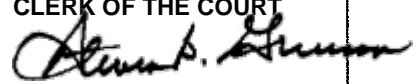


EXHIBIT A TO
DOCKETING
STATEMENT



1 WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
2 e.pepperman@kempjones.com
KEMP, JONES & COULTHARD, LLP
3 3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
4 Telephone: (702) 385-6000

5 PETER S. CHRISTIANSEN, ESQ. (#5254)
pete@christiansenlaw.com
6 KENDELEE L. WORKS, ESQ. (#9611)
kworks@christiansenlaw.com
7 CHRISTIANSEN LAW OFFICES
810 Casino Center Blvd.
8 Las Vegas, Nevada 89101
Telephone: (702) 240-7979

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 //


28 //

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 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
8 3800 Howard Hughes Parkway, 17th Floor
9 Las Vegas, NV 89169

-and-

PETER S. CHRISTIANSEN, ESQ. (#5254)
KENDELEE L. WORKS, ESQ. (#9611)
CHRISTIANSEN LAW OFFICES

10 810 Casino Center Blvd.
11 Las Vegas, Nevada 89101
12 *Attorneys for Plaintiffs*

13 **CERTIFICATE OF SERVICE**

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

18 

19 An Employee of Kemp, Jones & Coulthard.

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

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

Electronically Filed
4/17/2018 4:26 PM
Steven D. Grierson
CLERK OF THE COURT



1 WILL KEMP, ESQ. (#1205)
2 ERIC PEPPERMAN, ESQ. (#11679)
3 e.pepperman@kempjones.com
4 KEMP, JONES & COULTHARD, LLP
5 3800 Howard Hughes Parkway, 17th Floor
6 Las Vegas, Nevada 89169
7 Telephone: (702) 385-6000
8 Facsimile: (702) 385-6001
9 -and-
10 PETER S. CHRISTIANSEN, ESQ. (#5254)
11 KENDELEE L. WORKS, ESQ. (#9611)
12 kworks@christiansenlaw.com
13 CHRISTIANSEN LAW OFFICES
14 810 South Casino Center Blvd.
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,

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 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

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

///
///

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

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

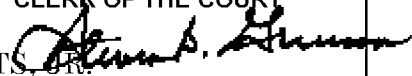
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully Submitted by:
KEMP, JONES & COULTHARD, LLP



WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
-and-
PETER S. CHRISTIANSEN, ESQ. (#5254)
KENDELEE L. WORKS, ESQ. (#9611)
CHRISTIANSEN LAW OFFICES
810 South Casino Center Blvd.
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

EXHIBIT B TO
DOCKETING
STATEMENT



1 DANIEL F. POLSENBERG
Nevada Bar No. 2376
2 dpolsenberg@lrrc.com
JOEL D. HENRIOD
3 Nevada Bar No. 8492
jhenriod@lrrc.com
4 ABRAHAM G. SMITH
asmith@lrrc.com
5 Nevada Bar No. 13,250
LEWIS ROCA ROTHGERBER LLP
6 3993 Howard Hughes Parkway,
Suite 600
7 Las Vegas, Nevada 89169
Telephone: (702) 949-8200
8 Facsimile: (702) 949-8398

D. LEE ROBERTS, JR.
Nevada Bar No. 8877
lroberts@wwhgd.com
HOWARD J. RUSSELL
Nevada Bar No. 8879
hrussell@wwhgd.com
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

*Additional Counsel Listed on
Signature Block*

9 *Attorneys for Defendant*
10 *Motor Coach Industries, Inc.*

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

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

18 Plaintiffs,

19 *vs.*

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

26 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

8 Darrell L. Barger, Esq.
9 Michael G. Terry, Esq.
10 HARTLINE DACUS BARGER
11 DREYER LLP
12 800 N. Shoreline Blvd.
13 Suite 2000, N. Tower
14 Corpus Christi, TX 78401

By /s/ Joel D. Henriod
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Parkway,
Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

12 John C. Dacus, Esq.
13 Brian Rawson, Esq.
14 HARTLINE DACUS BARGER
15 DREYER LLP
16 8750 N. Central
17 Expressway
18 Suite 1600
19 Dallas, TX 75231

D. Lee Roberts, Jr., Esq.
Howard J. Russell, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118

Attorneys for Defendant Motor Coach Industries, Inc.

17

18

19

20

21

22

23

24

25

26

27

28

1 **CERTIFICATE OF SERVICE**

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

5 Will Kemp, Esq.
6 Eric Pepperman, Esq.
7 KEMP, JONES & COULTHARD, LLP
8 3800 Howard Hughes Pkwy., 17th
9 Floor
10 Las Vegas, NV 89169
11 e.pepperman@kempjones.com

12 *Attorneys for Plaintiffs*

13 Keith Gibson, Esq.
14 James C. Ughetta, Esq.
15 LITTLETON JOYCE UGHETTA PARK &
16 KELLY LLP
17 The Centre at Purchase
18 4 Manhattanville Rd., Suite 202
19 Purchase, NY 10577
20 Keith.Gibson@LittletonJoyce.com
21 James.Ughetta@LittletonJoyce.com

22 *Attorneys for Defendant Bell Sports,
23 Inc. d/b/a Giro Sport Design*

24 Michael E. Stoberski, Esq.
25 Joslyn Shapiro, Esq.
26 OLSON CANNON GORMLEY ANGULO &
27 STOBERSKI
28 9950 W. Cheyenne Ave.
Las Vegas, NV 89129
mstoberski@ocgas.com
jshapiro@ocgas.com

*Attorneys for Defendant Bell Sports,
Inc. d/b/a Giro Sport Design*

Michael J. Nunez, Esq.
MURCHISON & CUMMING, LLP
350 S. Rampart Blvd., Suite 320
Las Vegas, NV 89145
mnunez@murchisonlaw.com

*Attorney for Defendant SevenPlus
Bicycles, Inc. d/b/a Pro Cyclery*

Peter S. Christiansen, Esq.
Kendelee L. Works, Esq.
CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd.
Las Vegas, NV 89101
pete@christiansenlaw.com
kworks@christiansenlaw.com

Attorneys for Plaintiffs

C. Scott Toomey, Esq.
LITTLETON JOYCE UGHETTA PARK &
KELLY LLP
201 King of Prussia Rd., Suite 220
Radnor, PA 19087
Scott.toomey@littletonjoyce.com

*Attorney for Defendant Bell Sports,
Inc. d/b/a Giro Sport Design*

Eric O. Freeman, Esq.
SELMAN BREITMAN LLP
3993 Howard Hughes Pkwy., Suite
200
Las Vegas, NV 89169
efreeman@selmanlaw.com

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

Paul E. Stephan, Esq.
Jerry C. Popovich, Esq.
William J. Mall, Esq.
SELMAN BREITMAN LLP
6 Hutton Centre Dr., Suite 1100
Santa Ana, CA 92707
pstephan@selmanlaw.com
jpopovich@selmanlaw.com
wmall@selmanlaw.com

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

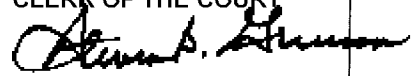
Edward Hubbard

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

EXHIBIT A

EXHIBIT A



1 **FFCL**

2 D. LEE ROBERTS, JR. (SBN 8877)
3 HOWARD J. RUSSELL (SBN 8879)
4 DAVID A. DIAL (*admitted pro hac vice*)
5 MARISA RODRIGUEZ (SBN 13,234)
6 WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
7 6385 S. Rainbow Blvd., Suite 400
8 Las Vegas, Nevada 89118
9 (702) 938-3838
10 (702) 938-3864
11 LRoberts@WWHGD.com

12 DANIEL F. POLSENBERG (SBN 2376)
13 JOEL D. HENRIOD (SBN 8492)
14 LEWIS ROCA ROTHGERBER CHRISTIE LLP
15 3993 Howard Hughes Pkwy. Suite 600
16 Las Vegas, Nevada 89169
17 (702) 949-8200
18 (702) 949-8398 (Fax)
19 DPolsenberg@LRRC.com
20 JHenriod@LRRC.com

21 *Attorneys for Motor Coach Industries, Inc,*

22 DISTRICT COURT
23 CLARK COUNTY, NEVADA

24 KEON KHIABANI and ARIA KHIABANI,
25 minors by and through their Guardian,
26 MARIE-CLAUDE RIGAUD; SIAMAK BARIN,
27 as Executor of the Estate of Kayvan
28 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 Larrv Stokes	\$33,069.88 \$25,026.69	\$33,069.88 \$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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

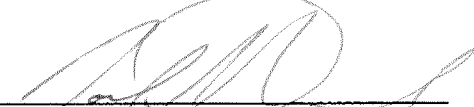
IT IS SO ORDERED.

Dated this 2 day of January, 2018



DISTRICT JUDGE
AC

Submitted by:
LEWIS ROCA ROTHGERBER CHRISTIE, LLP¹

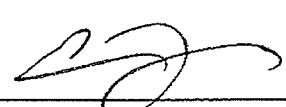
By: 
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Pkwy.
Suite 600
Las Vegas, NV 89169-5996

D. LEE ROBERTS, JR. (SBN 8877)
HOWARD J. RUSSELL (SBN 8879)
DAVID A. DIAL (*admitted pro hac vice*)
MARISA RODRIGUEZ (SBN 13,234)
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118

Attorneys for Defendant Motor Coach Industries, Inc.

Approved as to form and content by:

KEMP, JONES & COULTHARD, LLP

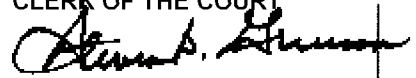
By: 
WILLIAM KEMP (SBN 1205)
ERIC PEPPERMAN (SBN 11,679)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

PETER S. CHRISTIANSEN (SBN 5254)
KENDELEE L. WORKS (SBN 9611)
CHRISTIANSEN LAW OFFICES
810 South Casino Center Blvd.
Las Vegas, NV 89101

Attorneys for Plaintiffs

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

EXHIBIT C TO
DOCKETING
STATEMENT



1 WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
2 e.pepperman@kempjones.com
KEMP, JONES & COULTHARD, LLP
3 3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
4 Telephone: (702) 385-6000

5 PETER S. CHRISTIANSEN, ESQ. (#5254)
pete@christiansenlaw.com
6 KENDELEE L. WORKS, ESQ. (#9611)
kworks@christiansenlaw.com
7 CHRISTIANSEN LAW OFFICES
810 Casino Center Blvd.
8 Las Vegas, Nevada 89101
Telephone: (702) 240-7979

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.

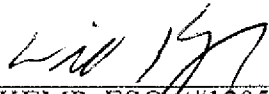
27
28

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

1 A copy of said Order is attached hereto.

2 DATED this 1st day of February, 2019.

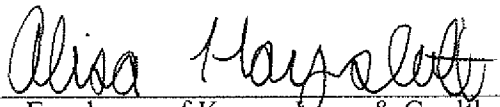
3 KEMP, JONES & COULTHARD, LLP

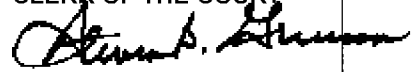
4
5 
6 WILL KEMP, ESQ. (#1205)
7 ERIC PEPPERMAN, ESQ. (#11679)
8 KEMP, JONES & COULTHARD, LLP
9 3800 Howard Hughes Parkway, 17th Floor
10 Las Vegas, NV 89169

11 -and-
12 PETER S. CHRISTIANSEN, ESQ. (#5254)
13 KENDELEE L. WORKS, ESQ. (#9611)
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.



1 FFCL
2

3 EIGHTH JUDICIAL DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

14 Plaintiffs,

15 vs.

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

27 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**

28 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.

17
18
19 

20
21
22
23
24
25
26
27
28
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
6 follows:

7 D. Lee Roberts, Jr., Esq.
8 Howard J. Russell, Esq.
9 David A. Dial, Esq.
10 Marisa Rodriguez, Esq.
11 WEINBERG WHEELER
12 HUDGINS GUNN & DIAL LLC
13 Facsimile: (702) 938-3864
14 Email: droberts@wwhgd.com
15 hrussell@wwhgd.com
16 ddial@wwhgd.com
17 mrodriguez@wwhgd.com

18 **AND:**

19 Darrell L. Barger, Esq.
20 Michael G. Terry, Esq.
21 John C. Dacus, Esq.
22 Brian Rawson, Esq.
23 HARTLINE DACUS BARGER
24 DREYER LLP
25 Email: dbarger@hdbdlaw.com
26 mterry@hdbdlaw.com
27 jdacus@hdbdlaw.com
28 brawson@hdbdlaw.com
*Attorneys for Defendant Motor Coach
Industries, Inc.*

Will Kemp, Esq.
Eric Pepperman, Esq.
KEMP JONES & COUTHARD LLP
Email: e.pepperman@kempjones.com

AND:

Peter S. Christiansen, Esq.
Kendelea L. Works, Esq.
CHRISTIANSSEN LAW OFFICES
Email: pete@christiansenlaw.com
kworks@christiansenlaw.com
Attorneys for Plaintiff

Keith Gibson, Esq.
James C. Ughetta, Esq.
LITTLETON JOYCE UGHETTA PARK
& KELLY LLP
Email: Keith.Gibson@littletonjoyce.com
James.Ughetta@LittletonJoyce.com
*Attorneys for Defendant Bell Sports, Inc.
d/b/a Giro Sport Design*

Michael E. Stoberski, Esq.
Joslyn Shapiro, Esq.
OLSON CANNON GORMLEY
ANGULO & STOBERSKI
Email: mstoberski@ocgas.com
jshapiro@ocgas.com

AND:

C. Scott Toomey, Esq.
LITTLETON JOYCE UGHETTA PARK
& KELLY LLP
Email: Scott.Toomey@littletonjoyce.com
*Attorneys for Defendant Bell Sports, Inc.
d/b/a
Giro Sport Design*

Eric O. Freeman, Esq.
SELMAN BREITMAN LLP
Email: efreeman@selmanlaw.com
*Attorney for Defendants Michelangelo
Leasing
Inc. d/b/a Ryan's Express & Edward
Hubbard*

Michael J. Nunez, Esq.
MURCHISON & CUMMING, LLP
Email: mjnuetz@murchisonlaw.com
*Attorney for Defendant SevenPlus
Bicycles, Inc. d/b/a Pro Cyclery*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Paul E. Stephan, Esq.
Jerry C. Popovich, Esq.
William J. Mall, Esq.
SELMAN BREITMAN LLP
Email: pstephan@selmanlaw.com
jpopovich@selmanlaw.com
wmall@selmanlaw.com
*Attorneys for Defendants Michelangelo
Leasing Inc. d/b/a Ryan's Express and
Edward Hubbard*

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
LEWIS ROCA ROTHGERBER
CHRISTIE LLP
Email: DPolsenberg@LRRC.com
JHenriod@LRRC.com
*Attorneys for Motor Coach Industries,
Inc.*

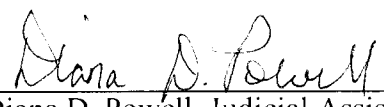
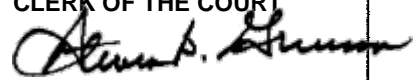

Diana D. Powell, Judicial Assistant

EXHIBIT D TO
DOCKETING
STATEMENT



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

1 WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
2 e.pepperman@kempjones.com
KEMP, JONES & COULTHARD, LLP
3 3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
4 Telephone: (702) 385-6000

5 PETER S. CHRISTIANSEN, ESQ. (#5254)
pete@christiansenlaw.com
6 KENDELEE L. WORKS, ESQ. (#9611)
kworks@christiansenlaw.com
7 CHRISTIANSEN LAW OFFICES
810 Casino Center Blvd.
8 Las Vegas, Nevada 89101
Telephone: (702) 240-7979

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 COURT'S
ORDER DENYING DEFENDANT'S
MOTION TO ALTER OR AMEND
JUDGMENT TO OFFSET SETTLEMENT
PROCEEDS PAID BY OTHER
DEFENDANTS FILED UNDER SEAL ON
MARCH 26, 2019**

22
23 TO: All parties herein; and

24 TO: Their respective counsel;

25 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that, on March 26, 2019, the
26 Court entered its Order Denying Defendant's Motion to Alter or Amend Judgment to Offset
27 Settlement Proceeds Paid by Other Defendants, and filed the same under seal on the same date.

28 ///
///

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

1 A redacted copy of said Order is attached hereto.

2 DATED this 3rd day of May, 2019.

3

4

KEMP, JONES & COULTHARD, LLP

5

/s/ Eric Pepperman

6

WILL KEMP, ESQ. (#1205)

ERIC PEPPERMAN, ESQ. (#11679)

KEMP, JONES & COULTHARD, LLP

3800 Howard Hughes Parkway, 17th Floor

Las Vegas, NV 89169

8

-and-

9

PETER S. CHRISTIANSEN, ESQ. (#5254)

KENDELEE L. WORKS, ESQ. (#9611)

CHRISTIANSEN LAW OFFICES

10

810 Casino Center Blvd.

Las Vegas, Nevada 89101

11

Attorneys for Plaintiffs

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

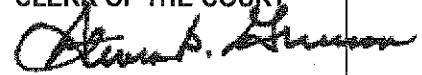
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 3rd day of May, 2019, the foregoing **NOTICE OF ENTRY OF**
3 **COURT'S ORDER DENYING DEFENDANT'S MOTION TO ALTER OR AMEND**
4 **JUDGMENT TO OFFSET SETTLEMENT PROCEEDS PAID BY OTHER DEFENDANTS**
5 **FILED UNDER SEAL ON MARCH 26, 2019** was served on all parties currently on the electronic
6 service list via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing
7 and Conversion Rules, Administrative Order 14-2.

8
9 /s/ Patty Pierson
10 An Employee of Kemp, Jones & Coulthard.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kje@kempjones.com



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 Plaintiffs,

14 vs.

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

23 Defendants.

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

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

29 In this matter, the Plaintiffs settled with Defendants Michelangelo Leasing Inc., Edward
30 Hubbard, Bell Sports Inc., and SevenPlus Bicycles Inc. for a total settlement of [REDACTED].
31 Plaintiffs and the remaining defendant, Motor Coach Industries ("MCI"), proceeded to trial. The
32 jury awarded [REDACTED] in favor of the Plaintiffs.

33 Defendant MCI moved to offset the jury award by the settlement proceeds pursuant to
34 NRS 17.245(1)(a). Specifically, it asked the court to reduce the jury award [REDACTED] by

1 the total settlement proceeds [REDACTED] for a total reduced judgment resulting in
2 [REDACTED].

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.

23 ///

24 ///

25 ///

26 ///

27 ///

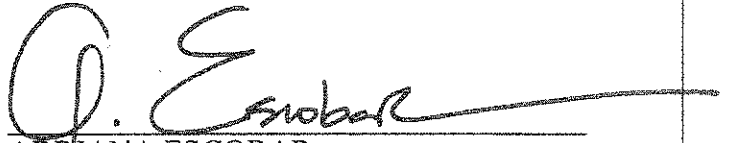
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Collectively, the defendants settled for ██████████ which constitutes almost ██████ 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.

IT IS SO ORDERED.

Dated this 26th day of March, 2019.



ADRIANA ESCOBAR
DISTRICT COURT JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
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:

D. Lee Roberts, Jr., Esq.
Howard J. Russell, Esq.
David A. Dial, Esq.
Marisa Rodriguez, Esq.
WEINBERG WHEELER
HUDGINS GUNN & DIAL LLC
Facsimile: (702) 938-3864
Email: lroberts@wwhgd.com
hrussell@wwhgd.com
ddial@wwhgd.com
mrodriguez@wwhgd.com

AND:
Darrell L. Barger, Esq.
Michael G. Terry, Esq.
John C. Dacus, Esq.
Brian Rawson, Esq.
HARTLINE DACUS BARGER
DREYER LLP
Email: dbarger@hdbdlaw.com
mterry@hdbdlaw.com
jdacus@hdbdlaw.com
brawson@hdbdlaw.com
*Attorneys for Defendant Motor Coach
Industries, Inc.*

Will Kemp, Esq.
Eric Pepperman, Esq.
KEMP JONES & COUTHARD LLP
Email: e.pepperman@kempjones.com

AND:
Peter S. Christiansen, Esq.
Kendelea L. Works, Esq.
CHRISTIANSSEN LAW OFFICES
Email: pete@christiansenlaw.com
kworks@christiansenlaw.com
Attorneys for Plaintiff

Keith Gibson, Esq.
James C. Ughetta, Esq.
LITTLETON JOYCE UGHETTA PARK
& KELLY LLP
Email: Keith.Gibson@littletonjoyce.com
James.Ughetta@LittletonJoyce.com
*Attorneys for Defendant Bell Sports, Inc.
d/b/a Giro Sport Design*

Michael E. Stoberski, Esq.
Joslyn Shapiro, Esq.
OLSON CANNON GORMLEY
ANGULO & STOBERSKI
Email: mstoberski@ocgas.com
jshapiro@ocgas.com

AND:
C. Scott Toomey, Esq.
LITTLETON JOYCE UGHETTA PARK
& KELLY LLP
Email: Scott.Toomey@littletonjoyce.com
*Attorneys for Defendant Bell Sports, Inc.
d/b/a
Giro Sport Design*

Eric O. Freeman, Esq.
SELMAN BREITMAN LLP
Email: efreeman@selmanlaw.com
*Attorney for Defendants Michelangelo
Leasing
Inc. d/b/a Ryan's Express & Edward
Hubbard*

Michael J. Nunez, Esq.
MURCHISON & CUMMING, LLP
Email: mnuez@murchisonlaw.com
*Attorney for Defendant SevenPlus
Bicycles, Inc. d/b/a Pro Cyclery*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Paul E. Stephan, Esq.
Jerry C. Popovich, Esq.
William J. Mall, Esq.
SELMAN BREITMAN LLP
Email: pstephan@selmanlaw.com
jpopovich@selmanlaw.com
wmall@selmanlaw.com
*Attorneys for Defendants Michelangelo
Leasing Inc. d/b/a Ryan's Express and
Edward Hubbard*

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
LEWIS ROCA ROTHGERBER
CHRISTIE LLP
Email: DPolsenberg@LRRC.com
JHenriod@LRRC.com
*Attorneys for Motor Coach Industries,
Inc.*

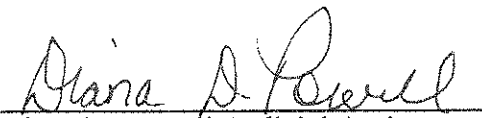
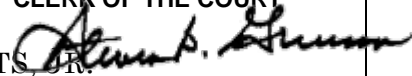

Diana D. Powell, Judicial Assistant

EXHIBIT E TO
DOCKETING
STATEMENT



1 DANIEL F. POLSENBERG
Nevada Bar No. 2376
2 dpolsenberg@lrrc.com
JOEL D. HENRIOD
3 Nevada Bar No. 8492
jhenriod@lrrc.com
4 ABRAHAM G. SMITH
asmith@lrrc.com
5 Nevada Bar No. 13,250
LEWIS ROCA ROTHGERBER LLP
6 3993 Howard Hughes Parkway,
Suite 600
7 Las Vegas, Nevada 89169
Telephone: (702) 949-8200
8 Facsimile: (702) 949-8398

D. LEE ROBERTS, JR.
Nevada Bar No. 8877
lroberts@wwhgd.com
HOWARD J. RUSSELL
Nevada Bar No. 8879
hrussell@wwhgd.com
DAVID A. DIAL, ESQ.
Admitted Pro Hac Vice
ddial@wwhgd.com
MARISA RODRIGUEZ
Nevada Bar No. 13234
mrodriguez@wwhgd.com
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

9 *Attorneys for Defendant*
10 *Motor Coach Industries, Inc.*

*Additional Counsel Listed on
Signature Block*

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

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

Case No.: A-17-755977-C
Dept. No.: XIV

19 Plaintiffs,
20 v.

**MOTOR COACH INDUSTRIES, INC.'S
RENEWED MOTION FOR
JUDGMENT AS A MATTER OF LAW
REGARDING FAILURE TO WARN
CLAIM**

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

27 Defendants.

1 Defendant Motor Coach Industries, Inc. (“MCI”) renews its motion for
2 judgment as a matter of law. NRCP 50(b).

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION

PLEASE TAKE NOTICE that MCI will bring the foregoing motion for hearing
before the Court on the **12th** day of **June**, 2018, at **9:30 a**.m., in
Department XIV of the Eighth Judicial District Court, 200 Lewis Avenue, Las
Vegas, Nevada 89155.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The Court should enter judgment as a matter of law in favor of Motor
3 Coach Industries, Inc. under NRCP 50(b) because plaintiffs did not meet their
4 burden to demonstrate that a warning would have made a difference. Rather,
5 the evidence conclusively demonstrates that, even if MCI had given a warning,
6 Mr. Hubbard did not have time to heed it before the collision between the motor
7 coach and Dr. Khiabani. A failure to warn could not have been the cause of the
8 accident because the accident would have happened even if a warning had been
9 given.

10 Plaintiffs also failed to meet their burden to establish causation because
11 they did not propose a specific warning that should have been given, or
12 demonstrate that any such warning would have prevented Dr. Khiabani’s
13 death.

14 Further, judgment as a matter of law is appropriate because MCI was not
15 required to manufacture a motor coach that would prevent injury to bicyclists.

16 And plaintiffs did not prove that Dr. Khiabani’s death was the result of a
17 “wrongful act or neglect,” as required by the wrongful death statute. Plaintiffs
18 opted to pursue a strict liability theory, which does not require any proof of
19 wrongdoing.

20 **STANDARD FOR JUDGMENT AS A MATTER OF LAW**

21 “Under NRCP 50(a)(1), the district court may grant a motion for
22 judgment as a matter of law if the opposing party has failed to prove a sufficient
23 issue for the jury, so that his claim cannot be maintained under the controlling
24 law.” *Bielar v. Washoe Health Sys., Inc.*, 129 Nev. 459, 470, 306 P.3d 360, 368
25 (2013) (quoting *Nelson v. Heer*, 123 Nev. 217, 222, 163 P.3d 420, 424 (2007)).

26 “To overcome a motion brought pursuant to NRCP 50(a), ‘the nonmoving party
27 must have presented sufficient evidence such that the jury could grant relief to
28

1 that party.” *Id.* Judgment as a matter of law should be entered when a party
2 fails to present testimony to support an element of its case. *Id.* (court properly
3 granted JMOL where there was no testimony to demonstrate that charges for
4 medical services and goods rendered were unreasonable).

5 THE RELEVANT EVIDENCE

6 Even construing the evidence in a light most favorable to the plaintiffs,
7 the evidence at trial demonstrates the following.

8 ***The Motor Coach Driver Testified that He Did Not*** 9 ***See Dr. Khiabani Until It Was Too Late***

10
11 The evidence at trial showed that Mr. Hubbard was driving south in a
12 motor coach that passed Dr. Khiabani at the cutout for the city bus on South
13 Pavilion Center, just south of Charleston Blvd. (March 1, 2018 Tr. at 140-41,
14 Ex. A.) After passing Dr. Khiabani, Mr. Hubbard said that he didn’t see him
15 while driving 450 feet, even though he was constantly checking his mirrors.
16 (*Id.* at 150, 156, 182-84.) He didn’t see Dr. Khiabani again until just before he
17 reached the Griffith Peak intersection. At the intersection, he saw a bicycle
18 drift into his lane in his peripheral vision. (*Id.* at 151, 166, 180.) The moment
19 he saw the bicycle drift into his lane, he immediately turned the steering wheel
20 to the left in an attempt to avoid a collision. (*Id.* at 155, 191.) In his words, he
21 immediately took “evasive action.” (*Id.* at 155.)

22 It happened “very fast.” (*Id.* at 189.) He didn’t know where Dr. Khiabani
23 came from. (*Id.* at 189-90.)

24 ***Mr. Hubbard Did Not Testify About Any Particular Warning*** 25 ***or That a Warning Would Have Changed What He Did***

26 In response to a single question from counsel, Mr. Hubbard testified that
27 if he was “trained about something relative to safety, [he] heed[s] those training
28 warnings[.]” (*Id.* at 154.) He was not asked if he would have changed his

1 conduct on the day of the accident if had received a warning. He was not asked
2 if he would have taken additional precautions if he was given a warning. He
3 was not asked a single question about any specific warning. Because plaintiffs
4 never proposed a specific warning or explained how it should have been
5 delivered to Mr. Hubbard, they never explained what additional information
6 Mr. Hubbard should have been given.

7 ***The Jury Finds No Design Defect Relating***
8 ***to Aerodynamics and Does Not Find That the Failure***
9 ***to Warn Was the Cause of Dr. Khiabani's Death***

10 The jury found that there was no right-side blind spot that made the
11 coach unreasonably dangerous and a legal cause of Dr. Khibani's death. (See
12 "Special Verdict," filed March 23, 2018 at 2:9.) It found that the lack of
13 proximity sensors and lack of rear-wheel protective barriers did not make the
14 coach unreasonably dangerous and a legal cause of Dr. Khiabani's death. (*Id.* at
15 2:14.) And it found that the aerodynamic design of the coach did not make it
16 unreasonably dangerous and a legal cause of Dr. Khiabani's death. (*Id.* at 2:19.)

17 With regard to the failure to warn claim, the jury was asked only whether
18 MCI failed to "provide an adequate warning that would have been acted upon."
19 (*Id.* at 2:25.) It was not asked whether the failure to provide an adequate
20 warning was the cause of Dr. Khiabani's death. And it was not asked whether
21 Mr. Hubbard *could have* avoided colliding with Dr. Khiabani if he had been
22 provided with a warning.
23
24
25
26
27
28

ARGUMENT

I. PLAINTIFFS FAILED TO PROVE CAUSATION BECAUSE IT WAS TOO LATE FOR MR. HUBBARD TO AVOID THE COLLISION WHEN DR. KHIABANI SUDDENLY APPEARED IN MR. HUBBARD'S PERIPHERAL VISION

A. Plaintiffs Had the Burden to Prove Causation

“In Nevada, it is well-established law that in strict product liability failure-to-warn cases, the plaintiff bears the burden of production and must prove, among other elements, that the inadequate warning caused his injuries.” *Rivera v. Philip Morris, Inc.*, 125 Nev. 185, 187, 209 P.3d 271, 273 (2009). Unlike in many states, there is no presumption that a person would have heeded a warning in Nevada. *Id.*

The plaintiff must prove causation. *See Sims v. Gen. Tel. & Elecs.*, 107 Nev. 516, 524, 815 P.2d 151, 156 (1991), *overruled on other grounds by Tucker v. Action Equip. & Scaffold Co.*, 113 Nev. 1349, 1356 n.4, 951 P.2d 1027, 1031 n.4 (1997). As the Court instructed the jury in this case, the plaintiff in a product-liability case must prove at least “legal” causation, which means the defect must have been “a substantial factor in bringing about the injury, damage, loss or harm.” NEV. J.I. 7.02 (listing elements of claim, including “the defect was a [proximate] [legal] cause of the damage or injury to the plaintiff”); NEV. J.I. 4.04A (definition of legal cause). (*See* Jury Instruction No. 24.)

B. Plaintiffs Failed to Present Any Evidence That a Warning Would Have Made a Difference

A failure to warn is not a cause of injury when it is clear that a warning would have made no difference. *Kauffman v. Manchester Tank & Equip. Co.*, 203 F.3d 831 (9th Cir. 1999) (unpublished). The plaintiff “must prove that he or she would not have suffered the harm in question if adequate warnings or instructions had been provided.” *See* AMERICAN LAW OF PRODUCTS LIABILITY

1 § 32:4 (3d ed.). To meet that burden, the plaintiff must prove that the warning
2 would have altered the instrumental party's conduct. *See id.* § 34:48 (plaintiff
3 must provide testimony "which indicates, in some way, that the plaintiff or
4 another instrumental party would have altered conduct had an adequate
5 warning been given"); *id.* § 32:4 & n.5 (citing voluminous cases holding that
6 plaintiff must "show that an adequate warning would have altered the conduct
7 that led to the injury").

8 Stated somewhat differently, a futile warning is not required. *See Afoa v.*
9 *China Airlines Ltd.*, 2013 WL 12066087, at *2 (W.D. Wash. Apr. 12, 2013)
10 (dismissing complaint and denying leave to amend because there was no
11 warning that could have prevented collision from occurring); *Adesina v. Aladan*
12 *Corp.*, 438 F. Supp. 2d 329, 338 (S.D.N.Y. 2006) ("If a failure to warn would
13 have been futile, plaintiff cannot prove proximate causation."); *Lee v. Martin*, 45
14 S.W.3d 860, 865 (Ark. Ct. App. 2001) (no causation if "an adequate warning
15 would have been futile under the circumstances").

16 The focus is on the actual circumstances. *See AMERICAN LAW OF*
17 *PRODUCTS LIABILITY* § 32:4 (3d ed.) ("In approaching the proximate cause issue
18 in warnings cases, the focus is on the effect an inadequate warning had, or if no
19 warning was provided, the effect an adequate warning would have had if given,
20 on the actual circumstances surrounding the accident."); *Arnold v. Ingersoll-*
21 *Rand Co.*, 834 S.W.2d 192, 193 (Mo. 1992) ("[T]he traditional approach to
22 proximate cause in failure to warn cases focuses on the effect of giving a
23 warning on the actual circumstances surrounding the accident."). A proposed
24 warning must provide *additional information* that the instrumental party
25 would have, and could have, acted on under the circumstances. *See McMurry v.*
26 *Inmont Corp.*, 694 N.Y.S.2d 157, 159 (N.Y. App. Div. 1999) (summary judgment
27 property when "a warning would not have added anything to the appreciation of
28 this hazard").

1 Nevada law is in accord with these principles. *See Rivera*, 125 Nev. at
2 191, 209 P.3d at 275 (“[T]he burden of proving causation can be satisfied in
3 failure-to-warn cases by demonstrating that a different warning would have
4 altered the way the plaintiff used the product or would have ‘prompted plaintiff
5 to take precautions to avoid the injury.’” (quoting *Riley v. Am. Honda Motor Co.,*
6 *Inc.*, 856 P.2d 196, 198 (Mont. 1993))); *see also Gove v. Eli Lilly & Co.*, 394 Fed.
7 App’x 817, 818-19 (2d Cir. 2010) (causation not established unless there is
8 evidence that adequate warning would have altered conduct); *Austin v. Will-*
9 *Burt Co.*, 361 F.3d 862, 869-70 (5th Cir. 2004) (same as *Gove*); *Barnhill v. Teva*
10 *Pharm. USA, Inc.*, 819 F. Supp. 2d 1254, 1261-62 (S.D. Ala. 2011) (summary
11 judgment appropriate where there was no evidence that a warning would have
12 avoided injury); *Little v. Brown & Williamson Tobacco Corp.*, 243 F. Supp. 2d
13 480, 497 (D.S.C. 2001) (summary judgment granted because plaintiff had
14 burden of showing that a warning would have made a difference in the conduct
15 of person warned and plaintiff provided no evidence); *Windham v. Wyeth Labs.,*
16 *Inc.*, 786 F. Supp. 607, 612-13 (S.D. Miss. 1992) (same as *Gove* and *Austin*);
17 *Udac v. Takata Corp.*, 214 P.3d 1133, 1153 (Haw. Ct. App. 2009) (jury should
18 not have been instructed on failure to warn theory when there was no evidence
19 that if person had been warned, he would have “altered his behavior”).

20 *Brown v. Shiver*, 358 S.E.2d 862, 864 (Ga. Ct. App. 1987), is particularly
21 useful. In that case, the court concluded that there was no causation to support
22 a failure to warn claim because the “plaintiff could not have seen the warning in
23 time to avoid [a] collision.”

24 Likewise, here, Mr. Hubbard—the person who would need to (1) have been
25 aware of the warning, (2) have heeded it in general, and (3) applied it in the
26 **particular situation**—testified that when Dr. Khiabani suddenly appeared in
27 his peripheral vision, it was too late for him to avoid the collision. He
28 immediately turned away from Dr. Khiabani and stopped the bus.

1 Unfortunately, that did not prevent the collision. A warning wouldn't have
2 either. Even if Mr. Hubbard had received a warning before the accident (and
3 would have heeded it), he *did not have time to heed* the warning and avoid the
4 collision. Mr. Hubbard did not testify that a warning would have caused him to
5 do anything differently to avoid the accident and there was no other evidence on
6 this issue. Thus, a failure to warn could not have been the cause of the
7 accident. *See id.*; *Powell v. J.T. Posey Co.*, 766 F.2d 131, 134 (3d Cir. 1985)
8 (“She would have rushed to grasp Adams, warning or no warning, when he
9 appeared to her to be falling, because that was her instinctive reaction.”);
10 *Overpeck v. Chicago Pneumatic Tool Co.*, 823 F.2d 751, 756 (3d Cir. 1987)
11 (causation was not established when there was “no evidence to support a
12 finding that a warning would have changed [the plaintiff’s] behavior” and
13 judgment notwithstanding the verdict was proper); *cf. Gravelet-Blondin v.*
14 *Shelton*, 728 F.3d 1086, 1092 (9th Cir. 2013) (warning is meaningless when
15 there is no time to react to it).

16 **C. Mr. Hubbard’s Consciousness of Safety**
17 **Is Insufficient to Demonstrate Causation**

18 In response to a single question from counsel, Mr. Hubbard testified that
19 he generally heeds safety training warnings. (March 1, 2018 Tr. at 154:18-21,
20 Ex. A.) But he was never asked about any particular warning. He was never
21 asked about a warning that related to “air blasts.” And he was never asked if
22 he would have (or could have) changed his conduct if he had been warned.

23 In a case relied on by the Nevada Supreme Court in *Rivera*, the Montana
24 Supreme Court held that cause was not established when there was no evidence
25 establishing that a warning relating to a motorcycle’s propensity to wobble
26 would have changed the plaintiff’s conduct. *See Riley v. Am. Honda Motor Co.,*
27 *Inc.*, 856 P.2d 196, 199 (Mont. 1993). Evidence that the plaintiff “respected
28 machinery and was concerned about safety” was insufficient to establish

1 causation even though the plaintiff later argued that he “might have rode [sic]
2 the motorcycle differently and might not have taken it on a long trip on the
3 highway” if he had been warned. *Id.*

4 Because Mr. Hubbard never testified that he would have done anything
5 differently if he had received a warning, his testimony that he was safety
6 conscious is insufficient to establish cause. *See id.*; 63A Am. Jur. 2d, *Products*
7 *Liability* § 1137 (2d ed. 2018) (“To establish that a proper warning would have
8 been heeded, the plaintiff may be required to present evidence of more than the
9 user’s general concern with issues of safety.”).

10 **D. The Open and Obvious Nature of the Danger**
11 **Reinforces the Conclusion that a Warning**
12 **Would Have Been Superfluous.**

13 Mr. Hubbard was a sophisticated user of motor coaches, having driven
14 motor coaches and buses for over two decades. (March 1, 2018 Tr. at 130, Ex.
15 A.) He knew or should have known the risk of driving next to a bicyclist. *See*
16 *Johnson v. Honeywell Int’l Inc.*, 101 Cal. Rptr. 549, 556 (Ct. App. 2009) (“[A]
17 manufacturer is not liable to a sophisticated user of its product for failure to
18 warn, if the sophisticated user knew or should have known of the risk, whether
19 the cause of action is for negligence or for strict liability for failure to warn.”).
20 In fact, he testified that at the precise moment he became aware that Dr.
21 Khiabani was too close to the motor coach, he took evasive action in an attempt
22 to avoid the collision.

23 The obviousness of the danger and Mr. Hubbard’s immediate reaction to
24 it highlights the fact that a warning would not have made any difference here.
25 *See Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 223, 955 P.2d 661 (1998)
26 (manufacturer is “not required to warn against dangers that are generally
27 known”); *Dorshimer v. Zonar Sys., Inc.*, 145 F. Supp. 3d 339, 354 (M.D. Pa.
28 2015) (no duty to warn bus driver when warning would have been meaningless

1 because danger was open and obvious); *Calles v. Scripto-Tokai Corp.*, 832
2 N.E.2d 409, 417 (Ill. Ct. App. 2005) (“The manufacturer has no duty to add
3 pointless warnings about dangers the consumer already recognizes.”);
4 *Bazerman v. Gardall Safe Corp.*, 609 N.Y.S.2d 610, 611 (N.Y. App. Div. 1994)
5 (“[T]here is no liability for failure to warn where such risks and dangers are so
6 obvious that they can ordinarily be appreciated by any consumer to the same
7 extent that a formal warning would provide or where they can be recognized
8 simply as a matter of common sense.” (citations omitted)).

9 **II. CAUSATION IS ABSENT BECAUSE PLAINTIFFS NEVER EXPLAINED**
10 **WHAT WARNING SHOULD HAVE BEEN GIVEN OR HOW IT WOULD**
11 **HAVE PREVENTED DR. KHIABANI’S DEATH**

12 Plaintiffs also failed to establish causation because they did not introduce
13 any evidence regarding what an adequate warning should have said, how it
14 should have been presented, or (most importantly) how a proposed warning
15 would have prevented the accident. *See Rivera*, 125 Nev. at 191, 209 P.3d at
16 275 (plaintiff may prove causation by showing that a “different warning” would
17 have altered conduct); *Broussard v. Procter & Gamble Co.*, 463 F. Supp. 2d 596,
18 609-10 (W.D. La. 2006) (entering summary judgment where plaintiff had not
19 offered “evidence of what warning Procter & Gamble should have provided or
20 how such a warning would have prevented [plaintiff’s] injuries”); *Thompson v.*
21 *Nissan N. Am., Inc.*, 429 F. Supp. 2d 759, 781 (E.D. La. 2006) (“Plaintiffs have
22 presented no evidence, from either of its experts . . ., of an inadequate warning,
23 nor do they present any language of a proposed adequate warning.”), *aff’d*, 230
24 Fed. App’x 443 (5th Cir. 2007); *Derienzo v. Trek Bicycle Corp.*, 376 F. Supp. 2d
25 537, 566 (S.D.N.Y. 2005) (one element of failure to warn claim is that “a
26 proposed alternative warning would have prevented Plaintiff’s accident”);
27 *Demaree v. Toyota Motor Corp.*, 37 F. Supp. 2d 959, 967 (W.D. Ky. 1999) (Rule
28 50 motion granted in part because “plaintiff failed to produce proof of what a

1 warning should or might have been”); *White v. Caterpillar, Inc.*, 867 P.2d 100,
2 107 (Colo. Ct. App. 1993) (“If the danger is open and obvious, there is no duty to
3 warn unless there is a substantial likelihood that the proposed warning would
4 have prevented injury to the ordinary user.”).

5 Plaintiffs had to prove that a *particular* warning would have prevented
6 Dr. Khiabani’s death from occurring. *See Campbell v. Boston Scientific Corp.*,
7 2016 WL 5796906 (S.D. W. Va. Oct. 3, 2016) (“To establish proximate causation
8 under a theory of failure to warn, the plaintiff must prove that a different
9 warning would have avoided her injuries.”); *Weilbrenner v. Teva*
10 *Pharmaceuticals USA, Inc.*, 696 F. Supp. 2d 1329 (M.D. Ga. 2010) (“[A]s this is
11 a failure-to-warn case, Plaintiffs must also show that a different label or
12 warning would have avoided Katelyn’s injuries.”). They did not meet that
13 burden.

14 Because there is no evidence regarding a proposed warning, there is no
15 evidence that a warning would have prevented Dr. Khiabani’s death. *See id.*;
16 *Morton v. Homelite, Inc.*, 183 F.R.D. 657, 659 (W.D. Mo. 1998) (“[W]here a
17 warning would not have conveyed any additional information it is appropriate
18 for the Court to enter judgment.”).

19 **III. THE TESTIMONY OF THE HUMAN FACTORS EXPERT**
20 **WAS TOO CONCLUSORY TO PROVE THAT A WARNING**
21 **SHOULD HAVE BEEN GIVEN AND HE DID NOT EXPLAIN**
22 **WHAT WARNING SHOULD HAVE BEEN GIVEN**

23 Mr. Cunitz’s testimony that warnings were needed did not create an issue
24 of fact for the jury. *See Brewer v. Myrtle Beach Farms Co., Inc.*, 2005 WL
25 7084354, at *4 (S.C. Ct. App. Aug. 30, 2005) (expert never stated “what
26 additional warnings are required”). His statement that MCI “needed a
27 warning, and they did not provide one” was conclusory, perfunctory, and
28 supported by no facts. (March 7, 2018 Tr. at 99, Ex. B.) He did not explain

1 what warning should have been given, how it should have been given, or how it
2 would have avoided the accident. Plaintiffs never asked him to, and he
3 admitted that others were more competent to do so. (*Id.* at 103-04.)

4 Mr. Cunitz's conclusory testimony wasn't even admissible evidence, much
5 less evidence sufficient to support a conclusion that the lack of a warning
6 caused harm to Dr. Khiabani. *See Hallmark v. Eldridge*, 124 Nev. 492, 501-02,
7 189 P.3d 646, 651-52 (2008) (expert should not have been allowed to testify
8 when opinion was highly speculative, was not based on any reliable
9 methodology, and had not been tested); *Rodriguez v. JLG Indus., Inc.*, 2012 WL
10 12883784, at *13 (C.D. Cal. Aug. 3, 2012) (expert opinion regarding warnings
11 was inadmissible when he did not "describe the reasoning or analysis he used"
12 to reach conclusions and testimony was "wholly conclusory"); *Dewick v. Maytag*
13 *Corp.*, 324 F. Supp. 2d 894, 900 (N.D. Ill. 2004) (expert testimony was nothing
14 more than "speculation or personal observation" because he had not tested the
15 efficacy of a warning, "drafted alternate warnings," or offered any other reliable
16 methodology); *Ortiz-Sempritt v. Coleman Co., Inc.*, 301 F. Supp. 2d 116, 120
17 (D.P.R. 2004) (expert was unqualified to testify as to adequacy of warnings
18 when he "did not perform any research or testing pertaining to the adequacy of
19 the generator's warnings or the likely reaction of plaintiff to any additional
20 warnings").

21 MCI is entitled to judgment as a matter of law because there was no
22 evidence that Mr. Hubbard would have done anything differently and because
23 Mr. Cunitz's testimony did not provide an adequate foundation for a finding of
24 causation. *See Bunker v. Ford Motor Co.*, 640 Fed. App'x 661, 663 (9th Cir.
25 2016) (where expert testimony regarding design defect was inadmissible, there
26 was no evidence of causation and summary judgment was properly entered).

1 **IV. JUDGMENT AS A MATTER OF LAW ACTUALLY**
2 **IS CONSISTENT WITH THE JURY'S VERDICT**

3 Judgment as a matter of law is consistent with the jury's verdict because
4 *it was not asked* whether an inadequate warning was the cause of damages to
5 the plaintiffs. The jury concluded only that (i) some warning should have been
6 given, and (ii) a warning "would have been acted upon." The jury did *not* find
7 that Mr. Hubbard ever saw Dr. Khiabani in time to apply that warning in this
8 case (*i.e.*, to move left and give him wider berth).

9 The warning claim was tied to the allegedly defective aerodynamic design,
10 which supposedly caused air blasts. On that defective design claim, the jury
11 found no liability: "Is MCI liable for defective design (Did the aerodynamic
12 design of the coach make it unreasonably dangerous and a legal cause of Dr.
13 Khiabani's death)? Yes ___ No √" (Special Verdict #4.) In other words, when
14 the jury was actually asked whether the allegedly defective design was the legal
15 cause of damage, the jury concluded that it was not.

16 If asked, the jury would have reached the same conclusion on the failure-
17 to-warn claim. MCI's proposed verdict form would have asked the jury that
18 very question:

19 1. Do you find, by a preponderance of the evidence, that the motor
20 coach was defective and that the defect was a legal cause of Kayvan Khiabani's
21 death? (Check all boxes that apply.)

<i>Allegedly defective aspect of the coach</i>	<i>Did this make the coach unreasonably dangerous?</i>	<i>Was the defect a legal cause of Khiabani's Death?</i>
Right-Side Blind Spot	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Absence of Proximity Sensor	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Aerodynamic Design	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Failure to Warn	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

22
23
24
25
26
27
28 *If you did not answer "Yes" to both "Defect" and "Legal Cause" for any alleged defect, please sign and return this form. Do not answer any further questions.*

1 (See Proposed Verdict Form Not Used at Trial, filed Mar. 26, 2018.)

2
3 **V. MCI WAS NOT REQUIRED TO MAKE A MOTOR COACH THAT**
4 **DOES NOT CREATE AIR DISTURBANCE IN THE FIRST PLACE**

5 The warning claim presupposes that the motor coach’s aerodynamics (*i.e.*
6 the air disturbance it caused) rendered it unreasonably dangerous to nearby
7 pedestrians or bicyclists. The jury found, however, that the aerodynamic design
8 of the coach did not make it unreasonably dangerous and a legal cause of Dr.
9 Khiabani’s death. (Special Verdict #4.)

10 And MCI was not obligated to design a vehicle that would prevent injury
11 to a bicyclist upon impact, so it was not required to provide a warning. A
12 manufacturer is not required to protect “third parties or nonusers when the
13 design defect is not the cause of the accident.” *De Veer v. Landrover*, 2001 WL
14 34354946, *2 (Cal. App. 2001). The vehicle need not be “crash compatible” with
15 bystanders. *Id.* at *5.

16 *De Veer* is particularly instructive. In that case the plaintiff sued the
17 manufacturer of the vehicle that collided with her vehicle. *Id.* at *1. The
18 plaintiff contended that “the front end of the 1988 Range Rover is defective
19 because its overly aggressive design increased the risk of serious physical injury
20 to other motorists, beyond those normally and reasonably expected in side-
21 impact collisions.” *Id.* at *1. Specifically, she claimed enhanced injuries
22 because the Land Rover’s “front end . . . was too stiff . . . causing her vehicle to
23 absorb too much energy,” and its “front bumper was too high,” making it
24 unreasonably dangerous to smaller vehicles in a collision. *Id.*

25 The California Court of Appeal rejected the plaintiff’s argument that a
26 manufacturer’s duty to make a vehicle crashworthy for its occupants also
27 requires the manufacturer to make the vehicle “crash compatible” with smaller
28 vehicles:

1 Based on De Veer's theory, automobile manufacturers are
2 liable for enhanced injuries to third parties unless they
3 make vehicles that are crash compatible. Taken to its
4 extreme, as noted by Land Rover, heavy trucks would be
defective unless crash compatible with buses, and both
would be defective unless crash compatible with pickup
trucks, vans, and SUVs. In essence, De Veer seeks not only a
crashworthy vehicle but a fail-proof one.

5 *De Veer v. Landrover*, 2001 WL 34354946, *3 (Cal. App. 2001). "The mere fact
6 that enhanced injuries in a collision between an SUV and a passenger car are
7 foreseeable is not sufficient to extend an SUV's manufacturer's duty to
8 occupants in the struck vehicle. Foreseeability is not synonymous with duty."
9 *Id.* at *5.

10 VI. NEVADA'S WRONGFUL-DEATH STATUTE REQUIRES 11 PROOF OF FAULT, NOT STRICT LIABILITY

12 Although plaintiffs could have pleaded a claim alleging MCI's culpability,
13 instead they opted for the easier route of strict liability. But unlike a common-
14 law claim for products liability without fault, wrongful death is a statutory
15 action, and the Nevada Legislature did not extend that action to claims based
16 upon strict liability. Plaintiffs did not prove that Dr. Khiabani's death was
17 "caused by [a] wrongful act or neglect." NRS 41.085(2).

18 A. The Harsh Common Law: Claims Expired at Death

19 "At common law, actions for death did not survive the death of the injured
20 party." *White v. Yup*, 85 Nev. 527, 532, 458 P. 2d 617, 620 (1969) (citing W.
21 PROSSER, LAW OF TORTS 920 (3d ed. 1964)). "Consequently, there was no right
22 of action for an injury which resulted in death." *Id.* (citing *Bolton v. Boltin*, 1
23 Camp. 493, 170 Eng. Rep. 1033 (1808)).

24 B. The Legislative Solution: A Wrongful-Death Statute

25 The Legislature created a cause of action where none previously existed if
26 death was "caused by the wrongful act or neglect of another." NRS 41.085(2).
27 This wrongful-death statute provides the exclusive path for recovery by a
28 decedent's estate or heirs.

1 C. **A “Wrongful Act” Requires a Finding of Fault**

2 1. ***Principles of Statutory Interpretation***

3 “Statutes in derogation of the common law must be strictly construed.”
4 *Holliday v. McMullen*, 104 Nev. 294, 296, 756 P.2d 1179, 1180 (1988) (citing
5 SUTHERLAND STAT. CONST. § 61.01–06 (4th ed.)). Statutes must be construed
6 as a whole and not be read in a way that would render words or phrases
7 superfluous or make a provision nugatory.” *Charlie Brown Constr. Co. v.*
8 *Boulder City*, 106 Nev. 497, 502, 797 P.2d 946, 949 (1990), *overruled on other*
9 *grounds by Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000).

10 2. ***To Avoid Superfluity, “Wrongful”***
11 ***Must Mean More than “Negligent”***

12 Here, the statute’s reference to both “wrongful act” and “neglect” suggests
13 that “wrongful” is used in the sense of blameworthy. Negligent acts causing
14 harm are already contrary to law, so the word “wrongful” cannot just mean
15 illegal. That would make “neglect” superfluous.

16 3. ***Context Shows that Wrongful is Not Merely Illegal***

17 In fact, another section of that same chapter recognizes the distinction
18 between “illegal” (prohibited by law) and “wrongful” (blameworthy), expressly
19 allowing employers to disclose information about “illegal or wrongful act[s]”
20 committed by an employee. NRS 41.755(1)(c).

21 4. ***Strict Construction Limits Wrongful-Death Claims***
22 ***to Negligent or Other Culpable Conduct***

23 In *Higginbotham v. Ford Motor Co.*, the Fifth Circuit applied strict
24 construction to predict that Georgia would not extend its wrongful-death
25 statute to permit recovery under a strict-liability theory. 540 F.2d 762, 771–72
26 (5th Cir. 1976). The next year, the Georgia Supreme Court confirmed that
27 result. *Ford Motor Co. v. Carter*, 238 S.E.2d 361, 365 (1977).

1
2
3
4
5
6
7
8
9
10
11
12

**5. *There Is Contrary Authority,
But It Is an Undecided Question***

In candor, counsel acknowledge that many of the Nevada Supreme Court’s product-liability cases arise from wrongful-death claims. *See, e.g., Ford Motor Co. v. Trejo*, 133 Nev., Adv. Op. 68, 402 P.3d 649, 651 (2017); *Young’s Mach. Co. v. Long*, 100 Nev. 692, 693, 692 P.2d 24, 24 (1984). And a California appellate court rejected a similar argument based on a similarly worded statute, although that Court applied a rule of liberal—rather than strict—construction. *Barrett v. Superior Court*, 272 Cal. Rptr. 304 (Ct. App. 1990). But counsel is unaware of any case squarely asking the Nevada Supreme Court to decide this issue.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**D. By Analogy to the Statute of Limitations,
Strict Products Liability is Not a Wrongful Act**

That strict liability is not among the bases for a wrongful-death action is confirmed by reference to how courts interpret the identical phrase in Nevada’s two-year statute limitations.

Just like the wrongful-death statute, that two-year statute of limitations applies only to actions to “recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another.” NRS 11.190(4)(e) (emphasis added). For actions not otherwise provided for, the limitation period is four years. NRS 11.220.

Relying on federal cases, Judge Ellsworth concluded that strict products liability was *not* a “wrongful act” within the meaning of NRS 11.190(4)(e), so the catchall four-year limit applied. *See Williams v. Homedics-U.S.A., Inc.*, 2012 WL 7749219 (Nev. Dist. Ct. July 20, 2012). She recognized that the Nevada Supreme Court had not yet decided the issue and turned to two Nevada federal district court cases that had ruled on the issue: *Campos v. New Direction Equip. Co.*, 2009 WL 114193, at *3 (D. Nev. Jan. 16, 2009), and *Fisher v. Professional Compounding Centers of America, Inc.*, 311 F. Supp. 2d 1008 (2004). *Williams*,

1 2012 WL 7749219. In *Fisher*, Judge Pro concluded in a published opinion that
2 the four-year statute of limitations applied. In *Campos*, the court concluded in
3 an unpublished opinion that the two-year statute of limitations applied. After
4 distinguishing the reasoning from *Campos*, Judge Ellsworth decided that based
5 on the plain meaning of “wrongful act” the four-year statute of limitations
6 applied. *Williams*, 2012 WL 7749219; *see also Schueler v. MGM Grand Hotel,*
7 *LLC*, 2017 WL 5904446 (Nev. Dist. Ct. Oct. 23, 2017) (stating that the four year
8 statute of limitations applies to strict products liability in accordance with
9 *Fisher*).

10 It would be anomalous for the identical statutory text—death “caused by
11 the wrongful act or neglect of another”—to carry an opposing meaning in the
12 wrongful-death statute. *Compare* NRS 11.190(4)(e), *with* NRS 41.085(2). In
13 both cases, the term “wrongful act” excludes actions based solely on strict
14 liability.

15 **E. A Wrongful-Death Claim is Still Available against**
16 **Product Manufacturers who Act**
Negligently, Recklessly, or Intentionally

17 To be clear, MCI does not argue that manufacturers of defective products
18 can never be liable under the wrongful-death statute. But the plaintiffs in
19 those cases need to at least show a “wrongful act or neglect”—conduct that
20 negligently, recklessly, or intentionally causes harm. Had the jury awarded
21 punitive damages, for example, plaintiffs might have been able to argue that
22 the jury found that kind of culpability. The jury rejected that invitation,
23 however, instead awarding liability only on a theory that requires no proof of
24 wrongdoing at all. That is not a wrongful act for which the Legislature has
25 created a remedy.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

Based on the foregoing, MCI respectfully requests that the Court grant its renewed motion for judgment as a matter of law.

DATED this 7th day of May, 2018.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

Darrell L. Barger, Esq.
Michael G. Terry, Esq.
HARTLINE DACUS BARGER
DREYER LLP
800 N. Shoreline Blvd.
Suite 2000, N. Tower
Corpus Christi, TX 78401

John C. Dacus, Esq.
Brian Rawson, Esq.
HARTLINE DACUS BARGER
DREYER LLP
8750 N. Central
Expressway
Suite 1600
Dallas, TX 75231

By /s/Joel D. Henriod
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Parkway,
Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

D. Lee Roberts, Jr., Esq.
Howard J. Russell, Esq.
David A. Dial, Esq.
Marisa Rodriguez, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118

Attorneys for Defendant Motor Coach Industries, Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 7th day of May, 2018, a true and correct copy
3 of the foregoing motion was served by e-service, in accordance with the
4 Electronic Filing Procedures of the Eight Judicial District Court.

5 Will Kemp, Esq.
6 Eric Pepperman, Esq.
7 KEMP, JONES & COULTHARD, LLP
8 3800 Howard Hughes Pkwy., 17th
9 Floor
10 Las Vegas, NV 89169
11 e.pepperman@kempjones.com

12 ***Attorneys for Plaintiffs***

13 Keith Gibson, Esq.
14 James C. Ughetta, Esq.
15 LITTLETON JOYCE UGHETTA PARK &
16 KELLY LLP
17 The Centre at Purchase
18 4 Manhattanville Rd., Suite 202
19 Purchase, NY 10577
20 Keith.Gibson@LittletonJoyce.com
21 James.Ughetta@LittletonJoyce.com

22 ***Attorneys for Defendant Bell
23 Sports, Inc. d/b/a Giro Sport
24 Design***

25 Michael E. Stoberski, Esq.
26 Joslyn Shapiro, Esq.
27 OLSON CANNON GORMLEY ANGULO &
28 STOBERSKI
29 9950 W. Cheyenne Ave.
30 Las Vegas, NV 89129
31 mstoberski@ocgas.com
32 jshapiro@ocgas.com

33 ***Attorneys for Defendant Bell
34 Sports, Inc. d/b/a Giro Sport
35 Design***

36 Michael J. Nunez, Esq.
37 MURCHISON & CUMMING, LLP
38 350 S. Rampart Blvd., Suite 320
39 Las Vegas, NV 89145
40 mnunez@murchisonlaw.com

41 ***Attorney for Defendant SevenPlus
42 Bicycles, Inc. d/b/a Pro Cyclery***

Peter S. Christiansen, Esq.
Kendelee L. Works, Esq.
CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd.
Las Vegas, NV 89101
pete@christiansenlaw.com
kworks@christiansenlaw.com

43 ***Attorneys for Plaintiffs***

44 C. Scott Toomey, Esq.
45 LITTLETON JOYCE UGHETTA PARK &
46 KELLY LLP
47 201 King of Prussia Rd., Suite 220
48 Radnor, PA 19087
49 Scott.toomey@littletonjoyce.com

50 ***Attorney for Defendant Bell
51 Sports, Inc. d/b/a Giro Sport
52 Design***

53 Eric O. Freeman, Esq.
54 SELMAN BREITMAN LLP
55 3993 Howard Hughes Pkwy., Suite
56 200
57 Las Vegas, NV 89169
58 efreeman@selmanlaw.com

59 ***Attorney for Defendants
60 Michelangelo
61 Leasing Inc. d/b/a Ryan's Express
62 and
63 Edward Hubbard***

64 Paul E. Stephan, Esq.
65 Jerry C. Popovich, Esq.
66 William J. Mall, Esq.
67 SELMAN BREITMAN LLP
68 6 Hutton Centre Dr., Suite 1100
69 Santa Ana, CA 92707
70 pstephan@selmanlaw.com
71 jpopovich@selmanlaw.com
72 wmall@selmanlaw.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

/s/ Jessie M. Helm
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

EXHIBIT A

EXHIBIT A

1 CASE NO. A-17-755977-C

2 DEPT. NO. 14

3 DOCKET U

4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 * * * * *

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

Plaintiffs,)

vs.)

17 MOTOR COACH INDUSTRIES, INC.,)
18 a Delaware corporation;)
19 MICHELANGELO LEASING, INC.)
20 d/b/a RYAN'S EXPRESS, an)
21 Arizona corporation; EDWARD)
22 HUBBARD, a Nevada resident, et)
23 al.,)

Defendants.)

24 **REPORTER'S TRANSCRIPTION OF PROCEEDINGS**

25 BEFORE THE HONORABLE ADRIANA ESCOBAR
DEPARTMENT XIV
DATED THURSDAY, MARCH 1, 2018

RECORDED BY: SANDY ANDERSON, COURT RECORDER

TRANSCRIBED BY: KRISTY L. CLARK, NV CCR No. 708

1 APPEARANCES:

2 For the Plaintiffs Keon Khiabani and the Estate of
3 Kayvan Khiabani, M.D.:

4 BY: WILLIAM S. KEMP, ESQ.
5 BY: ERIC PEPPERMAN, ESQ.
6 KEMP, JONES & COULTHARD, LLP
7 3800 Howard Hughes Parkway, 17th Floor
8 Las Vegas, Nevada 89169
9 (702) 385-6000
10 e.pepperman@kempjones.com

11 For the Plaintiffs Aria Khiabani and Katayoun Barin:

12 BY: PETER CHRISTIANSEN, ESQ.
13 BY: KENDELEE WORKS, ESQ.
14 **BY: WHITNEY J. BARRETT, ESQ.**
15 810 South Casino Center Drive, Suite 104
16 Las Vegas, Nevada 89101
17 (702) 570-9262
18 pjc@christiansenlaw.com
19 kworks@christiansenlaw.com

20 For the Defendant Motor Coach Industries, Inc.:

21 BY: D. LEE ROBERTS, ESQ.
22 BY: HOWARD RUSSELL, ESQ.
23 WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
24 6385 South Rainbow Boulevard, Suite 400
25 Las Vegas, Nevada 89118
(702) 938-3838
lroberts@wwhgd.com

26 - AND -

27 BY: DARRELL BARGER, ESQ.
28 BY: MICHAEL G. TERRY, ESQ.
29 HARTLINE DACUS BARGER DREYER
30 8750 North Central Expressway
31 Suite 1600
32 Dallas, Texas 75231
33 (214) 369-2100

34 * * * * *

1 APPEARANCES (Continued):

2 For the Defendant Motor Coach Industries, Inc.:

3 BY: JOEL D. HENRIOD, ESQ.
4 LEWIS ROCA ROTHBERGER CHRISTIE
5 3993 Howard Hughes Parkway
6 Suite 600
7 Las Vegas, Nevada 89169
8 (702) 949-8200
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Witness:	Direct:	Cross:	Redirect:	Recross:
Larry Stokes, PhD	66	91	113	
Edward Hubbard	130	170	197	

E X H I B I T S

Number:	Marked:	Admitted:	Joint:
230		142	
231		142	
232		142	
233		142	
234		142	
235		142	
236		142	
237		142	
503		197	
504		197	
505		197	
506		197	
507		197	

1 THE WITNESS: Edward Hubbard; E-d-w-a-r-d,
2 H-u-b-b-a-r-d.

3 THE CLERK: Thank you.
4

5 DIRECT EXAMINATION

6 BY MR. CHRISTIANSEN:

7 Q. Mr. Hubbard, what is it that you do for a
8 living, sir?

9 A. I'm a bus operator.

10 Q. And do you work here in Las Vegas?

11 A. Yes.

12 Q. How long have you operated buses?

13 A. Since 1997.

14 Q. Where did you -- at what point in time did
15 you come here to Las Vegas?

16 A. Two years ago next month, April.

17 Q. April the 18th, 2016?

18 A. April 9th, 2016.

19 Q. Okay. Were you operating a bus April 18th of
20 2017?

21 A. Yes.

22 Q. And who were you working for? Who -- who is
23 your employer?

24 A. Michelangelo.

25 Q. What were you doing that day, sir?

1 bicycle lane on South Pavilion Center?

2 A. Yes.

3 Q. And you -- which lane -- there are two travel
4 lanes we can see on that map there to your right.

5 Which lane were you in?

6 A. I was in the -- I was in this lane right here
7 (indicating).

8 Q. Is that the lane closest to the bicycle lane?

9 A. Yes, it is.

10 Q. Or closest to Red Rock Casino?

11 A. Yes.

12 Q. So it would be the most western -- it would
13 be the most western southbound lane, the one
14 immediately adjacent to the bicycle lane on South
15 Pavilion Center?

16 A. Yes.

17 Q. And do you see that little cutout there on
18 the map to your right, sir --

19 A. Yes.

20 Q. -- on South Pavilion Center?

21 Do you know what that is?

22 A. I believe that's for the city bus.

23 Q. Okay. Is that about the -- the spot where
24 you went past or overtook the bicycle?

25 A. Yeah. Yeah, on -- a little bit after that,

1 right near that area. Right.

2 Q. So between the time the bike -- you turn on
3 Pavilion Center and the time you pass the bicycle at
4 the city cutout, is the bicyclist always in the bicycle
5 lane?

6 A. Yes.

7 Q. And are you always in your -- the westernmost
8 southbound lane?

9 A. Yes.

10 Q. And from -- well, let's just say from the
11 city cutout all the way to the intersection at Griffith
12 Peak where the incident takes place, do you stay -- up
13 until the moment of the incident, do you stay in that
14 same lane?

15 A. Yes.

16 Q. Okay. Do you ever see the bicyclist
17 before -- the cutout there north of the intersection,
18 the city transit bus stop, from the time he turns
19 south, do you ever see him leave the bicycle lane?

20 A. No -- no.

21 Q. All right. You pass him without incident at
22 the city cutout?

23 A. Correct.

24 Q. And then do you remember having your
25 deposition taken, sir?

1 Q. You knew this bus had blind spots?

2 A. Correct.

3 Q. And because you knew that, you were -- you
4 used a term, and I don't want to mess it up, but you
5 were moving?

6 A. Yes. Moving in your seat, rocking, rocking
7 to eliminate the blind spots.

8 Q. Okay. And you were doing that to be aware of
9 your surroundings?

10 A. Right.

11 Q. And for 450 feet after passing the cyclist at
12 the city cutout, you never saw the cyclist again?

13 A. No, sir.

14 Q. Okay. And then my recollection of your
15 testimony is that you had entered the intersection.

16 Fair?

17 Just from this point forward, sir, just from
18 the zero line.

19 A. Oh, yes, yes.

20 Q. You're not stopping. I'm just -- it's kind
21 of disjunctive because I have to do it every 50 feet.

22 But you're just driving southbound?

23 A. Correct.

24 Q. It's a clear day?

25 A. Yes.

1 Q. There's nothing -- no objects impeding your
2 view of the street in front of you?

3 A. No.

4 Q. And once you got into the intersection --
5 and, well, I'm going to have you do that so I put it --
6 you put it exactly where you want it, and I'll show you
7 the picture you showed us at your deposition.

8 Out of your -- my words not yours. Out of
9 your peripheral vision, out of the side of your eye,
10 you saw the bike -- a bicyclist drift into your lane;
11 fair?

12 A. Yes.

13 Q. And "drift" is your word; correct?

14 A. Yes, sir.

15 Q. And you saw that out -- not out of the
16 windshield, as I understand it?

17 A. No. Not the front windshield, no.

18 Q. Out of sort of the side of your eye?

19 A. Correct.

20 Q. And for you to be seeing something out of the
21 side of your eye, the bicycle had to be -- the nose of
22 the bus had to have passed the bicycle; correct?

23 A. Well, approaching it, yes.

24 Q. Okay. And I recall -- here's, let's just
25 show -- at your deposition you placed this -- sort of

1 Q. And if it was in the door, just physics would
2 dictate that the nose of that bus had passed the
3 bicyclist; correct?

4 A. Yes. Yes.

5 Q. All right. I remember questions being posed
6 to you, Mr. Hubbard, in your deposition about your
7 knowledge of aerodynamics and air blast. And my
8 recollection is you didn't have any particularized
9 knowledge?

10 A. No, sir.

11 Q. You never been trained relative to air blast?

12 MR. BARGER: Objection. Leading.

13 THE COURT: Sustained.

14 BY MR. CHRISTIANSEN:

15 Q. Had you ever been trained as to a possible
16 hazard of an air blast?

17 A. No.

18 Q. And in terms of your personal habits, if
19 you're trained about something relative to safety, do
20 you heed those training warnings?

21 A. Absolutely.

22 Q. And you've never been told that a bus could
23 create air displacement?

24 A. No, sir.

25 Q. You don't know, as you sit here today, you

1 know, ten-plus months later, Mr. Hubbard, what caused
2 that bike, using your words, to drift into your lane?

3 A. I do not know.

4 Q. Do you know what a proximity sensor is?

5 A. I've heard of it, yes.

6 Q. This bus did not have a proximity sensor?

7 A. No.

8 Q. Anything that would have warned you earlier
9 about the cyclist would have caused you to take evasive
10 action earlier; fair?

11 MR. BARGER: Objection. Form.

12 THE COURT: Sustained.

13 BY MR. CHRISTIANSEN:

14 Q. Well, I'll ask it to you differently.

15 The second -- what did you do the second you
16 saw the bicycle drifting in your peripheral vision?

17 A. I proceeded to (witness indicating) turn my
18 steering wheel to the left to avoid hitting him,
19 because he was that close to --

20 Q. You were --

21 A. -- the bus.

22 Q. You were close to him when you saw him?

23 A. Yes.

24 Q. You took -- I'll use your words again from
25 your deposition -- evasive action?

1 A. Yes.

2 Q. And had you been alerted to the cyclist
3 earlier, you would have taken evasive action earlier?

4 MR. BARGER: Objection. Leading.

5 THE COURT: Sustained.

6 BY MR. CHRISTIANSEN:

7 Q. I'll ask it differently.

8 If you -- if you would have been alerted to
9 the bicyclist earlier, earlier than your peripheral
10 vision, would you've taken evasive action earlier?

11 A. Yes.

12 Q. And there are no proximity sensors on this
13 bus?

14 A. No.

15 Q. But there are blind spots on this bus?

16 A. Yes.

17 Q. And so I'm understanding you correctly, sir,
18 the bus that you were operating and driving for that
19 400 feet between the pink Post-it on the map and the
20 zero line, you were -- you did not, at any point in
21 time before this intersection, between that 450 feet
22 that we're discussing, see the cyclist?

23 A. You mean from the cutoff -- cutout?

24 Q. Yes, sir.

25 A. No, sir, I did not.

1 A. No, the question before that.

2 BY MR. CHRISTIANSEN:

3 Q. I don't remember. I think I said -- I'll
4 paraphrase.

5 THE COURT: Would you like it read back?

6 MR. CHRISTIANSEN: Sure. You know what? I
7 can read it. I got the same thing.

8 BY MR. CHRISTIANSEN:

9 Q. The question I said, "And it has been your
10 testimony, sir, that before he drifted -- to use your
11 words -- into your lane, he had to have been in the
12 bike lane; correct?

13 A. No, I -- I never said that.

14 Q. You never said he was in the bike lane before
15 you saw him?

16 A. No, I never said that.

17 Q. So we're clear, when you see him on the map
18 that you've put the pink Post-it, he was in the bike
19 lane at the city bus cutout.

20 A. Correct. Yes.

21 Q. And then you don't see him at all until he
22 drifts into your peripheral vision --

23 A. That's correct.

24 Q. -- in that intersection?

25 A. That's correct.

1 your right in that bicycle lane when you passed him?

2 A. How far was he to -- oh, 5, 7 feet over.

3 Q. Okay. In the bicycle lane as you went by?

4 A. Correct.

5 Q. Okay. And now I want to step to here if you
6 can. Sorry. I don't mean to step in front of you.

7 Please go ahead.

8 Now, at some point, you passed the bicyclist
9 back here, right, because it's not on this map?

10 A. Yeah, the cutoff is somewhere in here.

11 Q. Okay. And I think the testimony earlier was
12 maybe it was about 450 feet back from this

13 intersection; right?

14 A. Correct.

15 Q. All right. So the first time -- I mean, when
16 you went past him, did you ever see him again till we
17 get to the very end?

18 A. No, sir.

19 Q. And you were going about 25 or 30 miles an
20 hour at that point?

21 A. Yes.

22 Q. You know how fast the bicyclist was going?

23 A. I don't know.

24 Q. I want you to, if you can, maybe assume that
25 there's been testimony you were going about twice as

1 drive, what you do is -- you told the jury, you look
2 forward, you look to the right, to the left, you look
3 in your mirrors, and you do the rock-and-roll issue?

4 A. Correct.

5 Q. Okay. Now, rock and roll is not a dance when
6 you're driving a bus, is it?

7 A. No, sir.

8 Q. Would you tell the ladies and gentlemen what
9 you mean by rock and roll. What does that mean?

10 A. It means moving in your seat, moving around
11 in your seat so that you can eliminate blind spots so
12 that you can see more of your mirror.

13 Q. Okay. Is that how -- is that how you drive
14 buses?

15 A. That's how I was trained.

16 Q. That's how you learned? Okay.

17 And so, in addition to, obviously, looking
18 ahead, which you have to do, you're looking to the
19 right and you're looking to the left, you're looking in
20 your mirrors, and you're doing the rock and roll just
21 to do --

22 A. Yes.

23 Q. -- because you talk about a blind spot?

24 A. Yes.

25 Q. And you agree with me, every bus you've ever

1 driven has a blind spot, doesn't it?

2 A. They do.

3 Q. And every -- have you driven big trucks?

4 Have you ever -- like 18-wheelers and that?

5 A. No, sir.

6 Q. Okay. But even your car has a blind spot,
7 doesn't it?

8 A. Yes.

9 Q. There's not a vehicle on earth that doesn't
10 have a blind spot, is there?

11 A. Correct.

12 Q. That's why you, as you told us, you were
13 looking in the mirrors, but you're also rocking and
14 rolling to make sure; right?

15 A. Yes.

16 Q. And that blind spot is really for a
17 split-second, isn't it? Because if you're driving and
18 you get past somebody, you're no longer in a blind spot
19 at all, is it?

20 A. Correct.

21 Q. Just -- just a split-second, there might be a
22 blind spot; right?

23 A. Correct.

24 Q. All right. So I want to ask you -- I'm going
25 to put the bus at 250 -- at 250. And I'm -- and the

1 angle isn't meant to be an angle. It's just the way
2 I've set it down. Okay?

3 At 250, you, I presume, would be looking
4 forward in your mirrors and doing the rock and roll?

5 A. Yes.

6 Q. All right. And you did not see a bicyclist?

7 A. No, sir.

8 Q. Clearly, when you passed him, he was in the
9 bike lane, but, after that, you really don't know what
10 he did; isn't that fair?

11 A. That's correct.

12 Q. And am I too close to you? I don't mean to
13 get too close. I promise you I don't have the flu.

14 A. All right.

15 Q. So you drive on to 200, and you do not see
16 the bicyclist; correct?

17 A. Correct.

18 Q. And without being repetitious, you're still
19 watching, rocking, rolling, and looking in the mirrors?

20 A. Yes, sir.

21 Q. And you don't see him anywhere behind you,
22 and you're going over twice as fast as he is; right?

23 A. Correct.

24 Q. So he's not catching up to you at all, is he?

25 A. I really don't know what he's doing. I know

1 lawyers present in front of -- we will download these
2 so we can take a print.

3 THE COURT: Okay.

4 BY MR. BARGER:

5 Q. And I'm going to ask you if you can come with
6 me if you don't mind, sir.

7 Now, the bicycle here is not -- I mean,
8 that's not where it was at the time. So I'm going to
9 have you move the bicycle out of the way. We're just
10 talking about where the bus was. I'm going to take a
11 picture. Okay? All right?

12 Thank you.

13 Now what I want you to do next is show me
14 where the bicycle -- put the bicycle in there, if you
15 will, because you said what you did out of your -- was
16 it your peripheral vision you saw the bicycle come in
17 and hit you?

18 A. No. Right here.

19 Q. Somewhere in there?

20 A. Yes, sir.

21 Q. This happened pretty fast; fair?

22 A. Very fast.

23 Q. I mean, faster than we want to realize,
24 didn't it?

25 All right. So, when you saw the bicycle come

1 in, you don't know where it came from, do you?

2 A. No, sir.

3 Q. And what you told Mr. Christiansen was that
4 you didn't see him in the bicycle lane and you would
5 have if he had been in the bike lane because of your
6 looking in the mirrors and your rocking and rolling and
7 your doing that; right?

8 A. Yes, sir.

9 Q. All right. So is it your testimony -- I'm
10 going to move this back.

11 Is it your testimony that, at some point back
12 here, you never saw Dr. Khiabani in the bike lane?

13 A. No, sir.

14 Q. Is that correct?

15 A. That's correct.

16 Q. All right. And then up -- again, I'm going
17 to ask you to move it back so --

18 A. I should have turned this because it was more
19 like -- it was more like this than it was straight.
20 You understand?

21 Q. Yes, sir?

22 A. It was more like (witness indicating).

23 Q. What I want you to do now is move the bus
24 back where it was and put the bicycle at the -- where
25 you thought it was. And you say it's kind of more

1 turned. I don't want to use any words. I want you to
2 show --

3 A. Yeah, because he -- he was -- and he was
4 coming in. He wasn't straight. He was coming in.

5 Q. All right. I'm going to take a picture of
6 that as well.

7 That's when you immediately turned to the
8 left; right?

9 A. Correct.

10 Q. All right. And we've seen the videos and all
11 the pictures, that the bus ended up across over here;
12 right?

13 A. Yes.

14 Q. Right. You can take your seat, sir. Thank
15 you.

16 THE MARSHAL: Thank you, sir.

17 BY MR. BARGER:

18 Q. As you drive the MCI bus -- or any bus, but
19 let's talk about this MCI bus. As you drive that, do
20 you now -- do you now remember seeing the photographs
21 that there -- the right front door where the passengers
22 come in, there are windows there; right?

23 A. Yes.

24 Q. And you can see out; right?

25 A. Yes.

EXHIBIT B

EXHIBIT B

1 CASE NO. A-17-755977-C

2 DEPT. NO. 14

3 DOCKET U

4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 * * * * *

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

Plaintiffs,)

vs.)

17 MOTOR COACH INDUSTRIES, INC.,)
18 a Delaware corporation;)
19 MICHELANGELO LEASING, INC.)
20 d/b/a RYAN'S EXPRESS, an)
21 Arizona corporation; EDWARD)
22 HUBBARD, a Nevada resident, et)
23 al.,)

Defendants.)

24 **REPORTER'S TRANSCRIPTION OF PROCEEDINGS**

25 BEFORE THE HONORABLE ADRIANA ESCOBAR
DEPARTMENT XIV
DATED WEDNESDAY, MARCH 7, 2018

RECORDED BY: SANDY ANDERSON, COURT RECORDER

TRANSCRIBED BY: KRISTY L. CLARK, NV CCR No. 708

1 APPEARANCES:

2 For the Plaintiffs Keon Khiabani and the Estate of
3 Kayvan Khiabani, M.D.:

4 BY: WILLIAM S. KEMP, ESQ.
5 **BY: HOWARD RUSSELL, ESQ.**
6 KEMP, JONES & COULTHARD, LLP
7 3800 Howard Hughes Parkway, 17th Floor
8 Las Vegas, Nevada 89169
9 (702) 385-6000
10 e.pepperman@kempjones.com

11 For the Plaintiffs Aria Khiabani and Katayoun Barin:

12 BY: PETER CHRISTIANSEN, ESQ.
13 BY: KENDELEE WORKS, ESQ.
14 **BY: WHITNEY J. BARRETT, ESQ.**
15 810 South Casino Center Drive, Suite 104
16 Las Vegas, Nevada 89101
17 (702) 570-9262
18 pjc@christiansenlaw.com
19 kworks@christiansenlaw.com

20 For the Defendant Motor Coach Industries, Inc.:

21 BY: D. LEE ROBERTS, ESQ.
22 **BY: ERIC PEPPERMAN, ESQ.**
23 WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
24 6385 South Rainbow Boulevard, Suite 400
25 Las Vegas, Nevada 89118
(702) 938-3838
lroberts@wwhgd.com

26 - AND -

27 **For the Defendant Motor Coach Industries, Inc.:**

28 BY: DARRELL BARGER, ESQ.
29 BY: MICHAEL G. TERRY, ESQ.
30 HARTLINE DACUS BARGER DREYER
31 8750 North Central Expressway
32 Suite 1600
33 Dallas, Texas 75231
34 (214) 369-2100

35 * * * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Witness:	Direct:	Cross:	Redirect:	Recross:
Richard Stalnaker, Ph.D.	6	12	70	84
Robert Cunitz, Ph.D.	94	100	114	132
Brad Ellis	134			
David Dorr	191			

E X H I B I T S

Number:	Marked:	Admitted:	Joint:
7A		7	
412		69	
514-1		138	
514-2		138	
514-3		138	

1 expert on warnings.

2 MR. TERRY: I have no objection to his
3 qualifications, Your Honor.

4 BY MR. KEMP:

5 Q. Now, Doctor, have you had an opportunity to
6 review materials from Dr. Breidenthal regarding the
7 subject of whether or not a bus causes air displacement
8 or air blasts?

9 A. Yes.

10 Q. Okay. Now, don't tell me what
11 Dr. Breidenthal said in those materials, but tell me,
12 do you have an opinion as to whether or not MCI
13 provided an adequate warning with regards to that
14 subject matter in this case?

15 A. I do have an opinion about that.

16 Q. And what is your opinion?

17 A. A, that it needed a warning, and they did not
18 provide one.

19 Q. Now, are there other types of things that can
20 provide warnings that are electrical in nature?

21 A. Yes. There are warnings that are -- just to
22 distinguish, there are warnings that are printed. You
23 know, they're on a sheet of paper or a label or sign.
24 But that's one class of warnings.

25 But we have -- my field always have had for

1 Q. Okay. So it would apply to all delivery vans
2 that have that kind of front, all FedEx trucks that
3 have that kind of front?

4 A. I don't know, sir.

5 Q. Have you looked to see how many different
6 vehicles have the same characteristics and require the
7 same warning?

8 A. No, sir, I have not.

9 Q. You have not developed a warning?

10 A. Correct.

11 Q. So you haven't developed a sticker or a
12 warning or a print warning that satisfies what you
13 think should have been done?

14 A. I was not asked to -- usually, manufacturers
15 provide those, not me, unless they come and hire
16 somebody like myself, which hasn't happened.

17 Q. And you have been retained in the case?

18 A. But I was not retained by a manufacturer. I
19 wasn't retained by your client, for instance, so, no, I
20 haven't been asked to do the job. There are other
21 people in my field who are more than competent at doing
22 the job as well. So --

23 Q. But you were retained in this case to offer
24 an opinion about the MCI information communication?

25 A. Yes, that it needed a warning.

1 Q. And you did not draft a warning that you
2 thought we should have given?

3 A. Right.

4 Q. And you have not drafted or come up with any
5 training that you thought we should have given?

6 A. Again, that wasn't my -- A, wasn't my
7 assignment; B, there are -- I could have done the work
8 had I been assigned the work. Most likely, that work
9 would be paid for and -- paid for by the manufacturer
10 who has developed the need for that warning.

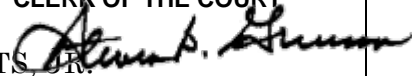
11 Q. Now --

12 A. So that's -- that's how it usually happens.
13 And, again, they're playing -- I'm almost done. Then
14 everybody -- any number of people in my field. There
15 are several hundreds more than competent to do the
16 work.

17 Q. Are you of the opinion that professional
18 drivers are not aware of air displacement around the
19 front of their bus?

20 A. I've not surveyed large numbers of
21 professional drivers. I have reviewed the documents
22 provided to me in this case, and they all revealed that
23 those people in the bus industry, including a driver,
24 didn't have this information. Whether that's universal
25 or not, I can't tell you. I didn't survey the industry

EXHIBIT F TO
DOCKETING
STATEMENT



1 DANIEL F. POLSENBERG
Nevada Bar No. 2376
2 dpolsenberg@lrrc.com
JOEL D. HENRIOD
3 Nevada Bar No. 8492
jhenriod@lrrc.com
4 ABRAHAM G. SMITH
asmith@lrrc.com
5 Nevada Bar No. 13,250
LEWIS ROCA ROTHGERBER LLP
6 3993 Howard Hughes Parkway,
Suite 600
7 Las Vegas, Nevada 89169
Telephone: (702) 949-8200
8 Facsimile: (702) 949-8398

D. LEE ROBERTS, JR.
Nevada Bar No. 8877
lroberts@wwhgd.com
HOWARD J. RUSSELL
Nevada Bar No. 8879
hrussell@wwhgd.com
DAVID A. DIAL, ESQ.
Admitted Pro Hac Vice
ddial@wwhgd.com
MARISA RODRIGUEZ
Nevada Bar No. 13234
mrodriguez@wwhgd.com
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

9 *Attorneys for Defendant*
10 *Motor Coach Industries, Inc.*

*Additional Counsel Listed on
Signature Block*

11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

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

19 Plaintiffs,

20 *vs.*

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

27 Defendants.

Case No. A755977
Dept. No. 14

**MOTOR COACH INDUSTRIES,
INC.'S MOTION TO ALTER
OR AMEND JUDGMENT TO
OFFSET SETTLEMENT
PROCEEDS PAID BY
OTHER DEFENDANTS
(REDACTED)**

1 Defendant Motor Coach Industries, Inc. (“MCI”) moves to alter or amend
2 the judgment¹ entered on April 17, 2018, to reflect the offset of amounts
3 recovered from the settling defendants. NRCP 52(b), 59(e); NRS 17.245(1)(a).
4 *A.A. Primo Builders, LLC*, 126 Nev. at ___, 245 P.3d at 1195 (quoting C. Wright,
5 A. Miller & M. Kane, 11 Federal Practice and Procedure § 2810.1, at 121 (2d ed.
6 1995)) (NRCP 59(e) relief is appropriate for any “substantive alteration of the
7 judgment”). That is assuming the Court does not grant MCI’s renewed motion
8 for judgment as a matter of law, or motion for a new trial, which are filed
9 separately concurrently herewith.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

NOTICE OF MOTION

PLEASE TAKE NOTICE that MCI will bring the foregoing motion for hearing
before the Court on the **7th** day of **June**, 2018, at **8:30 a.m.**, in
Department XIV of the Eighth Judicial District Court, 200 Lewis Avenue, Las
Vegas, Nevada 89155.

¹ A motion to alter or amend is the appropriate vehicle to apply for an offset of
settlement proceeds following entry of a judgment on a jury verdict. *Rio Mar
Assocs. v. UHS of Puerto Rico, Inc.*, 522 F.3d 159, 168 (1st Cir. 2008); *Duran v.
Town of Cicero*, 653 F.3d 632, 642 (7th Cir. 2011); *W. Indus., Inc. v. Newcor
Canada Ltd.*, 709 F.2d 16, 17 (7th Cir. 1983); *Tweedle v. State Farm Fire & Cas.
Co.*, 527 F.3d 664, 673 (8th Cir. 2008).

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The judgment entered on April 17, 2018, does not apply an offset of the
3 settlement proceeds paid by co-defendants. As MCI is entitled to that offset, the
4 judgment must be amended.

5 **A. Procedural History**

6 Plaintiffs sued several defendants in this case for the same indivisible
7 injuries to the decedent and his heirs: MCI; along with Michelangelo Leasing
8 Inc. d/b/a Ryan’s Express and Edward Hubbard; Bell Sports, Inc. d/b/a Giro
9 Sport Design; and SevenPlus Bicycles, Inc. d/b/a Pro Cyclery. (See “Amended
10 Complaint and Demand for Jury Trial,” filed June 6, 2017.)

11 The case proceeded to trial against MCI alone because—as plaintiffs
12 repeatedly represented to everyone besides federal Judge Boulware—they
13 settled their claims against the other defendants. According to the papers filed
14 and submitted in camera by the other defendants, the combined amount of that
15 settlements is [REDACTED]. (See Exhibits A, B, and C, submitted for filing under
16 seal.)

17 The judgment entered on April 17, 2018, awards \$18,746,003.62 plus
18 prejudgment interest against MCI. It does not offset that amount by the
19 [REDACTED] of settlement proceeds paid by co-defendants.

20 **B. Argument**

21 The total amount of the judgment must be reduced to [REDACTED],
22 which is the amount of the compensatory award (\$18,746,003.62) minus the
23 [REDACTED] offset. Moreover, prejudgment interest is eliminated by the offset
24 because the settlement proceeds exceed the amount past damages.

25 **1. *MCI Is Entitled to an Offset of [REDACTED]***

26 MCI is entitled to an offset of all settlement proceeds received from the
27 other defendants. NRS 17.245(1)(a) provides for an offset for a prior settlement:
28

1 When a release . . . is given in good faith to one of two or
2 more persons liable in tort for the same injury or the same
3 wrongful death:

(a) . . . it reduces the claim against the others [tortfeasors] to
4 the extent of any amount stipulated by the release

5 *Accord Banks ex rel. Banks v. Sunrise Hosp.*, 120 Nev. 822, 843, 102 P.3d 52, 67
6 (2004) (“claims against nonsettling tortfeasors must be reduced by the amount
7 of any settlement with settling tortfeasors”). This statute is part of the Uniform
8 Contribution Among Tortfeasors Act (UCATA).²

9 The common law also prohibits double recovery: once a plaintiff settles
10 for the full amount of her damage award, she cannot recover from other
11 tortfeasors. *Elyousef v. O’Reilly & Ferrario, LLC*, 126 Nev. ___, ___, 245 P.3d
12 547, 549 (2010) (to prevent double recovery, a prior settlement which satisfied a
13 damage award barred a claim against an alleged fiduciary tortfeasor, even
14 though the UCATA did not apply); *Whittlesea v. Farmer*, 86 Nev. 347, 350, 469
15 P.2d 57, 59 (1970) (even before Nevada adopted UCATA, a “plaintiff may have
16 but one satisfaction for his injuries from joint tortfeasors, the amount paid for a
17 covenant by one of them reduces by that amount the liability of the others”
18 (citing *Pac. States Lumber Co. v. Bargar*, 10 F.2d 335 (9th Cir. 1926))); *see also*
19 *Russ v. Gen. Motors Corp.*, 111 Nev. 1431, 1435–36, 906 P.2d 718, 720–21
20 (1995) (at common law “the release of one tortfeasor automatically release[s] all
21 other potential tortfeasors”); *Van Cleave v. Gamboni Const. Co.*, 101 Nev. 524,

22 ² Ordinarily, a joint tortfeasor who pays a judgment in excess of his equitable
23 share of liability (as MCI does here) is entitled to seek contribution or
24 indemnity from any other tortfeasors. *See* NRS 17.225 to 17.305; *Medallion*
25 *Dev. v. Converse Consultants*, 113 Nev. 27, 31- 34, 930 P.2d 115, 118-20 (1997)).
26 Any joint tortfeasor in a multi-defendant tort action may, however, obtain
27 protection from claims of contribution and implied indemnity under NRS 17.245
28 by settling with the tort claimant in good faith. *The Doctors Co. v. Vincent*, 120
Nev. 644, 98 P.3d 681, 690 (2004). This is fair only because the non-settling
defendants are then able to offset the settlement monies against the judgment.
NRS 17.245(1)(a); NRS 41.141; RESTATEMENT (SECOND) OF TORTS §
885(3).

1 530, 706 P.2d 845, 849 (1985). *Cf. also Grosjean v. Imperial Palace, Inc.*, 125
2 Nev. 349, 372, 212 P.3d 1068, 1084 (2009) (“the prohibition against double
3 recovery for a single injury operates to foreclose any further recovery against
4 Imperial Palace” under an alternative theory).

5 Similarly, the Uniform Joint Obligations Act (UJOA) recognizes a right to
6 offset “[t]he amount or value of any consideration received by the obligee
7 [plaintiff] from one or more of several obligors [defendants] . . . in whole or
8 partial satisfaction of their obligations.” NRS 101.040; *see also W. Techs., Inc. v.*
9 *All-Am. Golf Ctr., Inc.*, 122 Nev. 869, 873, 139 P.3d 858, 861 (2006).

10 Here, the total amount of the judgment must be reduced to
11 [REDACTED], which is the amount of the compensatory award
12 (\$18,746,003.62) minus the [REDACTED] offset.

13 **2. *The Offset Applies to Principal,***
14 ***and First to Past Damages***

15 In Nevada, the offset must be applied before any prejudgment interest is
16 calculated. *Ramadanis v. Stupak*, 107 Nev. 22, 24-25, 805 P.2d 65, 66 (1991).
17 Prejudgment interest runs only on the remainder. *Id.* The offset, moreover,
18 should also be applied entirely to the past compensatory damages. *See*
19 *Battaglia, M.D. v. Alexander*, 177 S.W.2d 893, 898 (Tex. 2005) (when the verdict
20 includes both past and future damages, “the settlement payments should be
21 applied first to past damages, then to future damages”).

22 In this case, the [REDACTED] amount of the settlement proceeds exceeds
23 the \$4,546,003.62 in past damages. Therefore, prejudgment interest may not be
24 awarded.

25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

For the foregoing reasons, the Court should offset the judgment on the jury verdict by the entire amount of plaintiffs' prior settlements, resulting in a judgment of no more than [REDACTED].

Dated this 7th day of May, 2018.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

Darrell L. Barger, Esq.
Michael G. Terry, Esq.
HARTLINE DACUS BARGER
DREYER LLP
800 N. Shoreline Blvd.
Suite 2000, N. Tower
Corpus Christi, TX 78401

John C. Dacus, Esq.
Brian Rawson, Esq.
HARTLINE DACUS BARGER
DREYER LLP
8750 N. Central
Expressway
Suite 1600
Dallas, TX 75231

By /s/Joel D. Henriod
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Parkway,
Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

D. Lee Roberts, Jr., Esq.
Howard J. Russell, Esq.
David A. Dial, Esq.
Marisa Rodriguez, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118

Attorneys for Defendant Motor Coach Industries, Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 7th day of May, 2018, a true and correct copy
3 of the foregoing motion was served by e-service, in accordance with the
4 Electronic Filing Procedures of the Eight Judicial District Court.

5 Will Kemp, Esq.
6 Eric Pepperman, Esq.
7 KEMP, JONES & COULTHARD, LLP
8 3800 Howard Hughes Pkwy., 17th
9 Floor
10 Las Vegas, NV 89169
11 e.pepperman@kempjones.com

12 *Attorneys for Plaintiffs*

13 Keith Gibson, Esq.
14 James C. Ughetta, Esq.
15 LITTLETON JOYCE UGHETTA PARK &
16 KELLY LLP
17 The Centre at Purchase
18 4 Manhattanville Rd., Suite 202
19 Purchase, NY 10577
20 Keith.Gibson@LittletonJoyce.com
21 James.Ughetta@LittletonJoyce.com

22 *Attorneys for Defendant Bell Sports,
23 Inc. d/b/a Giro Sport Design*

24 Michael E. Stoberski, Esq.
25 Joslyn Shapiro, Esq.
26 OLSON CANNON GORMLEY ANGULO &
27 STOBERSKI
28 9950 W. Cheyenne Ave.
Las Vegas, NV 89129
mstoberski@ocgas.com
jshapiro@ocgas.com

*Attorneys for Defendant Bell Sports,
Inc. d/b/a Giro Sport Design*

Michael J. Nunez, Esq.
MURCHISON & CUMMING, LLP
350 S. Rampart Blvd., Suite 320
Las Vegas, NV 89145
mnunez@murchisonlaw.com

*Attorney for Defendant SevenPlus
Bicycles, Inc. d/b/a Pro Cyclery*

Peter S. Christiansen, Esq.
Kendelee L. Works, Esq.
CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd.
Las Vegas, NV 89101
pete@christiansenlaw.com
kworks@christiansenlaw.com

Attorneys for Plaintiffs

C. Scott Toomey, Esq.
LITTLETON JOYCE UGHETTA PARK &
KELLY LLP
201 King of Prussia Rd., Suite 220
Radnor, PA 19087
Scott.toomey@littletonjoyce.com

*Attorney for Defendant Bell Sports,
Inc. d/b/a Giro Sport Design*

Eric O. Freeman, Esq.
SELMAN BREITMAN LLP
3993 Howard Hughes Pkwy., Suite
200
Las Vegas, NV 89169
efreeman@selmanlaw.com

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

Paul E. Stephan, Esq.
Jerry C. Popovich, Esq.
William J. Mall, Esq.
SELMAN BREITMAN LLP
6 Hutton Centre Dr., Suite 1100
Santa Ana, CA 92707
pstephan@selmanlaw.com
jpopovich@selmanlaw.com
wmall@selmanlaw.com

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

Edward Hubbard

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

/s/ Jessie M. Helm
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

EXHIBIT A

FILED UNDER SEAL

EXHIBIT A

EXHIBIT B

FILED UNDER SEAL

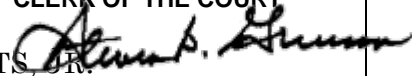
EXHIBIT B

EXHIBIT C

FILED UNDER SEAL

EXHIBIT C

EXHIBIT G TO
DOCKETING
STATEMENT



1 DANIEL F. POLSENBERG
Nevada Bar No. 2376
2 dpolsenberg@lrrc.com
JOEL D. HENRIOD
3 Nevada Bar No. 8492
jhenriod@lrrc.com
4 ABRAHAM G. SMITH
asmith@lrrc.com
5 Nevada Bar No. 13,250
LEWIS ROCA ROTHGERBER LLP
6 3993 Howard Hughes Parkway,
Suite 600
7 Las Vegas, Nevada 89169
Telephone: (702) 949-8200
8 Facsimile: (702) 949-8398

D. LEE ROBERTS, JR.
Nevada Bar No. 8877
lroberts@wwhgd.com
HOWARD J. RUSSELL
Nevada Bar No. 8879
hrussell@wwhgd.com
DAVID A. DIAL, ESQ.
Admitted Pro Hac Vice
ddial@wwhgd.com
MARISA RODRIGUEZ
Nevada Bar No. 13234
mrodriguez@wwhgd.com
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

9 *Attorneys for Defendant*
10 *Motor Coach Industries, Inc.*

*Additional Counsel Listed on
Signature Block*

11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

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

Case No. A755977
Dept. No. 14

**MOTOR COACH INDUSTRIES,
INC.'S MOTION FOR
A LIMITED NEW TRIAL
(REDACTED)**

19 Plaintiffs,

20 *vs.*

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

27 Defendants.

1 Defendant Motor Coach Industries, Inc. (“MCI”) moves for a new trial
2 regarding liability for an alleged failure to warn, as well as on the element of
3 damages. NRCP 59(a)-(b), 60(b). None of the grounds set forth in the following
4 points and authorities, however, justify disrupting any other aspects of the
5 jury’s verdict.

6 **NOTICE OF MOTION**

7 PLEASE TAKE NOTICE that MCI will bring the foregoing motion for hearing
8 before the Court on the **12th** day of **June**, 2018, at **9:30 a**.m., in
9 Department XIV of the Eighth Judicial District Court, 200 Lewis Avenue, Las
10 Vegas, Nevada 89155.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Several issues necessitate a new trial on liability for the alleged failure to
3 warn and on the element of damages. Defendant brings this motion under
4 Rules 59 and 60. Rule 59(a) states,

5 A new trial may be granted to all or any of the parties and on all or
6 part of the issues for any of the following causes or grounds
7 materially affecting the substantial rights of an aggrieved party: (1)
8 Irregularity in the proceedings of the court, jury, master, or adverse
9 party, or any order of the court, or master, or abuse of discretion by
10 which either party was prevented from having a fair trial; (2)
11 Misconduct of the jury or prevailing party; (3) Accident or surprise
12 which ordinary prudence could not have guarded against; (4) Newly
13 discovered evidence material for the party making the motion which
14 the party could not, with reasonable diligence, have discovered and
15 produced at the trial; (5) Manifest disregard by the jury of the
16 instructions of the court; (6) Excessive damages appearing to have
17 been given under the influence of passion or prejudice; or, (7) Error
18 in law occurring at the trial and objected to by the party making the
19 motion.

13 And Rule 60 allows the Court to set aside a judgment because of

14 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
15 discovered evidence which by due diligence could not have been
16 discovered in time to move for a new trial under Rule 59(b); (3)
17 fraud (whether heretofore denominated intrinsic or extrinsic),
18 misrepresentation or other misconduct of an adverse party; (4) the
19 judgment is void; or, (5) the judgment has been satisfied, released,
20 or discharged, or a prior judgment upon which it is based has been
21 reversed or otherwise vacated, or it is no longer equitable that an
22 injunction should have prospective application.

19 As shown herein, the judgment should be set aside and a new trial
20 granted, because (1) the jury was excused from considering causation on the
21 failure-to-warn claim; (2) Dr. Krauss was not permitted to testify regarding
22 Nevada statutes directly affecting the need for an “air blast” warning; (3) newly
23 discovered evidence has come to light that directly impacts the jury’s
24 determination of damages and even liability; and (4) the jury was not permitted
25 to take into account that income taxes would have greatly reduced the amount
26 of “probable support” plaintiffs could have received. For these reasons, MCI
27 respectfully requests that the Court grant its motion for new trial on plaintiff’s
28 failure-to-warn claim and damages.

I.

THE JURY’S VERDICT IS UNRELIABLE BECAUSE THE ERRONEOUS VERDICT FORM ENABLED THE JURY TO FIND LIABILITY FOR “FAILURE TO WARN” WITHOUT CONSIDERATION OF CAUSATION OF THE ACCIDENT

A. Plaintiff Had a Duty to Prove that Any Failure to Warn Was a Cause of the Injury

To establish liability for inadequate warnings, a plaintiff must prove that the lack of adequate warnings caused his injuries. *Michaels v. Pentair Water Pool & Spa*, 131 Nev. Adv. Op. 81, 357 P.3d 387, 397 (Ct. App. 2015). Unlike some states, Nevada does not recognize a “heeding presumption,” which “allow[s] the fact-finder to presume that the person injured by product use would have heeded an adequate warning” *Rivera v. Philip Morris, Inc.*, 125 Nev. 185, 192, 209 P.3d 271, 275 (2009) (quoting *Golonka v. General Motors Corp.*, 204 Ariz. 575, 65 P.3d 956, 967 (App.2003)).

But even where there is a heeding presumption, the plaintiff still must prove that heeding an adequate warning would have prevented the plaintiff’s harm:

[T]he “read-and-heed” presumption does not completely dispose of the causation issue in a failure-to-warn case. The most the presumption does is establish that a warning would have been read and obeyed. It does not establish that the defect in fact caused the plaintiff’s injury. ***The plaintiff invoking the presumption must still show that the danger that would have been prevented by an appropriate warning was the danger that materialized in the plaintiff’s case.***

Kovach v. Caligor Midwest, 913 N.E.2d 193, 199 (Ind. 2009) (emphasis added).

So, in Nevada, without the heeding presumption, the causation analysis becomes a two-step inquiry. First, the plaintiff must prove that user of the product would have read and heeded the warning. *Rivera*, 125 Nev. at 193, 209 P.3d at 276 (rejecting recognition of the “heeding presumption” in Nevada). Then he must prove that heeding the warning would have avoided the injury. *Id.* at 191, 209 P.3d at 275 (requiring the plaintiff to prove that “the defect

1 *caused* the plaintiff's injury" and that an adequate warning "would have
2 'prompted plaintiff to take precautions to avoid the injury'" (emphasis added)
3 (quoting *Riley v. Am. Honda Motor Co., Inc.*, 856 P.2d 196, 198 (Mont. 1993))).

4
5 **B. This Verdict Form Excused the Jury from Finding
Causation in Relation to the Failure to Warn Claim**

6 Here, the verdict form omitted the crucial second step of the analysis.
7 While four of the five "Liability" questions required the jury to find that a
8 specific alleged design defect was "a legal cause of Dr. Khiabani's death," the
9 fifth question addressing the failure-to-warn claim was silent as to causation.
10 (Special Verdict at 2, App. 2). That question read, "Did MCI fail to provide an
11 adequate warning that would have been acted upon?" (*Id.* at App. 2:25–26).
12 This question only addresses the first, "read and heed," prong of the causation
13 analysis. After marking "Yes" to this question, the following paragraph
14 required the jury to find Defendant liable and determine the amount of
15 damages, without even considering whether heeding the warning would have
16 avoided the injury. (*Id.* At App. 3).

17 This omission amounts to clear error, because the jury could have
18 determined that heeding the warning would not have prevented Dr. Khiabani's
19 death. A warning of "air blast" risk might induce the driver of a motor coach to
20 switch lanes to avoid passing too closely to a bicyclist. However, common sense
21 dictates that the driver would need to see a bicyclist to know of the need to
22 change lanes. In this case, the motor coach driver did not see Dr. Khiabani:

- 23 Q. -- from that point when you pass the bike up
24 through the zero line, you did not see a cyclist?
25 A. Correct. Not in the bike lane, no, sir.
26 Q. Not only did you not see the cyclist in the
27 bike lane, you didn't see the cyclist in this turn
lane; correct?
A. Correct, yes.
Q. You didn't see the cyclist at all?
A. Correct.

28 (Transcript of Proceedings at 149:7–15, Mar. 1, 2018, App. 15).

1 So even if the driver would have “acted upon” an adequate warning, as
 2 the verdict form asked, he would not have done so in this case—i.e., he would
 3 not have switched lanes to gain clearance from a bicyclist that he did not know
 4 was next to him. The verdict form was missing a critical step of the analysis
 5 because it failed to ask the next question: “If an adequate warning were heeded,
 6 would Dr. Khiabani’s death been avoided.” Or perhaps, “Was the lack of an
 7 adequate warning the legal cause of Dr. Khiabani’s death?”

8
 9 **C. The Form Proposed by MCI Would Have Required the Jury to Indicate Whether the Failure to Warn Was a Cause**

10 MCI’s proposed verdict form would have asked the jury whether any
 11 failure to warn was a legal cause of the injury:

12 1. Do you find, by a preponderance of the evidence, that the motor
 13 coach was defective and that the defect was a legal cause of Kayvan Khiabani’s
 14 death? (Check all boxes that apply.)

<i>Allegedly defective aspect of the coach</i>	<i>Did this make the coach unreasonably dangerous?</i>	<i>Was the defect a legal cause of Khiabani’s Death?</i>
Right-Side Blind Spot	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Absence of Proximity Sensor	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Aerodynamic Design	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Failure to Warn	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

21 *If you did not answer “Yes” to both “Defect” and “Legal Cause” for any alleged*
 22 *defect, please sign and return this form. Do not answer any further questions.*

23
 24 (MCI’s Proposed Special Verdict Form, App. 17-18.) Thus, MCI attempted to
 25 avoid exactly this situation. And, having done so, MCI also preserved its right
 26 to move for a new trial now. *Allstate Ins. Co. v. Miller*, 125 Nev. 300, 306, 322,
 27 212 P.3d 318, 323, 333 (2009).

1 Put simply, since the verdict form skipped a critical predicate to liability
2 for failure to warn—that the absence of an adequate warning *caused* the
3 accident—the verdict is faulty. The Court should grant Defendant a new trial
4 to remedy this error.

5 II.

6 **DR. KRAUSS SHOULD HAVE BEEN ALLOWED TO OPINE**
7 **ON MANUFACTURERS’ APPROPRIATE CONSIDERATION OF**
8 **EXISTING LAW WHEN SELECTING ISSUES ABOUT WHICH TO WARN**

9 A new trial may be granted if there was an “[i]rregularity in the
10 proceedings of the court . . . or any order of the court . . . or abuse of discretion
11 by which either party was prevented from having a fair trial.” NRCp 59(a)(1).
12 An abuse of discretion can occur when the district court misinterprets
13 controlling law. *MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. Adv. Op. 8, 367
14 P.3d 1286, 1292 (2016); *Gunderson v. D.R. Horton, Inc.*, 130 Nev. Adv. Op. 9,
15 319 P.3d 606, 615 (2014) (holding that a decision made “in clear disregard of the
16 guiding legal principles [can be] an abuse of discretion”). A new trial is also
17 appropriate for an “[e]rror in law occurring at the trial and objected to by the
18 party making the motion.”

19 Defendant’s human-factors expert Dr. Krauss would have provided key
20 evidence in defense of plaintiff’s failure to warn claim. Dr. Krauss would have
21 opined that it was not necessary to warn the user of the bus of the alleged “air
22 blasts” because it is already against the law to be close to a bicyclist. Dr.
23 Krauss would have also testified that warning people against actions that are
24 already illegal would result in the recipients dismissing the warnings altogether
25 thereby reduce their effectiveness in general. Dr. Krauss’ opinion was not based
26 on or about whether Dr. Hubbard was negligent. Rather, his opinion was about
27 what a manufacturer thinks when deciding to issue a warning. Other courts
28 have permitted similar evidence of a manufacturer’s consideration of criminal
laws. And while the Court here recognized the distinction between evidence of

1 contributory negligence and evidence that has overlap with contributory
2 negligence, respectfully the Court should not have drawn the line where it did
3 and prohibited Dr. Krauss from mentioning the statute.

4
5 **A. Courts Have Determined that It Is Appropriate for
Manufacturers to Consider What Conduct Is Illegal**

6 In determining whether to issue a warning, it is appropriate for a
7 manufacturer to consider what conduct is already illegal. *Ward v. Arm &*
8 *Hammer*, 341 F. Supp. 2d 499, 501 (D.N.J. 2004) (noting that citizens are
9 charged with knowledge of the law, including criminal law and that it follows
10 the manufacturer had no duty to warn plaintiff of that which he knew, and that
11 which the law already charged him with knowing). Everyone is presumed to
12 know the law. *Atkins v. Parker*, 472 U.S. 115, 130 (1985); see *Whiterock v. State*,
13 112 Nev. 775, 782, 918 P.2d 1309, 1314 (1996) (“mistake or ignorance of the law
14 is not a defense”). This is true even in a civil context. *Lucas v. Wisconsin Elec.*
15 *Power Co.*, 466 F.2d 638 (7th Cir. 1972); *Hicks v. State*, 419 S.W.3d 555, 558
16 (Tex. App. 2013). Thus, it is reasonable for a manufacturer to consider what
17 conduct is already against the law. See *Ward*, 341 F. Supp. 2d at 501.

18 Moreover, professional drivers are presumed to know the traffic laws that
19 apply to them. See e.g., *Mallery v. Int’l Harvester Co.*, 690 So. 2d 765, 768 (La.
20 App. 1996); see *Alfonso v. Robinson*, 514 S.E. 2d 615, 618 (Va. 1999). It is
21 therefore reasonable for defendant to consider relevant traffic laws when
22 determining whether to issue a warning. A manufacturer must be selective in
23 deciding what warnings to issue. In deciding whether to issue a warning a
24 manufacture is not required to warn a user of conduct that is already illegal.
25 Just as a manufacture does not have to warn the user he cannot exceed the

1 speed limit, or drive on the wrong side of the road, it does not need to warn a
2 user to give a bicyclist a wide berth.¹

3
4 **B. The Statute Was a Key Component of
Dr. Krauss' Expert Opinion**

5 Nevada statute NRS 484B.270 was vital to Dr. Krauss' expert opinion.
6 The statute provided that: "when overtaking or passing a bicycle" the driver of a
7 motor vehicle shall "pass to the left of the bicycle or electric bicycle at a safe
8 distance, which must be not less than 3 feet between any portion of the vehicle
9 and the bicycle." The crux of Dr. Krauss' opinion was that unnecessary
10 warnings mislead and are ineffective² and a warning becomes unnecessary
11 where there is a law prohibiting the conduct. Dr. Krauss in both his deposition
12 and expert report emphasized the goal of warning.

13 DR. KRAUSS: The whole point of a warning is to affect
14 behavior change in a way that makes something safer or
alleviate the hazard.

15 (Dr. Krauss Depo Tr. at 30:12–14, Nov. 9, 2017, App. 53.)

16 He noted that too many warnings are distracting and unsuccessful. (*Id.*)
17 Therefore, a manufacture must be selective in determining whether to give a
18 warning.

19 Dr. Krauss based his expert opinion on the success of law as a warning.
20 He analyzed the goal in designing warnings and their effectiveness, concluding
21 that warnings with penalties are more effective in achieving their goal.

22 DR. KRAUSS: This knowledge of the law would likely increase
23 compliance more than any warnings as there is voluminous
24 evidence that associating an enforced penalty with failed
compliance increase compliance rates.

25
26 ¹ *See Ward*, 341 F. Supp. 2d at 502 (noting that requiring a manufacture to
27 warn of criminal consequences would be analogous to requiring all automobile
manufacturers to warn of the effects of illegal drag racing).

28 ² (Dr. Krauss Expert Report at 8, App. 29).

1 (Dr. Krauss Expert Report at 9, App. 30.) Therefore, Dr. Krauss' expert
2 opinion was that the Nevada law requiring at least three feet to pass a
3 bicyclist would likely increase compliance more than any warning.³

4 Prohibiting Dr. Krauss from mentioning both the statute and any
5 conclusion based on the statute effectively prevented him from testifying to his
6 warning analysis. His warning opinion was based entirely on the existence of
7 the statute. It was an error to prevent him from referencing the statute.

8
9 **C. The Court Correctly Recognized the Law
But Respectfully Erred in Excluding the Statute**

10 The Court correctly recognized the distinction between evidence of
11 contributory negligence and evidence that has overlap with contributory
12 negligence. But respectfully, the Court should not have drawn the line where it
13 did and prohibit Dr. Krauss from mentioning the statute. The Nevada Supreme
14 Court has upheld, in a strict liability case, the introduction of evidence of
15 another's negligence. *Young's Mach. Co. v. Long*, 100 Nev. 692, 693, 692 P.2d
16 24, 24 (1984). In *Young*, the lower court permitted the appellant to argue that
17 the decedent's negligence was the sole proximate cause of his death but refused
18 to instruct the jury that it could use comparative fault principles to reduce the
19 award. *Id.* at 693. The Nevada Supreme Court affirmed the lower court's
20 decision to permit the arguments that the decedent's negligence was the sole
21 proximate cause of his death. *Id.*

22 More recently, the Nevada Supreme Court upheld a defendant's ability to
23 introduce evidence of another's negligent conduct to demonstrate that an
24 allegedly defective product did not cause the plaintiff's injury. *Banks ex re rel.*
25 *Banks v. Sunrise Hospital*, 120 Nev. 822, 845, 102 P.3d 52, 67 (2004). The
26
27

28 ³ (*Id.* at 9, App. 30).

1 *Banks* Court noted that a jury’s consideration of negligent conduct would not
2 encourage the jury to “compare negligence so as to affect its award of damages.”

3 The Court recognized the distinctions the Nevada Supreme Court has
4 articulated in *Young’s* and *Banks*; that just because evidence has some overlap
5 with negligence does not mean it is automatically excluded. But the Court
6 should not have excluded Dr. Krauss’ expert opinion on the statute. The statute
7 was only tangentially related to any accusation of Mr. Hubbard’s negligence.
8 As discussed above, the purpose of the statute was not to demonstrate the
9 negligence of Mr. Hubbard but rather to show any warning would have been
10 redundant. Dr. Krauss opined that because there is already a Nevada law that
11 requires drivers to maintain a distance from a bicyclist, any warning would be
12 redundant. Excluding this evidence was prejudicial to defendant and prevented
13 Dr. Krauss from testifying as to why the defendants allegedly did not warn.

14
15 **D. Any Prejudice Would Have Been Cured by Jury**
16 **Instruction No. 33, Which Informed the Jury of the**
Limited Relevance of Any Evidence that Could
Suggest Negligence on the Part of the Driver

17 The Court found that mentioning the statute at all would be highly
18 prejudicial. Jury instruction number 33 would have cured any prejudice,
19 however, by informing the jury on the limited relevance of the statute. *See*
20 *Young’s Mach. Co.*, 100 Nev. 693, P.2d at 24. The jury instruction warned the
21 jury that it was “not to consider any alleged negligence on the part of the bus
22 driver” and that any negligence “cannot insulate Defendant from liability.”
23 (Jury Instructions at No. 33, App. 88.) This would have allowed the jury to
24 consider the statute only for its limited purpose.

25
26 **E. It Was Error to Instruct the Jury on Nondelegation, which**
Merely Mocked MCI’s Inability to Mention the Statute

27 In the same vein, it was also an error to instruct the jury that “[a]
28 manufacturer cannot delegate its ultimate responsibility for assuring that its

1 product is dispensed with all proper warnings.” (Jury Instructions at No. 32,
2 App. 87.) Although it is true that a manufacturer is ultimately responsible if
3 the warnings it selects are inadequate, *see Allison v. Merck & Co.*, 110 Nev. 762,
4 779, 878 P.2d 948, 959 (1994), in respecting this Court’s order that Dr. Krauss
5 not discuss the statute, MCI never introduced any evidence that it was trying to
6 “delegate” that duty to others. Rather, the instruction gave plaintiffs a
7 strawman to attack: Dr. Krauss’ opinion was that unnecessary warnings
8 mislead and are ineffective, and that to avoid overload, a manufacturer may
9 consider what warnings a user will get from other sources. (Dr. Krauss expert
10 report pg. 8.) *See Ward*, 341 F. Supp. 2d at 502. But because the statute that
11 *did* provide that warning was excluded from the jury’s consideration, plaintiffs
12 were able to mock MCI—and mislead the jury—to suggest that MCI had
13 unsuccessfully tried to rely on others to provide that warning.

14 By drawing the jury’s attention to whether the responsibility was
15 delegated, it prevented the jury from considering what other information a user
16 may have heard. In selecting a warning, it was reasonable for defendant MCI
17 to consider what a user may be told by the DMV or professional training. Just
18 as it was an error to prevent Dr. Krauss from opining on what laws a
19 manufacturer considers in selecting its warning, it was an error to effectively
20 instruct the jury it could not contemplate whether defendant, in selecting its
21 warnings, considered what other sources may have already told a user.

22
23 **III.**

24 **CRITICAL, NEWLY DISCOVERED EVIDENCE CALLS FOR A NEW TRIAL**

25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

1 **A. Newly Discovered Evidence and Its Relevance**

2 **1. *The Channel 8 News Reports***
3 ***Uncovered Shocking, New Evidence***

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 ⁴ The first video segment and written article are available at George Knapp, *I-*
22 *Team: Audit of UNR’s School of Medicine Hidden from Public*,
23 LASVEGASNOW.COM (last updated Apr. 16, 2018),
24 [http://www.lasvegasnow.com/news/i-team-audit-of-unrs-school-of-medicine-](http://www.lasvegasnow.com/news/i-team-audit-of-unrs-school-of-medicine-hidden-from-public/1120792170)
25 [hidden-from-public/1120792170](http://www.lasvegasnow.com/news/i-team-audit-of-unrs-school-of-medicine-hidden-from-public/1120792170), App. 111 [hereinafter Arp. 13 Channel 8
26 Report]. The second video segment and written article are available at George
27 Knapp, *I-Team: Confidential Memos Reveal Reasons UNR Audit Kept Secret*,
28 LASVEGASNOW.COM (last updated Apr. 27, 2018),
[http://www.lasvegasnow.com/news/i-team-confidential-memos-reveal-reasons-](http://www.lasvegasnow.com/news/i-team-confidential-memos-reveal-reasons-unr-audit-kept-secret/1147000399)
[unr-audit-kept-secret/1147000399](http://www.lasvegasnow.com/news/i-team-confidential-memos-reveal-reasons-unr-audit-kept-secret/1147000399), App. 114 [hereinafter Arp. 27 Channel 8
Report].

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵ UNR’s medical staff based in Las Vegas were being transferred to the newly created UNLV medical program. (Apr. 13 Channel 8 Report, App. 111; Apr. 27 Channel 8 Report, App. 114).

⁶ (Julie Ardito, *Statement from University of Nevada, Reno School of Medicine Dean Thomas L. Schwenk, M.D. in Response to KLAS-TV Report, UNR SCHOOL OF MEDICINE* (Apr. 14, 2018), <https://med.unr.edu/news/archive/2018/statement->

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

2. This New Evidence Casts Doubts on the Jury's Determination of Damages and Even Liability

[Redacted text block]

in-response-to-klas-tv-report, App. 121; *UNR Med Statement Regarding Coverage of Due Diligence Audit*, UNR SCHOOL OF MEDICINE (Apr. 28, 2018), <https://med.unr.edu/news/archive/2018/statement-on-due-diligence-audit>, App. 123 [hereinafter UNR Response]).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. If Plaintiffs or Plaintiffs' Counsel Were Aware [REDACTED] then the Judgment Must Be Set Aside for Fraud on the Court

[REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

C. A New Trial Is Necessary Even if Plaintiffs Also Were Unaware

1. Plaintiffs Had an Affirmative Duty to Obtain and Disclose the Information, and Their Disclosures and Answer to an Interrogatory Led MCI to Believe They Had Relayed All Relevant Information

[REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. *It Is Very Likely that MCI Could Not Have Discovered This New Evidence Before, and Never Would Have But for it Being Leaked to the Press*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

a. IT WAS REASONABLE FOR MCI TO TRUST
PLAINTIFFS' REPRESENTATION RESPONDING
TO AN INTERROGATORY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

b. DEFENDANT COULD NOT HAVE BEEN EXPECTED TO SEEK DISCOVERY OF SUCH AN UNLIKELY SCENARIO

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c. UNR'S RESPONSE TO CHANNEL 8'S FOIA
REQUEST AND ITS SECRECY EVEN TOWARD
COUNTERPARTS AT UNLV DEMONSTRATE
THAT MCI LIKELY COULD NOT HAVE
DISCOVERED THE INFORMATION BEFORE TRIAL

[REDACTED]

[REDACTED]

[REDACTED]

d. THE EXPEDITED DISCOVERY SCHEDULE
DID NOT ALLOW FOR A NO-STONE-
UNTURNT DISCOVERY APPROACH

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

IV.

IT WAS AN ERROR TO EXCLUDE EVIDENCE OF TAXES PREVIOUSLY PAID BY DR. KHIABANI

Evidence related to the impact of income taxes on the amount of loss of probable support damages arising under Nevada’s wrongful death statute is admissible. Precluding such evidence was prejudicial. “Probable support damages” cannot be “probable” where the amount awarded ignores the inevitable impact of income taxes. In this case, the evidence of income tax was highly probative because Dr. Khiabani was in the very highest tax bracket. Defendant should have been permitted to introduce evidence related to the impact of income taxes on the amount of loss of probable support damages.

A. Excluding the Evidence on the Impact of Income Taxes Did Not Provide the Jury with Realistic Calculations

Nevada’s wrongful death statute, NRS 41.085, sets forth the type of damages a plaintiff can recover in a wrongful death action. *Alsenz v. Clark Cty. Sch. Dist.*, 109 Nev. 1062, 1064, 864 P.2d 285, 286 (1993). The statute provides, in pertinent part, that an heir may recover pecuniary damages for the heir’s

1 “loss of probable support.” In discussing loss of support damages in a wrongful
2 death case, the gross earnings are not available for the support of the family,
3 because gross earnings are reduced by the amount of income taxes withheld.
4 STEIN ON PERSONAL INJURY DAMAGES § 3:8 (3d ed.) (October 2017 Update);
5 RESTATEMENT (SECOND) OF TORTS § 914A; *Floyd v. Fruit Industries*, 136 A.2d
6 918, 925 (Conn. 1957).

7 Excluding evidence of the impact of income taxes on the loss of “probable
8 support” resulted in a \$300,000 difference per year, a figure that the jury was
9 precluded from hearing. Plaintiffs used economic expert, Dr. Larry Stokes, to
10 estimate the economic losses associated with Dr. Khiabani’s death. Dr. Stokes
11 used the year 2016 as the base year for his calculations.⁷ Mr. Roberts, making a
12 proffer outside the presence of the jury, questioned Dr. Stokes on the impact of
13 income taxes. Dr. Stokes testified that the income number he used for 2016 was
14 \$909,503.⁸ Dr. Khiabani’s W-2 indicated that the federal tax withheld
15 \$332,302.91.⁹ Further, Dr. Stokes noted that the income tax returns Dr. Stokes
16 had in his file indicated Dr. Khiabani paid 35 percent of gross income in taxes.¹⁰
17 So the amount of income Dr. Khiabani received in 2016 less the taxes he paid
18 was approximately \$619,777.

19 To calculate loss of probable support the jury was charged with
20 calculating how much money Dr. Khiabani would have provided his children.
21 Mr. Roberts noted that if the impact of income taxes was excluded, the jury
22 could award more money in lost probable support than Dr. Khiabani would
23 have actually had available.

24
25 _____
26 ⁷ (Transcript of Proceedings at 120:3–5, Mar. 1, 2018, App. 11).

27 ⁸ (*Id.* at 120:7, App. 11).

28 ⁹ (*Id.* at 121:12, App. 12).

¹⁰ (*Id.* at 122:16, App. 13).

1 MR. ROBERTS: [I]t's up to the jury to determine how much he
2 would have provided to his children in lost support. . . . He
3 couldn't have given his children any more than he had left in
4 his pocket after he paid his federal taxes could he?

5 DR. STOKES: Not in any current sense, no he couldn't.

6 (Transcript of Proceedings at 123:4–13, Mar. 1, 2018, App. 14).

7 Mr. Roberts further articulated this point and the danger of the jury
8 awarding inaccurate lost probable support damages.

9 MR. ROBERTS: And the fact is, if the jury isn't instructed on
10 taxes and awarded 15 million, they will have awarded 5
11 million more than it would have been possible for Dr.
12 Khiabani to pay them [the children] if he had paid his taxes.

13 (Transcript of Proceedings at 216:24–217:2, Mar. 20, 2018, App. 179).

14 Accordingly, preventing evidence of the impact of income taxes on the loss
15 of probable support, a \$300,000 difference, was prejudicial.¹¹

16 **B. Nevada Law Supports the Admission of**
17 **Evidence Related to the Impact of Income**
18 **Taxes on Loss of Probable Support**

19 The Court recognized that evidence of the impact of income taxes is not
20 admissible in certain circumstances. In *Otis Elevator Co. v. Reid*, the Court
21 noted that tax instructions are appropriate in special circumstances. 101 Nev.
22 515, 521, 706 P.2d 1378, 1382 (1985). Respectfully, such an instruction was
23 appropriate in this case. Defendant offered a proposed jury instruction on
24 consideration of probable taxes that would have directed the jury to subtract
25 probable income taxes and necessary personal living expenses from Dr.
26 Khiabani's lost earning capacity.¹² It was an error for the Court to reject it.

27 Nevada law supports the admission of evidence relating to the impact of
28 income taxes on loss of probable support. The Nevada Supreme Court has
recognized that the Legislature, in constructing the wrongful death statute,

¹¹ (*Id.* at 217:15–19, App. 180).

¹² (Defendant's Proposed Jury Instruction, Consideration of Probable Taxes (on
last unnumbered page), App. 209).

1 “carefully chose the words ‘probable support.’” *Freeman v. Davidson*, 105 Nev.
2 13, 16, 768 P.2d 885, 887 (1989).

3 Mr. Roberts correctly argued that in a loss of probable support case
4 evidence of the impact of income taxes is admissible:

5 MR. ROBERTS: If you have a lost support case... that
6 specifically addresses the issue, the clear majority rule is the
7 taxation comes in. And the reason it comes in is a loss of
support has to come in after personal consumption.

8 (*Id.* at 216:11–18, App. 179). Addressing the Court’s concerns, Mr.
9 Roberts further argued that while such evidence is not admissible in
10 certain circumstances, it was admissible here.

11 MR. ROBERTS: Personal consumption doesn’t come in in a
12 wage loss case... but if its loss of support, that’s why it comes
in.

13 (*Id.* at 216:19–23, App. 179).

14 Other courts have similarly recognized that evidence relating to the
15 impact of income taxes on loss of probable support damages is admissible.
16 *Burlington N., Inc. v. Boxberger*, 529 F.2d 284, 291 (9th Cir. 1975) (“[A]nnual
17 gross income is such that future taxes would have a substantial effect, evidence
18 of the decedent’s past and future tax liability should be admitted if a reasonably
19 fair and accurate estimate of his lost future income is to be assured.”); *Norfolk*
20 *& W. Ry. Co. v. Liepelt*, 444 U.S. 490, 493 (1980) (“It is his after-tax income,
21 rather than his gross income before taxes, that provides the only realistic
22 measure of his ability to support his family.”).

23 Nevada law supports admitting evidence related to the impact of income
24 taxes on probable support. Where such evidence is excluded, the jury may
25 award more money in lost probable support than the decedent would actually
26 have had available. Therefore, it was prejudicial for the Court to exclude the
27 evidence of Dr. Khiabani’s income taxes.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

Based on the foregoing, MCI respectfully requests that the Court grant its motion for new trial on plaintiff's failure-to-warn claim and damages.

Dated this 7th day of May, 2018.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

Darrell L. Barger, Esq.
Michael G. Terry, Esq.
HARTLINE DACUS BARGER
DREYER LLP
800 N. Shoreline Blvd.
Suite 2000, N. Tower
Corpus Christi, TX 78401

John C. Dacus, Esq.
Brian Rawson, Esq.
HARTLINE DACUS BARGER
DREYER LLP
8750 N. Central
Expressway
Suite 1600
Dallas, TX 75231

By /s/ Joel D. Henriod
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Parkway,
Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

D. Lee Roberts, Jr., Esq.
Howard J. Russell, Esq.
David A. Dial, Esq.
Marisa Rodriguez, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118

Attorneys for Defendant Motor Coach Industries, Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 7th day of May, 2018, a true and correct copy
3 of the foregoing motion was served by e-service, in accordance with the
4 Electronic Filing Procedures of the Eight Judicial District Court.

5 Will Kemp, Esq.
6 Eric Pepperman, Esq.
7 KEMP, JONES & COULTHARD, LLP
8 3800 Howard Hughes Pkwy., 17th
9 Floor
10 Las Vegas, NV 89169
11 e.pepperman@kempjones.com

12 *Attorneys for Plaintiffs*

13 Keith Gibson, Esq.
14 James C. Ughetta, Esq.
15 LITTLETON JOYCE UGHETTA PARK &
16 KELLY LLP
17 The Centre at Purchase
18 4 Manhattanville Rd., Suite 202
19 Purchase, NY 10577
20 Keith.Gibson@LittletonJoyce.com
21 James.Ughetta@LittletonJoyce.com

22 *Attorneys for Defendant Bell Sports,
23 Inc. d/b/a Giro Sport Design*

24 Michael E. Stoberski, Esq.
25 Joslyn Shapiro, Esq.
26 OLSON CANNON GORMLEY ANGULO &
27 STOBERSKI
28 9950 W. Cheyenne Ave.
Las Vegas, NV 89129
mstoberski@ocgas.com
jshapiro@ocgas.com

*Attorneys for Defendant Bell Sports,
Inc. d/b/a Giro Sport Design*

Michael J. Nunez, Esq.
MURCHISON & CUMMING, LLP
350 S. Rampart Blvd., Suite 320
Las Vegas, NV 89145
mnunez@murchisonlaw.com

*Attorney for Defendant SevenPlus
Bicycles, Inc. d/b/a Pro Cyclery*

Peter S. Christiansen, Esq.
Kendelee L. Works, Esq.
CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd.
Las Vegas, NV 89101
pete@christiansenlaw.com
kworks@christiansenlaw.com

Attorneys for Plaintiffs

C. Scott Toomey, Esq.
LITTLETON JOYCE UGHETTA PARK &
KELLY LLP
201 King of Prussia Rd., Suite 220
Radnor, PA 19087
Scott.toomey@littletonjoyce.com

*Attorney for Defendant Bell Sports,
Inc. d/b/a Giro Sport Design*

Eric O. Freeman, Esq.
SELMAN BREITMAN LLP
3993 Howard Hughes Pkwy., Suite
200
Las Vegas, NV 89169
efreeman@selmanlaw.com

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

Paul E. Stephan, Esq.
Jerry C. Popovich, Esq.
William J. Mall, Esq.
SELMAN BREITMAN LLP
6 Hutton Centre Dr., Suite 1100
Santa Ana, CA 92707
pstephan@selmanlaw.com
jpopovich@selmanlaw.com
wmall@selmanlaw.com

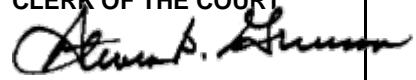
*Attorney for Defendants Michelangelo
Leasing Inc. d/b/a Ryan's Express and*

Edward Hubbard

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

/s/ Jessie M. Helm
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

EXHIBIT H TO
DOCKETING
STATEMENT



1 **NOAS**
2 DANIEL F. POLSENBERG
3 Nevada Bar No. 2376
4 dpolsenberg@lrrc.com
5 JOEL D. HENRIOD
6 Nevada Bar No. 8492
7 jhenriod@lrrc.com
8 ABRAHAM G. SMITH
9 asmith@lrrc.com
10 Nevada Bar No. 13,250
11 LEWIS ROCA ROTHGERBER LLP
12 3993 Howard Hughes Parkway,
13 Suite 600
14 Las Vegas, Nevada 89169
15 Telephone: (702) 949-8200
16 Facsimile: (702) 949-8398

D. LEE ROBERTS, JR.
Nevada Bar No. 8877
lroberts@wwhgd.com
HOWARD J. RUSSELL
Nevada Bar No. 8879
hrussell@wwhgd.com
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

*Additional Counsel Listed on
Signature Block*

*Attorneys for Defendant
Motor Coach Industries, Inc.*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

21 MOTOR COACH INDUSTRIES, INC., a
22 Delaware corporation; MICHELANGELO
23 LEASING INC. d/b/a RYAN'S EXPRESS, an
24 Arizona corporation; EDWARD HUBBARD, a
25 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

1 NOTICE OF APPEAL

2 Please take notice that defendant Motor Coach Industries, Inc. hereby
3 appeals to the Supreme Court of Nevada from:

- 4 1. All judgments and orders in this case;
- 5 2. "Judgment," filed April 17, 2018, notice of entry of which was served
6 electronically on April 18, 2018 (Exhibit A);
- 7 3. "Findings of Fact and Conclusions of Law on Defendant's Motion to
8 Retax," filed on January 3, 2019, notice of entry of which was served
9 electronically on April 24, 2019 (Exhibit B);
- 10 4. "Combined Order (1) Denying Motion for Judgment as a Matter of
11 Law and (2) Denying Motion for Limited New Trial," filed on February 1, 2019,
12 notice of entry of which was served electronically on February 1, 2019 (Exhibit
13 C);
- 14 5. "Order," filed on March 26, 2019 (Exhibit D); and
- 15 6. All rulings and interlocutory orders made appealable by any of the
16 foregoing.

17 DATED this 24th day of April, 2019.

18 LEWIS ROCA ROTHGERBER CHRISTIE LLP

19 Darrell L. Barger, Esq.
20 Michael G. Terry, Esq.
21 HARTLINE DACUS BARGER
22 DREYER LLP
23 800 N. Shoreline Blvd.
24 Suite 2000, N. Tower
25 Corpus Christi, TX 78401

23 John C. Dacus, Esq.
24 Brian Rawson, Esq.
25 HARTLINE DACUS BARGER
26 DREYER LLP
27 8750 N. Central
Expressway
Suite 1600
Dallas, TX 75231

By /s/Joel D. Henriod
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Parkway,
Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

D. Lee Roberts, Jr., Esq.
Howard J. Russell, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118

Attorneys for Defendant Motor Coach Industries, Inc.

1 CERTIFICATE OF SERVICE

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

5 Will Kemp, Esq.
Eric Pepperman, Esq.
6 KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Pkwy., 17th
7 Floor
Las Vegas, NV 89169
8 e.pepperman@kempjones.com

9 ***Attorneys for Plaintiffs***

10 Keith Gibson, Esq.
James C. Ughetta, Esq.
11 LITTLETON JOYCE UGHETTA PARK &
KELLY LLP
12 The Centre at Purchase
4 Manhattanville Rd., Suite 202
13 Purchase, NY 10577
Keith.Gibson@LittletonJoyce.com
14 James.Ughetta@LittletonJoyce.com

15 ***Attorneys for Defendant Bell
Sports, Inc. d/b/a Giro Sport
16 Design***

17 Michael E. Stoberski, Esq.
Joslyn Shapiro, Esq.
18 OLSON CANNON GORMLEY ANGULO &
STOBERSKI
19 9950 W. Cheyenne Ave.
Las Vegas, NV 89129
20 mstoberski@ocgas.com
jshapiro@ocgas.com

21 ***Attorneys for Defendant Bell
22 Sports, Inc. d/b/a Giro Sport
23 Design***

24 Michael J. Nunez, Esq.
MURCHISON & CUMMING, LLP
25 350 S. Rampart Blvd., Suite 320
Las Vegas, NV 89145
26 mnunez@murchisonlaw.com

27 ***Attorney for Defendant SevenPlus
Bicycles, Inc. d/b/a Pro Cyclery***

Peter S. Christiansen, Esq.
Kendele L. Works, Esq.
CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd.
Las Vegas, NV 89101
pete@christiansenlaw.com
kworks@christiansenlaw.com

Attorneys for Plaintiffs

C. Scott Toomey, Esq.
LITTLETON JOYCE UGHETTA PARK &
KELLY LLP
201 King of Prussia Rd., Suite 220
Radnor, PA 19087
Scott.toomey@littletonjoyce.com

***Attorney for Defendant Bell
Sports, Inc. d/b/a Giro Sport
Design***

Eric O. Freeman, Esq.
SELMAN BREITMAN LLP
3993 Howard Hughes Pkwy., Suite
200
Las Vegas, NV 89169
efreeman@selmanlaw.com

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

Paul E. Stephan, Esq.
Jerry C. Popovich, Esq.
William J. Mall, Esq.
SELMAN BREITMAN LLP
6 Hutton Centre Dr., Suite 1100
Santa Ana, CA 92707
pstephan@selmanlaw.com
jpopovich@selmanlaw.com
wmall@selmanlaw.com

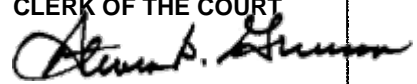
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

***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



1 WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
2 e.pepperman@kempjones.com
KEMP, JONES & COULTHARD, LLP
3 3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
4 Telephone: (702) 385-6000

5 PETER S. CHRISTIANSEN, ESQ. (#5254)
pete@christiansenlaw.com
6 KENDELEE L. WORKS, ESQ. (#9611)
kworks@christiansenlaw.com
7 CHRISTIANSEN LAW OFFICES
810 Casino Center Blvd.
8 Las Vegas, Nevada 89101
Telephone: (702) 240-7979

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 //

28 //

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 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
8 3800 Howard Hughes Parkway, 17th Floor
9 Las Vegas, NV 89169

10 -and-
11 PETER S. CHRISTIANSEN, ESQ. (#5254)
12 KENDELEE L. WORKS, ESQ. (#9611)
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.

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

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

Electronically Filed
4/17/2018 4:26 PM
Steven D. Grierson
CLERK OF THE COURT



1 WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
2 e.pepperman@kempjones.com
KEMP, JONES & COULTHARD, LLP
3 3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
4 Telephone: (702) 385-6000
Facsimile: (702) 385-6001
5 -and-
PETER S. CHRISTIANSEN, ESQ. (#5254)
6 KENDELEE L. WORKS, ESQ. (#9611)
kworks@christiansenlaw.com
7 CHRISTIANSEN LAW OFFICES
8 810 South Casino Center Blvd.
Las Vegas, Nevada 89101
9 *Attorneys for Plaintiffs*

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

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

17 Plaintiffs,

18 vs.

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

21 Defendants.
22

Case No.: A-17-755977-C

Dept. No.: XIV

JUDGMENT

23
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

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 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

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

///
///

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

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

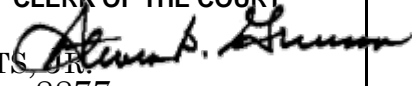
Respectfully Submitted by:
KEMP, JONES & COULTHARD, LLP



WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
-and-
PETER S. CHRISTIANSEN, ESQ. (#5254)
KENDELEE L. WORKS, ESQ. (#9611)
CHRISTIANSEN LAW OFFICES
810 South Casino Center Blvd.
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

EXHIBIT B

EXHIBIT B



1 DANIEL F. POLSENBERG
Nevada Bar No. 2376
2 dpolsenberg@lrrc.com
JOEL D. HENRIOD
3 Nevada Bar No. 8492
jhenriod@lrrc.com
4 ABRAHAM G. SMITH
asmith@lrrc.com
5 Nevada Bar No. 13,250
LEWIS ROCA ROTHGERBER LLP
6 3993 Howard Hughes Parkway,
Suite 600
7 Las Vegas, Nevada 89169
Telephone: (702) 949-8200
8 Facsimile: (702) 949-8398

D. LEE ROBERTS, JR.
Nevada Bar No. 8877
lroberts@wwhgd.com
HOWARD J. RUSSELL
Nevada Bar No. 8879
hrussell@wwhgd.com
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

*Additional Counsel Listed on
Signature Block*

9 *Attorneys for Defendant*
10 *Motor Coach Industries, Inc.*

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

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

18 Plaintiffs,

19 *vs.*

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

26 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

8 Darrell L. Barger, Esq.
9 Michael G. Terry, Esq.
10 HARTLINE DACUS BARGER
11 DREYER LLP
12 800 N. Shoreline Blvd.
13 Suite 2000, N. Tower
14 Corpus Christi, TX 78401

By /s/ Joel D. Henriod
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Parkway,
Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

12 John C. Dacus, Esq.
13 Brian Rawson, Esq.
14 HARTLINE DACUS BARGER
15 DREYER LLP
16 8750 N. Central
17 Expressway
18 Suite 1600
19 Dallas, TX 75231

D. Lee Roberts, Jr., Esq.
Howard J. Russell, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118

Attorneys for Defendant Motor Coach Industries, Inc.

20

21

22

23

24

25

26

27

28

1 CERTIFICATE OF SERVICE

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

5 Will Kemp, Esq.
Eric Pepperman, Esq.
6 KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Pkwy., 17th
7 Floor
Las Vegas, NV 89169
8 e.pepperman@kempjones.com

9 *Attorneys for Plaintiffs*

10 Keith Gibson, Esq.
James C. Ughetta, Esq.
11 LITTLETON JOYCE UGHETTA PARK &
KELLY LLP
12 The Centre at Purchase
4 Manhattanville Rd., Suite 202
13 Purchase, NY 10577
Keith.Gibson@LittletonJoyce.com
14 James.Ughetta@LittletonJoyce.com

15 *Attorneys for Defendant Bell Sports,
Inc. d/b/a Giro Sport Design*

16 Michael E. Stoberski, Esq.
17 Joslyn Shapiro, Esq.
18 OLSON CANNON GORMLEY ANGULO &
STOBERSKI
9950 W. Cheyenne Ave.
19 Las Vegas, NV 89129
mstoberski@ocgas.com
20 jshapiro@ocgas.com

21 *Attorneys for Defendant Bell Sports,
Inc. d/b/a Giro Sport Design*

22 Michael J. Nunez, Esq.
23 MURCHISON & CUMMING, LLP
350 S. Rampart Blvd., Suite 320
24 Las Vegas, NV 89145
mnunez@murchisonlaw.com

25 *Attorney for Defendant SevenPlus
26 Bicycles, Inc. d/b/a Pro Cyclery*

Peter S. Christiansen, Esq.
Kendele L. Works, Esq.
CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd.
Las Vegas, NV 89101
pete@christiansenlaw.com
kworks@christiansenlaw.com

Attorneys for Plaintiffs

C. Scott Toomey, Esq.
LITTLETON JOYCE UGHETTA PARK &
KELLY LLP
201 King of Prussia Rd., Suite 220
Radnor, PA 19087
Scott.toomey@littletonjoyce.com

*Attorney for Defendant Bell Sports,
Inc. d/b/a Giro Sport Design*

Eric O. Freeman, Esq.
SELMAN BREITMAN LLP
3993 Howard Hughes Pkwy., Suite
200
Las Vegas, NV 89169
efreeman@selmanlaw.com

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

Paul E. Stephan, Esq.
Jerry C. Popovich, Esq.
William J. Mall, Esq.
SELMAN BREITMAN LLP
6 Hutton Centre Dr., Suite 1100
Santa Ana, CA 92707
pstephan@selmanlaw.com
jpopovich@selmanlaw.com
wmall@selmanlaw.com

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

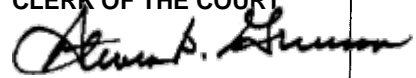
Edward Hubbard

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

EXHIBIT A

EXHIBIT A



1 **FFCL**

2 D. LEE ROBERTS, JR. (SBN 8877)
3 HOWARD J. RUSSELL (SBN 8879)
4 DAVID A. DIAL (*admitted pro hac vice*)
5 MARISA RODRIGUEZ (SBN 13,234)
6 WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
7 6385 S. Rainbow Blvd., Suite 400
8 Las Vegas, Nevada 89118
9 (702) 938-3838
10 (702) 938-3864
11 LRoberts@WWHGD.com

12 DANIEL F. POLSENBERG (SBN 2376)
13 JOEL D. HENRIOD (SBN 8492)
14 LEWIS ROCA ROTHGERBER CHRISTIE LLP
15 3993 Howard Hughes Pkwy. Suite 600
16 Las Vegas, Nevada 89169
17 (702) 949-8200
18 (702) 949-8398 (Fax)
19 DPolsenberg@LRRC.com
20 JHenriod@LRRC.com

21 *Attorneys for Motor Coach Industries, Inc,*

22 DISTRICT COURT
23 CLARK COUNTY, NEVADA

24 KEON KHIABANI and ARIA KHIABANI,
25 minors by and through their Guardian,
26 MARIE-CLAUDE RIGAUD; SIAMAK BARIN,
27 as Executor of the Estate of Kayvan
28 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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

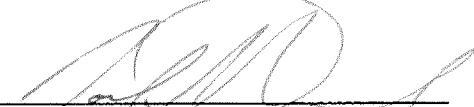
IT IS SO ORDERED.

Dated this 2 day of January, 2018



DISTRICT JUDGE

Submitted by:
LEWIS ROCA ROTHGERBER CHRISTIE, LLP¹


By: 
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Pkwy.
Suite 600
Las Vegas, NV 89169-5996

D. LEE ROBERTS, JR. (SBN 8877)
HOWARD J. RUSSELL (SBN 8879)
DAVID A. DIAL (*admitted pro hac vice*)
MARISA RODRIGUEZ (SBN 13,234)
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118

Attorneys for Defendant Motor Coach Industries, Inc.

Approved as to form and content by:

KEMP, JONES & COULTHARD, LLP

By: 
WILLIAM KEMP (SBN 1205)
ERIC PEPPERMAN (SBN 11,679)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

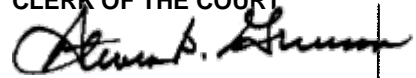
PETER S. CHRISTIANSEN (SBN 5254)
KENDELEE L. WORKS (SBN 9611)
CHRISTIANSEN LAW OFFICES
810 South Casino Center Blvd.
Las Vegas, NV 89101

Attorneys for Plaintiffs

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

EXHIBIT C

EXHIBIT C



1 WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
2 e.pepperman@kempjones.com
KEMP, JONES & COULTHARD, LLP
3 3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
4 Telephone: (702) 385-6000

5 PETER S. CHRISTIANSEN, ESQ. (#5254)
pete@christiansenlaw.com
6 KENDELEE L. WORKS, ESQ. (#9611)
kworks@christiansenlaw.com
7 CHRISTIANSEN LAW OFFICES
810 Casino Center Blvd.
8 Las Vegas, Nevada 89101
Telephone: (702) 240-7979

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.

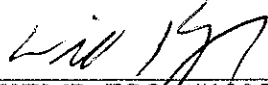
27
28

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

1 A copy of said Order is attached hereto.

2 DATED this 1st day of February, 2019.

3 KEMP, JONES & COULTHARD, LLP

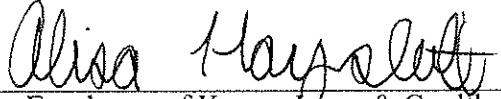
4
5 
6 WILL KEMP, ESQ. (#1205)
7 ERIC PEPPERMAN, ESQ. (#11679)
8 KEMP, JONES & COULTHARD, LLP
9 3800 Howard Hughes Parkway, 17th Floor
10 Las Vegas, NV 89169

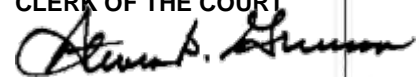
11 -and-

12 PETER S. CHRISTIANSEN, ESQ. (#5254)
13 KENDELEE L. WORKS, ESQ. (#9611)
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.



1 FFCL

2
3 EIGHTH JUDICIAL DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

14 Plaintiffs,

15 vs.

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

27 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**

28 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,

17
18
19 

20
21
22
23
24
25
26
27
28
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
6 follows:

7 D. Lee Roberts, Jr., Esq.
8 Howard J. Russell, Esq.
9 David A. Dial, Esq.
10 Marisa Rodriguez, Esq.
11 WEINBERG WHEELER
12 HUDGINS GUNN & DIAL LLC
13 Facsimile: (702) 938-3864
14 Email: lroberts@wwhgd.com
15 hrussell@wwhgd.com
16 ddial@wwhgd.com
17 mrodriguez@wwhgd.com

18 **AND:**

19 Darrell L. Barger, Esq.
20 Michael G. Terry, Esq.
21 John C. Dacus, Esq.
22 Brian Rawson, Esq.
23 HARTLINE DACUS BARGER
24 DREYER LLP
25 Email: dbarger@hdbdlaw.com
26 mterry@hdbdlaw.com
27 jdacus@hdbdlaw.com
28 brawson@hdbdlaw.com
Attorneys for Defendant Motor Coach Industries, Inc.

Will Kemp, Esq.
Eric Pepperman, Esq.
KEMP JONES & COUTHARD LLP
Email: e.pepperman@kempjones.com

AND:

Peter S. Christiansen, Esq.
Kendele L. Works, Esq.
CHRISTIANSSEN LAW OFFICES
Email: pete@christiansenlaw.com
kworks@christiansenlaw.com
Attorneys for Plaintiff

Keith Gibson, Esq.
James C. Ughetta, Esq.
LITTLETON JOYCE UGHETTA PARK
& KELLY LLP
Email: Keith.Gibson@littletonjoyce.com
James.Ughetta@LittletonJoyce.com
*Attorneys for Defendant Bell Sports, Inc.
d/b/a Giro Sport Design*

Michael E. Stoberski, Esq.
Joslyn Shapiro, Esq.
OLSON CANNON GORMLEY
ANGULO & STOBERSKI
Email: mstoberski@ocgas.com
jshapiro@ocgas.com

AND:

C. Scott Toomey, Esq.
LITTLETON JOYCE UGHETTA PARK
& KELLY LLP
Email: Scott.Toomey@littletonjoyce.com
*Attorneys for Defendant Bell Sports, Inc.
d/b/a
Giro Sport Design*

Eric O. Freeman, Esq.
SELMAN BREITMAN LLP
Email: efreeman@selmanlaw.com
*Attorney for Defendants Michelangelo Leasing
Inc. d/b/a Ryan's Express & Edward Hubbard*

Michael J. Nunez, Esq.
MURCHISON & CUMMING, LLP
Email: mnuez@murchisonlaw.com
Attorney for Defendant SevenPlus Bicycles, Inc. d/b/a Pro Cyclery

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Paul E. Stephan, Esq.
Jerry C. Popovich, Esq.
William J. Mall, Esq.
SELMAN BREITMAN LLP
Email: pstephan@selmanlaw.com
jpopovich@selmanlaw.com
wmall@selmanlaw.com
*Attorneys for Defendants Michelangelo
Leasing Inc. d/b/a Ryan's Express and
Edward Hubbard*

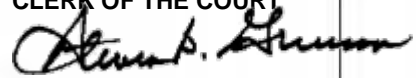
Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
LEWIS ROCA ROTHGERBER
CHRISTIE LLP
Email: DPolsenberg@LRRC.com
JHenriod@LRRC.com
*Attorneys for Motor Coach Industries,
Inc.*



Diana D. Powell, Judicial Assistant

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 Plaintiffs,

14 vs.

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

23 Defendants.

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

27 After considering the moving papers and argument of counsel, the Court **DENIES**
28 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.

23 ///

24 ///

25 ///

26 ///

27 ///


28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

IT IS SO ORDERED.

Dated this 26th day of March, 2019.



ADRIANA ESCOBAR
DISTRICT COURT JUDGE

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
6 follows:

7 D. Lee Roberts, Jr., Esq.
8 Howard J. Russell, Esq.
9 David A. Dial, Esq.
10 Marisa Rodriguez, Esq.
11 WEINBERG WHEELER
12 HUDGINS GUNN & DIAL LLC
13 Facsimile: (702) 938-3864
14 Email: lroberts@wwhgd.com
15 hrussell@wwhgd.com
16 ddial@wwhgd.com
17 mrodriguez@wwhgd.com

18 **AND:**
19 Darrell L. Barger, Esq.
20 Michael G. Terry, Esq.
21 John C. Dacus, Esq.
22 Brian Rawson, Esq.
23 HARTLINE DACUS BARGER
24 DREYER LLP
25 Email: dbarger@hdbdlaw.com
26 mterry@hdbdlaw.com
27 jdacus@hdbdlaw.com
28 brawson@hdbdlaw.com
Attorneys for Defendant Motor Coach Industries, Inc.

Will Kemp, Esq.
Eric Pepperman, Esq.
KEMP JONES & COUTHARD LLP
Email: e.pepperman@kempjones.com

AND:
Peter S. Christiansen, Esq.
Kendelea L. Works, Esq.
CHRISTIANSEN LAW OFFICES
Email: pete@christiansenlaw.com
kworks@christiansenlaw.com
Attorneys for Plaintiff

Keith Gibson, Esq.
James C. Ughetta, Esq.
LITTLETON JOYCE UGHETTA PARK
& KELLY LLP
Email: Keith.Gibson@littletonjoyce.com
James.Ughetta@LittletonJoyce.com
*Attorneys for Defendant Bell Sports, Inc.
d/b/a Giro Sport Design*

Michael E. Stoberski, Esq.
Joslyn Shapiro, Esq.
OLSON CANNON GORMLEY
ANGULO & STOBERSKI
Email: mstoberski@ocgas.com
jshapiro@ocgas.com

AND:
C. Scott Toomey, Esq.
LITTLETON JOYCE UGHETTA PARK
& KELLY LLP
Email: Scott.Toomey@littletonjoyce.com
*Attorneys for Defendant Bell Sports, Inc.
d/b/a
Giro Sport Design*

Eric O. Freeman, Esq.
SELMAN BREITMAN LLP
Email: efreeman@selmanlaw.com
*Attorney for Defendants Michelangelo Leasing
Inc. d/b/a Ryan’s Express & Edward Hubbard*

Michael J. Nunez, Esq.
MURCHISON & CUMMING, LLP
Email: mnuez@murchisonlaw.com
Attorney for Defendant SevenPlus Bicycles, Inc. d/b/a Pro Cyclery

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Paul E. Stephan, Esq.
Jerry C. Popovich, Esq.
William J. Mall, Esq.
SELMAN BREITMAN LLP
Email: pstephan@selmanlaw.com
jpopovich@selmanlaw.com
wmall@selmanlaw.com
*Attorneys for Defendants Michelangelo
Leasing Inc. d/b/a Ryan's Express and
Edward Hubbard*

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
LEWIS ROCA ROTHGERBER
CHRISTIE LLP
Email: DPolsenberg@LRRC.com
JHenriod@LRRC.com
*Attorneys for Motor Coach Industries,
Inc.*

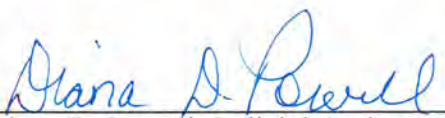
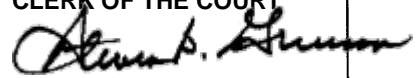

Diana D. Powell, Judicial Assistant

EXHIBIT I TO
DOCKETING
STATEMENT



1 WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
2 e.pepperman@kempjones.com
KEMP, JONES & COULTHARD, LLP
3 3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
4 Telephone: (702) 385-6000
Facsimile: (702) 385-6001
5 -and-
PETER S. CHRISTIANSEN, ESQ. (#5254)
6 pete@christiansenlaw.com
KENDELEE L. WORKS, ESQ. (#9611)
7 kworks@christiansenlaw.com
CHRISTIANSEN LAW OFFICES
8 810 South Casino Center Blvd.
Las Vegas, Nevada 89101
9 Telephone: (702) 240-7979
Facsimile: (866) 412-6992
10 *Attorneys for Plaintiffs*

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

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

18 Plaintiffs,

19 vs.

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

26 Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

**STIPULATION AND ORDER
DISMISSING PLAINTIFFS' CLAIMS
AGAINST DEFENDANTS
MICHELANGELO LEASING, INC.
AND EDWARD HUBBARD ONLY**

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

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

I

STIPULATION

IT IS HEREBY STIPULATED AND AGREED between Plaintiffs, by and through their counsel of record, Kemp, Jones & Coulthard, LLP and Christiansen Law Offices, and Defendants Michelangelo Leasing, Inc. d/b/a Ryan's Express ("Michelangelo") and Edward Hubbard, by and through their counsel of record, Selman Breitman LLP, that Plaintiffs' claims against Defendants Michelangelo and Hubbard be dismissed with prejudice and that Defendants Michelangelo and Hubbard be dismissed with prejudice from the above-entitled action, with each party to bear its own attorneys' fees and costs. This stipulation applies to Defendants Michelangelo and Hubbard **only**, and it does not dismiss Plaintiffs' claims against any other Defendant.

Dated this 13 day of August, 2018.

KEMP, JONES & COULTHARD, LLP



WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
-and-
CHRISTIANSSEN LAW OFFICES
PETER S. CHRISTIANSSEN, ESQ. (#5254)
KENDELEE L. WORKS, ESQ. (#9611)
810 South Casino Center Blvd.
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

Dated this 16 day of August, 2018.

SELMAN BREITMAN LLP



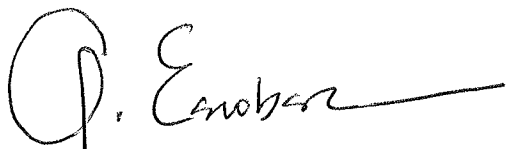

ERIC O. FREEMAN, ESQ. (#6648)
3993 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
*Attorneys for Defendants Michelangelo
Leasing, Inc. d/b/a Ryan's Express and
Edward Hubbard*

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

II
ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, pursuant to the forgoing stipulation, Plaintiffs' claims against Defendants Michelangelo Leasing, Inc. d/b/a Ryan's Express and Edward Hubbard are dismissed with prejudice and Defendants Michelangelo Leasing, Inc. and Edward Hubbard are dismissed with prejudice from the above-entitled action, with each party to bear its own attorneys' fees and costs. This order applies to Defendants Michelangelo Leasing, Inc. and Hubbard only, and it does not dismiss Plaintiffs' claims against any other Defendant.

Dated this 21 of August, 2018.


DISTRICT COURT JUDGE 

Submitted by:
KEMP, JONES & COULTHARD, LLP


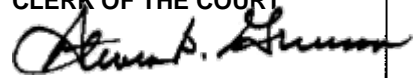

WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
-and-
CHRISTIANSEN LAW OFFICES
PETER S. CHRISTIANSEN, ESQ. (#5254)
KENDELEE L. WORKS, ESQ. (#9611)
810 South Casino Center Blvd.
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

EXHIBIT J TO
DOCKETING
STATEMENT



1 WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
2 e.pepperman@kempjones.com
KEMP, JONES & COULTHARD, LLP
3 3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
4 Telephone: (702) 385-6000

5 PETER S. CHRISTIANSEN, ESQ. (#5254)
pete@christiansenlaw.com
6 KENDELEE L. WORKS, ESQ. (#9611)
kworks@christiansenlaw.com
7 CHRISTIANSEN LAW OFFICES
810 Casino Center Blvd.
8 Las Vegas, Nevada 89101
Telephone: (702) 240-7979

9 *Attorneys for Plaintiffs*

10
11 **DISTRICT COURT**

12 **COUNTY OF CLARK, NEVADA**

13 KEON KHIABANI and ARIA KHIABANI,
minors by and through their natural mother,
14 KATAYOUN BARIN; KATAYOUN BARIN,
individually; KATAYOUN BARIN as
15 Executrix of the Estate of Kayvan Khiabani,
M.D. (Decedent), and the Estate of Kayvan
16 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 STIPULATION
AND ORDER DISMISSING PLAINTIFFS'
CLAIMS AGAINST DEFENDANT BELL
SPORTS, INC. ONLY**

22
23 TO: All parties herein; and

24 TO: Their respective counsel;

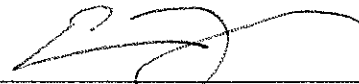
25 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the above-referenced
26 Order was entered in this matter. The Order was filed on October 17, 2018.

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 17th day of October, 2018.

3
4 KEMP, JONES & COULTHARD, LLP

5 

6 WILL KEMP, ESQ. (#1205)
7 ERIC PEPPERMAN, ESQ. (#11679)
8 KEMP, JONES & COULTHARD, LLP
9 3800 Howard Hughes Parkway, 17th Floor
10 Las Vegas, NV 89169

11 -and-
12 PETER S. CHRISTIANSEN, ESQ. (#5254)
13 KENDELEE L. WORKS, ESQ. (#9611)
14 CHRISTIANSEN LAW OFFICES
15 810 Casino Center Blvd.
16 Las Vegas, Nevada 89101
17 *Attorneys for Plaintiffs*

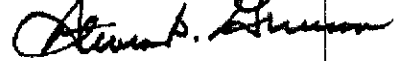
18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on the 17th day of October, 2018, the foregoing **NOTICE OF ENTRY**
20 **OF STIPULATION AND ORDER DISMISSING PLAINTIFFS' CLAIMS AGAINST**
21 **DEFENDANT BELL SPORTS, INC. ONLY** was served on all parties currently on the electronic
22 service list via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing
23 and Conversion Rules, Administrative Order 14-2.

24 

25 An Employee of Kemp, Jones & Coulthard.

26
27
28
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 WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
2 e.pepperman@kempjones.com
KEMP, JONES & COULTHARD, LLP
3 3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
4 Telephone: (702) 385-6000
Facsimile: (702) 385-6001
5 -and-
PETER S. CHRISTIANSEN, ESQ. (#5254)
6 pete@christiansenlaw.com
KENDELEE L. WORKS, ESQ. (#9611)
7 kworks@christiansenlaw.com
CHRISTIANSEN LAW OFFICES
8 810 South Casino Center Blvd.
Las Vegas, Nevada 89101
9 Telephone: (702) 240-7979
Facsimile: (866) 412-6992
10 *Attorneys for Plaintiffs*

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

18 Plaintiffs,

19 vs.

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

26 Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

**STIPULATION AND ORDER
DISMISSING PLAINTIFFS' CLAIMS
AGAINST DEFENDANT BELL
SPORTS, INC. ONLY**

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I
STIPULATION

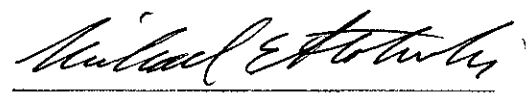
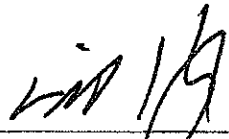
IT IS HEREBY STIPULATED AND AGREED between Plaintiffs, by and through their counsel of record, Kemp, Jones & Coulthard, LLP and Christiansen Law Offices, and Defendant Bell Sports, Inc. by and through its counsel of record, Olson, Cannon, Gormley, Angulo & Stoberski, that Plaintiffs' claims against Defendant Bell Sports, Inc. be dismissed with prejudice and that Defendant Bell Sports, Inc. be dismissed with prejudice from the above-entitled action, with each party to bear its own attorneys' fees and costs. This stipulation applies to Defendant Bell Sports, Inc. **only**, and it does not dismiss Plaintiffs' claims against any other Defendant.

Dated this 1 day of October, 2018.

Dated this 1 day of October, 2018.

KEMP, JONES & COULTHARD, LLP

OLSON, CANNON, GORMLEY,
ANGULO & STOBERSKI



WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
-and-
CHRISTIANSEN LAW OFFICES
PETER S. CHRISTIANSEN, ESQ. (#5254)
KENDELEE L. WORKS, ESQ. (#9611)
810 South Casino Center Blvd.
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

MICHAEL E. STOBERSKI, ESQ. (#4762)
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
Attorneys for Defendant Bell Sports, Inc.

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

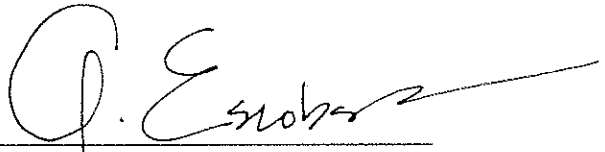
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, pursuant to the forgoing stipulation, Plaintiffs' claims against Defendant Bell Sports, Inc. are dismissed with prejudice and Defendant Bell Sports, Inc. is dismissed with prejudice from the above-entitled action, with each party to bear its own attorneys' fees and costs. This order applies to Defendant Bell Sports, Inc. only, and it does not dismiss Plaintiffs' claims against any other Defendant.

Dated this 15 of October, 2018.


DISTRICT COURT JUDGE

Submitted by:

KEMP, JONES & COULTHARD, LLP

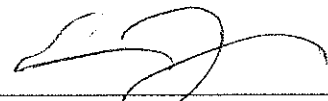
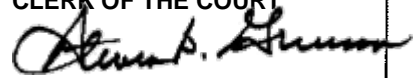

WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
-and-
CHRISTIANSEN LAW OFFICES
PETER S. CHRISTIANSEN, ESQ. (#5254)
KENDELEE L. WORKS, ESQ. (#9611)
810 South Casino Center Blvd.
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

EXHIBIT K TO
DOCKETING
STATEMENT



1 WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
2 e.pepperman@kempjones.com
KEMP, JONES & COULTHARD, LLP
3 3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
4 Telephone: (702) 385-6000

5 PETER S. CHRISTIANSEN, ESQ. (#5254)
pete@christiansenlaw.com
6 KENDELEE L. WORKS, ESQ. (#9611)
kworks@christiansenlaw.com
7 CHRISTIANSEN LAW OFFICES
810 Casino Center Blvd.
8 Las Vegas, Nevada 89101
Telephone: (702) 240-7979

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 STIPULATION
AND ORDER DISMISSING PLAINTIFFS'
CLAIMS AGAINST DEFENDANT
SEVENPLUS BICYCLES, INC. ONLY**

22
23 TO: All parties herein; and

24 TO: Their respective counsel;

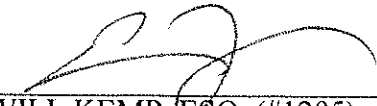
25 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the above-referenced
26 Order was entered in this matter. The Order was filed on October 17, 2018.

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 17th day of October, 2018.

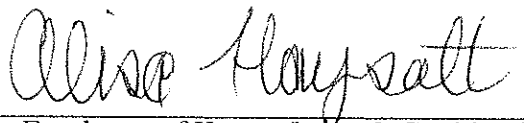
3
4 KEMP, JONES & COULTHARD, LLP

5 
6 WILL KEMP, ESQ. (#1205)
7 ERIC PEPPERMAN, ESQ. (#11679)
8 KEMP, JONES & COULTHARD, LLP
9 3800 Howard Hughes Parkway, 17th Floor
10 Las Vegas, NV 89169


11 -and-
12 PETER S. CHRISTIANSEN, ESQ. (#5254)
13 KENDELEE L. WORKS, ESQ. (#9611)
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 17th day of October, 2018, the foregoing **NOTICE OF ENTRY**
20 **OF STIPULATION AND ORDER DISMISSING PLAINTIFFS' CLAIMS AGAINST**
21 **DEFENDANT SEVENPLUS BICYCLES, INC. ONLY** was served on all parties currently on the
22 electronic service list via the Court's electronic filing system only, pursuant to the Nevada
23 Electronic Filing and Conversion Rules, Administrative Order 14-2.

24 
25 An Employee of Kemp, Jones & Coulthard.

26
27
28
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 WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
2 e.pepperman@kempjones.com
KEMP, JONES & COULTHARD, LLP
3 3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
4 Telephone: (702) 385-6000
Facsimile: (702) 385-6001
5 -and-
PETER S. CHRISTIANSEN, ESQ. (#5254)
6 pete@christiansenlaw.com
KENDELEE L. WORKS, ESQ. (#9611)
7 kworks@christiansenlaw.com
CHRISTIANSEN LAW OFFICES
8 810 South Casino Center Blvd.
Las Vegas, Nevada 89101
9 Telephone: (702) 240-7979
Facsimile: (866) 412-6992
10 *Attorneys for Plaintiffs*

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

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

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

Case No.: A-17-755977-C

Dept. No.: XIV

**STIPULATION AND ORDER
DISMISSING PLAINTIFFS' CLAIMS
AGAINST DEFENDANT
SEVENPLUS BICYCLES, INC. ONLY**

18 Plaintiffs,

19 vs.

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

26 Defendants.

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

I

STIPULATION

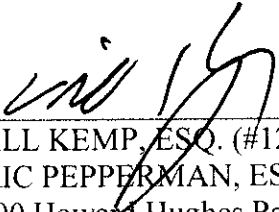
IT IS HEREBY STIPULATED AND AGREED between Plaintiffs, by and through their counsel of record, Kemp, Jones & Coulthard, LLP and Christiansen Law Offices, and Defendant SevenPlus Bicycles, Inc. d/b/a Pro Cyclery. by and through its counsel of record, Murchison & Cumming, LLP, that Plaintiffs' claims against Defendant SevenPlus Bicycles, Inc. be dismissed with prejudice and that Defendant SevenPlus Bicycles, Inc. be dismissed with prejudice from the above-entitled action, with each party to bear its own attorneys' fees and costs. This stipulation applies to Defendant SevenPlus Bicycles, Inc. **only**, and it does not dismiss Plaintiffs' claims against any other Defendant.

Dated this 1 day of October, 2018.

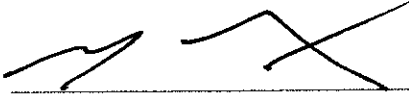
Dated this 1 day of October, 2018.

KEMP, JONES & COULTHARD, LLP

MURCHISON & CUMMING, LLP



WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169



MICHAEL J. NUNEZ, ESQ. (#10703)
350 S. Rampart, Suite 320
Las Vegas, Nevada 89145
*Attorneys for Defendant SevenPlus
Bicycles, Inc. d/b/a Pro Cyclery*

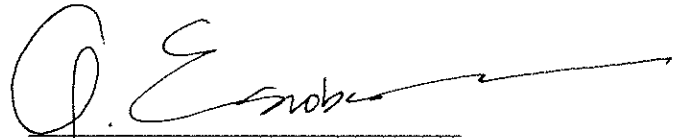
-and-
CHRISTIANSSEN LAW OFFICES
PETER S. CHRISTIANSSEN, ESQ. (#5254)
KENDELEE L. WORKS, ESQ. (#9611)
810 South Casino Center Blvd.
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

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

II
ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, pursuant to the forgoing stipulation, Plaintiffs' claims against Defendant SevenPlus Bicycles, Inc. d/b/a Pro Cyclery are dismissed with prejudice and Defendant SevenPlus Bicycles, Inc. is dismissed with prejudice from the above-entitled action, with each party to bear its own attorneys' fees and costs. This order applies to Defendant SevenPlus Bicycles, Inc. only, and it does not dismiss Plaintiffs' claims against any other Defendant.

Dated this 15 of October, 2018.


DISTRICT COURT JUDGE

Submitted by:

KEMP, JONES & COULTHARD, LLP

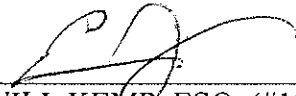
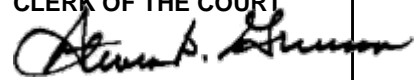

WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
-and-
CHRISTIANSEN LAW OFFICES
PETER S. CHRISTIANSEN, ESQ. (#5254)
KENDELEE L. WORKS, ESQ. (#9611)
810 South Casino Center Blvd.
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

EXHIBIT L TO
DOCKETING
STATEMENT



1 WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
2 e.pepperman@kempjones.com
KEMP, JONES & COULTHARD, LLP
3 3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
4 Telephone: (702) 385-6000
Facsimile: (702) 385-6001

5
6 PETER S. CHRISTIANSEN, ESQ. (#5254)
pete@christiansenlaw.com
KENDELEE L. WORKS, ESQ. (#9611)
7 kworks@christiansenlaw.com
CHRISTIANSEN LAW OFFICES
8 810 South Casino Center Blvd.
Las Vegas, Nevada 89101
9 Telephone: (702) 240-7979
Facsimile: (866) 412-6992

10 *Attorneys for Plaintiffs*

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

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

18 Plaintiffs,

19
20 vs.

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

27 Defendants.
28

Case No.: A-17-755977-C

Dept. No.: XIV

**SECOND AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL**

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

1 COME NOW Plaintiffs, KEON KHIABANI and ARIA KHIABANI, minors, by and
2 through their Guardian, MARIE-CLAUDE RIGAUD; SIAMAK BARIN, as Executor of the
3 Estate of Kayvan Khiabani, M.D. (Decedent), the Estate of Kayvan Khiabani, M.D. (Decedent);
4 SIAMAK BARIN, as Executor of the Estate of Katayoun Barin, DDS (Decedent); and the
5 Estate of Katayoun Barin, DDS (Decedent); by and through their attorneys, Will Kemp, Esq.
6 and Eric Pepperman, Esq. of the law firm KEMP, JONES & COULTHARD, LLP and Peter S.
7 Christiansen, Esq. and Kendelee L. Works, Esq. of CHRISTIANSEN LAW OFFICES, and for
8 their claims against the Defendants, and each of them, complain and allege as follows:

9 **THE PARTIES**

10 1. Plaintiff minors, KEON KHIABANI and ARIA KHIABANI, are the natural children of
11 Dr. Kayvan Khiabani (Decedent) and Katayoun “Katy” Barin (Decedent).

12 2. Plaintiff minor KEON KHIABANI is a citizen of the United States. Keon lives and
13 attends school in Montreal, Canada with his duly appointed Guardians.

14 3. Plaintiff minor ARIA KHIABANI is a citizen of the United States. Aria lives and
15 attends school in Montreal, Canada with his duly appointed Guardians.

16 4. Plaintiff MARIE-CLAUDE RIGAUD is the duly authorized Guardian of Keon Khiabani
17 and Aria Khiabani. She is a citizen and resident of Montreal, Canada. As Guardian, MARIE-
18 CLAUDE RIGAUD is authorized to bring this action on behalf of the Plaintiff Minors.

19 5. Plaintiff SIAMAK BARIN is a duly authorized Executor of the Estate of Kayvan
20 Khiabani, M.D. (Decedent). As Executor, Siamak Barin is authorized to bring this action on
21 behalf of Plaintiff the Estate of Kayvan Khiabani, M.D. (Decedent).

22 6. Plaintiff SIAMAK BARIN is a duly authorized Executor of the Estate of Katayoun
23 Barin, DDS (Decedent). As Executor, Siamak Barin is authorized to bring this action on behalf
24 of Plaintiff the Estate of Katayoun Barin, DDS (Decedent).

25 7. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,
26 Defendant MOTOR COACH INDUSTRIES, INC. (“MCI”) was and is a corporation organized
27 and existing under the laws of the State of Delaware and authorized to do business in the State
28 of Nevada, including Clark County. MCI designs, manufacturers, markets, and sells

1 commercial tour buses (aka Motor Coaches). Defendant MCI designed, manufactured, and sold
2 the 2008, full-size Motor Coach involved in the incident described herein.

3 8. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,
4 Defendant MICHELANGELO LEASING INC. d/b/a RYAN'S EXPRESS ("Ryan's Express")
5 was and is a corporation organized and existing under the laws of the State of Arizona and
6 authorized to do business in the State of Nevada. Ryan's Express is a ground transportation
7 company that provides charter bus services for group transportation. Defendant Ryan's Express
8 owned and operated the MCI bus involved in the incident described herein.

9 9. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,
10 Defendant EDWARD HUBBARD was and is a resident of Clark County, Nevada. Edward
11 Hubbard is employed by Ryan's Express as a bus driver. As part of his duties and
12 responsibilities, Hubbard operates full-size Motor Coaches and was operating the MCI bus at
13 the time of the incident described herein.

14 10. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,
15 Defendant BELL SPORTS, INC. d/b/a GIRO SPORT DESIGN ("Giro") was and is a
16 corporation organized and existing under the laws of the State of California and authorized to
17 do business in the State of Nevada, including Clark County. GIRO designs, manufactures,
18 markets, and sells protective gear and accessories for sport activities, including cycling helmets.
19 Defendant Giro designed, manufactured, and sold the helmet that Dr. Kayvan Khiabani was
20 wearing at the time of the incident described herein.

21 11. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,
22 Defendant SEVENPLUS BICYCLES, INC. d/b/a PRO CYCLERY ("Pro Cyclery") was and is
23 a corporation organized and existing under the laws of the State of Nevada and authorized to do
24 business in the State of Nevada, including Clark County. Pro Cyclery is engaged in the retail
25 sale of bicycles and cycling accessories, including cycling helmets. Upon information and
26 belief, Defendant Pro Cyclery sold to Dr. Kayvan Khiabani the helmet that Dr. Khiabani was
27 wearing at the time of the incident described herein.

28

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 12. The true names and capacities, whether individual, corporate, association or otherwise of
2 the Defendants, DOES 1 through 20 and/or ROE CORPORATIONS 1 through 20, inclusive,
3 are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs
4 are informed and believe, and thereupon allege, that each of the Defendants designated herein as
5 DOES and/or ROE CORPORATIONS is responsible in some manner for the events and
6 happenings herein referred to, and in some manner caused the injuries and damages to Plaintiffs
7 alleged herein. Plaintiffs will ask leave of the court to amend this Complaint to insert the true
8 names and capacities of said Defendants, DOES 1 through 20 and/or ROE CORPORATIONS 1
9 through 20, inclusive when the same have been ascertained by Plaintiffs, together with the
10 appropriate charging allegations, and to join such Defendants in this action.

11 13. Whenever it is alleged in this Complaint that a Defendant did any act or thing, it is
12 meant that such Defendant's officers, agents, servants, employees, or representatives did such
13 act or thing and at the time such act or thing was done, it was done with full authorization or
14 ratification of such Defendant or was done in the normal and routine course and scope of
15 business, or with the actual, apparent and/or implied authority of such Defendant's officers,
16 agents, servants, employees, or representatives. Specifically, Defendants are liable for the
17 actions of its officers, agents, servants, employees, and representatives.

18 14. All of the Defendants as named herein are jointly and severally liable to Plaintiffs for
19 Plaintiffs' damages.

20 15. Plaintiffs are informed and believe, and thereupon allege, that Defendants, and each of
21 them, jointly and in concert undertook to perform the acts as alleged herein, that Defendants and
22 each of them had full knowledge of the acts of each co-Defendant as alleged herein, and that
23 each Defendant authorized or subsequently ratified the acts of each co-Defendant as alleged
24 herein, making each co-Defendant an agent of the other Defendants and making each Defendant
25 jointly responsible and liable for the acts and omissions of each co-Defendant as alleged herein.
26
27
28

1 **JURISDICTION AND VENUE**

2 16. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00),
3 exclusive of costs, interest, and attorneys' fees.

4 17. Venue is proper in this Court because the incident giving rise to this lawsuit occurred in
5 Clark County, Nevada.

6 **GENERAL ALLEGATIONS**

7 18. On or about April 18, 2017, Dr. Kayvan Khiabani was riding his Scott Solace 10 Disc
8 road bicycle southbound in a designated bicycle lane on S. Pavilion Center Drive near the Red
9 Rock Resort and Casino in Las Vegas, Nevada. At the time, Dr. Khiabani was wearing a
10 bicycle helmet designed, manufactured, and sold by Giro. Upon information and belief, Dr.
11 Khiabani purchased the Giro helmet at the retail level from Defendant Pro Cyclery.

12 19. Upon information and belief, at approximately 10:34 AM, as he approached the
13 intersection of S. Pavilion Center Drive and Griffith Peak Drive, Dr. Khiabani was overtaken by
14 a large tour bus on his left side.

15 20. The bus was a 2008, full-size Motor Coach that was designed, manufactured, and sold
16 by Defendant MCI and further identified by Vehicle Identification No. 2M93JMHA28W064555
17 and Utah License Plate No. Z044712. Upon information and belief, the subject bus was
18 designed and manufactured without proximity sensors to alert the driver of adjacent pedestrians
19 and/or bicyclists that may be difficult to see or to alert such pedestrians and/or bicyclists.

20 21. At the time, the bus was owned and operated by Defendant Ryan's Express and being
21 driven by Defendant Edward Hubbard, an employee of Ryan's Express.

22 22. Upon information and belief, at the time that it overtook Dr. Khiabani, the bus was
23 traversing out of the right-hand turn lane and crossing over the designated bicycle lane from the
24 right side of Dr. Khiabani to the left side of Dr. Khiabani.

25 23. As it crossed over the designated bicycle lane to overtake Dr. Khiabani on the left, the
26 bus and Decedent's bicycle collided.

27 24. As a direct and proximate result of this collision, Dr. Khiabani suffered catastrophic
28 internal and external injuries, including to his head, severe shock to his nervous system, and

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 great pain and suffering. Dr. Khiabani was transported from the scene of the accident and
2 ultimately died from his injuries.

3 **FIRST CLAIM FOR RELIEF**

4 **(STRICT LIABILITY: DEFECTIVE CONDITION OR**
5 **FAILURE TO WARN AGAINST DEFENDANT MCI)**

6 25. Plaintiffs incorporate by this reference each and every allegation previously made in
7 this Complaint, as if fully set forth herein.

8 26. Defendant MCI, or its predecessors and/or affiliates, were responsible for the design,
9 manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the
10 subject bus.

11 27. At the time of the above-described incident, the subject bus was being used in a manner
12 foreseeable by Defendant MCI.

13 28. As so used, and from the time the bus left the hands of Defendant MCI, the subject bus
14 was defective, unfit, and unreasonably dangerous for its foreseeable use.

15 29. The subject bus was further defective and unreasonably dangerous in that Defendant
16 MCI failed to provide adequate warnings about dangers that were known or should have been
17 known by MCI and/or failed to provide adequate instructions for the bus' safe and proper use.

18 30. The aforementioned incident was a direct and proximate result of a defect or defects in
19 the bus and/or the failure of Defendant MCI to warn of defects that were either known or should
20 have been known or to instruct in the safe and proper use of the bus. As a result, Defendant
21 MCI should be held strictly liable in tort to Plaintiffs.

22 31. As a direct and proximate result of the defective nature of the subject bus, Decedent Dr.
23 Kayvan Khiabani suffered catastrophic personal injuries and died.

24 32. As a direct and proximate result of the acts and omissions of Defendant MCI, Decedent
25 sustained past, present, and future lost wages, which would otherwise have been gained in his
26 employment if not for his death proximately caused by this accident, far in excess of Fifteen
27 Thousand Dollars (\$15,000.00).

28

1 33. As a direct and proximate result of the acts and omissions of Defendant MCI, the
2 Plaintiff minors each have been deprived of their father's comfort, support, companionship,
3 society, and consortium, and further, each has suffered great grief, sorrow, and extreme
4 emotional distress as a result of the death of their father, to each for general damages far in
5 excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in excess of Fifteen
6 Thousand Dollars (\$15,000.00). The minor children also seek to recover for the pain, suffering,
7 and disfigurement of their father.
8

9 34. As a direct and proximate result of the acts and omissions of Defendant MCI, prior to
10 her death, Katy Barin was deprived of her husband's comfort, support, companionship, society,
11 and consortium, and further, had suffered great grief, sorrow, and extreme emotional distress as
12 a result of the death of her husband, for general damages far in excess of Fifteen Thousand
13 Dollars (\$15,000.00) and economic damages far in excess of Fifteen Thousand Dollars
14 (\$15,000.00).
15

16 35. As a direct and proximate result of the acts and omissions of Defendant MCI, Decedent
17 Kayvan Khiabani, MD's Estate and/or Executor Siamak Barin has incurred medical, funeral and
18 burial expenses, and other expenses relating thereto, far in excess of Fifteen Thousand Dollars
19 (\$15,000.00).
20

21 36. As a direct and proximate result of the acts and omissions of Defendant MCI, Decedent
22 Katy Barin, DDS's Estate and/or Executor Siamak Barin has incurred medical, funeral and
23 burial expenses, and other expenses relating thereto, far in excess of Fifteen Thousand Dollars
24 (\$15,000.00).
25

26 37. As a direct and proximate result of the acts and omissions of Defendant MCI, Plaintiffs
27 have suffered general and special damages in an amount far in excess of Fifteen Thousand
28 Dollars (\$15,000.00).

1 38. In carrying out its responsibilities for the design, manufacture, construction, assembly,
2 testing, labeling, distribution, marketing, and sale of the subject bus, Defendant MCI acted with
3 fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others.
4 As a direct and proximate result of the conduct of Defendant MCI, Plaintiffs are entitled to
5 punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).
6

7 39. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
8 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

9 **SECOND CLAIM FOR RELIEF**

10 **(NEGLIGENCE AGAINST DEFENDANTS RYAN'S EXPRESS**
11 **AND EDWARD HUBBARD)**

12 40. Plaintiffs incorporate by this reference each and every allegation previously made in this
13 Complaint, as if fully set forth herein.

14 41. Defendant Ryan's Express is vicariously liable for the wrongful acts or omissions of its
15 employee, Defendant Hubbard, in connection with the subject accident because: (i) at the time
16 of the subject accident, Defendant Hubbard was under the control of Defendant Ryan's Express,
17 and (ii) at the time of the subject accident, Defendant Hubbard was acting within the scope of
18 his employment with Ryan's Express.

19 42. Defendants Ryan's Express and Edward Hubbard owed a duty of care to Dr. Khiabani
20 and Plaintiffs to exercise due care in the operation of the 2008, full-size commercial tour bus.

21 43. Defendants were negligent and breached this duty of care, *inter alia*: (i) by overtaking
22 Dr. Khiabani at an unsafe speed, which, upon information and belief, also exceeded the posted
23 speed limit; (ii) by failing to give an audible warning with the horn before overtaking Dr.
24 Khiabani; (iii) by failing to overtake Dr. Khiabani in a reasonably safe manner; (iv) by failing to
25 ensure that Dr. Khiabani's bicycle was safely clear before overtaking the bicycle; (v) by failing
26 to leave at least 3 feet between any portion of the bus and Dr. Khiabani and/or his bicycle at the
27 time that the bus overtook Dr. Khiabani; (vi) by failing to yield the right-of-way to Dr.

28

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

1 Khiabani; and (vii) by entering, crossing over, and/or driving within the designated bicycle lane
2 while Dr. Khiabani was traveling therein.

3 44. As a direct and proximate result of these negligent acts and omissions, Decedent Dr.
4 Kayvan Khiabani suffered catastrophic personal injuries and died.

5 45. As a direct and proximate result of the negligent acts and omissions of Defendants
6 Ryan's Express and Edward Hubbard, Decedent sustained past, present, and future lost wages,
7 which would otherwise have been gained in his employment if not for his death proximately
8 caused by this accident, far in excess of Fifteen Thousand Dollars (\$15,000.00).

9 46. As a direct and proximate result of the negligent acts and omissions of Defendants
10 Ryan's Express and Edward Hubbard, the Plaintiff minors each have been deprived of their
11 father's comfort, support, companionship, society, and consortium, and further, each has
12 suffered great grief, sorrow, and extreme emotional distress as a result of the death of their
13 father, to each for general damages far in excess of Fifteen Thousand Dollars (\$15,000.00) and
14 economic damages far in excess of Fifteen Thousand Dollars (\$15,000.00). The minor children
15 also seek to recover for the pain, suffering, and disfigurement of their father.

16 47. As a direct and proximate result of the negligent acts and omissions of Defendants
17 Ryan's Express and Edward Hubbard, prior to her death, Katy Barin was deprived of her
18 husband's comfort, support, companionship, society, and consortium, and further, had suffered
19 great grief, sorrow, and extreme emotional distress as a result of the death of her husband, for
20 general damages far in excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages
21 far in excess of Fifteen Thousand Dollars (\$15,000.00).

22 48. As a direct and proximate result of the negligent acts and omissions of Defendants
23 Ryan's Express and Edward Hubbard, Decedent's Estate and/or Executor Siamak Barin has
24 incurred medical, funeral and burial expenses, and other expenses relating thereto, far in excess
25 of Fifteen Thousand Dollars (\$15,000.00).
26
27
28

1 49. As a direct and proximate result of the negligent acts and omissions of Defendants
2 Ryan's Express and Edward Hubbard, Plaintiffs have suffered general and special damages in
3 an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).

4 50. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
5 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.
6

7 **THIRD CLAIM FOR RELIEF**

8 **(NEGLIGENCE PER SE AGAINST DEFENDANTS**

9 **RYAN'S EXPRESS AND EDWARD HUBBARD)**

10 51. Plaintiffs incorporate by this reference each and every allegation previously made in this
11 Complaint, as if fully set forth herein.

12 52. When the subject bus overtook Dr. Khiabani at the time of the incident, Defendants
13 Ryan's Express and Edward Hubbard violated Nev. Rev. Stat. § 484B.270, *inter alia*: (i) by
14 overtaking Dr. Khiabani at an unsafe speed, which, upon information and belief, also exceeded
15 the posted speed limit; (ii) by failing to give an audible warning with the horn before overtaking
16 Dr. Khiabani; (iii) by failing to overtake Dr. Khiabani in a reasonably safe manner; (iv) by
17 failing to ensure that Dr. Khiabani's bicycle was safely clear before overtaking the bicycle; (v)
18 by failing to leave at least 3 feet between any portion of the bus and Dr. Khiabani and/or his
19 bicycle at the time that the bus overtook Dr. Khiabani; (vi) by failing to yield the right-of-way
20 to Dr. Khiabani; and (vii) by entering, crossing over, and/or driving within the designated
21 bicycle lane while Dr. Khiabani was traveling therein.

22 53. These violations, and each of them, were a legal cause of the incident and Plaintiffs'
23 resulting injuries.

24 54. Plaintiffs belong to the class of persons that the safety requirements in NRS 484B.270
25 are intended to protect.
26
27
28

1 55. As a direct and proximate cause of Defendants violations of NRS 484B.270, and each of
2 them, Plaintiffs have suffered general and special damages far in excess of Fifteen Thousand
3 Dollars (\$15,000.00), as outlined above.

4 56. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
5 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

6 **FOURTH CLAIM FOR RELIEF**

7 **(NEGLIGENT TRAINING AGAINST DEFENDANT RYAN'S EXPRESS)**

8
9 57. Plaintiffs incorporate by this reference each and every allegation previously made in this
10 Complaint, as if fully set forth herein.

11 58. Defendant Ryan's Express owed a duty of care to Dr. Khiabani and Plaintiffs to
12 adequately train its drivers, including Defendant Edward Hubbard, to safely operate its
13 commercial tour busses, including the bus involved in the subject incident.

14 59. Defendant Ryan's Express was negligent and breached this duty of care by failing to
15 adequately train its drivers, including Edward Hubbard, to safely operate its commercial tour
16 busses, including the bus involved in the subject incident. Defendant Ryan's Express further
17 breached this duty of care by entrusting the subject tour bus to an inadequately trained person
18 (i.e., Defendant Hubbard).

19 60. These negligent acts and omissions, and each of them, were a legal cause of the incident
20 and Plaintiffs' resulting injuries.

21 61. As a direct and proximate result of these negligent acts and omissions, Plaintiffs have
22 suffered general and special damages far in excess of Fifteen Thousand Dollars (\$15,000.00), as
23 outlined above.

24 62. In carrying out its responsibility to adequately train its drivers, Defendant Ryan's
25 Express acted with fraud, malice, express or implied, oppression, and/or conscious disregard of
26 the safety of others. As a direct and proximate result of the conduct of Defendant Ryan's
27
28

1 Express, Plaintiffs are entitled to punitive damages in excess of Fifteen Thousand Dollars
2 (\$15,000.00).

3 63. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
4 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

5 **FIFTH CLAIM FOR RELIEF**

6 **(STRICT LIABILITY: DEFECTIVE CONDITION OR FAILURE**
7 **TO WARN AGAINST DEFENDANTS GIRO AND PRO CYCLERY)**

8
9 64. Plaintiffs incorporate by this reference each and every allegation previously made in this
10 Complaint, as if fully set forth herein.

11 65. Defendant Giro, or its predecessors and/or affiliates, were responsible for the design,
12 manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the
13 helmet that Dr. Khiabani was wearing at the time of the above-described accident.

14 66. Upon information and belief, Defendant Pro Cyclery, or its predecessors and/or
15 affiliates, were part of the subject helmet's chain of distribution and sold to Dr. Khiabani at the
16 retail level the helmet that Dr. Khiabani was wearing at the time of the above-described
17 accident.

18 67. At the time of the subject accident, and at all other times material hereto, the helmet was
19 being used in a manner foreseeable by Defendants Giro and Pro Cyclery.

20 68. As so used, the subject helmet was defective, unfit, and unreasonably dangerous for its
21 foreseeable use in that there was inadequate protection of the head by the helmet, which caused
22 or contributed to the death of Dr. Khiabani.

23 69. The subject helmet was further defective and unreasonably dangerous in that Defendants
24 Giro and Pro Cyclery failed to provide adequate warnings about dangers that were either known
25 or should have been known by Giro and Pro Cyclery and/or failed to provide adequate
26 instructions regarding the helmet's safe and proper use.

1 70. The aforementioned death of Dr. Khiabani was a direct and proximate result of a defect
2 or defects in the helmet and/or the failure of Defendants Giro and Pro Cyclery to warn of
3 defects that were either known or should have been known or to instruct in the safe and proper
4 use of the helmet. As a result, Defendants Giro and Pro Cyclery should be held strictly liable in
5 tort to Plaintiffs.

6 71. As a direct and proximate result of the defective nature of the helmet and said
7 deficiencies in warnings and/or instructions, Decedent Dr. Kayvan Khiabani suffered a
8 catastrophic head injury and ultimately died.

9 72. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro
10 Cyclery, Decedent sustained past, present, and future lost wages, which would otherwise have
11 been gained in his employment if not for his death, far in excess of Fifteen Thousand Dollars
12 (\$15,000.00).

13 73. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro
14 Cyclery, the Plaintiff minors each have been deprived of their father's comfort, support,
15 companionship, society, and consortium, and further, each has suffered great grief, sorrow, and
16 extreme emotional distress as a result of the death of their father, to each for general damages
17 far in excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in excess of
18 Fifteen Thousand Dollars (\$15,000.00). The minor children also seek to recover for the pain,
19 suffering, and disfigurement of their father.

20 74. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro
21 Cyclery, prior to her death, Katy Barin was deprived of her husband's comfort, support,
22 companionship, society, and consortium, and further, had suffered great grief, sorrow, and
23 extreme emotional distress as a result of the death of her husband, for general damages far in
24 excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in excess of Fifteen
25 Thousand Dollars (\$15,000.00).
26
27
28

1 75. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro
2 Cyclery, Decedent's Estate and/or Executor Siamak Barin has incurred medical, funeral, and
3 burial expenses, and other expenses relating thereto, far in excess of Fifteen Thousand Dollars
4 (\$15,000.00).

5 76. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro
6 Cyclery, Plaintiffs have suffered general and special damages in an amount far in excess of
7 Fifteen Thousand Dollars (\$15,000.00).

8 77. In carrying out its responsibilities for the design, manufacture, construction, assembly,
9 testing, labeling, distribution, marketing, and sale of the subject helmet, Defendant Giro acted
10 with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of
11 others. As a direct and proximate result of the conduct of Defendant Giro, Plaintiffs are entitled
12 to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

13 78. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
14 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

15 **SIXTH CLAIM FOR RELIEF**

16 **(BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR**
17 **PURPOSE AGAINST DEFENDANTS GIRO AND PRO CYCLERY)**

18 79. Plaintiffs incorporate by this reference each and every allegation previously made in this
19 Complaint, as if fully set forth herein.

20 80. Giro/Pro Cyclery and Decedent, Dr. Khiabani, entered into a contract for the sale of
21 goods (i.e., the Giro helmet).

22 81. Defendants Giro/Pro Cyclery had reason to know of the particular purpose for which the
23 helmet was required by Dr. Khiabani (i.e., to wear while riding his road bicycle).

24 82. Dr. Khiabani relied on the skill or judgment of Defendants Giro/Pro Cyclery to furnish
25 suitable goods for this purpose.
26
27
28

1 83. The helmet sold by Defendants Giro/Pro Cyclery to Dr. Khiabani was not fit for said
2 purpose and, as a direct and proximate result, Plaintiffs have suffered general and special
3 damages far in excess of Fifteen Thousand Dollars (\$15,000.00), as outlined above.

4 84. In carrying out its responsibilities for the design, manufacture, construction, assembly,
5 testing, labeling, distribution, marketing, and sale of the subject helmet, Defendant Giro acted
6 with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of
7 others. As a direct and proximate result of the conduct of Defendant Giro, Plaintiffs are entitled
8 to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

9
10 85. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
11 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

12 **SEVENTH CLAIM FOR RELIEF**

13 **(WRONGFUL DEATH OF KAYVAN KHIABANI, MD**

14 **AGAINST ALL DEFENDANTS)**

15 86. Plaintiffs incorporate by this reference each and every allegation previously made in this
16 Complaint, as if fully set forth herein.

17
18 87. Plaintiff minors are the heirs of Decedent and are entitled to maintain an action for
19 damages against the Defendants for the wrongful death of Dr. Kayvan Khiabani.

20 88. Pursuant to NRS 41.085, Siamak Barin is the Executor of the Estate of the Decedent and
21 may also maintain an action for damages against the Defendants for special damages and
22 penalties, including but not limited to exemplary or punitive damages as set forth in NRS
23 41.085(5).

24
25 89. As a result of the injuries to and death of Dr. Khiabani, Plaintiffs are entitled to
26 damages, including, but not limited to: pecuniary damages for their grief and sorrow, loss of
27
28

1 probable support, companionship, society, comfort and consortium, and damages for pain,
2 suffering and disfigurement of the Decedent.

3 90. As a direct and proximate result of the wrongful death of Dr. Khiabani, Plaintiffs have
4 been damaged in an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).

5 91. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
6 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.
7

8 **EIGHTH CLAIM FOR RELIEF**

9 **(WRONGFUL DEATH OF KATY BARIN, DDS**

10 **AGAINST ALL DEFENDANTS)**

11 92. Plaintiffs incorporate by this reference each and every allegation previously made in this
12 Complaint, as if fully set forth herein.

13 93. As a direct and proximate result of the stress caused by the wrongful death of her
14 husband, Dr. Kayvan Khiabani, Katy Barin lost her battle against cancer.

15 94. Plaintiff minors are the heirs of Decedent Katy Barin and are entitled to maintain an
16 action for damages against the Defendants for the wrongful death of their mother, Dr. Katy
17 Barin.
18

19 95. Pursuant to NRS 41.085, Siamak Barin is the Executor of the Estate of Katy Barin
20 (Decedent) and may also maintain an action for damages against the Defendants for special
21 damages and penalties, including but not limited to exemplary or punitive damages as set forth
22 in NRS 41.085(5).
23

24 96. As a result of the death of Dr. Barin, Plaintiffs are entitled to damages, including, but not
25 limited to: pecuniary damages for their grief and sorrow, loss of probable support,
26 companionship, society, comfort and consortium, and damages for pain, suffering and
27 disfigurement of the Decedent.
28

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 97. As a direct and proximate result of the wrongful death of Dr. Barin, Plaintiffs have been
2 damaged in an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).

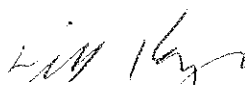
3 98. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
4 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray for judgment of this Court as follows:

- 7
- 8 1. Past and future general damages in an amount in excess of fifteen thousand dollars
9 (\$15,000.00);
 - 10 2. Past and future special damages in an amount in excess of fifteen thousand dollars
11 (\$15,000.00);
 - 12 3. Past and future damages for the wrongful death of Dr. Kayvan Khiabani, as set forth in
13 NRS 41.085, in an amount in excess of fifteen thousand dollars (\$15,000.00);
 - 14 4. Past and future damages for the wrongful death of Dr. Katy Barin, as set forth in NRS
15 41.085, in an amount in excess of fifteen thousand dollars (\$15,000.00);
 - 16 5. Punitive damages in an amount in excess of fifteen thousand dollars (\$15,000.00);
 - 17 6. Prejudgment and post-judgment interest, as allowed by law;
 - 18 7. Costs of suit and reasonable attorneys' fees, as allowed by law, in an amount to be
19 determined; and
 - 20 8. For such other and further relief that the Court may deem just and proper.

21 DATED this 17th day of November, 2017.

22 
23 _____
24 WILL KEMP, ESQ. (#1205)
25 ERIC PEPPERMAN, ESQ. (#11679)
26 KEMP, JONES & COULTHARD, LLP
27 3800 Howard Hughes Parkway, 17th Floor
28 Las Vegas, Nevada 89169
-and-
PETER S. CHRISTIANSEN, ESQ. (#5254)
KENDELEE L. WORKS, ESQ. (#9611)
CHRISTIANSEN LAW OFFICES
810 South Casino Center Blvd.
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

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

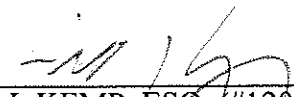
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiffs by and through their attorneys of record, KEMP, JONES & COULTHARD, LLP and CHRISTIANSEN LAW OFFICES, hereby demand a jury trial of all of the issues in the above matter.

DATED this 17th day of November, 2017.

KEMP, JONES & COULTHARD, LLP



WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

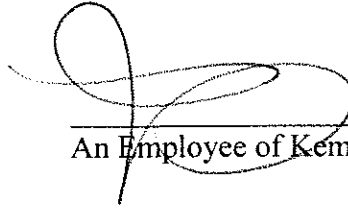
-and-

PETER S. CHRISTIANSEN, ESQ. (#5254)
KENDELEE L. WORKS, ESQ. (#9611)
CHRISTIANSEN LAW OFFICES
810 South Casino Center Blvd.
Las Vegas, Nevada 89101

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of November, 2017, the foregoing **SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL** was served on all parties currently on the electronic service list via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2.

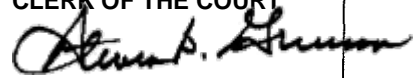


An Employee of Kemp, Jones & Coulthard

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT M TO
DOCKETING
STATEMENT



1 **OGM**
2 D. LEE ROBERTS, JR. (SBN 8877)
3 HOWARD J. RUSSELL (SBN 8879)
4 DAVID A. DIAL (*admitted pro hac vice*)
5 MARISA RODRIGUEZ (SBN 13,234)
6 WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
7 6385 S. Rainbow Blvd., Suite 400
8 Las Vegas, Nevada 89118
9 (702) 938-3838
10 (702) 938-3864
11 LRoberts@WWHGD.com

7 DANIEL F. POLSENBERG (SBN 2376)
8 JOEL D. HENRIOD (SBN 8492)
9 LEWIS ROCA ROTHGERBER CHRISTIE LLP
10 3993 Howard Hughes Pkwy. Suite 600
11 Las Vegas, Nevada 89169
12 (702) 949-8200
13 (702) 949-8398 (Fax)
14 DPolsenberg@LRRC.com
15 JHenriod@LRRC.com

12 *Attorneys for Motor Coach Industries, Inc,*

13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

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

20 Plaintiffs,

21 *vs.*

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

28 Defendants.

Case No. A-17-755977-C

Dept. No. 14

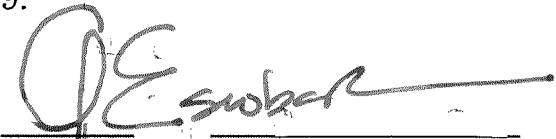
**ORDER GRANTING
MOTION TO DISMISS WRONGFUL
DEATH CLAIM**

Hearing Date: January 23, 2018
Hearing Time: 9:30 a.m.

1 Defendant Motor Coach Industries, Inc.'s ("MCI") "Motion to Dismiss
2 Wrongful Death Claim for Death of Katayoun Barin, DDS" (the "motion to
3 dismiss") came on for hearing on January 23, 2018 at 9:30 a.m. Having
4 reviewed the parties' briefing, argument of counsel, being duly advised on the
5 premises, and good cause appearing therefor:

6 It is hereby ORDERED that MCI's motion to dismiss is GRANTED.


7 Dated this 22nd day of January, 2019.




DISTRICT JUDGE

11 Submitted by:
12 LEWIS ROCA ROTHGERBER CHRISTIE, LLP

Approved as to form and content by:
KEMP, JONES & COULTHARD, LLP

14 By: 
15 DANIEL F. POLSENBERG (SBN 2376)
16 JOEL D. HENRIOD (SBN 8492)
17 ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Pkwy.
Suite 600
Las Vegas, NV 89169-5996

By: 
WILLIAM KEMP (SBN 1205)
ERIC PEPPERMAN (SBN 11,679)
3800 Howard Hughes Parkway,
17th Floor
Las Vegas, Nevada 89169

18 D. LEE ROBERTS, JR. (SBN 8877)
19 HOWARD J. RUSSELL (SBN 8879)
20 DAVID A. DIAL (*admitted pro hac*
vice)
21 MARISA RODRIGUEZ (SBN 13,234)
22 WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118

PETER S. CHRISTIANSEN (SBN 5254)
KENDELEE L. WORKS (SBN 9611)
CHRISTIANSEN LAW OFFICES
810 South Casino Center Blvd.
Las Vegas, NV 89101

Attorneys for Plaintiffs

23 *Attorneys for Defendant*
24 *Motor Coach Industries, Inc.*

IN THE SUPREME COURT OF THE STATE OF NEVADA

MOTOR COACH INDUSTRIES, INC.,

Appellant,

vs.

A.K. and K.K., 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),

Respondents.

No 78701

Electronically Filed
May 24 2019 03:44 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of

sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District County Eighth Department 14
County Clark Judge Adriana Escobar
District Ct. Case No. A-17-755977-C

2. Attorney filing this docketing statement:

Attorney Daniel F. Polsenberg, Joel D. Henriod, and Abraham G. Smith

Telephone 702-949-8200

Firm LEWIS ROCA ROTHGERBER CHRISTIE LLP

Address 3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

Attorney D. Lee Roberts, Jr. and Howard J. Russell Telephone 702-938-3838

Firm WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC

Address 6385 South Rainbow Boulevard, Suite 400
Las Vegas, Nevada 89118

Attorney Darrell L. Barger Telephone 361-866-8000

Firm HARTLINE DACUS BARGER DREYER LLP

Address 800 North Shoreline Boulevard, Suite 2000, North Tower
Corpus Christi, Texas 78401

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney William S. Kemp and Eric M. Pepperman Telephone (702) 385-6000

Firm KEMP, JONES & COULTHARD, LLP

Address 3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

Attorney Peter S. Christiansen and Kendelee L. Works Telephone (702) 240-7979

Firm CHRISTIANSEN LAW OFFICES

Address 810 Casino Center Boulevard
Las Vegas, Nevada 89101

Client(s) K.K. and A.K., 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. (Deceased); Siamak Barin, as Executor of the Estate of Katayoun Barin, DDS (Deceased); and the Estate of Katayoun Barin, DDS (Deceased)

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input checked="" type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify) |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Modification |
| | <input type="checkbox"/> Other disposition (specify): |

5. Does this appeal raise issues concerning any of the following? No.

- Child Custody
 Venue
 Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

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

Khiabani et al. v. Motor Coach Industries, Inc., Case No. 2:17-cv-02674-RFB-CWH (D. Nev.) (removal action remanded)

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. Nature of the action. Briefly describe the nature of the action and the result below:

This is a strict-liability action arising from the death of a bicyclist who swerved into the path of a moving motor coach in traffic. The district court entered judgment in favor of plaintiffs-respondents, from which defendant-appellant now appeals, along with the order granting costs to the prevailing party and the orders denying post-trial relief.

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

1. Whether defendant-appellant is entitled to judgment as a matter of law based, among other reasons, on plaintiffs' failure to propose an adequate warning and on the absence of evidence on how the driver would have responded to any allegedly necessary warning.

2. Whether the verdict form improperly allowed the jury to assess damages without determining that the absence of a proper warning—even assuming it would be heeded—was a proximate or legal cause of injuries.

3. Whether the district court erred in preventing defendant's human factors expert from testifying about the impact of Nevada statutes on the need for a warning about the allegedly dangerous aspect of the motor coach.

4. Whether the district court abused its discretion in denying a new trial in light of newly-discovered evidence regarding Dr. Khiabani's

employment status that directly impacts the determination of damages and liability.

5. Whether the district court erred in determining that the jury was not permitted to take into account that income taxes would have greatly reduced the amount of probable support plaintiffs could have received.

6. Whether a plaintiff in a wrongful-death action needs to prove some degree of fault by the defendant.

7. Whether a defendant in a strict products-liability action is categorically disentitled to an offset for settlement proceeds paid by other defendants.

8. Whether the district court abused its discretion in its award of costs.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raise the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A

Yes

No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

Reversal of well-settled Nevada precedent (identify the case(s))

An issue arising under the United States and/or Nevada Constitutions

A substantial issue of first impression

An issue of public policy

An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

A ballot question

One of the issues involves a verdict form that prevented the jury from determining the ultimate issue of proximate or legal causation in a failure-to-warn case (beyond the threshold issue of whether any warning would have been heeded). To establish liability for inadequate warnings, a plaintiff must prove that the lack of adequate warning caused his injuries. *Michaels v. Pentair Water Pool & Spa*, 131 Nev. Adv. Op. 81, 357 P.3d 387, 397 (Ct. App. 2015); *Rivera v. Phillip Morris, Inc.*, 125 Nev. 185, 192, 209 P.3d 271, 275 (2009). Here, plaintiffs prevailed because the verdict form did not allow the jury to determine whether any additional warning would have prevented the injuries, even assuming it would have been heeded. It is necessary for the Court to maintain a uniform application of the law concerning the causation analysis on a failure-to-warn claim.

Another issue involves the denial of an offset under NRS 17.245 purportedly because defendants that are liable for strict products liability have no right to contribution from any other defendants. It is necessary for the Court to maintain a uniform application of the law concerning offsets—*Banks v. Sunrise Hospital*, 120 Nev. 822, 102 P.3d 52 (2004)—and double recovery under the common law—*Elyousef v. O'Reilly & Ferrario, LLC*, 126 Nev. 441, 245 P.3d 547 (2010).

13. Assignment to the Court of Appeals or Retention in the Supreme Court.

Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court under NRAP 17(a)(10) and NRAP 17(a)(11).

14. Trial. If this action proceeded to trial, how many days did the trial last?

23

Was it a bench or jury trial? Jury

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 4/17/18
(Exhibit A); 1/3/19 (Exhibit B); 2/1/19 (Exhibit C); 3/26/19 (Exhibit D)

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 4/18/18
(Exhibit A); 4/24/19 (Exhibit B); 2/1/19 (Exhibit C); 5/3/19 (Exhibit D)

Was service by:

Delivery

Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

NRCP 50(b) Date of filing 5/7/18 (Exhibit E)

NRCP 52(b) Date of filing 5/7/18 (Exhibit F)

NRCP 59 Date of filing 5/7/18 (Exhibit G)

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion

2/1/19 (Exhibit C) and 3/26/19 (Exhibit D).

(c) Date written notice of entry of order resolving tolling motion was served

2/1/19 (Exhibit C) and 5/3/19 (Exhibit D).

Was service by:

- Delivery
- Mail/Electronic/Fax

19. Date notice of appeal filed 4/24/19 (Exhibit H)

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

The time limit for filing the notice of appeal from a final judgment is governed by NRAP 4(a)(1).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- NRAP 3A(b)(1) NRS 38.205
- NRAP 3A(b)(2) NRS 233B.150
- NRAP 3A(b)(3) NRS 703.376
- Other (specify) NRAP 3A(b)(8) Special orders (1) denying an offset of settlement proceeds paid by other defendants and (2) granting costs, entered after final judgment

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This appeal is from a final judgment pursuant to NRAP 3A(b)(1), after entry of orders resolving tolling motions. The appeal from the orders denying an offset of settlement proceeds paid by other defendants and granting costs are pursuant to NRAP 3A(b)(8).

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

K. K., a minor by and through guardian Marie-Claude Rigaud
A.K., a minor by and through guardian Marie-Claude Rigaud
Siamak Barin, as executor of the Estate of Kayvan Khiabani, M.D.
The Estate of Kayvan Khiabani, M.D.
Siamak Barin, as executor of the Estate of Katayoun Barin, DDS
The Estate of Katayoun Barin, DDS
Motor Coach Industries, Inc.
Michelangelo Leasing Inc. d/b/a Ryan's Express
Edward Hubbard
Bell Sports, Inc. d/b/a Giro Sport Design
SevenPlus Bicycles, Inc. d/b/a Pro Cyclery

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

Plaintiffs' claims against Michelangelo Leasing Inc. d/b/a Ryan's Express and Edward Hubbard were resolved with the August 22, 2018 "Stipulation and Order Dismissing Plaintiffs' Claims Against Defendants Michelangelo Leasing, Inc. and Edward Hubbard Only." (Exhibit I.)

Plaintiffs' claims against Bell Sports, Inc. d/b/a Giro Sport Design were resolved with the October 17, 2018 "Stipulation and Order Dismissing Claims Against Defendant Bell Sports, Inc. Only." (Exhibit J.)

Plaintiffs' claims against SevenPlus Bicycles, Inc. d/b/a Pro Cyclery were resolved with the October 17, 2018 "Stipulation and Order Dismissing Plaintiffs' Claims Against Defendant SevenPlus Bicycles, Inc. Only." (Exhibit K.)

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiffs filed their "Second Amended Complaint and Demand for Jury Trial" on November 17, 2017 for 1) strict liability: defective condition or failure to warn (MCI); 2) negligence (Ryan's Express and Edward Hubbard); 3) negligence per se (Ryan's Express and Edward Hubbard); 4) negligent training (Ryan's Express); 5) strict liability: defective condition or failure to

warn (Giro and Pro Cyclery); 6) breach of implied warranty of fitness for a particular purpose (Giro and Pro Cyclery); 7) wrongful death of Kayvan Khiabani, MD (all defendants); and 8) wrongful death of Katayoun Barin, DDS (all defendants) (Exhibit L).

An order granting the motion to dismiss the wrongful death claim for Katayoun Barin was entered on January 31, 2019. (Exhibit M.)

The remaining claims against MCI were resolved by the April 18, 2018 “Judgment” (Exhibit A).

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

Yes

No

25. If you answered “No” to question 23, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

Yes

No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

Yes

No

26. If you answered “No” to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Motor Coach Industries, Inc.
Name of appellant

Joel D. Henriod
Name of counsel of record

May 24, 2019
Date

/s/ Joel D. Henriod
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I hereby certify that this “Docketing Statement” was filed electronically with the Nevada Supreme Court on the 24th day of May, 2019. Electronic service of the foregoing “Docketing Statement” shall be made in accordance with the Master Service List as follows:

WILL KEMP
ERIC PEPPERMAN
KEMP, JONES & COULTHARD LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

Attorneys for Respondents

PETER S. CHRISTIANSEN
KENDELEE L. WORKS
CHRISTIANSEN LAW OFFICES
810 South Casino Center Boulevard
Las Vegas, Nevada 89101

Attorneys for Respondents

Dated this 24th day of May, 2019.

/s/ Adam Crawford
An Employee of Lewis Roca Rothgerber Christie LLP