 |  Notice of Entry <i>Notice of Entry of Order</i> |
| 08/28/2018 |  Notice of Withdrawal Filed By: Defendant Motor Coach Industries Inc <i>Notice of Withdrawal of David A. Dial, Esq.</i> |
| 08/29/2018 |  Request <i>Request for Transcripts</i> |
| 09/10/2018 |  Transcript of Proceedings <i>02-12-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT</i> |
| 09/10/2018 |  Transcript of Proceedings <i>Reporter's Transcription of Proceedings 2/13/18</i> |
| 09/10/2018 |  Transcript of Proceedings <i>Reporter's Transcription of Proceedings 2/14/18</i> |
| 09/10/2018 |  Transcript of Proceedings <i>Reporter's Transcription of Proceedings 2/21/18</i> |
| 09/10/2018 |  Transcript of Proceedings <i>Reporter's Transcription of Proceedings 02-15-18</i> |
| 09/10/2018 |  Transcript of Proceedings <i>Reporter's Transcription of Proceedings 02-16-18</i> |
| 09/10/2018 |  Transcript of Proceedings <i>Reporter's Transcription of Proceedings 02-20-18</i> |
| 09/10/2018 |  Transcript of Proceedings <i>Reporter's Transcription of Proceedings 02-22-18</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

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|------------|---|
| 09/10/2018 |  Transcript of Proceedings <i>Reporter's Transcription of Proceedings 02-23-18</i> |
| 09/10/2018 |  Transcript of Proceedings <i>Reporter's Transcription of Proceedings 02-26-18</i> |
| 09/10/2018 |  Transcript of Proceedings <i>Reporter's Transcription of Proceedings 02-27-18</i> |
| 09/10/2018 |  Transcript of Proceedings <i>Reporter's Transcription of Proceedings 02-28-18</i> |
| 09/12/2018 |  Transcript of Proceedings <i>Reporter's Transcription of Proceedings Heard on 03-01-18</i> |
| 09/12/2018 |  Transcript of Proceedings <i>Reporter's Transcription of Proceedings Heard on 3-2-18</i> |
| 09/12/2018 |  Transcript of Proceedings <i>Reporter's Transcript of Proceedings Heard on 03-05-18</i> |
| 09/12/2018 |  Transcript of Proceedings <i>03-06-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT</i> |
| 09/12/2018 |  Transcript of Proceedings <i>Reporter's Transcription of Proceedings Heard On 03-07-18</i> |
| 09/12/2018 |  Transcript of Proceedings <i>03-08-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT</i> |
| 09/12/2018 |  Transcript of Proceedings <i>Reporter's Transcription of Proceedings Heard on 03-12-18</i> |
| 09/12/2018 |  Transcript of Proceedings <i>03-13-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT</i> |
| 09/12/2018 |  Transcript of Proceedings <i>03-13-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT</i> |
| 09/12/2018 |  Transcript of Proceedings <i>03-14-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT</i> |
| 09/12/2018 |  Transcript of Proceedings <i>03-15-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT</i> |
| 09/12/2018 |  Transcript of Proceedings <i>03-16-18 A755977-C BARIN V MCI JURY TRIAL TRANSCRIPT</i> |
| 09/12/2018 |  Transcript of Proceedings <i>03-19-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

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| 09/13/2018 |  Transcript of Proceedings <i>Reporter's Transcription of Proceedings March 20, 2018</i> |
| 09/13/2018 |  Transcript of Proceedings <i>Reporter's Transcription of Proceedings March 21, 2018</i> |
| 09/13/2018 |  Transcript of Proceedings <i>03-22-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT</i> |
| 09/13/2018 |  Transcript of Proceedings <i>03-23-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT</i> |
| 09/18/2018 |  Filed Under Seal Filed By: Attorney Kemp, William Simon; Subject Minor Khiabani, Keon; Subject Minor Khiabani, Aria; Plaintiff Estate of Kayvan Khibani M.D. <i>Proof of Establishment of Blocked Financial Investments</i> |
| 09/18/2018 |  Supplement to Opposition Filed By: Subject Minor Khiabani, Keon <i>Plaintiffs' Supplemental Opposition to MCI's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants</i> |
| 09/24/2018 |  Response <i>Motor Coach Industries, Inc.'s Response to "Plaintiff's Supplemental Opposition to MCI's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid to Other Defendants"</i> |
| 10/17/2018 |  Stipulation and Order <i>Stipulation and Order Dismissing Plaintiffs' Claims Against Defendant Bell Sports, Inc. Only</i> |
| 10/17/2018 |  Stipulation and Order <i>Stipulation and Order Dismissing Plaintiffs' Claims Against Defendant SevenPlus Bicycles, Inc. Only</i> |
| 10/17/2018 |  Notice of Entry of Stipulation and Order <i>Notice of Entry of Stipulation and Order Dismissing Plaintiffs' Claims Against Defendant SevenPlus Bicycles, Inc. Only</i> |
| 10/17/2018 |  Notice of Entry of Stipulation and Order <i>Notice of Entry of Stipulation and Order Dismissing Plaintiffs' Claims Against Defendant Bell Sports, Inc. Only</i> |
| 10/18/2018 |  Transcript of Proceedings <i>A755977 12-7-17 BARIN V MCI MTN FOR DETER OF GOOD FAITH SETTLEMENT TRANSCRIPT</i> |
| 10/18/2018 |  Transcript of Proceedings <i>A755977 1-18-18 BARIN V MCI CALENDAR CALL TRANSCRIPT</i> |
| 10/18/2018 |  Transcript of Proceedings <i>A755977 2-9-18 BARIN V MCI STATUS CHECK TRANSCRIPT</i> |
| 10/18/2018 |  Transcript of Proceedings |

CASE SUMMARY

CASE NO. A-17-755977-C

A755977 1-29-18 BARIN V MCI MOTIONS IN LIMINE TRANSCRIPTS

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| 10/23/2018 |  Transcript of Proceedings A755977 1-31-18 BARIN VS MCI ALL PENDING MOTIONS TRANSCRIPTS |
| 01/03/2019 |  Finding of Fact and Conclusions of Law <i>Findings of Fact and Conclusion of Law on Defendant's Motion to Retax</i> |
| 01/31/2019 |  Order Granting Motion <i>Order Granting Motion to Dismiss Wrongful Death Claim</i> |
| 02/01/2019 |  Findings of Fact, Conclusions of Law and Order <i>Combined Order 1. Denying Motion for Judgment as a Matter of Law and 2. Denying Motion for Limited New Trial</i> |
| 02/01/2019 |  Notice of Entry of Order Filed By: Subject Minor Khiabani, Keon <i>Notice of Entry of Combined Order (1) Denying Motion for Judgment as a Matter of Law and (2) Denying Motion for Limited New Trial</i> |
| 02/01/2019 |  Findings of Fact, Conclusions of Law and Order Filed By: Defendant Bell Sports, Inc <i>Findings Of Fact Conclusions Of Law And Order On Motion For Determination Of Good Faith Settlement</i> |
| 02/01/2019 |  Notice of Entry of Order Filed By: Defendant Bell Sports, Inc <i>Notice Of Entry Of Findings Of Fact Conclusions Of Law And Order On Motion For Good Faith Settlement</i> |
| 03/21/2019 |  NV Supreme Court Clerks Certificate/Judgment - Dismissed <i>Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed</i> |
| 03/26/2019 |  Filed Under Seal <i>Order</i> |
| 04/09/2019 |  Stipulation and Order Filed by: Subject Minor Khiabani, Keon <i>Stipulation and Order Allowing the Order Denying Defendant Motor Coach Industries, Inc.'s Motion to Alter or Amend Judgment to Offset Settlement Proceeds to be Filed with Redactions and Under Seal</i> |
| 04/10/2019 |  Notice of Entry of Stipulation and Order Filed By: Subject Minor Khiabani, Keon <i>Notice of Entry of Stipulation and Order Allowing the Order Denying Defendant Motor Coach Industries, Inc.'s Motion to Alter or Amend Judgment to Offset Settlement Proceeds to Be Filed With Redactions and Under Seal</i> |
| 04/24/2019 |  Notice of Entry Filed By: Defendant Motor Coach Industries Inc <i>Notice of Entry of "Findings of Fact and Conclusions of Law on Defendant's Motion to Retax"</i> |
| 04/24/2019 |  Notice of Appeal <i>Notice of Appeal</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

04/24/2019



Case Appeal Statement

Case Appeal Statement

DISPOSITIONS

02/22/2018

Summary Judgment (Judicial Officer: Escobar, Adriana)

Debtors: Motor Coach Industries Inc (Defendant), Michelangelo Leasing Inc (Defendant), Edward Hubbard (Defendant), Bell Sports Inc (Defendant)

Creditors: Estate of Katayoun Barin (Plaintiff)

Judgment: 02/22/2018, Docketed: 02/22/2018

Comment: In part

03/23/2018

Verdict (Judicial Officer: Escobar, Adriana)

Debtors: Motor Coach Industries Inc (Defendant)

Creditors: Keon Khiabani (Subject Minor)

Judgment: 03/23/2018, Docketed: 03/30/2018

Total Judgment: 9,200,000.00

Debtors: Motor Coach Industries Inc (Defendant)

Creditors: Aria Khiabani (Subject Minor)

Judgment: 03/23/2018, Docketed: 03/30/2018

Total Judgment: 7,000,000.00

Debtors: Motor Coach Industries Inc (Defendant)

Creditors: Keon Khiabani (Subject Minor), Aria Khiabani (Subject Minor), Estate of Kayvan Khibani M.D. (Plaintiff)

Judgment: 03/23/2018, Docketed: 03/30/2018

Total Judgment: 1,000,000.00

Debtors: Motor Coach Industries Inc (Defendant)

Creditors: Estate of Kayvan Khibani M.D. (Plaintiff)

Judgment: 03/23/2018, Docketed: 03/30/2018

Total Judgment: 46,003.62

04/17/2018

Judgment Plus Interest (Judicial Officer: Escobar, Adriana)

Debtors: Motor Coach Industries Inc (Defendant)

Creditors: Keon Khiabani (Subject Minor)

Judgment: 04/17/2018, Docketed: 04/18/2018

Total Judgment: 9,533,333.34

Debtors: Motor Coach Industries Inc (Defendant)

Creditors: Aria Khiabani (Subject Minor)

Judgment: 04/17/2018, Docketed: 04/18/2018

Total Judgment: 7,333,333.33

Debtors: Motor Coach Industries Inc (Defendant)

Creditors: Estate of Katayoun Barin (Plaintiff)

Judgment: 04/17/2018, Docketed: 04/18/2018

Total Judgment: 1,833,333.33

Debtors: Motor Coach Industries Inc (Defendant)

Creditors: Estate of Kayvan Khibani M.D. (Plaintiff)

Judgment: 04/17/2018, Docketed: 04/18/2018

Total Judgment: 46,003.62

Debtors: Motor Coach Industries Inc (Defendant)

Creditors: Keon Khiabani (Subject Minor), Aria Khiabani (Subject Minor), Estate of Katayoun Barin (Plaintiff), Estate of Kayvan Khibani M.D. (Plaintiff)

Judgment: 04/17/2018, Docketed: 04/18/2018

Total Judgment: 246,480.55

06/28/2018

Order Approving Minor's Compromise (Judicial Officer: Escobar, Adriana)

Debtors: Motor Coach Industries Inc (Defendant), Michelangelo Leasing Inc (Defendant), Edward Hubbard (Defendant), Bell Sports Inc (Defendant), Sevenplus Bicycles Inc (Defendant)

Creditors: Keon Khiabani (Subject Minor), Aria Khiabani (Subject Minor)

Judgment: 06/28/2018, Docketed: 07/05/2018

08/22/2018

Order of Dismissal With Prejudice (Judicial Officer: Escobar, Adriana)

CASE SUMMARY

CASE NO. A-17-755977-C

Debtors: Michelangelo Leasing Inc (Defendant), Edward Hubbard (Defendant)
Creditors: Estate of Katayoun Barin (Plaintiff)
Judgment: 08/22/2018, Docketed: 08/22/2018


10/17/2018 **Order of Dismissal** (Judicial Officer: Escobar, Adriana)
Debtors: Bell Sports Inc (Defendant)
Creditors: Keon Khiabani (Subject Minor), Aria Khiabani (Subject Minor), Estate of Katayoun Barin (Plaintiff), Estate of Kayvan Khibani M.D. (Plaintiff)
Judgment: 10/17/2018, Docketed: 10/17/2018


10/17/2018 **Order of Dismissal With Prejudice** (Judicial Officer: Escobar, Adriana)
Debtors: Sevenplus Bicycles Inc (Defendant)
Creditors: Keon Khiabani (Subject Minor), Aria Khiabani (Subject Minor), Estate of Katayoun Barin (Plaintiff), Estate of Kayvan Khibani M.D. (Plaintiff)
Judgment: 10/17/2018, Docketed: 10/17/2018

01/31/2019 **Order of Dismissal With Prejudice** (Judicial Officer: Escobar, Adriana)
Debtors: Estate of Katayoun Barin (Plaintiff), Estate of Kayvan Khibani M.D. (Plaintiff)
Creditors: Motor Coach Industries Inc (Defendant)
Judgment: 01/31/2019, Docketed: 02/01/2019
Comment: Certain Claims

03/21/2019 **Clerk's Certificate** (Judicial Officer: Escobar, Adriana)
Debtors: Motor Coach Industries Inc (Defendant)
Creditors: Keon Khiabani (Subject Minor), Aria Khiabani (Subject Minor), Estate of Katayoun Barin (Plaintiff), Estate of Kayvan Khibani M.D. (Plaintiff), Marie Claude-Rigaud (Guardian), Siamak Barin (Executor)
Judgment: 03/21/2019, Docketed: 03/28/2019
Comment: Supreme Court No. 75953 Appeal Dismissed

HEARINGS

06/06/2017  **Minute Order** (12:30 PM) (Judicial Officer: Escobar, Adriana)
Denied; Ex-Parte Motion for Order Requiring Bus Company and Driver to Preserve and Immediately Turn Over Relevant Electronic Monitoring Information from Bus and Driver Cell Phone
Journal Entry Details:
Plaintiffs ex parte motion for order requiring bus company and driver to preserve and immediately turn over relevant electronic monitoring information from bus and driver cell phone was filed in Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on May 30, 2017. The Court notes that the motion is not the appropriate method for seeking the requested relief, as Plaintiffs are essentially requesting a temporary restraining order and an order compelling production of evidence. Thus, the Court DENIES Plaintiffs motion, as each of these motions require additional procedural steps, such as an attempt at notice to the other party which have apparently not been undertaken here. If Plaintiffs refile the request to preserve evidence as an application for temporary restraining order in line with NRCP 65(b), including making efforts to serve the Defendants with notice of that application, the Court will consider the matter at that time. The Court will not grant a motion to compel on an ex parte basis. Finally, the Court notes that both parties have a common law duty to preserve documents, tangible items, and information relevant to litigation that are reasonably calculated to lead to the discovery of admissible evidence when litigation is reasonably foreseeable. See Bass-Davis v. Davis, 122 Nev. 442 (2006). Plaintiffs are directed to submit a proposed order denying their motion, and to serve a copy of this minute order on Defendants. CLERK'S NOTE: Copies of this minute order placed in the attorney folders of: William Kemp (KEMP JONES & COULTHARD, LLP) Peter S. Christiansen (CHRISTIANSEN LAW OFFICES);

06/15/2017  **Motion for Temporary Restraining Order** (9:30 AM) (Judicial Officer: Escobar, Adriana)
Per Pltf's App for TRO requiring Bus Co. & Driver to Preserve & Immediately Turn over Relevant Electronic Monitoring Information from Bus and Driver Cell Phone on OST.
Decision Made; Per Pltf's App for TRO requiring Bus Co. & Driver to Preserve & Immediately Turn over Relevant Electronic Monitoring Information from Bus and Driver Cell

CASE SUMMARY

CASE NO. A-17-755977-C

Phone on OST.

Journal Entry Details:

Per Pltf's App for TRO requiring Bus Co. & Driver to Preserve & Immediately Turn over Relevant Electronic Monitoring Information from Bus and Driver Cell Phone on OST. Eric Freeman, Esq. appeared by CourtCall on behalf of Defts Michelangelo Leasing Inc. d/b/a Ryan's Express and Edward Hubbard. Judge Escobar disclosed that it had represented Mr. Kemp's firm prior to taking the Bench, but will be fair and impartial. There was no opposition from any counsel to this Court hearing this matter. Following Mr. Kemp's argument in support of the Application for TRO, both Mr. Russell and Mr. Stoberski stated they had no opposition to the proposed changes to the order, but requested to review it prior to signing off. Mr. Freeman presented his objection to the Temporary Restraining Order, arguing it was too broad. He also noted that Sevenplus Bicycles Inc., a defendant that it affects, was served but has made no appearance yet and they need to make an appearance. Mr. Kemp confirmed that Michelangelo and Hubbard were served and argued that they will need to look at the evidence and get started. Mr. Freeman responded that he needs the opportunity to discuss this with his potential client and reiterated his opposition to the TRO at this time, but he will work with counsel. Mr. Kemp reiterated his request for the TRO. COURT STATED it has given a lot of thought to this and did find that the preservation of evidence is critical and required; however, the Court needs to read the changed Order. COURT ORDERED, Application for TRO GRANTED IN PART and DENIED IN PART. COURT STATED it did not find it was something it wanted to come without the other parties being informed. The preservation of evidence is critical and required. COURT STATED it has not yet read the changed order, but at this time read from its notes, citing the electronic information that Mr. Kemp believes the bus has in its possession. COURT ORDERED within five business days, all of the cited items are to be preserved from the accident which occurred on 4/18/17. With respect to the Smart Phone, those items that Plaintiff requested are to be preserved. Under Bass-Davis, a party has the duty to preserve discoverable evidence, within five business days. COURT NOTED that the evidence already discussed may not be discoverable, but it is to be downloaded within five business days and is to be preserved by the Defendants; Mr. Freeman would have a duty to preserve this. Defendants are not to discuss the evidence with Plaintiff's, or anyone else involved in the case, until the appropriate time. Mr. Kemp stated his concern is that all data is downloaded. COURT ADVISED it wants a Declaration from the experts who are proficient to download the data from the date of the accident. It was noted that there are two such experts who would be proficient to do that. COURT ORDERED that the experts are to submit a Declaration to the Court as to what was downloaded and the dates of the data generation from the bus and the cell phone. The information will not be shared with Plaintiff until the appropriate time. Mr. Kemp noted that METRO may request the information. COURT REITERATED that the information is not to be shared with the Plaintiff, but METRO'S requests may be required. Mr. Freeman stated he will cooperate with Mr. Kemp's office and requested Mr. Kemp to forward the proposed revised Order to him along with the information as to whom could download all of this and preserve the data. Mr. Freeman's contact information was provided at this time. COURT SO NOTED. Mr. Kemp advised he will redraft the proposed Order, get it to all counsel, and then get it back to the Court within the next few days. COURT REITERATED, the TEMPORARY RESTRAINING ORDER, GRANTED IN PART; DENIED AS TO IMMEDIATELY TURNING OVER THE INFORMATION/EVIDENCE.;

07/20/2017



Motion for Preferential Trial Setting (9:30 AM) (Judicial Officer: Jones, Tierra)

Plaintiffs' Motion for Preferential Trial Setting Under NRS 16.025(2)

Granted; Plaintiff's Motion for Preferential Trial Setting Under NRS 16.025(2)

Journal Entry Details:

Mr. Kemp argued that parties can be ready for trial in six months. He advised that the widow does not have long to live which necessitates an expedited trial setting. He further stated he listed all witnesses at the early case conference and will provide counsel all documents by noon today. Opposition by defense counsel. Colloquy regarding scheduling of depositions, dispositive motions and motions in limine. COURT ORDERED, motion is GRANTED; trial date is SET, with the understanding that it may not go, and a status check regarding trial readiness is SET in sixty days. 9/21/17 9:30 AM STATUS CHECK: TRIAL READINESS 11/2/17 9:30 AM CALENDAR CALL 11/20/17 9:30 AM JURY TRIAL;

08/15/2017

CANCELED Motion to Associate Counsel (3:00 AM)

Vacated - per Order

On OST

08/22/2017

CANCELED Motion to Associate Counsel (3:00 AM)




CASE SUMMARY

CASE NO. A-17-755977-C

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| | <i>Vacated</i> |
| 09/21/2017 | Status Check (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Trial Readiness</i> Matter Continued; Removed to USDC 10/17/2017 |
| 09/21/2017 | Motion For Reconsideration (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Defendants Michelangelo Leasing Inc. and Edward Hubbard's Motion for Reconsideration Regarding the Court Granting Plaintiffs' Motion for Preferential Trial Setting</i> Matter Continued; Removed to USDC 10/17/2017 |
| 09/21/2017 | Joinder (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Defendant SevenPlus Bicycles, Inc. dba Pro Cyclery's Joinder to Defendant Ryan's Express and Edward Hubbard's Motion for Reconsideration</i> Matter Continued; Removed to USDC 10/17/2017 |
| 09/21/2017 | Joinder (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Defendant Motor Coach Industries, Inc.'s Joinder to Michelangelo Leasing Inc. and Edward Hubbard's Motion for Reconsideration Regarding the Court Granting Plaintiffs' Motion for Preferential Trial Setting</i> Matter Continued; Removed to USDC 10/17/2017 |
| 09/21/2017 |  All Pending Motions (9:30 AM) (Judicial Officer: Escobar, Adriana) Matter Heard; Journal Entry Details: <i>TRIAL READINESS ... DEFENDANTS MICHELANGELO LEASING INC. AND EDWARD HUBBARD'S MOTION FOR RECONSIDERATION REGARDING THE COURT GRANTING PLAINTIFFS' MOTION FOR PREFERENTIAL TRIAL SETTING ... DEFENDANT SEVENPLUS BICYCLES, INC. DBA PRO CYCLERY'S JOINDER TO DEFENDANT RYAN'S EXPRESS AND EDWARD HUBBARD'S MOTION FOR RECONSIDERATION ... DEFENDANT MOTOR COACH INDUSTRIES, INC.'S JOINDER TO MICHELANGELO LEASING INC. AND EDWARD HUBBARD'S MOTION FOR RECONSIDERATION REGARDING THE COURT GRANTING PLAINTIFFS' MOTION FOR PREFERENTIAL TRIAL SETTING</i> Scott Tooney, Esq., present on behalf of Bell Sports Inc. Paul Stephen, Esq., appearing Pro Hac Vice on behalf of Motor Coach Industries Inc. Michael G. Terry, Esq., appearing Pro Hac Vice on behalf of Katayoun Barin. Arguments by counsel regarding trial readiness and the Motion for Reconsideration. COURT STATED FINDINGS and ORDERED, trial and discovery is to move forward on the schedule that was set. Court noted the status of each Pro Hac Vice application. COURT FURTHER ORDERED, matter SET for Status Check regarding trial readiness. CLERK'S NOTE: Subsequent to Court, COURT ORDERED, matter SET for Status Check on October 30, 2017 to monitor the progress of discovery closer to the trial date; Motions for Reconsideration CONTINUED. hvp/10/9/17; |
| 10/12/2017 | CANCELED Motion (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Vacated - per Stipulation and Order</i> <i>Plaintiffs' Motion to Allow Plaintiffs to Present a Jury Questionnaire Prior to Voir Dire on OST</i> |
| 10/24/2017 | CANCELED Motion for Determination of Good Faith Settlement (9:30 AM) (Judicial Officer: Hardcastle, Kathy) <i>Vacated</i> <i>Defendant Sevenplus Bicycles Inc dba Pro Cyclery's Motion for Determination of Good Faith Settlement</i> |
| 10/24/2017 | CANCELED Motion to Compel (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Vacated</i> <i>Defendant Motor Coach Industries Inc's Motion to Compel Production of Documents by Las Vegas Metropolitan Police Department on OST</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

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| 11/02/2017 | CANCELED Calendar Call (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Vacated</i> |
| 11/02/2017 | Motion to Amend Complaint (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Set On an OST</i> Granted; |
| 11/02/2017 | Motion to Amend Complaint (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiffs' Motion to Amend Complaint to Substitute Parties on Order Shortening Time</i> Granted; |
| 11/02/2017 |  All Pending Motions (9:30 AM) (Judicial Officer: Escobar, Adriana) Granted; Plaintiff's Motion to Amend Cojmplaint to Substitute Parties on Order Shortening Time...Defendant's Opposition to Plaintiffs' Motion to Amend Complaint/Counteremotion to Set a Reasonable Trial Date Upon Changed Circumstance that Nullifies the Reason for Preferential Trial Setting Journal Entry Details: <i>Mr. Kemp stated that the amendment being sought is to replace the co-guardian into the case. He advised that Defendant's opposition is actually a request to continue the trial. He informed the Court the status of taking of depositions and argued opposition to Defendant's request for trial continuance. Mr. Polsenberg stated he does not want to try a case in which he is not prepared; a continuance is required to fully prepare. Following further arguments, COURT ORDERED, Plaintiff's Motion to Amend Complaint is GRANTED and Defendant's Counteremotion to Set a Reasonable Trial Date is GRANTED. Trial, which is anticipated to take four weeks, is set to a Firm Setting. 1/18/18 9:30 AM CALENDAR CALL 2/12/18 9:30 AM JURY TRIAL - FIRM SETTING;</i> |
| 11/20/2017 | CANCELED Jury Trial (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Vacated</i> |
| 12/07/2017 |  Motion for Determination of Good Faith Settlement (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Notice of Hearing on Defendant SevenPlus Bicycles, Inc d/b/a Pro Cyclery's Motion for Determination of Good Faith Settlement</i> Granted; Journal Entry Details: <i>COURT FINDS no collusion or fraud and the settlement negotiations were at arms length, and ORDERED, Good Faith Settlement is APPROVED. Ms. Igeleke to prepare the order to include Findings of Fact and Conclusions of Law, circulate proposed order to counsel and provide proposed order to Court's Chambers in Word format.;</i> |
| 01/18/2018 |  Calendar Call (9:30 AM) (Judicial Officer: Escobar, Adriana) Matter Heard; Journal Entry Details: <i>Colloquy regarding trial date and the jury questionnaire. COURT ORDERED, trial date STANDS.;</i> |
| 01/23/2018 | Motion for Summary Judgment (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiff's Motion for Summary Judgment On Foreseeability of Bus Interaction With Pedestrians or Bicyclists (Including Sudden Bicycle Movement)Mot</i> Granted; |
| 01/23/2018 | Motion for Summary Judgment (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Defendant's Motion for Summary Judgment on Punitive Damages</i> Denied; |
| 01/23/2018 | Motion for Summary Judgment (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Motor Coach Industries, Inc.'s Motion for Summary Judgment on All Claims Alleging a Product Defect</i> Denied; |

CASE SUMMARY

CASE NO. A-17-755977-C

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| 01/23/2018 | <p>Motion to Dismiss (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Defendant's Motion to Dismiss Wrongful Death Claim for Death of Katavoun Barin DDS</i> Granted;</p> |
| 01/23/2018 | <p>Motion for Leave (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Defendant Motor Coach Industries, Inc. Motion for Leave to File Third Party Complaint on OST</i> Moot;</p> |
| 01/23/2018 | <p>Motion for Leave (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Defendant's Motion for Leave to File Third Party Complaint on Order Shortening Time</i> Moot;</p> |
| 01/23/2018 | <p>Motion for Determination of Good Faith Settlement (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Defendant Bell Sports, Inc.'s Motion for Determination of Good Faith Settlement on OST</i> Granted;</p> |
| 01/23/2018 | <p>Objection (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Non- Party New Flyer Industries Inc's Objection to Special Master Hale's January 4, 2018</i> Granted in Part;</p> |
| 01/23/2018 | <p>Motion for Determination of Good Faith Settlement (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiffs' Motion for Determination of Good Faith Settlement with Defendants Michelangelo Leasing, Inc. d/b/a Ryan's Express and Edward Hubble Only on OST</i> Granted;</p> |
| 01/23/2018 | <p>Joinder (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiffs' Joinder to Defendant Bell Sports, Inc.'s Motion for Determination of Good Faith Settlement On Order Shortening Time</i> Matter Heard;</p> |
| 01/23/2018 | <p> All Pending Motions (9:30 AM) (Judicial Officer: Escobar, Adriana) Granted in Part; Journal Entry Details: <i>Following arguments by counsel, COURT ORDERED, the following: Defendant's Motion for Summary Judgment on Forseeability of Bus Interaction with Pedestrians or Bicyclists (Including Sudden Bicycle Movement) is GRANTED. Plaintiff's Motion for Determination of Good Faith Settlement with Defendants Michelangelo Leasing, Inc. dba Ryan's Express and Edward Hubble Only is GRANTED; Motion to Seal Settlement GRANTED as well. Defendant Bell Sports, Inc.'s Motion for Determination of Good Faith Settlement on OST is GRANTED; Motion to Seal GRANTED as well. Plaintiff's Joinder to Defendant Bell Sports, Inc.'s Motion for Determination of Good Faith Settlement on Order Shortening Time is GRANTED. Defendant's Motion for Summary Judgment on Punitive Damages is DENIED as Plaintiff provided sufficient evidence supporting punitive damages instruction. Motor Coach Industries, Inc." Motion for Summary Judgment on All Claims Alleging a Product Defect is DENIED as the theories have issues of material fact remaining. Defendant's Motion to Dismiss Wrongful Death Claim for Death of Katavoun Brain DDS is GRANTED. Defendant Motor Coach Industries, Inc. Motion for Leave to File Third Party Complaint on OST is MOOT. Defendant's Motion for Leave to File Third Party Complaint on OST is MOOT. Non-Party New Flyer Industries Inc.'s Objection to Special Master Hale's January 23, 2018. Court informed parties that a minute order will issue. Parties to prepare their respective orders.;</i></p> |
| 01/26/2018 | <p> Minute Order (11:00 AM) (Judicial Officer: Escobar, Adriana) Granted in Part; Non-Party New Flyer Industries, Inc.'s Objection to Special Master Hales's 1/4/18 Order Journal Entry Details: <i>Non-party New Flyer Industries, Inc. s Objection to Special Master Hale s January 4, 2018 Order came on for a hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on January 23, 2018. After considering the pleadings</i></p> |

CASE SUMMARY

CASE NO. A-17-755977-C

and argument of counsel, the Court GRANTS IN PART and DENIES IN PART New Flyer's motion. Plaintiffs will be permitted to conduct a deposition of Mr. Asham by video conference, to last no more than two hours. However, the deposition will be for the limited purpose of discovery of the financial status of the Defendant, Motor Coach Industries. Plaintiffs are directed to prepare a proposed order for the Court's signature, and to submit the proposed order in Microsoft Word format, by e-mail to dept14lc@clarkcountycourts.us. Additionally, in regard to the various other motions heard on January 23, 2018, the Court directs Plaintiffs to prepare proposed orders for (1) Bell Sports Inc.'s motion for determination of good faith settlement; (2) Michelangelo Leasing Inc. and Edward Hubbard's motion for determination of good faith settlement; (3) Plaintiffs' motion for summary judgment on foreseeability of bus interactions with pedestrians or bicyclists; (4) Defendant's motion for summary judgment on punitive damages; and (5) Defendant's motion for summary judgment on all claims alleging a product defect. Defendant is directed to prepare proposed orders for (1) Defendant's motion to dismiss wrongful death claim for death of Katy Brain; and (2) Defendant's motion for leave to file third-party complaint. Each proposed order shall be reviewed by opposing counsel for approval as to form and content, should be submitted in Microsoft word format, by e-mail to dept14lc@clarkcountycourts.us, and must include detailed findings of fact and conclusions of law. CLERK'S NOTE: Counsel notified via e-mail.;

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| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiffs' Motion In Limine No. 1 to Preclude Reference Or Argument Regarding the Alleged Negligence of Third Parties (I.E., Michelangelo and Hubbard)</i> Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiffs' Motion In Limine No. 2 to Preclude Any Reference to Settling Defendants (Including Claims, Settlement and Amounts)</i> Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiff's Motion In Limine No. 3 to Preclude Defendant MCI from Arguing That Decedent Was Contributorily Negligent</i> Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiffs' Motion In Limine No. 4 to Preclude MCI From Making Excessive Reference to the Fact that Plaintiffs Are of Iranian or "Persian" Descent</i> Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiffs' Motion In Limine No. 5 to Preclude Defendants From Arguing Or Suggesting That Plaintiffs Must Prove That the Bus Had Any Specific Defect</i> Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiffs' Motion In Limine No. 6 to Preclude Defendants From Mentioning That Defense Expert Dr. Michael Baden ("OJ's Medical Examiner") Worked for the Christiansen Law Firm</i> Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiffs' Motion In Limine No. 7 to Preclude Defendant MCI From Arguing That the Alleged Lack of Proximity Sensors From a Third party ("Commercial Availability") As a Defense Where the True Issue Is Whether Proximity Sensors Were Technologically "Feasible"</i> Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiffs' Motion In Limine No. 8 to Pre Instruct the Jury With Standard Instructions for Product Liability Claims</i> Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiffs' Motion In Limine No. 9 to Preclude Metro Report and/or Opinions From Metro</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

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| | <i>Officers</i> Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiffs' Motion In Limine No. 10 to Pre Admit Funeral Video and Funeral Slide Show</i> Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiffs' Motion In Limine No. 11 Pre Admit 1993 Generic Bus Wind Testing By MCI</i> Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiffs' Motion In Limine No. 12 to Preclude MCI Expert Rucoba From Offering Meteorologist Opinions Regarding Wind Speed At the Time of the Accident (Including But Not Limited to the Wildly Unsupported Claim That Wind Speeds At 10:30 a.m. Were "16 to 17 Mles Per Hours" And "Winds Were Gusting to 30 Miles Per Hour"</i> Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiffs' Motion In Limine No. 13 Preclude Defendants From Arguing Or Referencing Rigged Air Blast Testing That Is Not Substantially Similar Because It Used Stationary Bike and Not a Moving Bike</i> Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiffs' Motion In Limine No. 14 to Designate Virgil Hoogestraat As Managing Speaking Agent of MCI</i> Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiffs' Motion In Limine No. 15 to Designate Bryan Couch as Managing Speaking Agent of Motor Coach Industries, Inc.</i> Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiffs' Motion In Limine No. 16 to Pre Admit June 2001 Article As Notice of Potential Rear Tire Suction Hazard and Need For Protective Guard</i> Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018 <i>Defendant's Motion In Limine No. 2 to Exclude Illustrations by Plaintiffs' Expert Joshua Cohen that Have no Basis In Fact</i> Continued; Matter Heard; Continued; Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018 <i>Defendant's Motion In Limine No. 3 to Preclude Plaintiffs From Making Reference to a "Bullet Train"</i> Continued; Matter Heard; Continued; Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018 <i>Defendant's Motion In Limine No 13 to Exclude Plaintiffs' Expert Witness Robert Cunitz, Ph.D. or In the Alternative, to Limit His Testimony</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

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| | Continued; Matter Heard; Continued; Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018 <i>Defendant's Motion In Limine No.14 to Exclude Articles Regarding or Reference to Transit Buses</i> Continued; Matter Heard; Continued; Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018 <i>Defendants' Motion In Limine No 7 to Exclude Any Claims that the Subject Motor Coach was Defective Based On Alleged Dangerous "Air Blasts"</i> Continued; Matter Heard; Continued; Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Defendant's Motion in Limine No. 16 to Exclude Opinions by Plaintiffs' Expert Dipak Panigrahy</i> Withdrawn; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018 <i>Defendant's Motion In Limine No. 15 to Exclude Opinion Testimony from LV Witnesses On Causation and Engineering Principles</i> Continued; Matter Heard; Continued; Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018 <i>Defendant's Motion In Limine No 1 to Limit Opinions by Plaintiffs' Expert Robert Caldwell</i> Continued; Matter Heard; Continued; Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018 <i>Defendant's Motion In Limine No 5 to Exclude Any Claims of Defect Based On S-1 Gard</i> Continued; Matter Heard; Continued; Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018 <i>Defendants' Motion In Limine No 4 to Preclude Plaintiffs from Presenting Evidence that Proximity Sensors Were a Safer Alternative Design</i> Continued; Matter Heard; |

CASE SUMMARY

CASE NO. A-17-755977-C

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| | Continued; Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018 <i>Defendant's Motion In Limine No 6 to Exclude Reference to New Flyer Industriesc (NFI Group)</i> Continued; Matter Heard; Continued; Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018 <i>Defendant's Motion In Limine No 11 to Exclude Plaintiffs' Expert Witness David Roger</i> Continued; Matter Heard; Continued; Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018 <i>Plaintiff's Motion In Limine No. 17 to Admit Evidence of Facts Establishing Defendant's Consciousness of Responsibility</i> Continued; Matter Heard; Continued; Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018 <i>Defendant's Motion In Limine No 8 to Exclude Any Reference to Seatbelts</i> Continued; Matter Heard; Continued; Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiffs' Motion In Limine to Exclude the Testimony of Untimely Disclosed Expert Witness Robert Stahl, MD</i> |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018 <i>Defendant's Motion In Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes</i> Continued; Matter Heard; Continued; Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018 <i>Defendant's Motion In Limine No. 10 to Exclude Speculation As to Decendent's Thoughts About the Motor Coach</i> Continued; Matter Heard; Continued; Matter Heard; |
| 01/29/2018 | Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018 <i>Defendant's Motion In Limine No. 9 to Exclude Reference to the Ghost Bike Memorial</i> |

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Continued;
Matter Heard;
Continued;
Matter Heard;

01/29/2018

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)

01/29/2018, 01/31/2018

Defendant's Motion In Limine No. 12 to Exclude Reference to the Cost of the S-1 Gard or Proximity Sensors

Continued;
Matter Heard;
Continued;
Matter Heard;

01/29/2018

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)

Plaintiff's Motion In Limine to Exclude any Testimony on the Untimely Supplemental Expert Report filed by Defense Expert Carhart

01/29/2018



All Pending Motions (9:30 AM) (Judicial Officer: Escobar, Adriana)

Granted in Part;
Journal Entry Details:

Michael Terry appearing for Motor Coach Industries. Following arguments of counsel, COURT ORDERED, the following. Plaintiff's Motion in Limine No.1 to Preclude Reference or Argument Regarding the Alleged Negligence of Third Parties (i.e.: Michelangelo and Hubbard). Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 2 to Preclude any Reference to settling Defendants (Including Claims, Settlement and Amounts). Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 3 to Preclude Defendant MCI from Arguing that Decedent was Contributory Negligent. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 4 to Preclude MCI from Making Excessive Reference to the Fact that Plaintiffs are of Iranian or "Persian" Descent. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 5 to Preclude Defendants from Arguing or Suggesting that Plaintiffs Must Prove that the Bus had any Specific Defect. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 6 to Preclude Defendants from Mentioning that Defense Expert Dr. Michael Baden (OJ's Medical Examiner) Worked for the Christiansen Law Firm is GRANTED IN PART; Court will allow hypotheticals in for the case he has testified to in the past. Plaintiff's Motion in Limine No. 7 to Preclude Defendant MCI from Arguing that the Alleged Lack of Proximity Sensors from a Third Party ("Commercial Availability") as a Defense Where the True Issue is Whether Proximity Sensors were Technologically "Feasible", Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 8 to Pre-Instruct the Jury with Standard Instructions for Product Liability Claims. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 9 to Preclude Metro Report and/or Opinions from Metro Officers. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 10 to Pre-Admit Funeral Video and Funeral Slide Show. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 11 Pre-Admit 1993 Generic Bus Wind Testing by MCI. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 12 to Preclude MCI Expert Rucoba from Offering Meteorologist Opinions Regarding Wind Speed at the Time of the Accident (Including but Not Limited to the Wildly Unsupported Claim that Wind Speeds at 10:30 am were (16 to 17 Miles Per Hour" and "Winds were Gusting to 30 MPH". Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 13 Preclude Defendants from Arguing or Referencing Rigged Air Blast Testing that is Not Substantially Similar Because it used Stationary Bike and not a Moving Bike. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 14 to Designate Virgil Hoogestraat as Managing Speaking Agent of MCI. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 15 to Designate Bryan Couch as Managing Speaking Agent of Motor. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 16 Pre-Admit June 2001 Article as Notice of Potential Rear Tire Suction Hazard and Need for Protective Guard is WITHDRAWN. Plaintiff's Motion in Limine No. 17 to Admit Evidence of Fact Establishing Defendant's Consciousness of Responsibility . Court informed parties an order will be issued. Plaintiff's Motion in Limine to Exclude the Testimony of Untimely Disclosed Expert Witness Robert Stahl, MD is MOOT. Plaintiff's Motion in Limine to Exclude any Testimony on the Untimely Supplemental Expert Report Filed by Defense Expert Robert Stahl is irrelevant. Defendant's Motion in Limine No. 1 to Limit Opinions by Plaintiff's Expert Robert Caldwell, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 2 to Exclude

CASE SUMMARY

CASE NO. A-17-755977-C

Illustrations by Plaintiff's Expert Joshua Cohen that Have No Basis in Fact, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 3 to Preclude Plaintiff's from Making Reference to a "Bullet Train", CONTINUED to 1/31/18. Defendant's Motion in Limine No. 4 to Preclude Plaintiff's from Presenting Evidence that Proximity Sensors were a Safer Alternative Design CONTINUED to 1/31/18. Defendant's Motion in Limine No. 5 to Exclude any Claims of Defect Based on S-1 Gard Motion in Limine, CONTINUED to 1/31/18. Defendant's Motion in Limine NO. 6 to Exclude Reference to New Flyer Industries ((NFI Group), CONTINUED to 1/31/18. Defendant's Motion Limine No. 7 to Exclude any Claims that the Subject Motor Coach was Defective Based on Alleged Dangerous "Air Blasts", CONTINUED to 1/31/18. Defendant's Motion in Limine No. 8 to Exclude any Reference to Seatbelts, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 9 to Exclude Reference to the Ghost Bike Memorial, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 10 to Exclude Speculation as to Decedent's Thoughts about the Motor Coach, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 11 to Exclude Plaintiff's Expert Witness David Roger, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 12 to Exclude Reference to the Cost of the S-1 Gard or Proximity Sensors, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 13 to Exclude Plaintiff's Expert Witness Robert Cunitz, Ph.D. or in the Alternative, to Limit his Testimony, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 14 to Exclude Articles Regarding or Reference to Transit Buses, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 15 to Exclude Opinion Testimony from LV Witnesses on Causation and Engineering Principles, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 16 to Exclude Opinions by Plaintiff's Expert Dipak Panigrahy is WITHDRAWN as request of counsel. Defendant's Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes, CONTINUED to 1/31/18.;

01/31/2018



All Pending Motions (9:30 AM) (Judicial Officer: Escobar, Adriana)

Matter Heard;

Journal Entry Details:

Following arguments of counsel, COURT ORDERED, the following: Defendant's Motion in Limine No. 1 to Limit Opinions by Plaintiff's Expert Robert Caldwell. Court informed parties an order will be issued. Defendant's Motion in Limine No. 2 to Exclude Illustrations by Plaintiff's Expert Joshua Cohen that have No Basis in Fact. Court informed parties an order will be issued. Defendant's Motion in Limine No. 3 to Preclude Plaintiffs from Making Reference to a "Bullet Train." Court informed parties an order will be issued. Defendant's Motion in Limine No. 4 to Preclude Plaintiffs from Presenting Evidence that Proximity Sensors were a Safer Alternative Design. Court informed parties an order will be issued. Defendant's Motion i Limine No. 5 to Exclude any Claims of Defect Based on S-1 Gard Motion in Limine. Court informed parties an order will be issued. Defendant's Motion in Limine No. 6 to Exclude Reference to New Flyer Industries ((NFI Group). Court informed parties an order will be issued. Defendant's Motion in Limine No. 7 to Exclude any Claims that the Subject Motor Coach was Defective Based on Alleged Dangerous "Air Blasts." Court informed parties an order will be issued. Defendant's Motion in Limine No. 8 to Exclude any Reference to Seatbelts. Court informed parties an order will be issued. Defendant's Motion in Limine No. 9 to Exclude Reference to the Ghost Bike Memorial. Court informed parties an order will be issued. Defendant's Motion in Limine No. 10 to Exclude Speculation as to Decedent's Thoughts about the Motor Coach. Court informed parties an order will be issued. Defendant's Motion in Limine No. 11 to Exclude Plaintiff's Expert Witness David Roger. Court informed parties an order will be issued. Defendant's Motion in Limine No. 12 to Exclude Reference to the Cost of the S-1 Gard of Proximity Sensors. Court informed parties an order will be issued. Defendant's Motion in Limine No. 13 to Exclude Plaintiff's Expert Witness Robert Cunitz, Ph.D. or in the Alternative, to Limit his Testimony. Court informed parties an order will be issued. Defendant's Motion in Limine No. 14 to Exclude Articles Regarding or Reference to Transit Buses. Court informed parties an order will be issued. Defendant's Motion in Limine No. 15 to Exclude Opinion Testimony from LV Witnesses on Causation and Engineering Principles. Court informed parties an order will be issued. Defendant's Motion in Limine No. 16 to Exclude Opinions by Plaintiff's Expert Dipak Panigrahy. Court informed parties an order will be issued. Defendant's Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes. Court informed parties an order will be issued.;

02/06/2018



Minute Order (3:00 PM) (Judicial Officer: Escobar, Adriana)

Decision Made;

Journal Entry Details:

Defendant Motor Coach Industries, Inc. filed an objection to media request on January 31, 2018, in light of the impending trial and the media request and order filed on January 10,

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2018 from Courtroom View Network. Under Supreme Court Rule 230(2), a court considering whether to allow electronic coverage of a trial shall consider several factors. Defendant has asserted that the media request should be denied in consideration of these factors, as the coverage will impact Defendant's right to a fair trial, will impact the Defendant's right of privacy over confidential information, and will likely distract trial participants. The Court notes there is a presumption that court documents be open to the public, but in some cases a significant competing interest may outweigh the public right to access. *Howard v. State*, 128 Nev. 736, 291 P.3d 137, 139 (2012). Here the Court finds that none of Defendant's claimed prejudices is sufficient to close the courtroom to public access. The Court has limited media access to one camera at a time, so the Court finds there is minimal risk of distracting jurors or witnesses. Further, the Court finds there is little practical danger of jurors viewing pre-trial announcements of the intention to televise the trial, much less any likelihood that viewing such announcements alone would impute sufficient knowledge that a juror should be disqualified, as the trial will not be broadcast by any major media source. Finally, to the extent that the trial will involve confidential information that is subject to a stipulated protective order, the Court finds that concerns of avoiding dissemination of this information is not sufficiently significant to outweigh the presumption of public access. ;

02/07/2018



Minute Order (1:45 PM) (Judicial Officer: Escobar, Adriana)

Plaintiff's Motion in Limine #10

Granted in Part;

Journal Entry Details:

This Court previously ruled on the parties motions in limine, but deferred ruling on Plaintiff's motion in limine #10 (to pre-admit funeral video and funeral slide show), requesting Plaintiff's to submit the specific videos which Plaintiff's desire to use at trial. Plaintiff's counsel submitted a CD-Rom to chambers and opposing counsel on February 6, 2018, containing four proposed videos that Plaintiff's seek to pre-admit. The Court received no further objection or opposition from Defendant beyond the opposition to Plaintiff's motion in limine #10. After reviewing the proposed videos, the Court GRANTS Plaintiff's motion in limine #10 as to the fourth file, titled Kayvan Memorial Aria Speech, which lasts four minutes and twenty-nine seconds, and which shows Aria Khiabani's speech at his father's funeral. The Court finds this video is a fair depiction of the grief and sorrow felt by the two minor Plaintiff's, Aria and Keon, due to the loss of their father, and thus is relevant to prove the damages that Plaintiff's would be able to recover on their wrongful death claim. The Court further finds that the probative value of this testimony is not substantially outweighed by the danger of unfair prejudice, confusion of issues, or misleading the jury. Although Aria and Keon may testify at trial, the video depicts the Plaintiff's grief and sorrow experienced soon after their father's death, and is sufficiently short that the probative value is not substantially outweighed by considerations of waste of time and presentation of cumulative evidence. The Court DENIES Plaintiff's motion in limine #10 as to the other three offered videos. First, the slideshow from Katy Brain's funeral and Aria's speech from Katy's funeral are depictions of the value of Katy Brain's life and the impact of her death on Aria, but these issues are not relevant to the claims at issue, considering the Court dismissed the cause of action for wrongful death of Katy Brain. The remaining video, of the slideshow showed at Kayvan Khiabani's funeral, will not be pre-admitted. The Court finds that some photographs in the slideshow may have probative value of proving the loss of companionship, society, comfort, and consortium felt by the decedent's heirs, however because the slideshow is over sixteen minutes long and shows the value of Kayvan Khiabani's life in general, including his own positive experiences in travel and other activities, to the extent the slideshow is slightly probative of any of these categories, the Court finds any probative value of the slideshow as a whole is substantially outweighed by danger of unfair prejudice, confusion of issues, and undue delay, especially considering the wrongful death statute does not allow recovery based on the quality of the decedent's life generally. If Plaintiff's seek to utilize individual photographs at trial, the Court will entertain requests on an individual basis, but the slideshow video will not be pre-admitted. ;

02/09/2018



Status Check: Trial Readiness (2:00 PM) (Judicial Officer: Escobar, Adriana)

Matter Heard;

Journal Entry Details:

Colloquy regarding jury selection and scheduling for the upcoming jury trial. The Court informed counsel that an order will be issued regarding jury selection regarding the order of seating and the alternates. Additionally, the Court directed counsel to provide a list of any jury instructions they have stipulated to.;

02/12/2018



Minute Order (7:00 AM) (Judicial Officer: Escobar, Adriana)

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CASE NO. A-17-755977-C

Jury Selection - A755977

Matter Heard;

Journal Entry Details:

The parties appeared before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on February 9, 2018, for a status check on trial readiness. Counsel asked the Court whether the parties would be allowed more than one peremptory challenge in light of the agreement to utilize five alternate jurors. The Court will not allow more than five peremptory challenges per side four which can be used only for potential regular jurors (seats 1 through 16), and one of which can be used only for a potential alternate jurors (seats 17, 18, 19, 20, 21, 22, or 23). If a party does not use all four regular juror challenges, that party may not use one of those challenges as a second alternate juror challenge, and the unused challenge will be waived. CLERK'S NOTE: Parties notified via e-mail.;

02/12/2018



Jury Trial - FIRM (9:30 AM) (Judicial Officer: Escobar, Adriana)

Trial Continues;

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE JURY. Counsel stipulated to waive the reading of potential witnesses to the jurors as they were listed in the jury questionnaire. Exclusionary rule invoked, however counsel stipulated that expert witnesses may remain in court. IN THE PRESENCE OF THE JURY. Roll of jurors called by the clerk. Counsel stipulated to the presence of the jury. OUTSIDE THE PRESENCE OF THE JURY. The Court reminded counsel to keep voir dire relevant and not to use one juror to educate the others. IN THE PRESENCE OF THE JURY. Jury selection. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding jury selection. Evening recess. MATTER CONTINUED.;

02/13/2018



Jury Trial - FIRM (0:00 AM) (Judicial Officer: Escobar, Adriana)

Trial Continues;

Journal Entry Details:

Michael Terry present for Motor Coach Industries. Roll of jurors called. Counsel stipulated to the presence of the jury. Jury selection. Evening recess. MATTER CONTINUED.;

02/14/2018



Jury Trial - FIRM (9:30 AM) (Judicial Officer: Escobar, Adriana)

Trial Continues;

Journal Entry Details:

Michael Terry present for Motor Coach Industries. Roll of jurs called. Voir dire/jury selection commenced. Evening recess. MATTER CONTINUED.;

02/15/2018



Jury Trial - FIRM (1:00 PM) (Judicial Officer: Escobar, Adriana)

Trial Continues;

Journal Entry Details:

Michael Terry present for Motor Coach Industries. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding jury selection. IN THE PRESENCE OF THE JURY. Roll of jurors called. Jury selection. Evening recess. MATTER CONTINUED.;

02/16/2018



Jury Trial - FIRM (9:30 AM) (Judicial Officer: Escobar, Adriana)

02/16/2018, 02/20/2018-02/23/2018, 02/26/2018-03/02/2018, 03/05/2018, 03/07/2018-03/08/2018, 03/12/2018-03/16/2018, 03/19/2018-03/23/2018

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

CASE NO. A-17-755977-C

[illegible]

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[illegible]

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[illegible]

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Verdict;

Journal Entry Details:

Michael Terry, Esq., out of state Counsel, also present on behalf of Defendant Motor Coach Industries, Inc. OUTSIDE THE PRESENCE OF THE JURY. Court noted it reviewed its rulings on the motion in limine as it applies to the depositions at issue. Colloquy regarding scheduling settling of jury instructions. Court further noted its comments under the 403 analysis and advised it received trial briefs from Plaintiff and Court noted nothing received from Defense who advised they would file a brief this weekend. Arguments by Ms. Works as to why the issue needs to be decided today. Court stated it would take him outside the presence of the jury. Mr. Kemp and Mr. Terry stipulated to the admittance of Exhibits 263 and 264. JURY PRESENT. Continued testimony and exhibits presented. (See worksheet.) OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding Dr. Smith's report regarding criticism of Dr. Stokes. Colloquy regarding witness scheduling and settling jury instructions. Court recessed for the evening. CONTINUED TO: 3/19/18 9:30 AM;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

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Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict;

Journal Entry Details:

Court Clerk Denise Husted present. Michael Terry present for Motor Coach Industries. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. Court Clerk Katherine Streuber present: Michael Terry Esq, Pro Hac Vice present on behalf of Defendant Motor Coach Industries Inc. CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. OUTSIDE THE PRESENCE OF THE JURY. Court noted examination and cross examination cannot be cumulative although there are two Plaintiffs with different counsel. Arguments by counsel regarding constitutional right and ethical rules. Court advised it will look into the matter and make a determination. Mr. Kemp argued defense had a "shadow jury" watching the trial and noted a shadow juror had spoken with an actual juror in this trial. Statement by the Court. Court Marshal advised Juror had actually approached the shadow juror in the restroom and asked "How their day was going." Argument by Mr. Barger stating they do not know who the shadow jurors are, advised they do hire an independent company who controls the shadow jurors, believed they would have been instructed not to speak with any trial jurors and assured the Court and counsel they would contact the company to have the shadow jury removed. Court believed the discussion between the actual juror and shadow juror did not rise to the level of a mistrial and cautioned there would be sanctions imposed for any rule infractions. Court then advised it would do research and make a ruling in regards to examination and cross examination when there are more than one client with separate counsel. JURY PRESENT. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. COURT ORDERED, matter CONTINUED. 03-16-18 9:30 AM TRIAL BY JURY;

Trial Continues;

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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;

CASE NO. A-17-755977-C

Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding

CASE SUMMARY

CASE No. A-17-755977-C

jury view of the bus. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding the video deposition of Katy Brain. Evening recess. MATTER CONTINUED.;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

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Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict;

Journal Entry Details:

Court Clerk, Denise Husted present. Michael Terry, representing Motor Coach Industries also present. IN THE PRESENCE OF THE JURY: Testimony and exhibits presented per worksheet. Court Clerk, Louisa Garcia present. OUTSIDE THE PRESENCE OF THE JURY: Arguments by counsel regarding video clips of David Dorr and Mr. Pears. JURY PRESENT: Plaintiffs called witness David Dorr through video deposition. (See worksheet). COURT ORDERED, TRIAL CONTINUED. CONTINUED TO 3/8/18 1:00 P.M.;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

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Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict;

Journal Entry Details:

Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding exhibits numbered next in order. Mr. Terry stated objections regarding certain questions being asked of Plaintiff's witness Joshua Cohen. Mr. Kemp advised he wants to show pictures with Mr. Cohen rather than Dr. Stalnecker. COURT ORDERED, objection is SUSTAINED;

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foundation must be laid in questioning the doctor. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

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Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict;

Journal Entry Details:

Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Mr. Kemp stated objections to exhibits 508, 509 & 510. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

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Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict;

Journal Entry Details:

Michael Terry, Esq. appearing for Motor Coach Industries. OUTSIDE THE PRESENCE OF THE JURY. Upon Court's inquiry, Mr. Pepperman stated he relied on the fact that Mr. Lamont is in Canada and couldn't be subpoenaed to appear. Colloquy regard deposition testimony. IN THE PRESENCE OF THE JURY. Roll of jurors called by the Clerk. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Mr. Roberts questioned witness Larry Stokes regarding testimony pertaining to issues concerning taxes. Mr. Henriod asked to clarify the questions he could ask with the upcoming witness. Statement by Mr. Kemp. The Court advised that questioning has to

CASE SUMMARY

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be consistent with previous ruling regarding not discussing any parties involved in the litigation. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

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Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict;

Journal Entry Details:

Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding witness depositions and agreement regarding line by line testimony to be allowed. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

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Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict;

Journal Entry Details:

Michael Terry present for Motor Coach Industries. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Mr. Kemp stated opposition to Mr. Robert's questioning of witness Mary Witherell. He argued that the questions asked violated Motion in Limine #1, and the Court's previous ruling. Mr. Lee advised the photograph used was taken from the Plaintiff's exhibits and that he didn't feel he violated the Court's ruling. Following further

CASE SUMMARY

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arguments by counsel, the Court advised that a curative statement will be given to the jury. *IN THE PRESENCE OF THE JURY.* Testimony and exhibits presented per worksheet. *OUTSIDE THE PRESENCE OF THE JURY.* Colloquy regarding scheduling of witnesses. Evening recess. *MATTER CONTINUED.*;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

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Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict;

Journal Entry Details:

9:30 AM - Court Clerk Denise Husted present. *OUTSIDE THE PRESENCE OF THE JURY.* Mr. Kemp moved to admit selected Plaintiff's exhibits (see worksheet). There being no opposition, *COURT ORDERED*, exhibits are admitted. Mr. Barger noted that Plaintiff's exhibit #126 was previously admitted, but requested that his objection to that admission be noted on the record. Court so noted. *IN THE PRESENCE OF THE JURY.* Roll of jurors called by the Clerk. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. *OUTSIDE THE PRESENCE OF THE JURY.* Colloquy regarding the designated deposition selection of Mr. Hoogestraat discussed on the record. Court stated its findings and informed counsel a minute order regarding this issue is forthcoming. *IN THE PRESENCE OF THE JURY.* Testimony and exhibits presented per worksheet. 4:00 PM - Court Clerk Phyllis Irby present. Testimony and exhibits presented (see worksheet). Jury questions asked and answered. The Court thanked and recessed the jury for the evening. *OUTSIDE THE PRESENCE OF THE JURY.* Colloquy between the Court and counsel regarding pre-trial Motions in Limine. Mr. Pepperman requested to have Plaintiff's witness give testimony via video conference. *COURT ORDERED, TRIAL CONTINUED.* *CLERK'S NOTE:* Court's ruling regarding deposition of Mr. Hoogestraat is as follows: After hearing the oral argument of counsel and upon further consideration, the Court has determined that the designated deposition selections between 34:24 and 44:21 are all admissible. Because Mr. Hoogestraat was designated as Defendant's person most knowledgeable on hazard identification and reduction/mitigation/elimination on MCI buses, Mr. Hoogestraat's testimony on the existence of air displacement around a coach bus is within the scope of his 30(b)(6) testimony. Further, the Court finds Mr. Hoogestraat may be designated as managing-speaking agent for Defendant in regard to these statements, and no other reason not to admit the testimony has been presented. Thus, in addition to those noted during the hearing, Plaintiff will be permitted to present the video testimony of the following lines: 35:3-24, 36:15-25, 37:1-20, 38:8-25, 39:1-15, 40:18-25, 41:1-25, 42:1-8 and 44:9-21. dh 2/27/18 ;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

CASE NO. A-17-755977-C

[illegible]

CASE NO. A-17-755977-C

Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;

CASE NO. A-17-755977-C

OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding jury selection. IN THE PRESENCE OF THE JURY. Jury selection continued. Evening recess. MATTER CONTINUED.;

Denied; Defendant Motor Coach Ind. Objection to Special Master Order Staying Post-Trial Discovery Including 5/2/18 Depo of the Custodian of Records of the Board of Regents NSHE and Alternatively, Motion for Limited Post-Trial Discovery on OST

CASE SUMMARY

CASE NO. A-17-755977-C

Journal Entry Details:

Mr. Henriod stated there is a Motion to Seal and under the circumstances of this hearing, he feels that it should be granted. Mr. Kemp concurred. COURT ORDERED, the motion is GRANTED. Arguments by Mr. Henriod in support of the Objection to Special Master's Order Staying Post-Trial Discovery and Motion for Limited Post-Trial Discovery. He stated that recent revelations by the news media undermine the integrity of the judgment. He further advised that the required information would not have been identified by forwarding the releases. Mr. Kemp argued that the releases were signed and executed on 7/26/17. The release for the employment file was not forwarded by the defense and is the same discovery they are now seeking. He further argued that the post judgment discovery standard is exceedingly high and has not been met. The Court STATED ITS FINDINGS, and ORDERED, motion is DENIED. FURTHER, the subpoena is QUASHED and no post judgment discovery will be allowed. The Court informed parties that an order/minute order will follow with full findings.;

05/23/2018



Minute Order (7:00 AM) (Judicial Officer: Escobar, Adriana)

Motion to Seal

Granted;

Journal Entry Details:

Defendant Motor Coach Industries filed the following motions to seal: (1) Motion to seal Motor Coach Industries, Inc. s objections to special master order staying post-trial discovery including May 2, 2018 deposition of the custodian of records of the board of regents NSHE, and alternatively, motion for limited post-trial discovery; (2) Motion to seal and redact Motor Coach Industries, Inc s motion to alter or amend judgment to offset settlement proceeds paid by other defendants and accompanying exhibits, particular motions and exhibits; and (3) Motion to seal and redact Motor Coach Industries, Inc. s motion for new trial and accompanying exhibits G-L and O. The matter was subsequently discussed at the hearing on Defendant s objection to special master order and motion for limited post-trial discovery. Plaintiffs have not filed an opposition and indicated at the hearing that they were in agreement with Defendant s suggested sealing and redactions. First, the Court agrees that Defendant s objection to special master order and motion for post-trial discovery contains unconfirmed and scandalous assertions which bear directly on the character of the deceased. The Court finds that the Plaintiffs compelling privacy interests outweigh the presumption that court documents be open to the public. However, under SRCR 3(4)(b), this Court has a duty to protect the Plaintiffs interest by reasonable redaction, rather than outright sealing, when possible, and the Court finds that reasonable redaction is possible here to protect Plaintiffs privacy. The Court therefore GRANTS the first motion, in that Defendants must file a redacted version of the motion, redacting pages 5 8, all of page 9 except lines 7 20, all of page 10 except lines 3 13, all of page 11 except lines 4 20, all of page 12 except lines 22 26, all of page 13 except lines 1 2, page 14, and lines 1 5 of page 15, and omitting all attached exhibits. Additionally, the hearing on this motion is to be sealed for the same reasons. The unredacted version of the motion with all exhibits and the hearing must remain under seal until June 1, 2028. Second, the Court agrees that the motion to alter or amend judgment contains settlement terms that are confidential by agreement of the parties, that the settling defendants have a compelling interest in maintaining the confidentiality of these terms which outweighs the presumption that court documents be open to the public, and that the redacted version of the motion filed on May 7, 2018 is reasonably redacted to balance both the interests of the Defendants and the public. The Court therefore GRANTS the second motion to seal, and orders that the sealed version of the motion to alter or amend judgment, filed on May 8, 2018, remain under seal until June 1, 2028. Third, the Court agrees that Defendant s motion for a limited new trial contains the same unconfirmed and scandalous assertions which bear directly on the character of the deceased as are present in the Defendant s objection to the special master order and motion for post-trial discovery. The Court finds that the Plaintiffs compelling privacy interests outweigh the presumption that court documents be open to the public, and that reasonable redaction is possible to protect Plaintiffs privacy. The Court further finds the redacted version of the motion filed by Defendant on May 7, 2018 and the accompanying appendix omitting exhibits G L and O are reasonably redacted to balance both the interests of the Plaintiffs and the public. The Court therefore GRANTS the third motion to seal, and orders that the sealed version of the motion for a limited new trial and accompanying appendix, both filed on May 8, 2018, remain under seal until June 1, 2028. Defendant is directed to prepare a proposed order and to circulate it to opposing counsel for approval as to form and content before submitting it to chambers for signature. CLERK'S NOTE: Counsel notified via e-mail. Joel Henriod (JHenriod@LRRC.com);

07/06/2018

Motion to Retax (10:30 AM) (Judicial Officer: Escobar, Adriana)

Defendant's Motion to Retax Costs

CASE SUMMARY

CASE NO. A-17-755977-C


Matter Heard;

07/06/2018 **CANCELED Motion to Seal/Redact Records** (10:30 AM) (Judicial Officer: Escobar, Adriana)
Vacated - Moot

Motion to Seal "Motor Coach Industries, Inc's Objections to 'Special Master Order Staying Post-Trial Discovery Including May 2, 2018 Deposition of Custodian of Records of the Board of Regents NSHE,' and Alternatively, Motion for Limited Post-Trial Discovery"

07/06/2018 **CANCELED Motion to Seal/Redact Records** (10:30 AM) (Judicial Officer: Escobar, Adriana)
Vacated - Moot

Motion to Seal and Redact "Motor Coach Industries Inc's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendant's" and Accompanying Exhibits

07/06/2018  **Motion to Amend** (10:30 AM) (Judicial Officer: Escobar, Adriana)

07/06/2018, 09/25/2018

Motor Coach Industries, Inc's Motion to Alter or Amend Judgment to Offset Settlement Proceedings Paid By Other Defendants

Matter Continued;

Denied;

Journal Entry Details:

*Following arguments, opposition and reply, COURT ORDERED, an order will be issued. Defendant s Motion to Alter or Amend Judgment to Offset Settlement Proceeds paid by other defendants came on for a hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on September 25, 2018. After considering the moving papers and argument of counsel, the Court DENIES Defendants motion. In this matter, the Plaintiffs settled with Defendants Michelangelo Leasing Inc, Edward Hubbard, Bell Sports Inc., and SevenPlus Bicycles Inc. for a total settlement of \$5,110,000.00. Plaintiffs and the remaining defendant, Motor Coach Industries (MCI), proceeded to trial. The jury awarded \$18,746,003.62 in favor of the Plaintiffs. Defendant MCI moved to offset the jury award by the settlement proceeds pursuant to NRS 17.245(1)(a). Specifically, it asked the court to reduce the jury award (\$18,746,003.62) by the total settlement proceeds (\$5,110,000.00) for a total reduced judgment resulting in \$13,636,003.62. Under NRS 17.245(1)(a), when a release ... is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death...it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant... However, MCI is not entitled to an offset under NRS 17.245 because defendants that are liable for strict products liability, such as MCI, have no right to contribution from any other defendants. Norton v. Fergstrom, 2001 WK 1628302 *5 (Nev. Nov. 9, 2001); see also Andrews v. Harley Davidson, 106 Nev. 533, 537-38, 796 P.2d 1092, 1094 (1990); Central Telephone Co. v. Fixtures Mfg., 103 Nev. 298, 299, 738 P.2d 510, 511 (1987); NRS 17.225, NRS 41.141. While the Court understands that Norton is unpublished and cannot be used as precedent because it was decided prior to 2016, the Court finds its rationale persuasive and agrees with the Nevada Supreme Court s rationale. Moreover, this case was decided in 2001, after NRS 17.245 was enacted in 1973 and amended in 1997. Additionally, NRS 41.141 was enacted in 1973, and amended in 1979, 1987, and 1989, which also precedes the Court s decision in Norton. Contributory negligence is not a defense in strict products liability. Andrews v. Harley Davidson, 796 P.2d 1092 (Nev. 1990). Moreover, because contributory negligence is not a defense in products liability, MCI is not entitled to contribution. Id. Here, MCI has no right to contribution from the settling Defendants because plaintiff s judgment against MCI is based on strict products liability failure to warn and strict products liability has no right to contribution. To the extent that MCI would have otherwise been able to assert contribution claims against the settling defendants, those claims would have necessarily been premised on contributory negligence. But, because contributory negligence is not a defense to a strict products liability claim, MCI has no right to receive contribution from the settling defendants. Moreover, NRS 17.245 applies to joint tortfeasors but is silent concerning an offset for defendants found liable in strict products liability. But, it follows logically, that similar to NRS 17.255, which bars intentional tortfeasors from contribution, a defendant found liable in strict products liability would also be barred from receiving contribution from the other defendants. Unlike other products liability cases where defendants receive offsets, here, none of the other defendants in this case acted in concert with MCI in manufacturing the coach. MCI also argues it is entitled to an offset under NRS 41.141. Pursuant to NRS 41.141, defendants are responsible for 100% of plaintiff s injuries if their liability arises from a claim based on strict liability, an intentional tort, or any of the other enumerated categories. Caf Moda v. Palma, 272 P.3d 137 (Nev. 2012). However, MCI is not entitled to an offset under NRS 41.141. The jury found against MCI based on strict liability failure to warn. Any alleged fault of the settling defendants had nothing to do with this failure*

CASE SUMMARY

CASE NO. A-17-755977-C

to warn. Thus, MCI is not entitled to apportion any percentage of its responsibility to the settling defendants. Plaintiffs analogized this matter to *Evans v. Dean Witter Reynolds, Inc.*, 5 P.3d 1043 (Nev. 2000). In *Evans*, the Court enforced the principle that although offsets are typically allowed in a case that involves joint tortfeasors, there is a carve out for intentional torts. Intentional tortfeasors may not apply credits from settlements by their joint tortfeasors in reduction of judgments against them arising from their intentional misconduct. *Id.* Moreover, equitable offsets are based on a right to contribution and intentional tortfeasors have no right to contribution under NRS 17.255. *Id.* Similarly here, just like the intentional tortfeasors in *Evans*, MCI has no right to contribution from the settling defendants. As in *Evans*, MCI has no right to receive contribution from the settling dependents either directly through a contribution claim or indirectly through a post-judgment offset. MCI was never entitled to seek contribution or indemnity from any other tortfeasors. NRS 17.245 cannot and did not bar MCI from pursuing contribution claims that never existed in the first place; and MCI is not entitled to indirectly receive a nonexistent right to contribution under the guise of an offset. MCI also asserts that Plaintiffs will receive a double recovery if no offset is granted. However, for the foregoing reasons, an offset is not permissible, thus no double recovery will occur. Finally, MCI argues that Plaintiffs are judicially estopped from asserting that the defendant has no right to offset. Plaintiff's motion for good faith settlement stated: Indeed, the proposed settlement is favorable to any remaining defendants. Plaintiffs remaining claims will be reduced by the settlement amounts contributed by Michelangelo and Hubbard. NRS 17.245(1) (a). As set forth above, the remaining defendants will receive a contribution toward any future judgment entered against them. When considering a claim of judicial estoppel, Nevada's courts look for the following five elements: (1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake. *Matter of Frei Irrevocable Tr.* Dated Oct. 29, 1996, 133 Nev. 8, 390 P.3d 646, 652 (2017). All five elements are necessary to sustain a finding of judicial estoppel. *Id.* Here, element three is not be met. The plaintiff did not successfully assert their prior position because the Court granted the motion for good faith settlement based on Plaintiff's assertion that the non-settling defendants will receive an offset. When conducting the analysis of Plaintiff's good faith settlement, the Court considered the relative liability of the defendants and determined that the settlement amount was proper. The Court did not adopt the plaintiff's argument that the non-settling defendant would be entitled to an offset. Further, the jury verdict was based on failure to warn, which has absolutely no bearing on the plaintiffs claim against the other defendants. The settling defendants. Now, considering the jury verdict, it appears that the settling defendants might have paid even more than their fair share of the liability. Collectively, the defendants settled for \$5,110,000.00 which constitutes almost 30% of the total award in this matter. When looking at the potential liability of all defendants, the Court finds that MCI was responsible for a large majority of the damages. Thus, judicial estoppel does not apply here. Counsel for Plaintiff is directed to prepare a proposed order including detailed findings of fact and conclusions of law, which is to be approved by opposing counsel as to form and content prior to submitting the order to chambers in Microsoft word format, by email to dept14lc@clarkcountycourts.us and PowellD@clarkcountycourts.us.
CLERK'S NOTE: Minute order modified on 2/21/19. sdh;

Matter Continued;
Denied;

- | | |
|------------|---|
| 07/06/2018 | CANCELED Motion to Seal/Redact Records (10:30 AM) (Judicial Officer: Escobar, Adriana) <i>Vacated - Moot</i> <i>Motion to Seal and Redact "Motor Coach Industries Inc's Motion for New Trial and Accompanying Exhibits G-6 and O"</i> |
| 07/06/2018 | Motion for Judgment (10:30 AM) (Judicial Officer: Escobar, Adriana) <i>Motor Coach Industries Inc's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim</i> Matter Heard; |
| 07/06/2018 | Motion (10:30 AM) (Judicial Officer: Escobar, Adriana) <i>Motor Coach Industries Inc's Motion for a Limited New Trial</i> Matter Heard; |
| 07/06/2018 | Motion to Strike (10:30 AM) (Judicial Officer: Escobar, Adriana) <i>Motor Coach Industries, Inc.'s (MCI) Motion to Strike Plaintiffs' "Combined Opposition to Motion for a Limited New Trial, and MCI's Renewed Motion for Judgment as a Matter of Law"</i> |

CASE SUMMARY

CASE NO. A-17-755977-C

Regarding Failure to Warn Claim", and Opposition to Untimely Motion to Exceed Page Limited on OST
Matter Heard;

07/06/2018

Motion to Strike (10:30 AM) (Judicial Officer: Escobar, Adriana)

Motor Coach Industries, Inc.'s Motion to Strike Plaintiffs' "Combined Opposition to Motion for a Limited New Trial and MCI's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim" and Opposition to Untimely Motion to Exceed Page Limit and Request for Order Shortening Time
Matter Heard;

07/06/2018



All Pending Motions (10:30 AM) (Judicial Officer: Escobar, Adriana)

Matter Heard;

Journal Entry Details:

Mr. Kemp stated parties have agreed to submit three of the motions now without oral argument, Motor Coach Industries Inc's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim, Motor Coach Industries Inc's Motion for a Limited New Trial, and Defendant's Motion to Retax Costs; as to Motor Coach Industries Inc's Motion to Alter or Amend Judgment to Offset Settlement Proceedings Paid By Other Defendants, it should be put off until after the projected funding date. Upon inquiry by the Court regarding the motions to strike, counsel stated those could be submitted too. COURT ORDERED, Motor Coach Industries Inc's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim, Motor Coach Industries Inc's Motion for a Limited New Trial, Defendant's Motion to Retax Costs, Motor Coach Industries, Inc.'s (MCI) Motion to Strike Plaintiffs' "Combined Opposition to Motion for a Limited New Trial, and MCI's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim", and Opposition to Untimely Motion to Exceed Page Limited on OST, and Motor Coach Industries, Inc.'s Motion to Strike Plaintiffs' "Combined Opposition to Motion for a Limited New Trial and MCI's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim" and Opposition to Untimely Motion to Exceed Page Limit and Request for Order Shortening Time TAKEN UNDER ADVISEMENT; Motor Coach Industries Inc's Motion to Alter or Amend Judgment to Offset Settlement Proceedings Paid By Other Defendants CONTINUED. Motor Coach Industries Inc's Motion to Alter or Amend Judgment to Offset Settlement Proceedings Paid By Other Defendant's CONTINUED TO 8/28/2018 10:30 AM;

07/31/2018

CANCELED Motion (9:30 AM) (Judicial Officer: Escobar, Adriana)

Vacated - Moot

Plaintiffs Motion to Exceed Page Limit as to Combined Opposition to Motion for Limited New Trial and MCI s Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim

08/09/2018

CANCELED Motion to Seal/Redact Records (9:30 AM) (Judicial Officer: Escobar, Adriana)

Vacated - Moot

Defendant's Motion to Seal and Redact "Reply In Support of Motion for a Limited New Trial"

08/09/2018

CANCELED Motion to Seal/Redact Records (9:30 AM) (Judicial Officer: Escobar, Adriana)

Vacated - Moot

Defendant's Motion to Seal and Redact "Motor Coach Industries, Inc.'s Reply In Support of Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants"

08/27/2018



Minute Order (8:00 AM) (Judicial Officer: Escobar, Adriana)

Granted in Part; Defendant MCI's Motion to Retax Costs, Motion to Alter or Amend Judgment to Offset Settlement Proceeds, Motion for Limited New Trial, Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim, Motion to Strike Plaintiffs' Combined Opposition...Plaintiffs' Motion to Exceed Page Limit as to Combined Opposition
Journal Entry Details:

Defendant MCI s motion to retax costs, motion to alter or amend judgment to offset settlement proceeds, motion for limited new trial, renewed motion for judgment as a matter of law regarding failure to warn claim, and motion to strike Plaintiffs combined opposition, as well as Plaintiffs motion to exceed page limit as to combined opposition came on for a hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on July 6, 2018. Upon the stipulation of counsel, all motions were submitted on the briefs without oral argument except for Defendant s motion to alter or amend judgment, which

CASE SUMMARY**CASE NO. A-17-755977-C**

was continued to August 28, 2018, at 10:30 AM. Therefore, after considering the briefs of the parties, the Court holds as follows: A. Motion to strike combined opposition and Plaintiffs motion to exceed page limit First, the Court GRANTS Plaintiffs motion to exceed page limit as to combined opposition and DENIES Defendant s motion to strike Plaintiffs combined opposition. The Court notes that Plaintiffs combined opposition contains one facts section with separate arguments and conclusions responding to two motions (Defendant s motion for limited new trial and Defendant s renewed motion for judgment as a matter of law), that the combined opposition is fifty three pages long, and that Plaintiffs did seek leave of court to file a brief in excess of thirty pages, albeit after the brief was already filed. Considering the complexity of this case and the legal arguments presented by Defendant s motions, as well as the significant factual overlap of these two particular motions, the Court finds an opposition in excess of thirty pages is warranted. The proper procedure would have been for the Plaintiffs to seek leave of court before filing the over-long opposition, or at least to include a motion to exceed page limit at the beginning of the opposition. However, the Court finds Defendant suffered little prejudice from the untimely motion or from Plaintiffs filing their oppositions together so as not to repeat eight pages of facts, and thus the Court will not impose the grave penalty of striking the opposition. B. Renewed motion for judgment as a matter of law The Court DENIES Defendant s renewed motion for judgment as a matter of law regarding failure to warn claim. Defendant first argues that Plaintiffs failed to prove causation on this theory because the facts showed that Dr. Khiabani suddenly appeared in Mr. Hubbard s peripheral vision, and the accident happened too quickly for a reasonable jury to find that Mr. Hubbard could have avoided the accident. This argument ignores the full facts as presented in the Plaintiffs case-in-chief, specifically the testimony of Mr. Hubbard that he observed the bicycle while both Dr. Khiabani and the coach were on Charleston, and saw the bicycle turn onto Pavilion Center before Mr. Hubbard turned the coach onto Pavilion Center. Thus, although Mr. Hubbard testified that he did not see Dr. Khiabani s bicycle for 450 feet before the accident, the split-second that the accident occurred was not the first time Mr. Hubbard was made aware of the bicycle s presence. Taking all inferences in Plaintiffs favor, Plaintiffs elicited sufficient evidence for a reasonable jury to find that, had Mr. Hubbard been adequately warned about the dangerous nature of the coach, he would have driven differently as early as when he turned onto Pavilion Center for example by driving in the left lane instead of the right lane, or by driving slower so as to not pass the bicycle and that this different action would have avoided the accident. Thus, the accident did not happen too quickly for a reasonable jury to find that a warning would have made a difference. The parties next dispute to what extent a plaintiff in a failure to warn claim must prove causation. Defendant argues that insufficient evidence of causation was presented by Hubbard s testimony that he absolutely heeds warnings he is given when he is trained about something relative to safety, because Plaintiffs needed to additionally prove that the accident would have been avoided by the user heeding the warning. Defendant cites to numerous other jurisdictions for this notion, and argues that it is further supported by the Nevada Supreme Court s Rivera v. Philip Morris, Inc. decision. This Court disagrees. It is undisputed that, under Rivera, the Plaintiffs bear the burden of producing evidence demonstrating that, among other things, the defect caused the injury. Rivera also held that the burden of proving causation can be satisfied in failure-to-warn cases by demonstrating that a different warning would have altered the way the plaintiff used the product or would have prompted plaintiff to take precautions to avoid the injury. Taking all inferences in Plaintiffs favor, the Court finds that Hubbard s testimony that he would have complied with a warning, combined with the facts listed above regarding Hubbard s perception of the events leading up to the accident, was sufficient to satisfy Plaintiffs burden of proving causation under Nevada law. Similarly, the Court disagrees with Defendant s suggestion that the open and obvious nature of the danger reinforces the conclusion that a warning would have been superfluous. Mot. at 10. Taking all inferences in Plaintiffs favor, the presence of testimony by Hubbard, Mary Witherell, and some of Defendant s own employees, that they were not aware of the significance of the air displacement created by the coach s design refutes Defendant s classification of the danger as open and obvious. Further, even if the evidence enabled this Court to find as a matter of law that Hubbard should have known generally of the risk of driving next to a bicyclist, which this Court has not done, no Nevada law holds that this would prevent a reasonable jury from finding that an adequate warning would have avoided the accident. Next, Defendant suggests that Plaintiffs duty to prove causation required Plaintiffs to craft an adequate warning. Failure-to-warn claims can be classified as one of two types: allegations that the warning given by the defendant was crafted in such a way to be ineffective in preventing the injury; or allegations that the product is dangerous enough that a warning should have been provided but the defendant did not provide any warning. In cases of the first variety, the jury must consider whether the warning was adequate under the factors provided in Lewis v. Sea Ray Boats, Inc., However, in the second category, the warning provided nothing could not possibly be considered adequate under the Sea Ray factors, and thus the only required findings are that the product was unreasonably dangerous and that an adequate warning would have avoided the injury. This case falls into the second category, where MCI

CASE SUMMARY

CASE NO. A-17-755977-C

undisputedly did not provide any warnings about any of the alleged defects which Plaintiffs alleged. In such a case, the Court finds no support for Defendant's assertion that no reasonable jury could find that the product was unreasonably dangerous and that an adequate warning would have avoided the injury without a specific warning being proposed by the plaintiff. While it is true that providing a model warning to show what the defendant could have done to make the product reasonably safe may be a helpful illustration for the plaintiff's case, it is not required for the jury to find in Plaintiffs favor. Cf. *Ford Motor Co. v. Trejo* (in a design defect claim, a plaintiff may choose to support their case with evidence that a safer alternative design was feasible at the time of manufacture.). Plaintiffs need not prove precisely how the facts would have been different had there been an adequate warning, as this would amount to speculation; Plaintiffs need only provide the facts sufficient to allow the jury to draw the conclusion that the presence of an adequate warning would have avoided the accident. As noted above, Plaintiffs did so here. In line with the above, the Court disagrees that the jury's verdict was consistent with judgment as a matter of law on causation, as the jury could have, and evidently did, find that the lack of an adequate warning caused the accident. The Court disagrees with Defendant's suggestion that the jury finding no liability on the defective design claim means when the jury was actually asked whether the allegedly defective design was the legal cause of damage, the jury concluded that it was not. In reality, the jury found no liability after being instructed that liability required both a design defect and causation, so a simple no answer does not necessarily mean the jury found causation to be lacking. Defendant next argues that, MCI was not required to make a coach that does not create air disturbance, and therefore MCI was not required to provide a warning at all. While the Court notes that this argument was not raised in MCI's NRCP 50(a) motion during trial, the argument misstates the question actually posed to the jury. The failure-to-warn claim does not ask whether the coach created an air disturbance, but rather whether the coach was unreasonably dangerous due to the air disturbance it created. Thus, regardless of whether MCI had a duty to minimize or remove any air disturbance from its product, there was sufficient evidence for the jury to find that any air disturbance created by the coach was unreasonably dangerous and that the injury could have been avoided by an adequate warning. Finally, Defendant argues that Nevada's wrongful-death statute requires proof of fault, while the nature of a strict liability claim does not require proving fault, and therefore that the elements of a wrongful death claim could not be satisfied by allegations founded in strict liability. The Court finds no support in Nevada case law for this notion, and indeed finds myriad wrongful death actions founded in strict liability, and thus the Court will not apply the law differently for this case. Moreover, Defendant's interpretation of the wrongful act or neglect language in NRS 41.085(2) would lead to an absurd result: A defendant who, by no intentional act or malice, creates an unreasonably dangerous product would still be held strictly liable if a user were merely injured, but would no longer be held accountable if the injuries were grave enough to end the user's life. C. Motion for limited new trial The Court DENIES Defendant's motion for limited new trial, as none of the arguments presented by Defendant exhibits an issue which materially affect[ed] the substantial rights of an aggrieved party. NRCP 59(a). First, Defendant argues that the jury was excused from considering causation of the failure to warn claim because the verdict form did not mention this step of the analysis, and instead allowed the jury to return a verdict in Plaintiffs favor solely by finding that Defendant failed to provide an adequate warning that would have been heeded. First, as noted above, the Court disagrees with Defendant's position that Plaintiff must prove that an adequate warning would have actually avoided the injury, or that the accident happened too quickly for a jury to find that an adequate warning could have avoided the accident. However, the Court also notes that the jury instructions sufficiently informed the jury on all findings required for the jury to return a verdict in Plaintiffs favor including causation and that this remedied any potential errors with the verdict form. Taking into consideration the totality of the jury instructions and the verdict form, the Court does not find that the absence of causation on the fifth question was prejudicial to Defendant. Finally, the Court finds no support for the notion that the special verdict form was required to include a finding for every element of every claim. Second, the Court does not agree that precluding evidence of NRS 484B.270, the statute requiring a motorist to maintain a three-foot distance from a bicyclist, constituted an error of law that warrants a new trial. The safety statute in its current form did not exist at the time the coach was sold, and the version of the statute that did exist at the time the coach was sold contained only a mandate that a motorist passing a bicyclist do so safely, which does not offer any support for Dr. Krauss's opinion that the law already required vehicles to maintain a certain distance from bicycles. Thus, the existence of the statute has no probative value as to why Defendant chose not to provide a warning with the coach. Further, the Court maintains that the JI 32, on nondelegation, was rightfully included due to evidence being presented at trial that at least one of Defendant's employees believed another entity would warn drivers about the danger of the coach. If JI 32 caused any prejudice to Defendant's case, the Court does not agree that it materially affected Defendant's substantial rights. Third, as noted in this Court's order denying Defendant's motion for post-trial discovery, the Court does not agree that any newly discovered evidence warrants a new

CASE SUMMARY

CASE NO. A-17-755977-C

trial. For the same reasons iterated in that order, the Court has not been convinced that the new evidence could not have been found with reasonable diligence, so NRCPC 59(a)(4) is not met here. The Court is also not convinced by Defendant's argument that the difficulty in discovering this evidence is exhibited by Plaintiffs' lack of knowledge, or that Defendant was entitled to rely on Plaintiffs' duty to disclose such information. NRCPC 16.1 requires a party to disclose the identity of individuals likely to have discoverable information, but it does not require a party to conduct discovery for the other parties. Here, it appears Plaintiffs disclosed Dr. Khiabani's employer, which was sufficient to satisfy Plaintiffs' duty under NRCPC 16.1; Plaintiffs were under no duty to actually discover any information from Dr. Khiabani's employer, just to enable Defendant to do so. As stated in the Court's prior order, Defendant had access to the new evidence had it simply attempted to get it. Moreover, even if the Court were to find that Plaintiffs lapsed on their discovery obligations, this Court does not find that such a finding would render the new evidence undiscoverable with due diligence, so a new trial is not warranted on these grounds. Fourth, the Court does not agree that it erred by precluding evidence of the impact of income taxes. While the Court recognizes the difference between damages for lost wages and damages for loss of probable support, Nevada law is clear that evidence of tax implications is not admissible in a wrongful death case. See, e.g. *Otis Elevator Co. v. Reid*, 101 Nev. 515 (1985). Defendant is correct that certain special circumstances allow jury instructions on tax consequences, but only when tax issues are discussed at trial. *Id.* Here, tax issues were not discussed at trial under the general rule that tax implications are not admissible, and thus there was no indication that the jury would consider tax implications. Therefore, *Otis Elevator Co. v. Reid*'s special circumstances exception does not apply, and Defendant's substantial rights were not materially affected. D. Motion to Retax The Court is unable to award costs under NRS 18.005 unless the prevailing party provides justifying documentation to demonstrate how such [claimed costs] were necessary to and incurred in the present action. *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352 (1998) and *Cadle Co. v. Woods & Erickson, LLP*, 345 P.3d 1049 (Nev. 2015). The Nevada Supreme Court will reverse an award of costs as an abuse of discretion if the party does not provide evidence, such as a declaration of counsel, that explains how the [costs] were necessary and incurred rather than simply telling the district court that the costs were reasonable and necessary. *Matter of DISH Network Derivative Litigation*, 133 Nev. Adv. Op. 16, 401 P.3d 1081 (2017). Here, Plaintiffs provided a detailed and verified memorandum of costs, over 1,300 pages of documentation including itemized lists and invoices, and a declaration of counsel in support of the memorandum of costs which discusses (1) the expert fees being sought; (2) reporter's fees for depositions and deposition transcripts; (3) online legal research; (4) trial support services; and (5) other necessary and unavoidable costs including photocopies, travel expenses for necessary fact and expert witness depositions, postage, witness fees, juror fees, process server fees, official court reporter fees, and run services for delivery of time sensitive documents and filing. Although the Court finds that Plaintiffs' opposition to Defendant's motion to retax provides some argument for why many costs were reasonable or necessary, and further that many of Plaintiffs' claimed costs appear reasonable and necessary based on the Court's own experience and knowledge of this case, binding case law precludes this Court from awarding costs for which Plaintiffs have not provided sufficient documentation. In light of the above, the Court GRANTS Defendant's motion to retax IN PART, as to the following items: 1. \$70.00 cost for a paralegal to file a subpoena. Paralegal time is not a cost of litigation under NRS 18.005, and is more appropriately categorized as legal fees. See, e.g. *Las Vegas Metropolitan Police Department v. Yeghiazarian*, 129 Nev. 760, 770 (2013) (concluding that reasonable attorney's fees includes charges for persons such as paralegals and law clerks). 2. \$22,553.75 for videography services and related expedite fees. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 3. \$5,075.00 for synchronized DVD costs. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 4. \$1,736.00 for rough drafts of depositions. NRS 18.005(2) provides for one copy of each deposition, but does not provide for rough drafts, and Plaintiffs have not shown in its declaration how this service was necessary. 5. \$3,450.00 for Live Note and Zoom connection fees. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation

CASE SUMMARY


CASE NO. A-17-755977-C

explaining how the costs were necessary. 7. \$100.00 for After 5 PM charges. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 8. \$185.00 for flash drives, apparently for depositions of expert witnesses. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 9. \$300.00 for video files for expert witnesses. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 10. \$1,385.40 for conference rooms for depositions of various witnesses. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 11. \$100.00 for read and sign fees. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 12. \$315.00 for equipment rental. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 13. \$100.00 for non-writing wait time for two witnesses. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 14. \$79.00 for parking for depositions. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 15. \$356.40 for food provided at depositions. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 16. \$1,050.00 for professional fees for Dr. Gavin. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 17. \$140.00 for duplicate service on Portia Hubbard. In examining the documents provided by Plaintiffs, it appears Ms. Hubbard was served with a subpoena on both on 8/26/2017 and on 10/1/2017, with no explanation for why the second subpoena was necessary. NRS 18.005(7) does not allow costs for service which the Court finds to be unnecessary. Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 18. \$35.00 for wait time of process server(s). This cost is not enumerated in NRS 18.005(7), and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 19. \$61.60 for faxes. While reasonable costs for telecopies are allowed under NRS 18.005(11), under *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352 (1998) and *Cadle Co. v. Woods & Erickson, LLP*, 345 P.3d 1049 (Nev. 2015), the documentation submitted is insufficient for the Court to find that the costs were reasonable or necessary, because Plaintiffs have provided no information stating what documents were faxed, and in most cases provide no information of who the fax was sent to. Further, Plaintiffs have offered no explanation for why certain faxes have a higher per-page cost than others. Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary or reasonable. 20. \$4,141.77 for scanning (internal and outside vendor). NRS 18.005 does not provide for costs of scanning, and Plaintiffs have not provided any information about how costs were incurred at all due to internal scanning, or how each scan was necessary. While the Court agrees that the DISH Network Court found the party in that case provided the district court with sufficient justifying documentation to support the award of costs for photocopying and scanning under

CASE SUMMARY**CASE NO. A-17-755977-C**

NRS 18.005(12), Plaintiffs here have provided no such documentation explaining the reasonableness or necessity of these costs. 21. \$39.00 for an unsubstantiated Las Vegas Metropolitan Police Department cost. Defendant's motion states that this cost appears to be either for a police report or for a subpoena, and Plaintiffs do not offer any opposition to this cost being retaxed. Moreover, while Plaintiffs provided documentation showing that these costs were incurred, these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 22. \$1,219.98 for hotels for trial witnesses. NRS 18.005(15) only includes travel and lodging incurred while conducting discovery, and while Plaintiffs provided documentation showing that these costs were incurred, the declaration of counsel only discusses the necessity of costs incurred in travel expenses for depositions. Plaintiffs thus provided no documentation explaining how the costs were necessary. 23. \$30,018.77 in legal research. As stated in DISH Network, the reasonable and necessary expenses for computerized services for legal research allowed in NRS 18.005 (17) pertain to costs incurred in the process of electronic discovery. The declaration of Plaintiffs counsel states that these costs were incurred to provide the Court with the most recent applicable caselaw on various points of dispute throughout pre-trial motions and during the course of trial... The argument contained in Plaintiffs opposition to the motion to retax reinforces that these costs were incurred not as a part of discovery, but rather to assist Plaintiffs counsel in making legal arguments in motion practice and at trial. Further, the itemized list of research provided in Plaintiffs appendix of documents provides only the date and cost of each transaction. Thus, under DISH Network's holding that this expense does not fall under NRS 18.005(17), this cost is not taxable. In total, the Court reduces Plaintiffs taxable costs by \$77,061.67. As to the remaining specific costs Defendant seeks to retax, the Court finds that each cost falls under NRS 18.005(17) as an expense that is reasonable, necessary, and actually incurred, based on the documentation and declaration of counsel. This conclusion contemplates that the parties conducted discovery on an extremely expedited schedule due to the preferential trial setting. Further, the complex nature of the claims and gravity of damages at issue required Plaintiffs to expend costs that may be considered luxuries in different cases, such as oversize color printing and trial support services. Finally, the Court examined in detail the requested expert fees under *Frazier v. Drake*, 357 P.3d 365 (Nev. App. 2015) and found that the fees in excess of \$1,500 for each witness was warranted in light of the factors enumerated in *Frazier*. Counsel for Plaintiffs is directed to prepare a proposed order including detailed findings of fact and conclusions of law on Defendant's motion for judgment as a matter of law Defendant's motion for new trial, Defendant's motion to strike Plaintiffs opposition, and Plaintiffs motion to exceed page limit. Counsel for Defendant is directed to prepare a separate proposed order including detailed findings of fact and conclusions of law on Defendant's motion to retax. Both proposed orders are to be approved by opposing counsel as to form and content prior to submitting the order to chambers in Microsoft word format, by e-mail to dept14lc@clarkcountycourts.us CLERK'S NOTE: Counsel notified via e-mail: William Kemp (jk@hkj-law.com) Peter S. Christiansen (pete@christiansenlaw.com) Kendalee Works (kworks@christiansenlaw.com) Lee Roberts (lroberts@wwhgd.com) Howard Russell (hrussell@wwhgd.com) Eric Pepperman (e.pepperman@kempjones.com);

09/26/2018 **CANCELED Status Check: Blocked Account (3:00 AM)** (Judicial Officer: Escobar, Adriana)
Vacated

02/04/2019  **Minute Order (11:32 AM)** (Judicial Officer: Escobar, Adriana)
Defendant's Motion to Alter or Amend Judgment to Offset Settlement Proceeds
Minute Order - No Hearing Held;

DATE**FINANCIAL INFORMATION****Defendant Bell Sports Inc**

| | |
|------------------------------------|-------------|
| Total Charges | 223.00 |
| Total Payments and Credits | 223.00 |
| Balance Due as of 4/29/2019 | 0.00 |

Defendant Michelangelo Leasing Inc

| | |
|------------------------------------|-------------|
| Total Charges | 223.00 |
| Total Payments and Credits | 223.00 |
| Balance Due as of 4/29/2019 | 0.00 |

Defendant Sevenplus Bicycles Inc

| | |
|------------------------------------|-------------|
| Total Charges | 223.00 |
| Total Payments and Credits | 223.00 |
| Balance Due as of 4/29/2019 | 0.00 |

CASE SUMMARY**CASE NO. A-17-755977-C****Defendant** Motor Coach Industries Inc

Total Charges 1,238.00

Total Payments and Credits 1,238.00

Balance Due as of 4/29/2019 0.00**Other** New Flyer Industries, Inc.

Total Charges 223.00

Total Payments and Credits 223.00

Balance Due as of 4/29/2019 0.00**Plaintiff** Estate of Katayoun Barin

Total Charges 448.50

Total Payments and Credits 448.50

Balance Due as of 4/29/2019 0.00**Plaintiff** Estate of Kayvan Khibani M.D.

Total Charges 3.50

Total Payments and Credits 3.50

Balance Due as of 4/29/2019 0.00**Subject Minor** Khiabani, Keon

Total Charges 1,031.00

Total Payments and Credits 1,031.00

Balance Due as of 4/29/2019 0.00**Defendant** Motor Coach Industries Inc

Appeal Bond Balance as of 4/29/2019 1,000.00

DISTRICT COURT CIVIL COVER SHEET

A-17-755977-C

County, Nevada

Department 31

Case No.

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

| | |
|--|---|
| Plaintiff(s) (name/address/phone): Keon Khiabani, Aria Khiabani and Katayoun Barin | Defendant(s) (name/address/phone): Motor Coach Industries, Inc., Vista Outdoor Inc., d/b/a Giro Sport Design, Michelangelo Leasing, Inc., d/b/a Ryan's Express, and Edward Hubbard |
| Attorney (name/address/phone): Will Kemp, Esq. and Eric Pepperman, Esq., Kemp, Jones & Coulthard LLP 3800 Howard Hughes Pkwy, 17th Fl. Las Vegas 89169 (702) 467-8059 Peter S. Christiansen, Esq. Christiansen Law Firm 810 S. Casino Center Blvd., Las Vegas 89101 (702) 240-7979 | Attorney (name/address/phone): |

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

| | | |
|--|--|--|
| Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property | Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice | Torts Other Torts <input checked="" type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort |
| Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500 | Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract | Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal |
| Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ | | Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters |

Business Court filings should be filed using the Business Court civil coversheet.

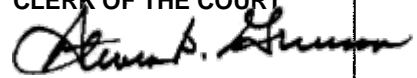
5/25/2017

Date

Signature of initiating party or representative

See other side for family-related case filings.

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15 Las Vegas, Nevada 89101
16 Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

17 KEON KHIABANI and ARIA KHIABANI,
18 minors, by and through their Guardian,
19 MARIE-CLAUDE RIGAUD; SIAMAK
20 BARIN, as Executor of the Estate of Kayvan
21 Khiabani, M.D. (Decedent), the Estate of
22 Kayvan Khiabani, M.D. (Decedent);
23 SIAMAK BARIN, as Executor of the Estate
24 of Katayoun Barin, DDS (Decedent); and the
25 Estate of Katayoun Barin, DDS (Decedent);

Plaintiffs,

vs.

26 MOTOR COACH INDUSTRIES, INC.,
27 a Delaware corporation; et al.

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

JUDGMENT

28 The above-captioned action having come before the Court for a jury trial
commencing on February 12, 2018, the Honorable Adriana Escobar, District
Judge, presiding, and the issues having been duly tried, and the jury having duly
rendered its special verdict,

1 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that, pursuant
2 to the jury's verdict, judgment is entered in favor of Plaintiffs, KEON KHIABANI
3 and ARIA KHIABANI, minors, by and through their Guardian MARIE-CLAUDE
4 RIGAUD, and SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani,
5 M.D. (Decedent) and as Executor of the Estate of Katayoun ("Katy") Barin, DDS
6 (Decedent), and against Defendant MOTOR COACH INDUSTRIES, INC.
7 ("MCI"), as follows:

8 **KEON KHIABANI DAMAGES**

| | |
|--|----------------|
| 9 Past Grief and Sorrow, Loss of Companionship, 10 Society, and Comfort: | \$1,000,000.00 |
| 11 Future Grief and Sorrow, Loss of Companionship, 12 Society, and Comfort: | \$7,000,000.00 |
| 13 Loss of Probable Support: | \$1,200,000.00 |
| 14 Pain and Suffering of Decedent, 15 Dr. Kayvan Khiabani: | \$333,333.34 |
| 16 | |
| 17 TOTAL | \$9,533,333.34 |

18
19 **ARIA KHIABANI DAMAGES**

| | |
|--|----------------|
| 20 Past Grief and Sorrow, Loss of Companionship, 21 Society, and Comfort: | \$1,000,000.00 |
| 22 Future Grief and Sorrow, Loss of Companionship, 23 Society, and Comfort: | \$5,000,000.00 |
| 24 Loss of Probable Support: | \$1,000,000.00 |
| 25 Pain and Suffering of Decedent, 26 Dr. Kayvan Khiabani: | \$333,333.33 |
| 27 | |
| 28 TOTAL | \$7,333,333.33 |

THE ESTATE OF KATY BARIN DAMAGES

| | |
|---|----------------|
| Greif and Sorrow, Loss of Companionship, Society, Comfort, and Consortium suffered by Katy Barin before her October 12, 2017 death: | \$1,000,000.00 |
| Loss of Probable Support before her October 12, 2017 death ³³ | \$500,000.00 |
| Pain and Suffering of Decedent, Dr. Kayvan Khiabani: | \$333,333.33 |
| TOTAL | \$1,833,333.33 |

THE ESTATE OF KAYVAN KHIABANI COMPENSATORY DAMAGES

| | |
|------------------------------|-------------|
| Medical and Funeral Expenses | \$46,003.62 |
|------------------------------|-------------|

| | |
|--|------------------------|
| PLAINTIFFS' COMBINED TOTAL DAMAGES AWARD: | \$18,746,003.62 |
|--|------------------------|

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that, under Nev. Rev. Stat. § 18.020, Plaintiffs shall also recover all costs reasonably and necessarily incurred in this action in an amount to be determined.

///

///

1 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that, pursuant
2 to Nev. Rev. Stat. § 17.130, Plaintiffs shall receive prejudgment interest, accruing
3 from June 1, 2017, at the rate provided by law, on \$4,546,003.62 of the combined
4 total damages award, as this amount represents past damages for: (i) the grief and
5 sorrow and loss of companionship, society, and comfort suffered by Keon
6 Khiabani (\$1,000,000.00); (ii) the grief and sorrow and loss of companionship,
7 society, and comfort suffered by Aria Khiabani (\$1,000,000.00); (iii) the grief and
8 sorrow and loss of companionship, society, comfort, consortium, and probable
9 support suffered by Katy Barin before her October 12, 2017 death
10 (\$1,500,000.00); (iv) the pain and suffering of Decedent Dr. Kayvan Khiabani
11 (\$1,000,000.00); and (v) the medical and funeral expenses incurred by Decedent
12 Dr. Kayvan Khiabani (\$46,003.62). As of April 11, 2018, the total amount of
13 accrued prejudgment interest is \$246,480.55.¹

14 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiffs'
15 total judgment shall bear post-judgment interest at the rate provided by law, which
16 is currently 6.5%/year, until satisfied.

17 IN SUM, judgment upon the verdict in favor of Plaintiffs is hereby given
18 for Eighteen Million Seven Hundred Forty-Six Thousand Three and 62/100
19 Dollars (\$18,746,003.62) against Defendant MCI, with prejudgment interest, as
20 described above, and with post-judgment interest continuing to accrue on the total
21 judgment amount from the date this Judgment is entered until it is fully satisfied.

22 Dated this 17th day of April, 2018.

23 
24
25 DISTRICT COURT JUDGE

26
27 ¹ 06/01/2017 - 06/30/2017 \$21,484.53(30 days @ \$716.15/daily @ 5.750%/year);
28 07/01/2017 - 12/31/2017 \$143,230.23(184 days @ \$778.43/daily @ 6.250%/year);
1/01/2018 - 04/11/2018 \$81,765.78(101 days @ \$809.56/daily @ 6.500%/year)

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1 Respectfully Submitted by:

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3 

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6 ERIC PEPPERMAN, ESQ. (#11679)

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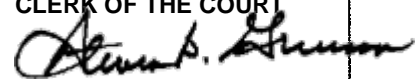
11 KENDELEE L. WORKS, ESQ. (#9611)

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9 *Attorneys for Plaintiffs*

11 **DISTRICT COURT**

12 **COUNTY OF CLARK, NEVADA**

13 KEON KHIABANI and ARIA KHIABANI,
14 minors by and through their natural mother,
KATAYOUN BARIN; KATAYOUN BARIN,
15 individually; KATAYOUN BARIN as
Executrix of the Estate of Kayvan Khiabani,
16 M.D. (Decedent), and the Estate of Kayvan
Khiabani, M.D. (Decedent),

17 Plaintiffs,

18 vs.

19 MOTOR COACH INDUSTRIES, INC.,
20 a Delaware corporation; et al.

21 Defendants.

Case No. A-17-755977-C

Dept. No. XIV

NOTICE OF ENTRY OF JUDGMENT

23 TO: All parties herein; and

24 TO: Their respective counsel;

25 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that a Judgment was entered
26 in the above entitled matter on April 17, 2018.

27 //

28 //

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1 A copy of said Judgment is attached hereto.

2 DATED this 18th day of April, 2018.

3 KEMP, JONES & COULTHARD, LLP

4 

5 WILL KEMP, ESQ. (#1205)

6 ERIC PEPPERMAN, ESQ. (#11679)

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9 Las Vegas, NV 89169

10 -and-

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13 CHRISTIANSEN LAW OFFICES

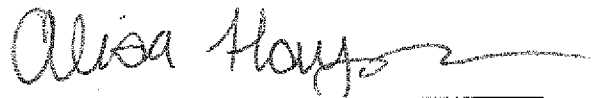
14 810 Casino Center Blvd.

15 Las Vegas, Nevada 89101

16 *Attorneys for Plaintiffs*

17 **CERTIFICATE OF SERVICE**

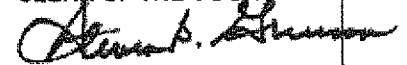
18 I hereby certify that on the 18th day of April, 2018, the foregoing NOTICE OF ENTRY OF
19 JUDGMENT was served on all parties currently on the electronic service list via the Court's
20 electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules,
21 Administrative Order 14-2.

22 

23 An Employee of Kemp, Jones & Coulthard.

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Steven D. Grierson
CLERK OF THE COURT



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16 Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

17 KEON KHIABANI and ARIA KHIABANI,
18 minors, by and through their Guardian,
19 MARIE-CLAUDE RIGAUD; SIAMAK
20 BARIN, as Executor of the Estate of Kayvan
21 Khiabani, M.D. (Decedent), the Estate of
22 Kayvan Khiabani, M.D. (Decedent);
23 SIAMAK BARIN, as Executor of the Estate
24 of Katayoun Barin, DDS (Decedent); and the
25 Estate of Katayoun Barin, DDS (Decedent);

Plaintiffs,

vs.

26 MOTOR COACH INDUSTRIES, INC.,
27 a Delaware corporation; et al.

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

JUDGMENT

28 The above-captioned action having come before the Court for a jury trial
commencing on February 12, 2018, the Honorable Adriana Escobar, District
Judge, presiding, and the issues having been duly tried, and the jury having duly
rendered its special verdict,

1 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that, pursuant
2 to the jury's verdict, judgment is entered in favor of Plaintiffs, KEON KHIABANI
3 and ARIA KHIABANI, minors, by and through their Guardian MARIE-CLAUDE
4 RIGAUD, and SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani,
5 M.D. (Decedent) and as Executor of the Estate of Katayoun ("Katy") Barin, DDS
6 (Decedent), and against Defendant MOTOR COACH INDUSTRIES, INC.
7 ("MCI"), as follows:

8 **KEON KHIABANI DAMAGES**

| | |
|--|----------------|
| 9 Past Grief and Sorrow, Loss of Companionship, 10 Society, and Comfort: | \$1,000,000.00 |
| 11 Future Grief and Sorrow, Loss of Companionship, 12 Society, and Comfort: | \$7,000,000.00 |
| 13 Loss of Probable Support: | \$1,200,000.00 |
| 14 Pain and Suffering of Decedent, 15 Dr. Kayvan Khiabani: | \$333,333.34 |
| 16 | |
| 17 TOTAL | \$9,533,333.34 |

18
19 **ARIA KHIABANI DAMAGES**

| | |
|--|----------------|
| 20 Past Grief and Sorrow, Loss of Companionship, 21 Society, and Comfort: | \$1,000,000.00 |
| 22 Future Grief and Sorrow, Loss of Companionship, 23 Society, and Comfort: | \$5,000,000.00 |
| 24 Loss of Probable Support: | \$1,000,000.00 |
| 25 Pain and Suffering of Decedent, 26 Dr. Kayvan Khiabani: | \$333,333.33 |
| 27 | |
| 28 TOTAL | \$7,333,333.33 |

THE ESTATE OF KATY BARIN DAMAGES

| | |
|---|----------------------|
| Greif and Sorrow, Loss of Companionship, Society, Comfort, and Consortium suffered by Katy Barin before her October 12, 2017 death: | \$1,000,000.00 |
| Loss of Probable Support before her October 12, 2017 death ³³ | \$500,000.00 |
| Pain and Suffering of Decedent, Dr. Kayvan Khiabani: | \$333,333.33 |
| | |
| | TOTAL \$1,833,333.33 |

THE ESTATE OF KAYVAN KHIABANI COMPENSATORY DAMAGES

| | |
|------------------------------|-------------|
| Medical and Funeral Expenses | \$46,003.62 |
|------------------------------|-------------|

| | |
|--|------------------------|
| PLAINTIFFS' COMBINED TOTAL DAMAGES AWARD: | \$18,746,003.62 |
|--|------------------------|

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that, under
 Nev. Rev. Stat. § 18.020, Plaintiffs shall also recover all costs reasonably and
 necessarily incurred in this action in an amount to be determined.

///

///

1 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that, pursuant
2 to Nev. Rev. Stat. § 17.130, Plaintiffs shall receive prejudgment interest, accruing
3 from June 1, 2017, at the rate provided by law, on \$4,546,003.62 of the combined
4 total damages award, as this amount represents past damages for: (i) the grief and
5 sorrow and loss of companionship, society, and comfort suffered by Keon
6 Khiabani (\$1,000,000.00); (ii) the grief and sorrow and loss of companionship,
7 society, and comfort suffered by Aria Khiabani (\$1,000,000.00); (iii) the grief and
8 sorrow and loss of companionship, society, comfort, consortium, and probable
9 support suffered by Katy Barin before her October 12, 2017 death
10 (\$1,500,000.00); (iv) the pain and suffering of Decedent Dr. Kayvan Khiabani
11 (\$1,000,000.00); and (v) the medical and funeral expenses incurred by Decedent
12 Dr. Kayvan Khiabani (\$46,003.62). As of April 11, 2018, the total amount of
13 accrued prejudgment interest is \$246,480.55.¹

14 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiffs'
15 total judgment shall bear post-judgment interest at the rate provided by law, which
16 is currently 6.5%/year, until satisfied.

17 IN SUM, judgment upon the verdict in favor of Plaintiffs is hereby given
18 for Eighteen Million Seven Hundred Forty-Six Thousand Three and 62/100
19 Dollars (\$18,746,003.62) against Defendant MCI, with prejudgment interest, as
20 described above, and with post-judgment interest continuing to accrue on the total
21 judgment amount from the date this Judgment is entered until it is fully satisfied.


22 Dated this 17th day of April, 2018.

23
24 
25 DISTRICT COURT JUDGE

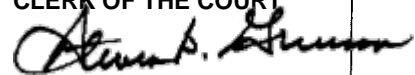
26
27 ¹ 06/01/2017 - 06/30/2017 \$21,484.53(30 days @ \$716.15/daily @ 5.750%/year);
28 07/01/2017 - 12/31/2017 \$143,230.23(184 days @ \$778.43/daily @ 6.250%/year);
1/01/2018 - 04/11/2018 \$81,765.78(101 days @ \$809.56/daily @ 6.500%/year)

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Attorneys for Motor Coach Industries, Inc,

DISTRICT COURT
CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,
minors by and through their Guardian,
MARIE-CLAUDE RIGAUD; SIAMAK BARIN,
as Executor of the Estate of Kayvan
Khiabani, M.D. (Decedent); the ESTATE
OF KAYVAN KHIABANI, M.D. (Decedent);
SIAMAK BARIN, as Executor of the
Estate of Katayoun Barin, DDS
(Decedent); and the ESTATE OF
KATAYOUN BARIN, DDS (Decedent),

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC., a
Delaware corporation; MICHELANGELO
LEASING INC. d/b/a RYAN'S EXPRESS, an
Arizona corporation; EDWARD
HUBBARD, a Nevada resident; BELL
SPORTS INC. d/b/a GIRO SPORT DESIGN,
a Delaware corporation; SEVENPLUS
CYCLES, INC. d/b/a PRO CYCLERY, a
Nevada corporation; DOES 1 through
20; and ROE CORPORATIONS 1 through
20,

Defendants.

Case No. A-17-755977-C

Dept. No. 14

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON
DEFENDANT'S MOTION TO RETAX**

Hearing Date: July 6, 2018
Hearing Time: 10:30 a.m.

1 Defendant Motor Coach Industries, Inc.'s ("MCI") "Motion to Retax Costs"
2 came on for hearing on July 6, 2018 at 10:30 a.m. Upon stipulation of the
3 parties, the motion was submitted on the briefs without oral argument. Having
4 reviewed the briefing, being duly advised on the premises, and good cause
5 appearing therefor, this Court now issues these findings of fact and conclusions
6 of law:

7 I.

8 PROCEDURAL HISTORY

9 1. On March 23, 2018, following a 23-day trial, the jury rendered a
10 special verdict awarding plaintiffs a combined total of \$18,746,003.62 in
11 compensatory damages.

12 2. On April 17, 2018, this Court entered judgment in favor of
13 plaintiffs.

14 3. On April 24, 2018, plaintiffs' filed their "Verified Memorandum of
15 Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110,"
16 "Declaration of Peter S. Christiansen, Esq." in support of the memorandum, and
17 supporting appendix volumes. Mr. Christiansen amended his declaration on
18 April 25, 2018. Plaintiffs filed a supplemental memorandum on May 9, 2018.

19 4. MCI filed its "Motion to Retax Costs" on April 30, 2018. Plaintiffs
20 filed their opposition on May 14, 2018, and MCI filed its reply on June 29, 2018.

21 5. After considering the briefing, this Court issued a detailed minute
22 order on August 24, 2018 granting MCI's motion in part, and directing MCI's
23 counsel to prepare this formal order.

24 II.

25 FINDINGS OF FACT

26 6. Plaintiffs provided a detailed and verified memorandum of costs,
27 over 1,300 pages of documentation, including itemized lists and invoices, and a
28 declaration of counsel in support of the memorandum of costs, which discusses

1 (1) the expert fees being sought; (2) reporter's fees for depositions and
2 deposition transcripts; (3) online legal research; (4) trial support services; and
3 (5) other "necessary and unavoidable costs," including "photocopies, travel
4 expenses for necessary fact and expert witness depositions, postage, witness
5 fees, juror fees, process server fees, official court reporter fees, and run services
6 for delivery of time sensitive documents and filing." (*See generally*, Pls.' Memo
7 and Opp.)

8 7. Plaintiffs requested costs incurred by their two law firms, Kemp,
9 Jones & Coulthard, LLP ("KJP") and Christiansen Law Offices ("CLO"), totaling
10 \$619,888.71. (Pls.' Supp. Memo, at 2–3.)

11 8. Any of the foregoing findings of fact which constitute conclusions of
12 law shall be deemed as conclusions of law.

13 CONCLUSIONS OF LAW

14 9. The Court is unable to award costs under NRS 18.005 unless the
15 prevailing party provides justifying documentation to "demonstrate how such
16 [claimed costs] were necessary to and incurred in the present action." *Bobby*
17 *Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 386 (1998) and
18 *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049
19 (2015). The Nevada Supreme Court will reverse an award of costs as an abuse
20 of discretion if the party does not provide evidence, such as a declaration of
21 counsel, that "explains how the [costs] were necessary and incurred rather than
22 simply telling the district court that the costs were reasonable and necessary."
23 *In re Dish Network Deriv. Litig.*, 133 Nev. Adv. Op. 16, 401 P.3d 1081 (2017).

24 10. Although the Court finds that plaintiffs' opposition to MCI's motion
25 to retax provides some argument for why many costs were reasonable or
26 necessary, and further that many of plaintiffs' claimed costs appear reasonable
27 and necessary based on the Court's own experience and knowledge of this case,
28 binding case law precludes this Court from awarding costs for which plaintiffs

1 have not provided sufficient documentation.

2 ***Retaxed Costs***

3 11. \$70.00 cost for a paralegal to file a subpoena. Paralegal time is not
4 a “cost” of litigation under NRS 18.005, and is more appropriately categorized
5 as legal fees. *See, e.g. Las Vegas Metropolitan Police Dept. v. Yeghiazarian*, 129
6 Nev. 760, 770, 312 P.3d 503, 510 (2013) (concluding that “reasonable attorney’s
7 fees” includes charges for persons such as paralegals and law clerks).

8 12. \$22,553.75 for videography services and related fees to expedite.
9 These costs are not specifically allowed under NRS 18.005, and thus would only
10 be recoverable under NRS 18.005(17). Plaintiffs provided documentation
11 showing that these costs were incurred, but these costs are not discussed in the
12 declaration of counsel. Plaintiffs thus provided no documentation explaining
13 how the costs were necessary.

14 13. \$5,075.00 for synchronized DVD costs. These costs are not
15 specifically allowed under NRS 18.005, and thus would only be recoverable
16 under NRS 18.005(17). Plaintiffs provided documentation showing that these
17 costs were incurred, but these costs are not discussed in the declaration of
18 counsel. Plaintiffs thus provided no documentation explaining how the costs
19 were necessary.

20 14. \$1,736.00 for rough drafts of depositions. NRS 18.005(2) provides
21 for one copy of each deposition, but does not provide for rough drafts, and
22 plaintiffs have not shown in counsel’s declaration how this service was
23 necessary.

24 15. \$3,450.00 for “Live Note” and “Zoom” connection fees. These costs
25 are not specifically allowed under NRS 18.005, and thus would only be
26 recoverable under NRS 18.005(17). Plaintiffs provided documentation showing
27 that these costs were incurred, but these costs are not discussed in the
28 declaration of counsel. Plaintiffs thus provided no documentation explaining

1 how the costs were necessary.

2 16. \$4,550.00 for videoconference costs. These costs are not specifically
3 allowed under NRS 18.005, and thus would only be recoverable under NRS
4 18.005(17). Plaintiffs provided documentation showing that these costs were
5 incurred, but these costs are not discussed in the declaration of counsel.
6 Plaintiffs thus provided no documentation explaining how the costs were
7 necessary.

8 17. \$100.00 for "After 5 PM charges." These costs are not specifically
9 allowed under NRS 18.005, and thus would only be recoverable under NRS
10 18.005(17). Plaintiffs provided documentation showing that these costs were
11 incurred, but these costs are not discussed in the declaration of counsel.
12 Plaintiffs thus provided no documentation explaining how the costs were
13 necessary.

14 18. \$185.00 for flash drives, apparently for depositions of expert
15 witnesses. These costs are not specifically allowed under NRS 18.005, and thus
16 would only be recoverable under NRS 18.005(17). Plaintiffs provided
17 documentation showing that these costs were incurred, but these costs are not
18 discussed in the declaration of counsel. Plaintiffs thus provided no
19 documentation explaining how the costs were necessary.

20 19. \$300.00 for video files for expert witnesses. These costs are not
21 specifically allowed under NRS 18.005, and thus would only be recoverable
22 under NRS 18.005(17). Plaintiffs provided documentation showing that these
23 costs were incurred, but these costs are not discussed in the declaration of
24 counsel. Plaintiffs thus provided no documentation explaining how the costs
25 were necessary.

26 20. \$1,385.40 for conference rooms for depositions of various witnesses.
27 These costs are not specifically allowed under NRS 18.005, and thus would only
28 be recoverable under NRS 18.005(17). Plaintiffs provided documentation

1 showing that these costs were incurred, but these costs are not discussed in the
2 declaration of counsel. Plaintiffs thus provided no documentation explaining
3 how the costs were necessary.

4 21. \$100.00 for "read and sign" fees. These costs are not specifically
5 allowed under NRS 18.005, and thus would only be recoverable under NRS
6 18.005(17). Plaintiffs provided documentation showing that these costs were
7 incurred, but these costs are not discussed in the declaration of counsel.
8 Plaintiffs thus provided no documentation explaining how the costs were
9 necessary.

10 22. \$315.00 for equipment rental. These costs are not specifically
11 allowed under NRS 18.005, and thus would only be recoverable under NRS
12 18.005(17). Plaintiffs provided documentation showing that these costs were
13 incurred, but these costs are not discussed in the declaration of counsel.
14 Plaintiffs thus provided no documentation explaining how the costs were
15 necessary.

16 23. \$100.00 for "non-writing wait time" for two witnesses. These costs
17 are not specifically allowed under NRS 18.005, and thus would only be
18 recoverable under NRS 18.005(17). Plaintiffs provided documentation showing
19 that these costs were incurred, but these costs are not discussed in the
20 declaration of counsel. Plaintiffs thus provided no documentation explaining
21 how the costs were necessary.

22 24. \$79.00 for parking for depositions. These costs are not specifically
23 allowed under NRS 18.005, and thus would only be recoverable under NRS
24 18.005(17). Plaintiffs provided documentation showing that these costs were
25 incurred, but these costs are not discussed in the declaration of counsel.
26 Plaintiffs thus provided no documentation explaining how the costs were
27 necessary.

28 25. \$356.40 for food provided at depositions. These costs are not

1 specifically allowed under NRS 18.005, and thus would only be recoverable
2 under NRS 18.005(17). Plaintiffs provided documentation showing that these
3 costs were incurred, but these costs are not discussed in the declaration of
4 counsel. Plaintiffs thus provided no documentation explaining how the costs
5 were necessary.

6 26. \$1,050.00 for “professional fees” for Dr. Gavin. This cost is not
7 specifically allowed under NRS 18.005, and thus would only be recoverable
8 under NRS 18.005(17). Plaintiffs provided documentation showing that this
9 cost was incurred, but this cost is not discussed in the declaration of counsel.
10 Plaintiffs thus provided no documentation explaining how the cost was
11 necessary.

12 27. \$140.00 for duplicate service on Portia Hubbard. In examining the
13 documents provided by plaintiffs, it appears Ms. Hubbard was served with a
14 subpoena on both on August 26, 2017 and on October 1, 2017, with no
15 explanation for why the second subpoena was necessary. NRS 18.005(7) does
16 not allow costs for service which the Court finds to be unnecessary. Plaintiffs
17 provided documentation showing that these costs were incurred, but these costs
18 are not discussed in the declaration of counsel. Plaintiffs thus provided no
19 documentation explaining how the costs were necessary.

20 28. \$35.00 for wait time of process server(s). This cost is not
21 enumerated in NRS 18.005(7), and thus would only be recoverable under NRS
22 18.005(17). Plaintiffs provided documentation showing that this cost was
23 incurred, but this costs is not discussed in the declaration of counsel. Plaintiffs
24 thus provided no documentation explaining how the cost was necessary.

25 29. \$61.60 for faxes. While “reasonable costs for telecopies” are allowed
26 under NRS 18.005(11), under *Bobby Berosini*, 114 Nev. at 1352 and *Cadle Co.*,
27 345 P.3d at 1049, the documentation submitted is insufficient for the Court to
28 find that the costs were reasonable or necessary, because plaintiffs have

1 provided no information stating what documents were faxed, and in most cases
2 provide no information of who the fax was sent to. Further, plaintiffs have
3 offered no explanation for why certain faxes have a higher per-page cost than
4 others. Plaintiffs provided documentation showing that these costs were
5 incurred, but these costs are not discussed in the declaration of counsel.
6 Plaintiffs thus provided no documentation explaining how the costs were
7 necessary or reasonable.

8 30. \$4,141.77 for scanning (internal and outside vendor). NRS 18.005
9 does not provide for costs of scanning, and plaintiffs have not provided any
10 information about how costs were incurred at all due to internal scanning, or
11 how each scan was necessary. While the Court agrees that the *DISH Network*
12 court found the party in that case “provided the district court with sufficient
13 justifying documentation to support the award of costs for photocopying and
14 scanning under NRS 18.005(12),” plaintiffs here have provided no such
15 documentation explaining the reasonableness or necessity of these costs.

16 31. \$39.00 for an unsubstantiated Las Vegas Metropolitan Police
17 Department cost. MCI observes that this cost appears to be either for a police
18 report or for a subpoena, and plaintiffs do not offer any opposition to this cost
19 being retaxed. Moreover, while plaintiffs provide documentation showing that
20 this cost was incurred, this cost is not discussed in the declaration of counsel.
21 Plaintiffs thus provided no documentation explaining how the cost was
22 necessary.

23 32. \$1,219.98 for hotels for trial witnesses. NRS 18.005(15) only
24 includes travel and lodging incurred while conducting discovery. While
25 plaintiffs provide documentation showing that these costs were incurred, the
26 declaration of counsel only discusses the necessity of costs incurred in travel
27 expenses for depositions. Plaintiffs thus provide no documentation explaining
28 how the costs were necessary.

1 33. \$30,018.77 in legal research. As stated in *DISH Network*, the
2 “reasonable and necessary expenses for computerized services for legal
3 research” allowed in NRS 18.005(17) pertain to costs incurred in the
4 process of electronic discovery. 133 Nev., Adv. Op. at ___, 401 P.3d at 1093.
5 The declaration of plaintiffs’ counsel states that these costs were incurred “to
6 provide the Court with the most recent applicable caselaw on various points of
7 dispute throughout pre-trial motions and during the course of trial...” The
8 argument contained in plaintiffs’ opposition to the motion to retax reinforces
9 that these costs were incurred not as a part of discovery, but rather to assist
10 plaintiffs’ counsel in making legal arguments in motion practice and at trial.
11 Further, the “itemized” list of research provided in plaintiffs’ appendix of
12 documents provides only the date and cost of each transaction. Thus, under
13 *DISH Network’s* holding that this expense does not fall under NRS 18.005(17),
14 these costs are not taxable.

15 ***Taxed Costs***

16 34. As to the remaining specific costs MCI seeks to retax, the Court
17 finds that each cost falls under NRS 18.005(17) as an expense that is
18 reasonable, necessary, and actually incurred, based on the documentation and
19 declaration of counsel. This conclusion contemplates that the parties conducted
20 discovery on an extremely expedited schedule due to the preferential trial
21 setting.

22 35. Further, the complex nature of the claims and gravity of damages
23 at issue required plaintiffs to expend costs that may be considered luxuries in
24 different cases, such as oversize color printing and trial support services.

25 36. Finally, the Court examined in detail the requested expert fees
26 under *Frazier v. Drake*, 357 P.3d 365 (Nev. App. 2015) and found that the fees
27 in excess of \$1,500 for each witness was warranted in light of the factors
28 enumerated in *Frazier*.

37. Because NRS 18.005(5) allows a court to award “a larger fee after determining that the circumstances surrounding the expert’s testimony were of such necessity as to require the larger fee,” the Court has determined that an award exceeding the cap for each of plaintiffs’ five experts is reasonable given plaintiffs’ declaration of counsel, supporting documentation, and the *Frazier* factors, and therefore taxes the entire amount claimed for each of them.

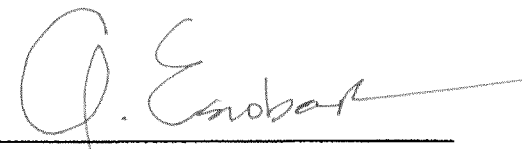

38. In total, the Court reduces plaintiffs’ taxable costs by \$77,061.87 for a total award of **\$542,826.84**. Those costs are summarized below:

| NRS | Definition of Cost | Claimed Amount | Awarded Amount |
|------------|---|---------------------|---------------------|
| 18.005(1) | Filing/Clerk Fees | \$1,956.00 | \$1,886.00 |
| 18.005(2) | Reporter’s Fees for Depositions/Deposition Transcript | \$87,861.77 | \$46,526.22 |
| 18.005(3) | Jurors’ Fees | \$15,828.82 | \$15,828.82 |
| 18.005(4) | Witness Fees | \$1,291.18 | \$1,291.18 |
| 18.005(5) | Expert Witness Fees | \$237,076.61 | \$237,076.61 |
| | Robert Caldwell | \$81,296.19 | \$81,296.19 |
| | Joshua Cohen | \$35,084.67 | \$35,084.67 |
| | Robert Cunitz | \$62,599.18 | \$62,599.18 |
| | Richard Stalnaker | \$33,069.88 | \$33,069.88 |
| | Larry Stokes | \$25,026.69 | \$25,026.69 |
| 18.005(6) | Interpreter Fees | \$620.76 | \$620.76 |
| 18.005(7) | Process Server Fees | \$3,094.50 | \$2,919.50 |
| 18.005(8) | Official Reporter Fees | \$49,625.42 | \$49,625.42 |
| 18.005(9) | Cost of Bond | | |
| 18.005(10) | Bailiff Overtime | \$406.88 | \$406.88 |
| 18.005(11) | Telecopies (Faxes) | \$61.80 | \$0 |
| 18.005(12) | Photocopies/Printing/Scans | \$44,301.61 | \$40,120.84 |
| 18.005(13) | Long Distance Telephone | \$909.16 | \$909.16 |
| 18.005(14) | Postage/Fed Ex | \$1,812.48 | \$1,812.48 |
| 18.005(15) | Travel Expense (Air, Hotel, Car, Meals) | \$14,036.65 | \$12,816.67 |
| 18.005(16) | Fees Charged Pursuant to NRS 19.0335 | | |
| Other | Legal Research | \$30,018.77 | \$0 |
| Other | Run Service | \$1,887.00 | \$1,887.00 |
| Other | Trial Support | \$129,099.30 | \$129,099.30 |
| | TOTAL | \$619,888.71 | \$542,826.84 |


39. If any conclusions of law are properly findings of fact, they shall be treated as if appropriately identified and designated.

1 IT IS SO ORDERED.

2 Dated this 2 day of January, 2018

3 
4 DISTRICT JUDGE 

5 Submitted by:
6 LEWIS ROCA ROTHGERBER CHRISTIE, LLP¹

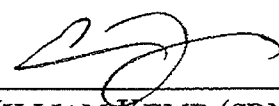
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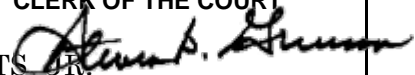
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26
27 ¹ Although MCI submits this order, the order expresses the Court's reasoning
28 and conclusions. MCI does not agree with much of the reasoning articulated in
this order.



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DISTRICT COURT

CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,
minors, by and through their guardian,
MARIE-CLAUDE RIGAUD; SIAMAK
BARIN, as executor of the ESTATE OF
KAYVAN KHIABANI, M.D., (Decedent);
the ESTATE OF KAYVAN KHIABANI, M.D.
(Decedent); SIAMAK BARIN, as executor of
the ESTATE OF KATAYOUN BARIN, DDS
(Decedent); and the Estate of KATAYOUN
BARIN, DDS (Decedent),

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC., a
Delaware corporation; MICHELANGELO
LEASING INC. d/b/a RYAN'S EXPRESS, an
Arizona corporation; EDWARD HUBBARD,
a Nevada resident; BELL SPORTS, INC.
d/b/a GIRO SPORT DESIGN, a Delaware
corporation; SEVENPLUS BICYCLES, INC.
d/b/a PRO CYCLERY, a Nevada
corporation, DOES 1 through 20; and ROE
CORPORATIONS 1 through 20,

Defendants.

Case No. A755977

Dept. No. 14

**NOTICE OF ENTRY OF "FINDINGS
OF FACT AND CONCLUSIONS OF
LAW ON DEFENDANT'S MOTION
TO RETAX"**

1 Please take notice that on the 23rd day of April, 2019, a “Findings of Fact
2 and Conclusions of Law on Defendant’s Motion to Retax” was entered in this
3 case. A copy of the order is attached.

4 Dated this 24th day of April, 2019.

5 LEWIS ROCA ROTHGERBER CHRISTIE LLP
6

7 By /s/ Joel D. Henriod

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of April, 2019, a true and correct copy of the foregoing notice of entry was served by e-service, in accordance with the Electronic Filing Procedures of the Eight Judicial District Court.

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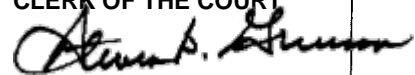
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Edward Hubbard

/s/ Adam Crawford
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

EXHIBIT A

EXHIBIT A



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Attorneys for Motor Coach Industries, Inc,

DISTRICT COURT
CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,
minors by and through their Guardian,
MARIE-CLAUDE RIGAUD; SIAMAK BARIN,
as Executor of the Estate of Kayvan
Khiabani, M.D. (Decedent); the ESTATE
OF KAYVAN KHIABANI, M.D. (Decedent);
SIAMAK BARIN, as Executor of the
Estate of Katayoun Barin, DDS
(Decedent); and the ESTATE OF
KATAYOUN BARIN, DDS (Decedent),

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC., a
Delaware corporation; MICHELANGELO
LEASING INC. d/b/a RYAN'S EXPRESS, an
Arizona corporation; EDWARD
HUBBARD, a Nevada resident; BELL
SPORTS INC. d/b/a GIRO SPORT DESIGN,
a Delaware corporation; SEVENPLUS
CYCLES, INC. d/b/a PRO CYCLERY, a
Nevada corporation; DOES 1 through
20; and ROE CORPORATIONS 1 through
20,

Defendants.

Case No. A-17-755977-C

Dept. No. 14

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON
DEFENDANT'S MOTION TO RETAX**

Hearing Date: July 6, 2018
Hearing Time: 10:30 a.m.

1 Defendant Motor Coach Industries, Inc.'s ("MCI") "Motion to Retax Costs"
2 came on for hearing on July 6, 2018 at 10:30 a.m. Upon stipulation of the
3 parties, the motion was submitted on the briefs without oral argument. Having
4 reviewed the briefing, being duly advised on the premises, and good cause
5 appearing therefor, this Court now issues these findings of fact and conclusions
6 of law:

7 I.

8 PROCEDURAL HISTORY

9 1. On March 23, 2018, following a 23-day trial, the jury rendered a
10 special verdict awarding plaintiffs a combined total of \$18,746,003.62 in
11 compensatory damages.

12 2. On April 17, 2018, this Court entered judgment in favor of
13 plaintiffs.

14 3. On April 24, 2018, plaintiffs' filed their "Verified Memorandum of
15 Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110,"
16 "Declaration of Peter S. Christiansen, Esq." in support of the memorandum, and
17 supporting appendix volumes. Mr. Christiansen amended his declaration on
18 April 25, 2018. Plaintiffs filed a supplemental memorandum on May 9, 2018.

19 4. MCI filed its "Motion to Retax Costs" on April 30, 2018. Plaintiffs
20 filed their opposition on May 14, 2018, and MCI filed its reply on June 29, 2018.

21 5. After considering the briefing, this Court issued a detailed minute
22 order on August 24, 2018 granting MCI's motion in part, and directing MCI's
23 counsel to prepare this formal order.

24 II.

25 FINDINGS OF FACT

26 6. Plaintiffs provided a detailed and verified memorandum of costs,
27 over 1,300 pages of documentation, including itemized lists and invoices, and a
28 declaration of counsel in support of the memorandum of costs, which discusses

1 (1) the expert fees being sought; (2) reporter's fees for depositions and
2 deposition transcripts; (3) online legal research; (4) trial support services; and
3 (5) other "necessary and unavoidable costs," including "photocopies, travel
4 expenses for necessary fact and expert witness depositions, postage, witness
5 fees, juror fees, process server fees, official court reporter fees, and run services
6 for delivery of time sensitive documents and filing." (*See generally*, Pls.' Memo
7 and Opp.)

8 7. Plaintiffs requested costs incurred by their two law firms, Kemp,
9 Jones & Coulthard, LLP ("KJP") and Christiansen Law Offices ("CLO"), totaling
10 \$619,888.71. (Pls.' Supp. Memo, at 2–3.)

11 8. Any of the foregoing findings of fact which constitute conclusions of
12 law shall be deemed as conclusions of law.

13 CONCLUSIONS OF LAW

14 9. The Court is unable to award costs under NRS 18.005 unless the
15 prevailing party provides justifying documentation to "demonstrate how such
16 [claimed costs] were necessary to and incurred in the present action." *Bobby*
17 *Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 386 (1998) and
18 *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049
19 (2015). The Nevada Supreme Court will reverse an award of costs as an abuse
20 of discretion if the party does not provide evidence, such as a declaration of
21 counsel, that "explains how the [costs] were necessary and incurred rather than
22 simply telling the district court that the costs were reasonable and necessary."
23 *In re Dish Network Deriv. Litig.*, 133 Nev. Adv. Op. 16, 401 P.3d 1081 (2017).

24 10. Although the Court finds that plaintiffs' opposition to MCI's motion
25 to retax provides some argument for why many costs were reasonable or
26 necessary, and further that many of plaintiffs' claimed costs appear reasonable
27 and necessary based on the Court's own experience and knowledge of this case,
28 binding case law precludes this Court from awarding costs for which plaintiffs

1 have not provided sufficient documentation.

2 ***Retaxed Costs***

3 11. \$70.00 cost for a paralegal to file a subpoena. Paralegal time is not
4 a “cost” of litigation under NRS 18.005, and is more appropriately categorized
5 as legal fees. *See, e.g. Las Vegas Metropolitan Police Dept. v. Yeghiazarian*, 129
6 Nev. 760, 770, 312 P.3d 503, 510 (2013) (concluding that “reasonable attorney’s
7 fees” includes charges for persons such as paralegals and law clerks).

8 12. \$22,553.75 for videography services and related fees to expedite.
9 These costs are not specifically allowed under NRS 18.005, and thus would only
10 be recoverable under NRS 18.005(17). Plaintiffs provided documentation
11 showing that these costs were incurred, but these costs are not discussed in the
12 declaration of counsel. Plaintiffs thus provided no documentation explaining
13 how the costs were necessary.

14 13. \$5,075.00 for synchronized DVD costs. These costs are not
15 specifically allowed under NRS 18.005, and thus would only be recoverable
16 under NRS 18.005(17). Plaintiffs provided documentation showing that these
17 costs were incurred, but these costs are not discussed in the declaration of
18 counsel. Plaintiffs thus provided no documentation explaining how the costs
19 were necessary.

20 14. \$1,736.00 for rough drafts of depositions. NRS 18.005(2) provides
21 for one copy of each deposition, but does not provide for rough drafts, and
22 plaintiffs have not shown in counsel’s declaration how this service was
23 necessary.

24 15. \$3,450.00 for “Live Note” and “Zoom” connection fees. These costs
25 are not specifically allowed under NRS 18.005, and thus would only be
26 recoverable under NRS 18.005(17). Plaintiffs provided documentation showing
27 that these costs were incurred, but these costs are not discussed in the
28 declaration of counsel. Plaintiffs thus provided no documentation explaining

1 how the costs were necessary.

2 16. \$4,550.00 for videoconference costs. These costs are not specifically
3 allowed under NRS 18.005, and thus would only be recoverable under NRS
4 18.005(17). Plaintiffs provided documentation showing that these costs were
5 incurred, but these costs are not discussed in the declaration of counsel.
6 Plaintiffs thus provided no documentation explaining how the costs were
7 necessary.

8 17. \$100.00 for "After 5 PM charges." These costs are not specifically
9 allowed under NRS 18.005, and thus would only be recoverable under NRS
10 18.005(17). Plaintiffs provided documentation showing that these costs were
11 incurred, but these costs are not discussed in the declaration of counsel.
12 Plaintiffs thus provided no documentation explaining how the costs were
13 necessary.

14 18. \$185.00 for flash drives, apparently for depositions of expert
15 witnesses. These costs are not specifically allowed under NRS 18.005, and thus
16 would only be recoverable under NRS 18.005(17). Plaintiffs provided
17 documentation showing that these costs were incurred, but these costs are not
18 discussed in the declaration of counsel. Plaintiffs thus provided no
19 documentation explaining how the costs were necessary.

20 19. \$300.00 for video files for expert witnesses. These costs are not
21 specifically allowed under NRS 18.005, and thus would only be recoverable
22 under NRS 18.005(17). Plaintiffs provided documentation showing that these
23 costs were incurred, but these costs are not discussed in the declaration of
24 counsel. Plaintiffs thus provided no documentation explaining how the costs
25 were necessary.

26 20. \$1,385.40 for conference rooms for depositions of various witnesses.
27 These costs are not specifically allowed under NRS 18.005, and thus would only
28 be recoverable under NRS 18.005(17). Plaintiffs provided documentation

1 showing that these costs were incurred, but these costs are not discussed in the
2 declaration of counsel. Plaintiffs thus provided no documentation explaining
3 how the costs were necessary.

4 21. \$100.00 for "read and sign" fees. These costs are not specifically
5 allowed under NRS 18.005, and thus would only be recoverable under NRS
6 18.005(17). Plaintiffs provided documentation showing that these costs were
7 incurred, but these costs are not discussed in the declaration of counsel.
8 Plaintiffs thus provided no documentation explaining how the costs were
9 necessary.

10 22. \$315.00 for equipment rental. These costs are not specifically
11 allowed under NRS 18.005, and thus would only be recoverable under NRS
12 18.005(17). Plaintiffs provided documentation showing that these costs were
13 incurred, but these costs are not discussed in the declaration of counsel.
14 Plaintiffs thus provided no documentation explaining how the costs were
15 necessary.

16 23. \$100.00 for "non-writing wait time" for two witnesses. These costs
17 are not specifically allowed under NRS 18.005, and thus would only be
18 recoverable under NRS 18.005(17). Plaintiffs provided documentation showing
19 that these costs were incurred, but these costs are not discussed in the
20 declaration of counsel. Plaintiffs thus provided no documentation explaining
21 how the costs were necessary.

22 24. \$79.00 for parking for depositions. These costs are not specifically
23 allowed under NRS 18.005, and thus would only be recoverable under NRS
24 18.005(17). Plaintiffs provided documentation showing that these costs were
25 incurred, but these costs are not discussed in the declaration of counsel.
26 Plaintiffs thus provided no documentation explaining how the costs were
27 necessary.

28 25. \$356.40 for food provided at depositions. These costs are not

1 specifically allowed under NRS 18.005, and thus would only be recoverable
2 under NRS 18.005(17). Plaintiffs provided documentation showing that these
3 costs were incurred, but these costs are not discussed in the declaration of
4 counsel. Plaintiffs thus provided no documentation explaining how the costs
5 were necessary.

6 26. \$1,050.00 for “professional fees” for Dr. Gavin. This cost is not
7 specifically allowed under NRS 18.005, and thus would only be recoverable
8 under NRS 18.005(17). Plaintiffs provided documentation showing that this
9 cost was incurred, but this cost is not discussed in the declaration of counsel.
10 Plaintiffs thus provided no documentation explaining how the cost was
11 necessary.

12 27. \$140.00 for duplicate service on Portia Hubbard. In examining the
13 documents provided by plaintiffs, it appears Ms. Hubbard was served with a
14 subpoena on both on August 26, 2017 and on October 1, 2017, with no
15 explanation for why the second subpoena was necessary. NRS 18.005(7) does
16 not allow costs for service which the Court finds to be unnecessary. Plaintiffs
17 provided documentation showing that these costs were incurred, but these costs
18 are not discussed in the declaration of counsel. Plaintiffs thus provided no
19 documentation explaining how the costs were necessary.

20 28. \$35.00 for wait time of process server(s). This cost is not
21 enumerated in NRS 18.005(7), and thus would only be recoverable under NRS
22 18.005(17). Plaintiffs provided documentation showing that this cost was
23 incurred, but this costs is not discussed in the declaration of counsel. Plaintiffs
24 thus provided no documentation explaining how the cost was necessary.

25 29. \$61.60 for faxes. While “reasonable costs for telecopies” are allowed
26 under NRS 18.005(11), under *Bobby Berosini*, 114 Nev. at 1352 and *Cadle Co.*,
27 345 P.3d at 1049, the documentation submitted is insufficient for the Court to
28 find that the costs were reasonable or necessary, because plaintiffs have

1 provided no information stating what documents were faxed, and in most cases
2 provide no information of who the fax was sent to. Further, plaintiffs have
3 offered no explanation for why certain faxes have a higher per-page cost than
4 others. Plaintiffs provided documentation showing that these costs were
5 incurred, but these costs are not discussed in the declaration of counsel.
6 Plaintiffs thus provided no documentation explaining how the costs were
7 necessary or reasonable.

8 30. \$4,141.77 for scanning (internal and outside vendor). NRS 18.005
9 does not provide for costs of scanning, and plaintiffs have not provided any
10 information about how costs were incurred at all due to internal scanning, or
11 how each scan was necessary. While the Court agrees that the *DISH Network*
12 court found the party in that case “provided the district court with sufficient
13 justifying documentation to support the award of costs for photocopying and
14 scanning under NRS 18.005(12),” plaintiffs here have provided no such
15 documentation explaining the reasonableness or necessity of these costs.

16 31. \$39.00 for an unsubstantiated Las Vegas Metropolitan Police
17 Department cost. MCI observes that this cost appears to be either for a police
18 report or for a subpoena, and plaintiffs do not offer any opposition to this cost
19 being retaxed. Moreover, while plaintiffs provide documentation showing that
20 this cost was incurred, this cost is not discussed in the declaration of counsel.
21 Plaintiffs thus provided no documentation explaining how the cost was
22 necessary.

23 32. \$1,219.98 for hotels for trial witnesses. NRS 18.005(15) only
24 includes travel and lodging incurred while conducting discovery. While
25 plaintiffs provide documentation showing that these costs were incurred, the
26 declaration of counsel only discusses the necessity of costs incurred in travel
27 expenses for depositions. Plaintiffs thus provide no documentation explaining
28 how the costs were necessary.

1 33. \$30,018.77 in legal research. As stated in *DISH Network*, the
2 “reasonable and necessary expenses for computerized services for legal
3 research” allowed in NRS 18.005(17) pertain to costs incurred in the
4 process of electronic discovery. 133 Nev., Adv. Op. at ___, 401 P.3d at 1093.
5 The declaration of plaintiffs’ counsel states that these costs were incurred “to
6 provide the Court with the most recent applicable caselaw on various points of
7 dispute throughout pre-trial motions and during the course of trial...” The
8 argument contained in plaintiffs’ opposition to the motion to retax reinforces
9 that these costs were incurred not as a part of discovery, but rather to assist
10 plaintiffs’ counsel in making legal arguments in motion practice and at trial.
11 Further, the “itemized” list of research provided in plaintiffs’ appendix of
12 documents provides only the date and cost of each transaction. Thus, under
13 *DISH Network’s* holding that this expense does not fall under NRS 18.005(17),
14 these costs are not taxable.

15 ***Taxed Costs***

16 34. As to the remaining specific costs MCI seeks to retax, the Court
17 finds that each cost falls under NRS 18.005(17) as an expense that is
18 reasonable, necessary, and actually incurred, based on the documentation and
19 declaration of counsel. This conclusion contemplates that the parties conducted
20 discovery on an extremely expedited schedule due to the preferential trial
21 setting.

22 35. Further, the complex nature of the claims and gravity of damages
23 at issue required plaintiffs to expend costs that may be considered luxuries in
24 different cases, such as oversize color printing and trial support services.

25 36. Finally, the Court examined in detail the requested expert fees
26 under *Frazier v. Drake*, 357 P.3d 365 (Nev. App. 2015) and found that the fees
27 in excess of \$1,500 for each witness was warranted in light of the factors
28 enumerated in *Frazier*.

37. Because NRS 18.005(5) allows a court to award “a larger fee after determining that the circumstances surrounding the expert’s testimony were of such necessity as to require the larger fee,” the Court has determined that an award exceeding the cap for each of plaintiffs’ five experts is reasonable given plaintiffs’ declaration of counsel, supporting documentation, and the *Frazier* factors, and therefore taxes the entire amount claimed for each of them.

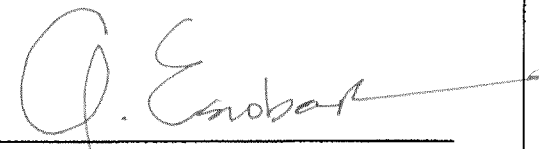

38. In total, the Court reduces plaintiffs’ taxable costs by \$77,061.87 for a total award of **\$542,826.84**. Those costs are summarized below:

| NRS | Definition of Cost | Claimed Amount | Awarded Amount |
|------------|---|---------------------|---------------------|
| 18.005(1) | Filing/Clerk Fees | \$1,956.00 | \$1,886.00 |
| 18.005(2) | Reporter’s Fees for Depositions/Deposition Transcript | \$87,861.77 | \$46,526.22 |
| 18.005(3) | Jurors’ Fees | \$15,828.82 | \$15,828.82 |
| 18.005(4) | Witness Fees | \$1,291.18 | \$1,291.18 |
| 18.005(5) | Expert Witness Fees | \$237,076.61 | \$237,076.61 |
| | Robert Caldwell | \$81,296.19 | \$81,296.19 |
| | Joshua Cohen | \$35,084.67 | \$35,084.67 |
| | Robert Cunitz | \$62,599.18 | \$62,599.18 |
| | Richard Stalnaker | \$33,069.88 | \$33,069.88 |
| | Larry Stokes | \$25,026.69 | \$25,026.69 |
| 18.005(6) | Interpreter Fees | \$620.76 | \$620.76 |
| 18.005(7) | Process Server Fees | \$3,094.50 | \$2,919.50 |
| 18.005(8) | Official Reporter Fees | \$49,625.42 | \$49,625.42 |
| 18.005(9) | Cost of Bond | | |
| 18.005(10) | Bailiff Overtime | \$406.88 | \$406.88 |
| 18.005(11) | Telecopies (Faxes) | \$61.80 | \$0 |
| 18.005(12) | Photocopies/Printing/Scans | \$44,301.61 | \$40,120.84 |
| 18.005(13) | Long Distance Telephone | \$909.16 | \$909.16 |
| 18.005(14) | Postage/Fed Ex | \$1,812.48 | \$1,812.48 |
| 18.005(15) | Travel Expense (Air, Hotel, Car, Meals) | \$14,036.65 | \$12,816.67 |
| 18.005(16) | Fees Charged Pursuant to NRS 19.0335 | | |
| Other | Legal Research | \$30,018.77 | \$0 |
| Other | Run Service | \$1,887.00 | \$1,887.00 |
| Other | Trial Support | \$129,099.30 | \$129,099.30 |
| | TOTAL | \$619,888.71 | \$542,826.84 |


39. If any conclusions of law are properly findings of fact, they shall be treated as if appropriately identified and designated.

1 IT IS SO ORDERED.

2 Dated this 2 day of January, 2018

3 
4 DISTRICT JUDGE 

5 Submitted by:
6 LEWIS ROCA ROTHGERBER CHRISTIE, LLP¹

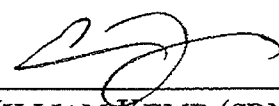
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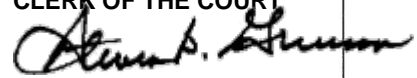
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26
27 ¹ Although MCI submits this order, the order expresses the Court's reasoning
28 and conclusions. MCI does not agree with much of the reasoning articulated in
this order.



FFCL

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,
minors, by and through their Guardian,
MARIE-CLAUDE RIGAUD; SIAMAK
BARIN, as Executor of the Estate of Kayvan
Khiabani, M.D. (Decedent), the Estate of
Kayvan Khiabani, M.D. (Decedent);
SIAMAK BARIN, as Executor of the Estate
of Katayoun Barin, DDS (Decedent); and the
Estate of Katayoun Barin, DDS (Decedent);

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC.,
a Delaware corporation; MICHELANGELO
LEASING INC. d/b/a RYAN'S EXPRESS,
an Arizona corporation; EDWARD
HUBBARD, a Nevada resident; BELL
SPORTS, INC. d/b/a GIRO SPORT
DESIGN, a Delaware corporation;
SEVENPLUS BICYCLES, INC. d/b/a PRO
CYCLERY, a Nevada corporation, DOES 1
through 20; and ROE CORPORATIONS 1
through 20.

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

**COMBINED ORDER (1) DENYING
MOTION FOR JUDGMENT AS A
MATTER OF LAW AND (2)
DENYING MOTION FOR LIMITED
NEW TRIAL**

This matter came before the Court on July 6, 2018, pursuant to Defendant's motion for judgment as a matter of law and Defendant's motion for limited new trial. Having considered the briefs and other pleadings and papers on file, the parties having waived oral argument on both motions, and with good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant's motion for judgment as a matter of law is denied for the following reasons:

Defendant cannot raise issues in the "Renewed" Rule 50 motion that were not first raised in the Rule 50 motion filed at the close of evidence. *Nelson v. Heer*, 123 Nev. 217, 163 P.2d

1 420, 424 n. 9 (Nev. 2007) ("See NRCP 50 (indicating within the drafter's note to the 2004
2 amendment that a motion filed under subdivision (b) is the renewal of a motion filed under
3 subdivision (a) and must have been preceded by a motion filed at the appropriate time under
4 subdivision (a) (2))." In the present case, Defendant presented its Rule 50(a) argument orally
5 the morning of March 22, 2018. The entire argument comprises 12 pages of transcript. (TT
6 3/22/18 12-24) Defendant made the following arguments in this order: (1) strict liability is
7 not available in wrongful death actions (3/22/18 12:24 to 20:4); (2) the evidence was
8 insufficient to establish a product defect, including warnings, because "it was too late at that
9 point for Mr. Hubbard to make an evasive maneuver" (3/22/18 20:5 to 22:9); (3) Plaintiffs did
10 not propose language for a warning (3/22/18 22:10 to 22:20); (4) an S-1 Gard argument
11 (3/22/18 22:21 to 23:10); and (5) strict liability does not extend to bystanders. (3/22/18 23).

12 However, absent in the Rule 50(a) motion was (1) the new argument that "Hubbard did
13 not testify about any particular warning or that a warning would have changed what he did"
14 (Mot. 50(b), 4:24 to 5:6), (2) the new argument that Plaintiffs should have explained "how it
15 [a warning] would have prevented Dr. Khiabani's death" (Mot. 50(b), 6:22 to 9:15 and 11:9
16 12:18)), (3) the new argument that Hubbard's heeding testimony "is insufficient to
17 demonstrate causation" and that Hubbard "never testified that he would have done anything
18 differently" (Mot. 50(b), 9:16), (4) the new "open and obvious" argument (Mot. 50(b), 10:10
19 to 11:8) and (5) the new attack on Plaintiff's warning expert (Cunitz) (Mot. 50(b), 12:19 to
20 13:26) Because the last 5 arguments were not made in the Rule 50(a) motion, they have not
21 been preserved and are denied as procedurally improper.

22 Defendant's first argument in the motion is that Plaintiffs failed to prove causation on the
23 failure to warn theory because the facts showed that Dr. Khiabani suddenly appeared in Mr.
24 Hubbard's peripheral vision, and the accident happened too quickly for a reasonable jury to
25 find that Mr. Hubbard could have avoided the accident. This argument ignores the full facts
26 as presented in the Plaintiffs' case-in-chief, specifically the testimony of Mr. Hubbard that he
27 observed the bicycle while both Dr. Khiabani and the coach were on Charleston, and saw the
28 bicycle turn onto Pavilion Center before Mr. Hubbard turned the coach onto Pavilion Center.

1 Thus, although Mr. Hubbard testified that he did not see Dr. Khiabani's bicycle for 450 feet
2 before the accident, the "split-second" that the accident occurred was not the first time Mr.
3 Hubbard was made aware of the bicycle's presence. Taking all inferences in Plaintiffs' favor,
4 Plaintiffs elicited sufficient evidence for a reasonable jury to find that, had Mr. Hubbard been
5 adequately warned about the dangerous nature of the coach, he would have driven differently
6 as early as when he turned onto Pavilion Center—for example by driving in the left lane
7 instead of the right lane, or by driving slower so as to not pass the bicycle—and that this
8 different action would have avoided the accident. Thus, the accident did not happen too
9 quickly for a reasonable jury to find that a warning would have made a difference.

10 The parties next dispute to what extent a plaintiff in a failure to warn claim must prove
11 causation. Defendant argues that insufficient evidence of causation was presented by
12 Hubbard's testimony that he "absolutely" heeds warnings he is given when he is trained about
13 something relative to safety, because Plaintiffs needed to additionally prove that the accident
14 would have been avoided by the user heeding the warning. Defendant cites to numerous other
15 jurisdictions for this notion, and argues that it is further supported by the Nevada Supreme
16 Court's *Rivera v. Philip Morris, Inc.* decision. This Court disagrees. It is undisputed that,
17 under *Rivera*, the Plaintiffs bear the burden of producing evidence demonstrating that, among
18 other things, the defect caused the injury. *Rivera* also held that "the burden of proving
19 causation can be satisfied in failure-to-warn cases by demonstrating that a different warning
20 would have altered the way the plaintiff used the product or would have prompted plaintiff to
21 take precautions to avoid the injury."

22 Taking all inferences in Plaintiffs' favor, the Court finds that Hubbard's testimony that
23 he would have complied with a warning, combined with the facts listed above regarding
24 Hubbard's perception of the events leading up to the accident, was sufficient to satisfy
25 Plaintiffs' burden of proving causation under Nevada law.

26 Similarly, the Court disagrees with Defendant's suggestion that "the open and obvious
27 nature of the danger reinforces the conclusion that a warning would have been superfluous."
28 Mot. 50(b) at 10. Taking all inferences in Plaintiffs' favor, the presence of testimony by

1 Hubbard, Mary Witherell, and some of Defendant's own employees that they were not aware
2 of the significance of the air displacement created by the coach's design refutes Defendant's
3 classification of the danger as "open and obvious." Further, even if the evidence enabled this
4 Court to find as a matter of law that Hubbard should have known generally of the "risk of
5 driving next to a bicyclist," which this Court has not done, no Nevada law holds that this
6 would prevent a reasonable jury from finding that an adequate warning would have avoided
7 the accident.

8 Next, Defendant suggests that Plaintiffs' duty to prove causation required Plaintiffs to
9 craft an adequate warning. Failure-to-warn claims can be classified as one of two types:
10 allegations that the warning given by the defendant was crafted in such a way to be ineffective
11 in preventing the injury; or allegations that the product is dangerous enough that a warning
12 should have been provided but the defendant did not provide any warning. In cases of the first
13 variety, the jury must consider whether the warning was adequate under the factors provided
14 in *Lewis v. Sea Ray Boats, Inc.* However, in the second category, the absence of any warning,
15 the lack of any warning, could not possibly be considered adequate under the *Sea Ray* factors,
16 and thus the only required findings are that the product was unreasonably dangerous and that
17 an adequate warning would have avoided the injury. This case falls into the second category,
18 where Defendant undisputedly did not provide any warnings about any of the alleged defects
19 which Plaintiffs alleged. In such a case, the Court finds no support for Defendant's assertion
20 that no reasonable jury could find that the product was unreasonably dangerous and that an
21 adequate warning would have avoided the injury without a specific warning being proposed
22 by the plaintiff. While it is true that providing a model warning to show what the defendant
23 could have done to make the product reasonably safe may be a helpful illustration for the
24 plaintiff's case, it is not required for the jury to find in Plaintiffs' favor. *Cf. Ford Motor Co. v.*
25 *Trejo* (in a design defect claim, "a plaintiff may choose to support their case with evidence
26 that a safer alternative design was feasible at the time of manufacture."). Furthermore,
27 Defendant did not propose a jury instruction requiring that Plaintiff provide proof of a specific
28 warning and instead only tendered JI 30 and JI 31. Plaintiffs need not prove precisely how the