

Case No. 79424

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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

DESIRE EVANS-WAIAU,  
individually; GUADALUPE PARRA-  
MENDEZ, individually,

Appellants,

vs.

BABYLYN TATE, individually,

Respondent.

Electronically Filed  
Apr 23 2020 02:34 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

From the Eighth Judicial District Court, Clark County  
The Honorable Mary Kay Holthus, District Judge  
District Court Case No. A-16-736457-C

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**APPELLANTS' APPENDIX  
VOLUME 11  
PAGES 2501 – 2546**

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Nevada Bar No. 5092  
KEVIN T. STRONG  
Nevada Bar No. 12107  
**PRINCE LAW GROUP**  
10801 W. Charleston Boulevard, Suite 560  
Las Vegas, Nevada 89135  
Attorneys for Appellants

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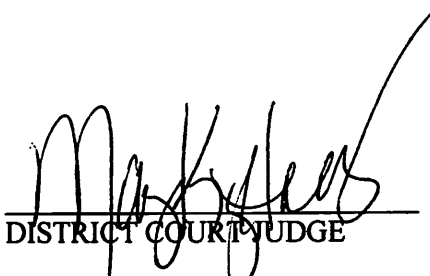
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Order Regarding Defendant Tate's Motions *in Limine*

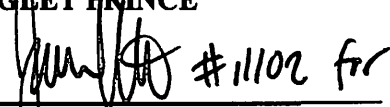
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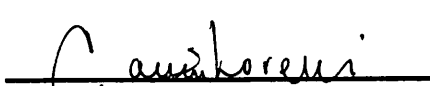
10  
11 **IT IS SO ORDERED.**  
12 DATED this 23 day of April, 2019.

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DISTRICT COURT JUDGE

DATED this 23 day of April, 2019.  
Respectfully Submitted By:  
**ATKIN WINNER & SHERROD**

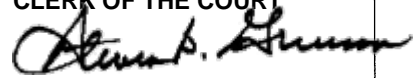
DATED this 20 day of April, 2019.  
Approved as to Form and Content:  
**EGLET PRINCE**

 #11102 for  
DENNIS M. PRINCE, ESQ.  
Nevada Bar No. 5092  
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Attorneys for Defendant  
*Babylun Tate*

<sup>17</sup> See Minute Order 11/1/2018.

<sup>18</sup> See Minute Order 11/1/2018, referencing ruling on Plaintiffs' Omnibus Motion *in Limine* No. 1.



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13 Attorneys for Defendant  
14 Babylyn B. Tate

15 EIGHTH JUDICIAL DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 DESIRE EVANS-WAIAU, individually;  
18 GUADALUPE PARRA-MENDEZ,  
19 individually; JORGE PARRA-MEZA, as  
20 guardian for MAYRA PARRA, a minor;  
21 JORGE PARRA-MEZA, as guardian for  
22 AALIYAH PARRA, a minor; and JORGE  
23 PARRA, a minor,

24 Plaintiffs

25 vs.

26 BABYLYN TATE, individually, DOES I-  
27 X, and ROE CORPORATIONS I-X,  
28 inclusive,

Defendants

CASE NO.: A-16-736457-C  
DEPT. NO.: 18

**NOTICE OF ENTRY OF ORDER  
REGARDING DEFENDANT TATE'S  
MOTIONS IN LIMINE**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE that the attached Order Regarding Defendant

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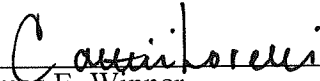
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1 Tate's Motions in Limine was entered by the Court on the 24<sup>th</sup> day of April, 2019.

2 DATED this 26 day of April, 2019.

4 ATKIN WINNER & SHERROD

6   
Thomas E. Winner  
Nevada Bar No. 5168  
Caitlin J. Lorelli  
Nevada Bar No. 14571  
1117 South Rancho Drive  
Las Vegas, Nevada 89102  
Attorneys for Babylyn B. Tate



CERTIFICATE OF SERVICE

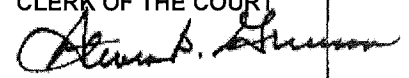
I certify that on this 26 day of April, 2019, the foregoing NOTICE OF ENTRY OF ORDER REGARDING DEFENDANT TATE'S MOTIONS IN LIMINE was served on the following by ☐ Electronic Service pursuant to NEFR 9 ☒ Electronic Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail ☐ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

Paul D. Powell  
Michael Kristof  
The Powell Law Firm  
6785 West Russell Road, Suite 210  
Las Vegas, NV 89118

And

Dennis Prince  
Jack Degree  
Eglet Prince  
400 South 7<sup>th</sup> Street, Suite 400  
Las Vegas, Nevada 89101  
Attorney for Plaintiffs

  
An employee of ATKIN WINNER & SHERROD



**ORDR**  
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*Attorneys for Babylyn B. Tate*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DESIRE EVANS-WAIAU, individually;  
GUADALUPE PARRA-MENDEZ,  
individually; JORGE PARRA-MEZA, as  
guardian for MAYRA PARRA, a minor;  
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AALIYAH PARRA, a minor; and JORGE  
PARRA-MEZA, as guaridan for SIENNA  
PARRA, a minor,

Plaintiff(s)

vs.

BABYLYN TATE, Individually; DOES I-  
X, and ROE CORPORATIONS I-X,  
inclusive,

Defendant(s)

CASE NO.: A-16-736457-C  
DEPT. NO.: IX

**ORDER REGARDING DEFENDANT  
TATE'S MOTIONS *IN LIMINE***

Defendant BABYLYN TATE's Motions *in Limine* were brought for hearing in front of Department 17 of the Eighth Judicial District Court, before the Honorable Senior Judge Nancy Becker, on the 3<sup>rd</sup> day of October 2018; and before the Honorable Judge Michael P. Villani, in chambers, on the 1<sup>st</sup> day November, 2018, and for hearing on the 5<sup>th</sup> day of December, 2018 and 18<sup>th</sup> day of January, 2019, before the Honorable Judge Michael P. Villani with Dennis M. Prince, Esq., James A. Trummell, Esq., and Kevin T. Strong, Esq. of EGLET PRINCE appearing on behalf of Plaintiffs DESIRE EVANS-WAIAU and GUADALUPE PARRA-MENDEZ, and

1 Thomas E. Winner, Esq. of ATKIN WINNER & SHERROD appearing on behalf of Defendant  
2 BABYLYN TATE. The Court having reviewed the pleadings and papers on file herein, having  
3 heard oral argument, and being duly advised in the premises, hereby orders:

4 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's  
5 Motion *in Limine* No. 1: Regarding Specific Statements and Claims of the Parties is  
6 **GRANTED, IN PART** and **DENIED, IN PART**. Part (B) – Defendant Tate's Observations and  
7 Triage at Accident Scene - Defendant Tate is permitted to testify about what she observed after  
8 the subject accident occurred, including the actions of the Plaintiffs post-accident. Meaning,  
9 Defendant Tate is permitted to opine she does not believe Plaintiffs sustained any injury based  
10 upon her observations. In rendering her observations post-accident, Defendant Tate is not  
11 permitted to testify she performed a triage or a medical procedure.<sup>1</sup> Part (C) – Injuries of Minor  
12 Children – Evidence of injury to minor children is permissible to establish severity of impact  
13 only. Evidence of lack of injury to Defendant Tate is permissible to establish severity of impact.  
14 Evidence of minor children's medical expenses is inadmissible; relevance outweighed by unfair  
15 prejudice.<sup>2</sup> Part (D) – Plaintiff Evans-Waiiau's Subsequent Injuries – The defense may argue that  
16 neither the subject accident nor the subsequent accident on July 10, 2016 is the cause of Plaintiff  
17 Evans-Waiiau's surgery. The defense is permitted to have experts testify there was an increase in  
18 symptoms as set forth by the reports.<sup>3</sup> However, Plaintiff Evans-Waiiau's 2018 Complaint,  
19 relative to the July 10, 2016 subsequent accident, wherein she alleges injuries to her shoulders  
20 and back, is not a verified complaint and the statements contained therein are deemed legal  
21 conclusions made by counsel rather than party admissions. The Court finds Plaintiff Evans-  
22 Waiiau's cervical recommendation was made prior to the 2016 accident and that Defendant  
23 Tate's experts do not opine the 2016 caused or contributed to the alleged injuries sustained in the

24  
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26 <sup>1</sup> See Minute Order 10/3/2018.

27 <sup>2</sup> See Minute Order 11/1/2018.

28 <sup>3</sup> See Minute Order 12/5/2018.

1 subject collision and on these bases and to that extent, Part 1D is denied.<sup>4</sup>

2 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's  
3 Motion *in Limine* No. 2: To Prohibit the Use of Unfairly Prejudicial Trial Tactics is **GRANTED,**  
4 **IN PART** and **DENIED, IN PART.** Part (1) – Avoiding Responsibility – Counsel cannot argue  
5 this matter is in trial because Defendant Tate is trying to avoid her responsibility. Counsel may  
6 use the term “safety rule.” However, to the extent counsel is going to use this specific  
7 terminology, counsel must use them in the context of their fact-driven argument.<sup>5</sup> Part (2) –  
8 Negligence Posing a Risk to Persons Other Than Plaintiffs – Counsel may make the general  
9 argument that when a person violates the rules of the road, it endangers people on the roadway in  
10 general. However, counsel cannot argue or make argument that suggests other people were  
11 threatened or harmed by Defendant Tate's conduct absent facts to support this contention.<sup>6</sup> Part  
12 (3) – “Send a Message” via Verdict – The Court did not specifically rule on this issue. Rather,  
13 the Court made a general ruling with regard to Motion *in Limine* No. 2 as a whole wherein the  
14 Court Granted Defendant Tate's motion *in limine* to the extent that if counsel is going to use  
15 specific words, counsel has to use them in the context of their fact-driven argument.<sup>7</sup> Part (4) –  
16 Conscience of the Community – Counsel cannot argue that the jury is the conscience of the  
17 community.<sup>8</sup>

18 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's  
19 Motion *in Limine* No. 3: To Admit and Exclude Certain Information Regarding the Plaintiffs'  
20 Claims for Damages is **GRANTED, IN PART** and **DENIED, IN PART.** Part (1) – Evidence of  
21 Medical Liens – Evidence of treatment on a litigation lien is admissible.<sup>9</sup> Part (2) – Per Diem  
22  
23

24 <sup>4</sup> See Minute Order on 1/18/2019.

25 <sup>5</sup> See Minute Order 10/3/2018.

26 <sup>6</sup> See Minute Order 10/3/2018.

27 <sup>7</sup> See Minute Order 10/3/2018.

28 <sup>8</sup> See Minute Order 10/3/2018.

<sup>9</sup> See Minute Order 11/1/2018.

Order Regarding Defendant Tate's Motions *in Limine*

1 Calculations – Per diem arguments are permitted.<sup>10</sup> Part (3) – Untimely Disclosures of Medical  
 2 Specials – Continued medical specials are not limited to May 4, 2018 unless there have been no  
 3 disclosures thereafter. Absent proper disclosure(s) continued medical specials are not  
 4 permitted.<sup>11</sup> Part (4) – Speculative Damages – Denied for vagueness.<sup>12</sup>

5 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's  
 6 Motion *in Limine* No. 4: To Prohibit Questions Regarding Verdict Amounts During *Voir Dire*,  
 7 and to Impose Reasonable Limitations on the Scope and Duration of *Voir Dire* is **DENIED, IN**  
 8 **PART** and **DEFERRED, IN PART** Part (1) – Potential Jurors Willingness to Award Certain  
 9 Verdicts or Ranges – inquiring about potential verdict amounts from a potential juror is  
 10 admissible but may not rise to the level of juror indoctrination. Mentioning range or specific  
 11 verdict amount Plaintiffs are seeking is permissible from outset of *voir dire*. The parties are free  
 12 to a juror's life experience to determine any bias.<sup>13</sup> Part (2) – Reasonable Limitations on Scope  
 13 and Duration of Voir Dire – the Court will address the extent and length of *voir dire* during  
 14 trial.<sup>14</sup>

15 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's  
 16 Motion *in Limine* No. 5: Regarding Expert Testimony is **GRANTED, IN PART** and **DENIED,**  
 17 **IN PART.** Part (1) – Non-Retained Experts Opinions Formed During Course and Scope of  
 18 Treatment, as Documented in their Records – A treating physician may not review documents  
 19 and act as a rebuttal witness. A treating physician cannot testify to things outside the scope of his  
 20 or her treatment.<sup>15</sup> Part (2) – Cumulative Medical Testimony – Dr. Khavkin will not be excluded  
 21 on the basis of cumulative medical testimony.<sup>16</sup> Part (3) – Expert Testimony Based on Reports  
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23 <sup>10</sup> See Minute Order 10/3/2018.

24 <sup>11</sup> See Minute Order 10/3/2018.

25 <sup>12</sup> See Minute Order 10/3/2018.

26 <sup>13</sup> See Minute Order 11/1/2018.

27 <sup>14</sup> See Minute Order 11/1/2018.

28 <sup>15</sup> See Minute Order 10/3/2018.

<sup>16</sup> See Minute Order 10/3/2018.

Order Regarding Defendant Tate's Motions *in Limine*

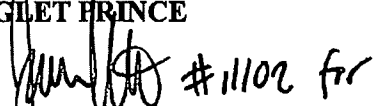
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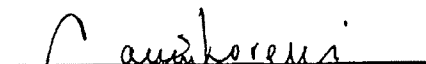
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11 **IT IS SO ORDERED.**  
12 DATED this 23 day of April, 2019.

13  
14   
DISTRICT COURT JUDGE

15 DATED this 20 day of April, 2019.  
16 Approved as to Form and Content:  
17 EGLET PRINCE

18 DATED this 23 day of April, 2019.  
19 Respectfully Submitted By:  
20 ATKIN WINNER & SHERROD

21  #11102 for  
22 DENNIS M. PRINCE, ESQ.  
23 Nevada Bar No. 5092  
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*Babylun Tate*

<sup>17</sup> See Minute Order 11/1/2018.

<sup>18</sup> See Minute Order 11/1/2018, referencing ruling on Plaintiffs' Omnibus Motion *in Limine* No. 1.



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11 F: 702.450.5451  
12 -and-  
13 **PAUL D. POWELL, ESQ.**  
14 Nevada Bar No. 7488  
15 **THE POWELL LAW FIRM**  
16 6785 W. Russell Road, Suite 210  
17 Las Vegas, NV 89118  
18 E-Mail: [paul@tplf.com](mailto:paul@tplf.com)  
19 T: 702.28.5500  
20 F: 702.728.5501  
21 *Attorneys for Plaintiffs Desire Evans-Waiiau*  
22 *and Guadalupe Parra-Mendez*

23 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 **DESIRE EVANS-WAIAU, individually,**  
26 **GUADALUPE PARRA-MENDEZ,**  
27 **individually; JORGE PARRA-MEZA as**  
28 **guardian for MAYRA PARRA, a minor;**  
**JORGE PARRA-MEZA, as guardian for**  
**AALIYAH PARRA, a minor; and JORGE**  
**PARRA-MEZA, as guardian for SIENNA**  
**PARRA, a minor,**

**Plaintiffs,**

**vs.**

**BABYLYN TATE, individually, DOES I-X,**  
**and ROE CORPORATIONS I-X, inclusive,**

**Defendants.**

**CASE NO.: A-16-736457-C**

**DEPT. NO.: XVII**

**NOTICE OF ENTRY OF ORDER**  
**REGARDING DEFENDANT TATE'S**  
**MOTIONS IN LIMINE**

...

...

...

1 PLEASE TAKE NOTICE that an Order Regarding Defendant Tate's Motions In Limine  
2 was entered on April 24, 2019, a copy of which is attached hereto as Exhibit "1."

3 DATED this 26th day of April, 2019.

4 **24RINCE**

5  
6 /s/ Jack F. DeGree

DENNIS M. PRINCE, ESQ.

Nevada Bar No. 5092

JAMES A. TRUMMELL, ESQ.

Nevada Bar No. 14127

400 S. 7th Street, 4th Floor

Las Vegas, Nevada 89101


*Attorneys for Plaintiffs Desire Evans-Waiiau  
and Guadalupe Parra-Mendez*



**CERTIFICATE OF SERVICE**

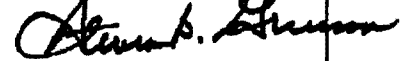
Pursuant to NRCP 5(b), I certify that I am an employee of the EGLET PRINCE and that on April 26, 2019, I did cause a true and correct copy of **NOTICE OF ENTRY OF ORDER REGARDING DEFENDANT TATE'S MOTIONS IN LIMINE** to be e-filed and e-served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules entered on the Court's docket in the above-referenced matter.

Thomas E. Winner, Esq.  
Caitlin J. Lorelli, Esq.  
ATKIN WINNER & SHERROD  
1117 S. Rancho Drive  
Las Vegas, Nevada 89102  
*Attorneys for Defendant Babylyn Tate*

  
An Employee of EGLET PRINCE

# **EXHIBIT 1**

# **EXHIBIT 1**



**ATKIN WINNER & SHERROD**  
A NEVADA LAW FIRM

**ORDER**  
**THOMAS E. WINNER**  
Nevada Bar No. 5168  
**CAITLIN J. LORELLI**  
Nevada Bar No. 14571  
**ATKIN WINNER & SHERROD**  
1117 South Rancho Drive  
Las Vegas, Nevada 89102  
Phone (702) 243-7000  
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[twinner@awslawyers.com](mailto:twinner@awslawyers.com)  
[clorelli@awslawyers.com](mailto:clorelli@awslawyers.com)

*Attorneys for Babylyn B. Tate*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DESIRE EVANS-WAIAU, individually;  
GUADALUPE PARRA-MENDEZ,  
individually; JORGE PARRA-MEZA, as  
guardian for MAYRA PARRA, a minor;  
JORGE PARRA-MEZA, as guardian for  
AALIYAH PARRA, a minor; and JORGE  
PARRA-MEZA, as guardian for SIENNA  
PARRA, a minor,

Plaintiff(s)

vs.

BABYLYN TATE, Individually; DOES I-  
X, and ROE CORPORATIONS I-X,  
inclusive,

Defendant(s)

CASE NO.: A-16-736457-C  
DEPT. NO.: IX

**ORDER REGARDING DEFENDANT  
TATE'S MOTIONS *IN LIMINE***

Defendant BABYLYN TATE's Motions *in Limine* were brought for hearing in front of Department 17 of the Eighth Judicial District Court, before the Honorable Senior Judge Nancy Becker, on the 3<sup>rd</sup> day of October 2018; and before the Honorable Judge Michael P. Villani, in chambers, on the 1<sup>st</sup> day November, 2018, and for hearing on the 5<sup>th</sup> day of December, 2018 and 18<sup>th</sup> day of January, 2019, before the Honorable Judge Michael P. Villani with Dennis M. Prince, Esq., James A. Trummell, Esq., and Kevin T. Strong, Esq. of EGLET PRINCE appearing on behalf of Plaintiffs DESIRE EVANS-WAIAU and GUADALUPE PARRA-MENDEZ, and

Order Regarding Defendant Tate's Motions *in Limine*

1 Thomas E. Winner, Esq. of ATKIN WINNER & SHERROD appearing on behalf of Defendant  
 2 BABYLYN TATE. The Court having reviewed the pleadings and papers on file herein, having  
 3 heard oral argument, and being duly advised in the premises, hereby orders:

4 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's  
 5 Motion *in Limine* No. 1: Regarding Specific Statements and Claims of the Parties is  
 6 **GRANTED, IN PART and DENIED, IN PART.** Part (B) – Defendant Tate's Observations and  
 7 Triage at Accident Scene - Defendant Tate is permitted to testify about what she observed after  
 8 the subject accident occurred, including the actions of the Plaintiffs post-accident. Meaning,  
 9 Defendant Tate is permitted to opine she does not believe Plaintiffs sustained any injury based  
 10 upon her observations. In rendering her observations post-accident, Defendant Tate is not  
 11 permitted to testify she performed a triage or a medical procedure.<sup>1</sup> Part (C) – Injuries of Minor  
 12 Children – Evidence of injury to minor children is permissible to establish severity of impact  
 13 only. Evidence of lack of injury to Defendant Tate is permissible to establish severity of impact.  
 14 Evidence of minor children's medical expenses is inadmissible; relevance outweighed by unfair  
 15 prejudice.<sup>2</sup> Part (D) – Plaintiff Evans-Waiiau's Subsequent Injuries – The defense may argue that  
 16 neither the subject accident nor the subsequent accident on July 10, 2016 is the cause of Plaintiff  
 17 Evans-Waiiau's surgery. The defense is permitted to have experts testify there was an increase in  
 18 symptoms as set forth by the reports.<sup>3</sup> However, Plaintiff Evans-Waiiau's 2018 Complaint,  
 19 relative to the July 10, 2016 subsequent accident, wherein she alleges injuries to her shoulders  
 20 and back, is not a verified complaint and the statements contained therein are deemed legal  
 21 conclusions made by counsel rather than party admissions. The Court finds Plaintiff Evans-  
 22 Waiiau's cervical recommendation was made prior to the 2016 accident and that Defendant  
 23 Tate's experts do not opine the 2016 caused or contributed to the alleged injuries sustained in the  
 24  
 25

---

26 <sup>1</sup> See Minute Order 10/3/2018.

27 <sup>2</sup> See Minute Order 11/1/2018.

28 <sup>3</sup> See Minute Order 12/5/2018.

Order Regarding Defendant Tate's Motions *in Limine*

subject collision and on these bases and to that extent, Part 1D is denied.<sup>4</sup>

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's Motion *in Limine* No. 2: To Prohibit the Use of Unfairly Prejudicial Trial Tactics is **GRANTED, IN PART and DENIED, IN PART**. Part (1) – Avoiding Responsibility – Counsel cannot argue this matter is in trial because Defendant Tate is trying to avoid her responsibility. Counsel may use the term "safety rule." However, to the extent counsel is going to use this specific terminology, counsel must use them in the context of their fact-driven argument.<sup>5</sup> Part (2) – Negligence Posing a Risk to Persons Other Than Plaintiffs – Counsel may make the general argument that when a person violates the rules of the road, it endangers people on the roadway in general. However, counsel cannot argue or make argument that suggests other people were threatened or harmed by Defendant Tate's conduct absent facts to support this contention.<sup>6</sup> Part (3) – "Send a Message" via Verdict – The Court did not specifically rule on this issue. Rather, the Court made a general ruling with regard to Motion *in Limine* No. 2 as a whole wherein the Court Granted Defendant Tate's motion *in limine* to the extent that if counsel is going to use specific words, counsel has to use them in the context of their fact-driven argument.<sup>7</sup> Part (4) – Conscience of the Community – Counsel cannot argue that the jury is the conscience of the community.<sup>8</sup>

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's Motion *in Limine* No. 3: To Admit and Exclude Certain Information Regarding the Plaintiffs' Claims for Damages is **GRANTED, IN PART and DENIED, IN PART**. Part (1) – Evidence of Medical Liens – Evidence of treatment on a litigation lien is admissible.<sup>9</sup> Part (2) – Per Diem

<sup>4</sup> See Minute Order on 1/18/2019.

<sup>5</sup> See Minute Order 10/3/2018.

<sup>6</sup> See Minute Order 10/3/2018.

<sup>7</sup> See Minute Order 10/3/2018.

<sup>8</sup> See Minute Order 10/3/2018.

<sup>9</sup> See Minute Order 11/1/2018.

Order Regarding Defendant Tate's Motions *in Limine*

1 Calculations – Per diem arguments are permitted.<sup>10</sup> Part (3) – Untimely Disclosures of Medical  
 2 Specials – Continued medical specials are not limited to May 4, 2018 unless there have been no  
 3 disclosures thereafter. Absent proper disclosure(s) continued medical specials are not  
 4 permitted.<sup>11</sup> Part (4) – Speculative Damages – Denied for vagueness.<sup>12</sup>

5 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's  
 6 Motion *in Limine* No. 4: To Prohibit Questions Regarding Verdict Amounts During *Voir Dire*,  
 7 and to Impose Reasonable Limitations on the Scope and Duration of *Voir Dire* is **DENIED, IN**  
 8 **PART** and **DEFERRED, IN PART** Part (1) – Potential Jurors Willingness to Award Certain  
 9 Verdicts or Ranges – inquiring about potential verdict amounts from a potential juror is  
 10 admissible but may not rise to the level of juror indoctrination. Mentioning range or specific  
 11 verdict amount Plaintiffs are seeking is permissible from outset of *voir dire*. The parties are free  
 12 to a juror's life experience to determine any bias.<sup>13</sup> Part (2) – Reasonable Limitations on Scope  
 13 and Duration of Voir Dire – the Court will address the extent and length of *voir dire* during  
 14 trial.<sup>14</sup>

15 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's  
 16 Motion *in Limine* No. 5: Regarding Expert Testimony is **GRANTED, IN PART** and **DENIED,**  
 17 **IN PART.** Part (1) – Non-Retained Experts Opinions Formed During Course and Scope of  
 18 Treatment, as Documented in their Records – A treating physician may not review documents  
 19 and act as a rebuttal witness. A treating physician cannot testify to things outside the scope of his  
 20 or her treatment.<sup>15</sup> Part (2) – Cumulative Medical Testimony – Dr. Khavkin will not be excluded  
 21 on the basis of cumulative medical testimony.<sup>16</sup> Part (3) – Expert Testimony Based on Reports  
 22

---

23 <sup>10</sup> See Minute Order 10/3/2018.

24 <sup>11</sup> See Minute Order 10/3/2018.

25 <sup>12</sup> See Minute Order 10/3/2018.

26 <sup>13</sup> See Minute Order 11/1/2018.

27 <sup>14</sup> See Minute Order 11/1/2018.

28 <sup>15</sup> See Minute Order 10/3/2018.

<sup>16</sup> See Minute Order 10/3/2018.

Order Regarding Defendant Tate's Motions *in Limine*

1 and Learned in Trial – All experts are limited to their expert reports and deposition testimony.  
2 However, the expert is not only allowed to parrot their reports. Experts do have latitude in  
3 explaining the foundation of their opinions. Each party has the right to object, at the time of trial,  
4 if he or she believes the other is seeking to elicit information or opinions that are outside the  
5 mandates of NRC 16.1. Moreover, an expert may modify his or her opinion based on new  
6 information learned during the course of trial.<sup>17</sup> Part (4) – Experts and Relevant, Fact-Based  
7 Hypothetical Questions – all hypothetical questions must be based upon evidence adduced at  
8 trial. All experts are limited to their opinions contained within their reports and deposition  
9 testimony.<sup>18</sup>

10  
11 IT IS SO ORDERED.

DATED this 23 day of April, 2019.

12  
13  
14  
15 DATED this 20 day of April, 2019.  
Approved as to Form and Content:  
EGLET PRINCE

16  
17 *[Signature]* #11102 for  
18 DENNIS M. PRINCE, ESQ.  
Nevada Bar No. 5092  
19 TRACY A. EGLET, ESQ.  
Nevada Bar No. 6419  
20 KEVIN T. STRONG, ESQ.  
Nevada Bar No. 12107  
21 400 South 7th Street, 4th Floor  
Las Vegas, Nevada 89101  
22 Tel. (702) 450-5400  
Fax (702) 450-5451  
23 Attorneys for Plaintiffs  
*Desire Evans-Walau and*  
24 *Guadalupe Parra-Mendez*

10  
11 *[Signature]*  
12 DISTRICT COURT JUDGE

DATED this 23 day of April, 2019.  
Respectfully Submitted By:  
ATKIN WINNER & SHERROD

13  
14  
15  
16  
17 *[Signature]*  
18 THOMAS E. WINNER, ESQ.  
Nevada Bar No. 5168  
19 CAITLIN J. LORELLI, ESQ.  
Nevada Bar No. 14571  
20 1117 South Rancho Drive  
Las Vegas, Nevada 89102  
21 Tel. (702) 243-7000  
Fax (702) 243-7059  
22 Attorneys for Defendant  
*Babylon Tate*

23  
24  
25  
26  
27 <sup>17</sup> See Minute Order 11/1/2018.

28 <sup>18</sup> See Minute Order 11/1/2018, referencing ruling on Plaintiffs' Omnibus Motion *in Limine* No. 1.

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

JUN 03 2019 3:25 PM

BY, Dara Yorke  
DARA YORKE, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

DESIRE EVANS-WAIAU, INDIVIDUALLY;  
GUADALUPE PARRA-MENDEZ,  
INDIVIDUALLY,

Plaintiffs,

vs.

BABYLYN TATE, INDIVIDUALLY,

Defendants.

Case No. A-16-736457-C

Dept. No. 18

GENERAL VERDICT FOR DEFENDANT

We, the jury, find for defendant Babylyn Tate and against plaintiffs  
Desire Evans-Waiau and Guadalupe Parra-Mendez.

Dylan Sweikert  
JURY FOREPERSON

6-3-19  
DATE

A-16-736457-C  
VER  
Verdict  
4839968





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Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

THOMAS E. WINNER  
Nevada Bar No. 5168  
CAITLIN J. LORELLI  
Nevada Bar No. 14571  
ATKIN WINNER & SHERROD  
1117 South Rancho Drive  
Las Vegas, Nevada 89102  
Phone (702) 243-7000  
Facsimile (702) 243-7059  
[twinner@awslawyers.com](mailto:twinner@awslawyers.com)  
[clorelli@awslawyers.com](mailto:clorelli@awslawyers.com)  
*Attorneys for Defendant*  
*Babylyn Tate*

**EIGHTH JUDICIAL DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

DESIRE EVANS-WAIAU, individually;  
GUADALUPE PARRA-MENDEZ,  
individually; JORGE PARRA-MEZA, as  
guardian for MAYRA PARRA, a minor;  
JORGE PARRA-MEZA, as guardian for  
AALIYAH PARRA, a minor; and JORGE  
PARRA-MEZA, as guaridan for SIENNA  
PARRA, a minor,

Plaintiff(s)

vs.

BABYLYN TATE, Individually; DOES I-  
X, and ROE CORPORATIONS I-X,  
inclusive,

Defendant(s)

CASE NO.: A-16-736457-C  
DEPT. NO.: XVIII

**JUDGMENT UPON JURY VERDICT**

This action came on for trial before the Court and a jury, Honorable Mary Kay Holthus,  
Eighth Judicial District Court Judge, presiding, and the issues having been duly tried and the jury  
having duly rendered its verdict,

IT IS ORDERED ADJUDGED AND DECREED that the Plaintiffs take nothing, that the  
action be dismissed on the merits, and that the Defendant, Babylyn Tate, recover of the plaintiffs.

///

|                                                                 |                                                             |
|-----------------------------------------------------------------|-------------------------------------------------------------|
| <input type="checkbox"/> Non-Jury<br>Disposed After Trial Start | <input type="checkbox"/> Jury<br>Disposed After Trial Start |
| <input type="checkbox"/> Non-Jury<br>Judgment Reached           | <input checked="" type="checkbox"/> Jury<br>Verdict Reached |
| <input type="checkbox"/> Transferred before Trial               | <input type="checkbox"/> Other - _____                      |

1 ///


2 DESIRE EVANS-WAIAU AND GUADALUPE PARRA MENDEZ, her costs of action.

3 DATED this 11<sup>th</sup> day of July, 2019.

4   
5 DISTRICT COURT JUDGE  
6 

7 Submitted by:

8 Atkin Winner & Sherrod

  
Thomas E. Winner  
Nevada Bar No. 5168  
Caitlin J. Lorelli  
Nevada Bar No. 14571  
1117 South Rancho Drive  
Las Vegas, Nevada 89102  
*Attorneys for Defendant*  
*Babylyn Tate*

20

21

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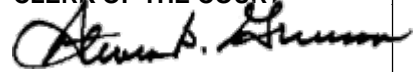
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1 THOMAS E. WINNER  
Nevada Bar No. 5168  
2 CAITLIN J. LORELLI  
Nevada Bar No. 14571  
3 ATKIN WINNER & SHERROD  
1117 South Rancho Drive  
4 Las Vegas, Nevada 89102  
Phone (702) 243-7000  
5 Facsimile (702) 243-7059  
twinner@awslawyers.com  
6 clorelli@awslawyers.com  
Attorneys for Defendant Babylyn Tate

7  
8 EIGHTH JUDICIAL DISTRICT COURT

9 CLARK COUNTY, NV

10 DESIRE EVANS-WAIAU, individually;  
GUADALUPE PARRA-MENDEZ,  
11 individually; JORGE PARRA-MEZA, as  
guardian for MAYRA PARRA, a minor;  
12 JORGE PARRA-MEZA, as guardian for  
AALIYAH PARRA, a minor; and JORGE  
13 PARRA-MEZA, as guaridan for SIENNA  
PARRA, a minor,

14 Plaintiffs.

15 vs.

16 BABYLYN TATE, Individually; DOES I-  
X, and ROE CORPORATIONS I-X,  
17 inclusive,

18 Defendant.

CASE NO.: A-16-736457-C  
DEPT. NO.: IX

**NOTICE OF ENTRY OF JUDGMENT  
UPON JURY VERDICT**

19 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

20 YOU WILL PLEASE TAKE NOTICE that the attached Judgment Upon Jury Verdict  
21 was entered by the Court on the 15<sup>th</sup> day of July, 2019.

22 DATED this 15<sup>th</sup> day of July, 2019.

23 ATKIN WINNER & SHERROD

24  
25 /s/ Caitlin J. Lorelli  
Thomas E. Winner  
Nevada Bar No. 5168  
26 Caitlin J. Lorelli  
Nevada Bar No. 14571  
27 1117 South Rancho Drive  
Las Vegas, Nevada 89102  
28 Attorneys for Defendant Babylyn B. Tate

1 CERTIFICATE OF SERVICE

2 I certify that on this 15<sup>th</sup> day of July, 2019, the foregoing **NOTICE OF ENTRY OF**  
3 **JUDGMENT UPON JURY VERDICT** was served on the following by ☐ Electronic Service  
4 pursuant to NEFR 9 ☒ Electronic Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐  
5 overnight delivery ☐ fax ☐ fax and mail ☐ mailing by depositing with the U.S. mail in Las  
6 Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as  
7 follows:

8 Paul D. Powell  
9 The Powell Law Firm  
6785 West Russell Road, Suite 210  
Las Vegas, NV 89118  
10 *Attorneys for Plaintiffs*

11 Dennis M. Prince  
12 Eglet Prince  
400 S. 7<sup>th</sup> Street, 4<sup>th</sup> Floor  
13 Las Vegas, NV 89101  
14 *Attorneys for Plaintiffs*

15  
16 /s/ Colette Thorne  
17 An employee of ATKIN WINNER & SHERROD  
18  
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ORIGINAL

Electronically Filed  
7/15/2019 3:55 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

1 THOMAS E. WINNER  
Nevada Bar No. 5168  
2 CAITLIN J. LORELLI  
Nevada Bar No. 14571  
3 ATKIN WINNER & SHERROD  
1117 South Rancho Drive  
4 Las Vegas, Nevada 89102  
Phone (702) 243-7000  
5 Facsimile (702) 243-7059  
[twinner@awslawyers.com](mailto:twinner@awslawyers.com)  
6 [clorelli@awslawyers.com](mailto:clorelli@awslawyers.com)  
*Attorneys for Defendant*  
7 *Babylyn Tate*

8 EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DESIRE EVANS-WAIAU, individually;  
GUADALUPE PARRA-MENDEZ,  
individually; JORGE PARRA-MEZA, as  
guardian for MAYRA PARRA, a minor;  
JORGE PARRA-MEZA, as guardian for  
AALIYAH PARRA, a minor; and JORGE  
PARRA-MEZA, as guaridan for SIENNA  
PARRA, a minor,

Plaintiff(s)

vs.

BABYLYN TATE, Individually; DOES I-  
X, and ROE CORPORATIONS I-X,  
inclusive,

Defendant(s)

CASE NO.: A-16-736457-C  
DEPT. NO.: XVIII

JUDGMENT UPON JURY VERDICT

20  
21 This action came on for trial before the Court and a jury, Honorable Mary Kay Holthus,  
22 Eighth Judicial District Court Judge, presiding, and the issues having been duly tried and the jury  
23 having duly rendered its verdict,

24 IT IS ORDERED ADJUDGED AND DECREED that the Plaintiffs take nothing, that the  
25 action be dismissed on the merits, and that the Defendant, Babylyn Tate, recover of the plaintiffs,  
26

27 ///



|                                                                 |                                                             |
|-----------------------------------------------------------------|-------------------------------------------------------------|
| <input type="checkbox"/> Non-Jury<br>Disposed After Trial Start | <input type="checkbox"/> Jury<br>Disposed After Trial Start |
| <input type="checkbox"/> Non-Jury<br>Judgment Reached           | <input checked="" type="checkbox"/> Jury<br>Verdict Reached |
| <input type="checkbox"/> Transferred before Trial               | <input type="checkbox"/> Other - _____                      |

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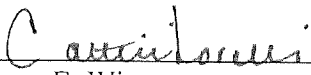
DESIRE EVANS-WAIAU AND GUADALUPE PARRA MENDEZ, her costs of action.

DATED this 11<sup>th</sup> day of July, 2019.

  
DISTRICT COURT JUDGE  


Submitted by:

Atkin Winner & Sherrod

  
Thomas E. Winner  
Nevada Bar No. 5168  
Caitlin J. Lorelli  
Nevada Bar No. 14571  
1117 South Rancho Drive  
Las Vegas, Nevada 89102  
*Attorneys for Defendant*  
*Babylyn Tate*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**April 26, 2017**

---

A-16-736457-C      Desire Evans-Waiau, Plaintiff(s)  
vs.  
Babylyn Tate, Defendant(s)

---

**April 26, 2017      3:00 AM      All Pending Motions**

**HEARD BY:** Villani, Michael      **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Olivia Black

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Paul Powell, Esq. and Nickolas Amon, Esq. / 05/02/17.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**August 22, 2018**

---

A-16-736457-C      Desire Evans-Waiau, Plaintiff(s)  
vs.  
Babylyn Tate, Defendant(s)

---

**August 22, 2018      9:00 AM      Calendar Call**

**HEARD BY:** Villani, Michael      **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Louisa Garcia

**RECORDER:** Cynthia Georgilas

**REPORTER:**

**PARTIES**

**PRESENT:** Prince, Dennis M      Attorney  
Smith, Andrew D.      Attorney  
Strong, Kevin T.      Attorney  
Winner, Thomas E.      Attorney

**JOURNAL ENTRIES**

- Colloquy regarding scheduling. Counsel anticipate two weeks. Pursuant to representations, COURT ORDERED, matter SET for status check; trial date VACATED and RESET.

9/19/18 8:30 AM STATUS CHECK: TRIAL READINESS

10/31/18 9:00 AM CALENDAR CALL

11/13/18 10:00 AM JURY TRIAL



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**August 28, 2018**

---

A-16-736457-C      Desire Evans-Waiau, Plaintiff(s)  
vs.  
Babylyn Tate, Defendant(s)

---

**August 28, 2018**

**1:43 PM**

**Minute Order**

**Minute Order Re:  
Continuance of Pltfs'  
and Deft's Motions in  
Limine**

**HEARD BY:** Villani, Michael

**COURTROOM:** Chambers

**COURT CLERK:** April Watkins

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Plaintiffs Motions in Limine 1-18 and Defendant s Motions in Limine 1-5 currently set for hearing on Wednesday, September 5, 2018 at 8:30 a.m. are CONTINUED to Wednesday, October 3, 2018 at 8:30 a.m.

CLERK S NOTE: This Minute Order was electronically served by Courtroom Clerk, April Watkins, to all registered parties for Odyssey File & serve. aw

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**September 19, 2018**

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A-16-736457-C      Desire Evans-Waiiau, Plaintiff(s)  
vs.  
Babylyn Tate, Defendant(s)

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**September 19, 2018      8:30 AM      Status Check      Status Check: Trial  
Readiness**

**HEARD BY:** Hardcastle, Kathy

**COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** April Watkins

**RECORDER:** Cynthia Georgilas

**REPORTER:**

**PARTIES**

**PRESENT:**      Winner, Thomas E.      Attorney

**JOURNAL ENTRIES**

- Upon Court's inquiry, Mr. Winner stated he believes case will be ready for trial. COURT ORDERED, calendar call date STANDS.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**October 03, 2018**

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A-16-736457-C      Desire Evans-Waiau, Plaintiff(s)  
vs.  
Babylyn Tate, Defendant(s)

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**October 03, 2018      10:00 AM      All Pending Motions**

**HEARD BY:** Becker, Nancy      **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Haly Pannullo

**RECORDER:** Cynthia Georgilas

**REPORTER:**

**PARTIES**

**PRESENT:** Prince, Dennis M      Attorney  
Winner, Thomas E.      Attorney

**JOURNAL ENTRIES**

- James Trummell, Esq., present on behalf of Plaintiff.

**PLAINTIFFS' MOTIONS IN LIMINE NOS. 1-11**

As to excluding medical records prior to the motor vehicle accident, COURT ORDERED, to the extent that Plaintiffs want to prohibit Dr. Schifini or Dr. Wang from making statements, Motion GRANTED IN PART and DENIED IN PART as it is suggested that somehow there were records out there that weren't given and it is believed that is not an issue; however, Dr. Schifini can state the fact that someone may not have gone for treatment which does not mean they did not have symptoms. As to the secondary gain evidence and the issue that it's a psychological diagnosis, COURT FURTHER ORDERED, GRANTED to the extent that they can not say malingering or secondary gain evidence; to the extent that Dr. Schifini or Dr. Wang want to simply say that the medical records don't support that she received an acute traumatic spinal injury as a result of this accident and at most she received a sprained strain, Motion GRANTED; Motion DENIED to the extent that somehow this is limited to a psychiatrist or other people with mental health or psychological background. As to Plaintiff's Motion in Limine No. 4, COURT ORDERED, Motion CONTINUED for argument. As to Plaintiff's Motion in Limine No. 5, COURT ORDERED, Motion DENIED. As to Plaintiff's Motion in Limine No. 6, Court noted the law clearly says that you cannot make arguments solely for the basis of inflaming the

passion of the jury and this Court is not going to grant the Motion as there will not be a forced objection. As to Plaintiff's Motion in Limine No. 7, Motion GRANTED IN PART and DENIED IN PART; an attorney being sought and retained is not attorney/client privilege; however, when an attorney is retained and/or when visited does not come in. As to Plaintiff's Motion in Limine No. 8 and attorney advertising limited to voir dire, COURT ORDERED, Motion GRANTED; however, it should not be mentioned in the remainder of the trial or obsessed upon in voir dire. As to Plaintiff's Motion in Limine No. 9, COURT STATED that would be improper argument and ORDERED, Motion GRANTED. As to Plaintiff's Motion in Limine No.10 and asking limited questions in voir dire as to employment, COURT ORDERED, Motion GRANTED; any further direction is to come from Judge Villani. As to Plaintiff's Motion in Limine No. 11, to the extent of cross-examination and wanting to talk about having a relationship in terms of doing cases on medical liens, COURT STATED there is a broad basis for asking these kinds of questions and it should be allowed; trying to talk about other cases would not be allowed.

PLAINTIFFS' MOTION IN LIMINE NO. 12: TO LIMIT DEFENDANT'S RETAINED EXPERTS' TESTIMONY TO THE OPINIONS AND BASES SET FORTH IN THEIR EXPERT REPORTS  
COURT ORDERED, Motion DENIED to the extent that the experts are limited only to what they said in their reports; however, expert is free to change their opinion based upon new information that was presented at trial or that was presented to them subsequent to the report.

PLAINTIFFS' MOTION IN LIMINE NO. 13 TO EXCLUDE ARGUMENT, REFERENCE, OR EXPERT OPINION THAT PLAINTIFF DESIRE EVANS-WAIAU'S NECK PAIN WAS SYMPTOMATIC DURING THE IMMEDIATE YEARS PRIOR TO AND IMMEDIATELY BEFORE THE SUBJECT COLLISION  
COURT ORDERED, Motion CONTINUED.

PLAINTIFFS' MOTION IN LIMINE NO. 14 TO PRECLUDE DEFENDANT FROM CHARACTERIZING PLAINTIFF DESIRE EVANS-WAIAU'S NECK PAIN FOLLOWING THE SUBSEQUENT July 10, 2016 MOTOR VEHICLE ACCIDENT AS ANYTHING OTHER THAN A TEMPORARY EXACERBATION  
COURT ORDERED, Motion CONTINUED.

PLAINTIFFS' MOTION IN LIMINE NO. 15 TO EXCLUDE IRRELEVANT AND/OR UNDULY PREJUDICIAL INFORMATION  
COURT ORDERED, Motion CONTINUED.

PLAINTIFFS' MOTION IN LIMINE NO. 16 TO LIMIT TESTIMONY AND OPINIONS OF DEFENDANT'S RETAINED MEDICAL EXPERT, JOSEPH J. SCHIFINI, M.D.  
COURT ORDERED, Motion CONTINUED.

PLAINTIFFS' MOTION IN LIMINE NO. 17: TO EXCLUDE REFERENCE TO AND EVIDENCE OF MEDICAL LIENS  
COURT ORDERED, Motion CONTINUED.

PLAINTIFFS' MOTION IN LIMINE NO. 18: FOR JUDICIAL NOTICE OF LIFE EXPECTANCY TABLE

COURT ORDERED, Motion DENIED.

DEFENDANT'S MOTION IN LIMINE NO. 1: REGARDING SPECIFIC STATEMENTS AND CLAIMS OF THE PARTIES

COURT ORDERED, Part C & D of Motion CONTINUED; as to what the Defendant charging nurse states in terms of her observations, Motion GRANTED IN PART and DENIED IN PART, as she can talk about what she observed about the two Defendant's post-accident, as to the opinion that it is not believe that the Defendant's had sustained any injury based upon her observations; however, cannot testify to doing a triage or a medical procedure in that observation; DENIED as to the extent of her testifying to something using words like triage or other medical terminology under the circumstances.

DEFENDANT'S MOTION IN LIMINE NO. 2: TO PROHIBIT THE USE OF UNFAIRLY PREJUDICIAL TRIAL TACTICS

COURT ORDERED, Motion GRANTED to the extent that if counsel going to use specific words, counsel has to use them in the context of their fact-driven argument. In regards to avoiding responsibility argument, COURT ORDERED, Motion GRANTED IN PART and DENIED IN PART; GRANTED to the extent that you cannot argue that this matter is in trial because they re trying to avoid responsibility. As to the term "safety rules", COURT ORDERED, Motion DENIED. As to conscience of the community, COURT ORDERED, it is not to be argued that the jury is the conscience of the community; Motion DENIED to exclude just the general argument that when you violate the rules of the road you re endangering people on the roadway in general; Motion GRANTED to the extent that you cannot make an argument that suggests that other people were threatened or harmed just by the conduct of the Defendant in this case unless you have facts to show that.

DEFENDANT'S MOTION IN LIMINE NO. 3: TO ADMIT AND EXCLUDE CERTAIN INFORMATION REGARDING THE PLAINTIFFS' CLAIMS FOR DAMAGES (PARTS 1-4)

COURT ORDERED, as to dealing with treatment on medical liens COURT ORDERED, Motion DEFERRED and to be heard at the time Plaintiff's Motion in Limine number 17 as they all involve the same topic. As to the Motion to Exclude the Per Diem Argument, COURT ORDERED, Motion DENIED. As to, continued medical specials, COURT ORDERED, medical specials to the May 4th, 2018 are not to be limited, except that if there have been no disclosures thereafter, it is to be limited. As to speculative damage, COURT ORDERED, Motion to Exclude is DENIED as it is too vague.

DEFENDANT'S MOTION IN LIMINE NO. 4: TO PROHIBIT QUESTIONS REGARDING VERDICT AMOUNTS DURING VOIR DIRE, AND TO IMPOSE REASONABLE LIMITATIONS ON THE SCOPE AND DURATION OF VOIR DIRE (PARTS 1-2)

COURT ORDERED, Motion CONTINUED.

DEFENDANT'S MOTION IN LIMINE NO. 5: REGARDING EXPERT TESTIMONY

COURT ORDERED, Motion GRANTED to the extent that a treating physician has now reviewed documents and wants to act as a rebuttal witness or done things outside of the scope of treatment, then, no, they can't do that. As to Dr. Khavkin, Motion DENIED and will not be excluded as being cumulative.

Court noted a continued date will be served to the parties upon review of the Court's calendar.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**November 01, 2018**

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A-16-736457-C      Desire Evans-Waiau, Plaintiff(s)  
vs.  
Babylyn Tate, Defendant(s)

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**November 01, 2018      12:30 AM      Minute Order**

**HEARD BY:** Villani, Michael

**COURTROOM:** Chambers

**COURT CLERK:** Haly Pannullo

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- The Court having reviewed the pleadings and finds the factual and legal argument is sufficient to rule on the motions as follows:

Plaintiffs Omnibus Motion in Limine No. 1

Granted. All hypothetical questions must be based upon evidence adduced at trial. All experts are limited to their opinions contained within their reports, deposition testimony.

Plaintiffs Omnibus Motion in Limine No. 4

Granted. Plaintiff s treating physicians can testify consistent with FCH1, LLC Rodriguez, 335 P.3d 183 (2014) Specifically, they are allowed, if properly, disclosed pursuant to NRCP 16.1 (a)(2)(B), to testify as to causation, diagnosis, prognosis, future treatment and extent of disability. Also, they are able to defend their own treatment.

Plaintiff s Motion in Limine No. 13: To Exclude Argument, Reference, or Expert Opinion that Plaintiff Desire Evans-Waiau s Neck Pain was Symptomatic During the Immediate Years Prior to and Immediately Before the Subject Collision

The Court requests oral argument on Wednesday, November 21, 2018 at 8:30 a.m.

Plaintiff's Motion in Limine No. 14: To Preclude Defendant From Characterizing Plaintiff Desire Evans-Waiiau's Neck Pain Following the Subsequent July 10, 2016 Motor Vehicle Accident as Anything Other than a Temporary Exacerbation

The Court requests oral argument on Wednesday, November 21, 2018 at 8:30 a.m.

Plaintiff's Motion in Limine No. 15: To Exclude Irrelevant and/or Unduly Prejudicial Information

a) Termination from the Cromwell: Unless Defendant can establish that Plaintiff was terminated as opposed to resigned the evidence is excluded. The mere fact that Plaintiff thought she was terminated is contrary to the documentary evidence received from the Cromwell specifically stating that Plaintiff resigned.

b) Termination from Bed Bath and Beyond and Spacecraft: Since neither Plaintiff or Defendant's experts address Plaintiff's termination from Bed Bath and Beyond and SPACECRAFT in relationship to Plaintiff's earning capacity, it is deemed irrelevant and is excluded.

c) Injuries, if any, relating to the May 10, 2010 and July 10, 2016 may be relevant based upon the various expert's' opinions. The fact that Plaintiff previously filed "claims" or "lawsuit" is irrelevant and therefore, excluded.

Plaintiff's Motion in Limine No. 16: To Limit Testimony and Opinions of Defendant's Retained Medical Expert, Joseph J. Schifini, M.D.

Dr. Schifini can rely on the photographs and property damage reports regarding Plaintiff's vehicle as one item in forming his opinions. Since the appraisal reports identifies the areas of damage from the accident and the cost of repair for the same he can testify accordingly as to the basis of his opinion. The fact that the vehicle had prior damage is not part of his opinion and is therefore irrelevant and excluded.

Plaintiff's Motion in Limine No. 17 To Exclude Reference to and Evidence of Medical Liens:

Granted in part and denied in part. Evidence of insurance, Medicare, Medicaid, Obamacare, etc. is precluded as well as any evidence that that liens were sold to a third party for any type of a discount or other write off issues. See *Khoury v. Seastrand*, 377 P.3d 81 (2016). Evidence that treatment may have been provided on a lien basis is allowed.

Defendant's Motion in Limine No. 1: Regarding Specific Statements of the Parties

c. Testimony regarding alleged injuries to the minor children: Denied. Evidence that Plaintiff's children were injured the accident is relevant to the issue of severity of the impact between the two vehicles. If Plaintiff is seeking to elicit the fact that her passengers were injured then Defendant can elicit testimony that she was not injured. The amount of medical expenses incurred by the children are excluded as said relevant information is outweighed by the unfair prejudicial value.

d. The Court requests oral argument on Wednesday, November 21, 2018 at 8:30 a.m.



Defendant s Motion in Limine No. 3: To Admit and Exclude Certain Information Regarding the Plaintiffs Claims for Damages

Part 1: Evidence of Treatment on a Litigation Lien is admissible. See the Court s above ruling on Plaintiff s Motion in Limine No.17 To Exclude Reference to and Evidence of Medical Liens. The court previously ruled on Parts 2-4 on 10/3/2018.

Defendant s Motion in Limine No. 4: To Prohibit Questions Regarding Verdict Amounts During Voir Dire, and to Impose Reasonable Limitations on the Scope and Duration of Voir Dire (Parts 1-2) Inquiring from a juror regarding verdict amounts is allowed so long as the questioning does not rise to the level of juror indoctrination. Mentioning from the outset of voir dire a range or specific amount Plaintiff is seeking is permissible. See Khoury v Seastrand. The Court has presided over numerous personal injury trials and has found that some attorneys seek to challenge a juror for cause merely because they could not award a "large or substantial verdict amount" without emphasizing to the juror "if said amount was supported by the evidence and law." The parties are free to question a juror's life experience to determine any bias. In Whitlock v Salmon, 104 Nev. 210 (1988), the Nevada Supreme Court stated that the trial court has inherent power to govern its own procedures and to place upon the parties reasonable limitations on voir dire. The Court will address the extent and length of voir dire during the trial.

Defendant s Motion in Limine No. 5: Regarding Expert Testimony (Parts 1-4)

Part 3: Granted. All experts in this case are limited to their expert reports and deposition testimony. The parties are aware that an expert is not merely allowed to parrot their reports but do have some latitude in explaining the foundation of their opinions. If either party believes that the other is seeking to elicit information or opinions that are outside of the mandates of NRC 16.1 they are to object at the time of the trial. However, an expert is free to modify his or her opinion based on new information that they learn during the course of trial.

Part 4: See the Court s above ruling on Plaintiffs Omnibus Motion in Limine No. 1.

The Court previously ruled on Parts 1-2 on 10/3/2018.

Counsel for each party is directed to submit a proposed order for their respective motions consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Haly Pannullo, to all registered parties for Odyssey File & Serve hvp/11/01/18

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**December 05, 2018**

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A-16-736457-C      Desire Evans-Waiau, Plaintiff(s)  
vs.  
Babylyn Tate, Defendant(s)

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**December 05, 2018      8:30 AM      All Pending Motions**

**HEARD BY:** Villani, Michael      **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Haly Pannullo

**RECORDER:** Cynthia Georgilas

**REPORTER:**

**PARTIES**

**PRESENT:** Prince, Dennis M      Attorney  
Strong, Kevin T.      Attorney  
Winner, Thomas E.      Attorney

**JOURNAL ENTRIES**

- DEFENDANT'S MOTION IN LIMINE NO. 1: REGARDING SPECIFIC STATEMENTS AND CLAIMS OF THE PARTIES ... PLAINTIFFS' MOTION IN LIMINE NO. 14 TO PRECLUDE DEFENDANT FROM CHARACTERIZING PLAINTIFF DESIRE EVANS-WAIAU'S NECK PAIN FOLLOWING THE SUBSEQUENT July 10, 2016 MOTOR VEHICLE ACCIDENT AS ANYTHING OTHER THAN A TEMPORARY EXACERBATION ... PLAINTIFFS' MOTION IN LIMINE NO. 13 TO EXCLUDE ARGUMENT, REFERENCE, OR EXPERT OPINION THAT PLAINTIFF DESIRE EVANS-WAIAU'S NECK PAIN WAS SYMPTOMATIC DURING THE IMMEDIATE YEARS PRIOR TO AND IMMEDIATELY BEFORE THE SUBJECT COLLISION

James Trummell, Esq., also present on behalf of Defendant.

Arguments by counsel regarding Plaintiff's Motion in Limine No. 14, Plaintiff's Motion in Limine No. 13 and Defendant's Motion in Limini No. 1. COURT ORDERED, Motion in Limine No. 14 GRANTED to the extent that defense is free to argue that neither the subject accident nor the July 10th accident is the cause of the surgery and Defense is allowed to have the experts that's in the reports testify that there was an increase in symptoms. COURT FURTHER ORDERED, Motions in Limine No. 13 and

Motions in Limine No. 1, TAKEN UNDER ADVISEMENT.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto****COURT MINUTES****January 18, 2019**

A-16-736457-C      Desire Evans-Waiiau, Plaintiff(s)  
                                          vs.  
                                          Babylyn Tate, Defendant(s)

**January 18, 2019      3:00 PM      Minute Order**

**HEARD BY:** Villani, Michael**COURTROOM:** Chambers**COURT CLERK:** Olivia Black**RECORDER:****REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Plaintiff's Motion in Limine No. 13: To Exclude Argument, Reference, or Expert Opinion that Plaintiff Desire Evans-Waiiau's Neck Pain was Symptomatic During the Immediate Years Prior to and Immediately Before the Subject Collision and Defendant's Motion in Limine No. 1D: Plaintiff Evans-Waiiau's Subsequent Injuries and Claims Are Relevant and Admissible came before this Court on December 5, 2018 Oral Calendar at 8:30 a.m. The Court took the matter under advisement and now rules as follows:

Plaintiff's Motion in Limine No. 13: To Exclude Argument, Reference, or Expert Opinion that Plaintiff Desire Evans-Waiiau's Neck Pain was Symptomatic During the Immediate Years Prior to and Immediately Before the Subject Collision

At issue is a motor vehicle accident that occurred in 2010, 5 years prior to the subject accident. After the 2010 accident, Plaintiff received 2 months of chiropractic treatment and underwent one medical examination with a physician that diagnosed her with possible cervical radiculopathy. The evidence shows that Plaintiff did not undergo any further treatment for neck pain between July 13, 2010 and October 30, 2015. "In order for evidence of a prior injury or preexisting conditions to be admissible, a defendant must present by competent evidence a causal connection between the prior injury and the injury at issue." FGA, INC. v. Giglio, 128 Nev. 271, 283 (2012). Further, once the plaintiff has

demonstrated a prima facie case and met his or her burden, the defendant can traverse the plaintiff's case in three ways. The defendant may (1) cross-examine the plaintiff's expert, (2) contradict the expert's testimony with his own expert, and/or (3) propose an independent alternative causation theory. *Id.* If the defendant chooses the third approach, his or her expert's testimony is subject to the reasonable degree of medical probability. *Williams v. Eight Judicial Dist. Court*, 127 Nev. 518, 530 (2011).

There is no evidence to establish that the 2010 accident was the cause of the alleged injuries sustained in the subject collision. Defendant's two medical experts (Dr. Wang and Dr. Schifini) do not opine to an alternative theory of causation in their respective reports. Neither doctor opined that Plaintiff's prior cervical spine injury is the cause of her current injuries or pain complaints. Neither expert has established a causal connection between the 2010 accident and the subject accident to the injuries claimed. Moreover, if expert testimony is offered to contradict the plaintiff's expert's opinion, the testimony must be supported by competent medical research and relevant evidence. *FGA, Inc.*, 128 Nev. at 284. "If the defense expert does not consider the plaintiff's theory of causation at all, then the defense expert must state any independent alternative causes to a reasonable degree of medical probability." *Williams*, 127 Nev. 518 at 531. Although both experts reviewed Plaintiff's medical records from the 2010 accident, it does not appear that Defendant's retained experts consider Plaintiff's theory of medical causation in their reports. Defendant's experts opine that Plaintiff did not suffer an acute, traumatic injury to her cervical disc.

Since Defendant's experts did not consider plaintiff's theory of causation or provide the 2010 accident as an alternative theory of causation in their reports, Plaintiff's motion is GRANTED and Defendants are precluded from arguing that Plaintiff was symptomatic in the immediate years prior to the subject accident unless disclosed witnesses have testified to the contrary.

Defendant's Motion in Limine No. 1D: Plaintiff Evans-Waiiau's Subsequent Injuries and Claims Are Relevant and Admissible

At issue is a July 10, 2016 accident that Plaintiff was involved in which occurred nine months after the subject accident. Defendant references a portion of a 2018 Complaint that Plaintiff filed for the 2016 accident where she alleges injuries to her shoulders and back. The Court notes that the Complaint in A777152 is not a verified complaint. The Court does not find the statements in said Complaint to be a party admission but rather legal conclusions made by Plaintiff's attorney. Additionally, Evans-Waiiau's cervical recommendation was made prior to this 2016 accident. Moreover, Defendant's experts do not opine that the 2016 accident caused or contributed to the alleged injuries sustained in the subject collision. For those reasons, Defendant's Motion in Limine 1D is DENIED.

The Court previously addressed the issue of the 2016 accident on 12/5/18 when the Court granted Plaintiffs' Motion in Limine to preclude defendant from characterizing Evans-Waiiau's neck pain

following the subsequent July 10, 2016 accident as anything other than a temporary exacerbation. The Court ruled that the Defense experts are free to testify that there was an increase in symptoms after the 2016 accident.

Counsel for Plaintiff is directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing.

LAW CLERK NOTE: The delay in this decision was due to a calendaring error.

CLERK'S NOTE: A copy of the foregoing minute order has been electronically distributed to all registered parties.//ob/01/18/19

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**January 30, 2019**

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A-16-736457-C      Desire Evans-Waiau, Plaintiff(s)  
vs.  
Babylyn Tate, Defendant(s)

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**January 30, 2019      9:00 AM      Calendar Call**

**HEARD BY:** Holthus, Mary Kay

**COURTROOM:** RJC Courtroom 03F

**COURT CLERK:** Haly Pannullo

**RECORDER:** Yvette G. Sison

**REPORTER:**

**PARTIES**

**PRESENT:** Prince, Dennis M      Attorney  
Winner, Thomas E.      Attorney

**JOURNAL ENTRIES**

- James Trummell, Esq., also present on behalf of Plaintiff.

Mr. Prince announced parties are ready for trial. Colloquy regarding scheduling issues and conflicts.  
COURT ORDERED, trial dates VACATED and RESET; all pending motions VACATED and RESET.

04/10/19 9:00 AM CALENDAR CALL & ALL PENDING MOTIONS

04/22/19 9:00 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto****COURT MINUTES****April 10, 2019**

A-16-736457-C      Desire Evans-Waiau, Plaintiff(s)  
                                  vs.  
                                  Babylyn Tate, Defendant(s)

**April 10, 2019                      9:00 AM                      All Pending Motions**

**HEARD BY:**   Holthus, Mary Kay                                      **COURTROOM:**   RJC Courtroom 03F

**COURT CLERK:**   Dara Yorke

**RECORDER:**   Yvette G. Sison

**REPORTER:**

**PARTIES**

|                 |                   |          |
|-----------------|-------------------|----------|
| <b>PRESENT:</b> | Henriod, Joel D.  | Attorney |
|                 | Prince, Dennis M  | Attorney |
|                 | Smith, Andrew D.  | Attorney |
|                 | Winner, Thomas E. | Attorney |

**JOURNAL ENTRIES**

- CALENDAR CALL...PLAINTIFF'S MOTION IN LIMINE NO.19: TO EXCLUDE SUB ROSA SURVEILLANCE VIDEO OF PLAINTIFF DESIRE EVANS-WAIAU AND ANY TESTIMONY OR REFERENCE TO THE SAME...PLAINTIFF'S MOTION IN LIMINE NO. 20: TO EXCLUDE THE TESTIMONY AND OPTIONS OF DEFENDANT'S RETAINED EXPERT KEVIN KIRKENDALL, CPA

Mr. Winner advised his experts are available on May 6, 7, and 8, 2019; which two would be coming from out of state and two are local. Mr. Prince indicated he was trial ready if it were to start on April 22, 2019. Further, Mr. Prince indicated he anticipated a couple of days to pick the jury. Court inquired if Mr. Prince wanted to start the trial on April 29, 2019; however, he noted he has another trial starting May 20, 2019 and needed at least a week between to prepare. Court advised parties could start the trial at 1:00 pm on April 22, 2019. Both parties agreed. Upon Court's inquiry, Mr. Prince indicated he was anticipating 3 weeks for trial. Court noted it would be dark May 2 and 3, 2019.

PLAINTIFF'S MOTION IN LIMINE NO.19: TO EXCLUDE SUB ROSA SURVEILLANCE VIDEO OF PLAINTIFF DESIRE EVANS-WAIAU AND ANY TESTIMONY OR REFERENCE TO THE SAME



Mr. Prince indicated the instant Motion is in reference to video that was taken post surgery. Further statements by Mr. Prince requesting it be excluded due to being impeachment and couldn't use. Mr. Winner disagreed and stated Plaintiff is more than capable of work activities and the video was relevant to support their claims; therefore, it would be inappropriate to exclude it. Following colloquy between parties, Court advised it was inclined to not keep the video out as a matter of law. COURT ORDERED, the instant Motion was hereby DENIED.

PLAINTIFF'S MOTION IN LIMINE NO. 20: TO EXCLUDE THE TESTIMONY AND OPTIONS OF DEFENDANT'S RETAINED EXPERT KEVIN KIRKENDALL, CPA

Mr. Prince indicated the instant Motion be withdrawn. COURT SO ORDERED.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto****COURT MINUTES****April 22, 2019**

A-16-736457-C      Desire Evans-Waiau, Plaintiff(s)  
                                  vs.  
                                  Babylyn Tate, Defendant(s)

**April 22, 2019****1:00 PM****Jury Trial****HEARD BY:** Holthus, Mary Kay**COURTROOM:** RJC Courtroom 03F**COURT CLERK:** Dara Yorke**RECORDER:** Yvette G. Sison**REPORTER:****PARTIES**

|                 |                         |           |
|-----------------|-------------------------|-----------|
| <b>PRESENT:</b> | Degree, Jack, ESQ       | Attorney  |
|                 | Evans-Waiau, Desire     | Plaintiff |
|                 | Henriod, Joel D.        | Attorney  |
|                 | Parra-Mendez, Guadalupe | Plaintiff |
|                 | Prince, Dennis M        | Attorney  |
|                 | Tate, Babylyn           | Defendant |
|                 | Winner, Thomas E.       | Attorney  |

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Colloquy regarding procedures. Court noted it provided both parties with copies of the Order prepared by the Court with Motion In Limines. Court indicated proposed orders should have been done before calendar call. Mr. Prince concurred, indicating it should have been done and parties are trial ready; however, they would have time following proceedings to resolve issues. Colloquy between parties regarding trial brief which was received prior to the start of trial. Mr. Henriod indicated Defense anticipated making an oral Motion to consider admissibility before opening statements on causation and Prima Facie. Mr. Prince indicated counsel was arguing for the Court to reconsider Judge Villani's ruling. Mr. Henriod advised the Court it was allowed to fix any error before entry of final judgement. Colloquy between parties regarding the effects of what would be allowed in. Mr. Prince indicated it wouldn't effect jury selection and could be done before opening statements. Upon Court's inquiry, Mr. Prince noted jury should be informed trial would last three weeks due to the Court's calendar. Colloquy between

parties regarding expert witnesses schedules. Further colloquy regarding questions for the jury.

PROSPECTIVE JURY PANEL PRESENT: Roll call taken by the Clerk. Voir dire oath ADMINISTERED. Voir dire conducted. CONFERENCE AT BENCH. Jurors excused and replaced.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL

PROSPECTIVE JURY PANEL PRESENT: Voir dire conducted.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Statements by Mr. Prince regarding Motions in Limine. Order Regarding Plaintiff's Motions in Limine SIGNED IN OPEN COURT. COURT RECESSED for the evening; TRIAL CONTINUED.

4/23/19 1:00 PM JURY TRIAL CONTINUED