IN THE SUPREME COURT OF THE STATE OF NEVADA

VIVIA HARRISON, Appellant, vs. RAMPARTS INC., LUXOR HOTEL & CASINO, A DOMESTIC CORPORATION, Respondent.	Case No. 80167 Electronically Filed Jul 09 2020 02:34 p.m. Elizabeth A. Brown Clerk of Supreme Court Appeal from the Eighth Judicial District Court, the Honorable David M. Jones Presiding

APPELLANT'S APPENDIX, VOLUME 4
(Nos. 497–726)

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DISTRICT COURT

CLARK COUNTY, NEVADA

VIVIA HARRISON, an individual,

Plaintiff,

v.

RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, a Nevada Domestic Corporation; DESERT MEDICAL EQUIPMENT, a Nevada Domestic Corporation, DOES I through XXX, inclusive, and ROE BUSINESS ENTITIES I through XXX, inclusive,

Defendants.

DESERT MEDICAL EQUIPMENT, a Nevada Domestic Corporation,

Third-Party Plaintiff,

v.

STAN SAWAMOTO, an individual.

Third Party Defendant.

CASE NO.: A-16-732342-C
DEPT. NO.: XXIX

DEFENDANT RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO'S REPLY IN SUPPORT OF ITS MOTION FOR ATTORNEY'S FEES AND COSTS

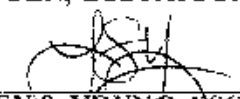
Hearing Date: February 27, 2019
Hearing Time: 9:00 a.m.

COMES NOW, Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO (hereinafter referred to as "Luxor"), by and through its attorneys of record, the law firm of LINCOLN, GUSTAFSON & CERCOS, LLP, and hereby submits the following Points and Authorities in support of its Reply to Plaintiff's Opposition to Luxor's Motion for Attorney's Fees and Costs.

This Reply is made and based upon the attached Memorandum of Points and Authorities and supporting documentation, the papers and pleadings on file in this action, and any oral argument this Court may allow at the time of hearing.

DATED this 20th day of February, 2019.

LINCOLN, GUSTAFSON & CERCOS, LLP



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I.

INTRODUCTION

As this Court is aware, trial started on December 10, 2018 and concluded on December 20, 2018 with the Jury returning a Defense Verdict against Plaintiff and in Luxor's favor. As such, Luxor is the prevailing party and, thus, entitled to award of costs pursuant to NRS §18.005 and NRS §18.020. Pursuant to NRS §18.110 and case law, a memorandum of costs must be filed within 5 days after the entry of order or judgment. Here, the Entry of Judgment on the Verdict was filed and served on January 16, 2019 and the Memorandum of Costs was timely filed on January 17, 2019. As the prevailing party, Luxor respectfully requests the Court grant its costs incurred in this matter to defend the allegations made by Plaintiff.

NRS §18.110(4) expressly provides that if Plaintiff wished to dispute and/or retax and settle those costs, "**Within 3 days after service** of a copy of the memorandum, the adverse party may move

the court, upon 2 days' notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing party claiming costs. Upon the hearing of the motion the court or judge shall settle the costs." *See* Nev. Rev. Stat. Ann. § 18.110(4). Thus, Plaintiff's motion to retax and settle Luxor's costs was due on or before January 28, 2019. Plaintiff did not file a motion to retax and settle Luxor's costs and, thus, Plaintiff has waived any objection to the Memorandum of Costs and the Court should enter an order granting Luxor's costs totaling **$53,160.03**. *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 493, 117 P.3d 219, 227 (2005). Plaintiff's faltering argument that Luxor is not entitled to recover costs pursuant to NRCP 68 is inapplicable here.

Plaintiff's opposition fails to cite any applicable law or statute in support of the arguments made. In fact, Plaintiff contends that the standard of care in considering an award of attorney's fees is that Defendant must show Plaintiff "brought forth this lawsuit and proceeded to trial in 'bad faith'." (*See* Plaintiff's Opposition, Page 2; *See also* Page 3 line 15, which contradictorily states "Defendant concedes the argument that Vivia's claims were not in good faith…"). Tellingly, although Plaintiff includes quotation marks, there is no citation for the argument. Plaintiff is clearly flummoxed regarding legal arguments of "good faith" and "bad faith," which are not equal opposites.

As a preliminary matter, it must be brought to the Court's attention that Luxor seeks recovery of costs and fees against Plaintiff and Plaintiff's counsel, which award should be offset from settlement funds received by Plaintiff from other sources. It is Luxor's understanding that during trial and before the jury verdict, Plaintiff reached a high/low agreement with Desert Medical Equipment that guaranteed Plaintiff would receive a certain amount no matter what the verdict would be. In Nevada, as well as in other jurisdictions, "an offset is part of the trial judgment, and thus it takes priority over an attorney's lien." *John J. Muije, Ltd. v. North Las Vegas Cab Co.*, 106 Nev. 664, 666, 799 P.2d 559, 560 (1990)(*citing Salaman v. Bolt*, 141 Cal.Rptr. 841 (Ct.App. 1977); *Galbreath v. Armstrong*, 193 P.2d 630 (Mont. 1948); *Hobson Constr. Co., Inc. v. Max Drill, Inc.*, 385 A.2d 1256 (N.J. Super.App.Div. 1978); *Johnson v. Johnston*, 254 P. 494 (Okla. 1927)).

It is anticipated Plaintiff may argue that Plaintiff's counsel has perfected an attorney's lien and, thus, the attorney's lien takes priority over everything, including any award of fees and costs to Luxor. This is incorrect. In *Salaman*, the court gave priority to an offset arising from an unrelated matter

between the two parties. The Court explained that an offset must be satisfied before attorney's fees are calculated. The *Salaman* court determined that equity requires settlement of the net verdict between the two parties before an attorney's liens may attach. *Salaman*, 141 Cal.Rptr. 841. A perfected attorney's lien attaches to the net judgment that the client receives after all setoffs arising from that action have been paid. *See John J. Muije, Ltd.*, 106 Nev. at 667. After the net judgment is finalized, then the attorney's lien will be superior to a later lien asserted. (*Id. citing See United States Fidelity & Guarantee v. Levy*, 77 F.2d 972 (5th Cir. 1935) (attorney's lien is superior to offset from a claim arising out of a different matter from which the judgment arose); *Cetenko v. United California Bank*, 638 P.2d 1299 (Cal. 1982) (attorney's lien is superior to that of another creditor who obtained a lien on the same judgment); *Haupt v. Charlie's Kosher Market*, 112 P.2d 627 (Cal. 1941) (attorney's lien is superior to that of third-party judgment creditor).

Plaintiff's opposition attempts to utilize the *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268, 274 (1983), factors to oppose Luxor's request for attorney's fees based on the following:

- Luxor's Offer was not in good faith
- Luxor should not be awarded attorney's fees pursuant to NRS 18.010

As noted, Plaintiff's opposition is void of any supporting case law or statute. Plaintiff's opposition is fatally flawed based on the forgoing;

- Based on the lack of evidence to support liability against Luxor, and no special damages sought, the offer of judgment was reasonable, timely and in good faith; and
- Plaintiff and Plaintiff's Counsel unreasonably maintained and extended the action against Luxor and, thus, is subject to an award of attorney's fees.

In addition to Luxor's argument as the prevailing party and obtaining a judgment more favorable than its' NRCP 68 offer of judgment, Luxor respectfully requests the Court award Luxor's attorneys' fees incurred in this action to defend the baseless, unreasonable, and frivolous allegations made by Plaintiff pursuant to NRS §18.010 and NRS §7.085. All the jurors concluded, including the two dissenters, that all the evidence showed that Plaintiff was at a minimum of 51% at fault and, thus, no recovery. The evidence and trial confirmed that the action was maintained without reasonable grounds triggering an award of attorney's fees pursuant NRS §18.010(2)(b). Because Plaintiff brought

and maintained this lawsuit against Luxor "without reasonable ground," Defendant is entitled to an award of attorney fees. The Nevada legislature requires courts to "liberally construe" NRS § 18.010(2)(b)'s allowance for attorney fees to a prevailing party in groundless lawsuits "in favor of awarding attorney's fees in all appropriate situations."

II.

ARGUMENT

1. Based on the lack of evidence to support liability against Luxor, and no special damages sought, the offer of judgment was reasonable, timely and in good faith

The purpose of offers of judgment is to promote settlement of suits by rewarding defendants who make reasonable offers and penalizing plaintiffs who refuse to accept them. Early settlement saves time and money for the court system, the parties, and the taxpayers. NRCP 68 requires a plaintiff's attorney to advise his or her client to accept reasonable offers. The possibility that a client will not heed sound advice is a risk that the attorney, not the opposing party, must bear. *John J. Muije, Ltd. v. North Las Vegas Cab Co.*, 106 Nev. 664, 667, 799 P.2d 559, 561 (1990).

Plaintiff complains that Luxor's offer was too little and too early and, thus, not in good faith. Plaintiff asserts that at the time of the offer was made (March 23, 2017), little information was known to allow Plaintiff to evaluate the claim. This argument is ironic given that Plaintiff was the keeper of the facts from the beginning with knowledge of the accident and statements from Plaintiff and her family showing there was little to no chance Plaintiff would not be found at least 51% at fault for driving her scooter into a stationary table.

Plaintiff claims that the $1,000 was too little given that Plaintiff had over $400,000 in medical bills. This argument is twisted since Plaintiff did not present any evidence of medical bills at trial. Although Plaintiff presented a life care planner at trial, Plaintiff later stipulated on the record during trial that Plaintiff would not be asking the jury to award any damages for past medical bills or future medical bills. Therefore, given that Plaintiff's medical bills sought at trial was Zero, and liability was unlikely against Luxor, an offer of $1,000 early in the case, almost two years before trial, and months before incurring substantial fees and costs in taking depositions, retaining experts, and other discovery, was not only reasonable, but predictive.

This case against Luxor was never about damages. It was about liability. Was Luxor responsible for Plaintiff's injuries because Plaintiff drove her scooter into a table at Luxor's Deli; the unequivocal answer was No. Luxor informed Plaintiff of that position early on in the litigation. On February 21, 2017, Luxor's counsel discussed the allegations in the complaint, how the allegations were inaccurate, false, and did not support a negligence claim against Luxor. (*See* letter to Matthew Pfau, Esq., dated March 23, 2017, a true and correct copy is attached hereto as Exhibit "A"). Luxor confirmed the inaccurate and false allegations in the complaint, confirmed the facts that Plaintiff and her family moved the furniture causing any "obstruction" and, thus, requested a dismissal. *Id*. At this point, Luxor also served the offer of judgment. After incurring substantial fees and costs, as well as fees and costs to travel to Alabama to take depositions of Plaintiff and Plaintiff's family, Luxor again attempted to encourage Plaintiff to resolve the claim against Luxor and even offered to waive its attorney's fees and costs, which were substantial. (*See* letter to Matthew Pfau, Esq., dated June 15, 2017, a true and correct copy is attached hereto as Exhibit "B"). Plaintiff continued to ignore Luxor's requests and maintained the frivolous action.

"The district court may consider the oral offers of settlement in determining whether discretionary fees should be awarded under NRS Chapter 18 or the amount of fees." *Parodi v. Budetti*, 115 Nev. 236, 242 (1999). When considering a motion for attorney's fees pursuant to subdivision (2)(a) in a case in which a non-statutory offer of settlement has been rejected, the district court must consider the reasonableness of the rejection. Factors which go to reasonableness include whether the offeree eventually recovered more than the rejected offer and whether the offeree's rejection unreasonably delayed the litigation with no hope of greater recovery. *Cormier v. Manke*, 108 Nev. 316, 830 P.2d 1327 (1992).

Subsequently, on August 20, 2018, Luxor moved for summary judgment. Plaintiff mainly relied on an expert opinion to defeat the motion. The expert opinion suggested that it was "plausible" that there was an ADA violation in the Deli. This Court narrowly denied Luxor's motion for summary judgment and stated: "Counsel, I can tell you this: I'm gonna deny it this time. Major uphill battle. Major uphill battle in this case; okay? Gonna deny it at this time without prejudice." (*See* Hearing

Transcript of hearings on September 24, 2108, Page 26:18-20, a true and correct copy is attached hereto as Exhibit "C").

As shown at trial, there was never any evidence to suggest a dangerous condition existed inside the Deli at the time of the incident. On December 10, 2018, this matter proceeded to trial resulting in a full defense verdict in favor of Luxor. Plaintiff at no time in this case, whether in discovery or at trial, provided any facts to establish a dangerous condition existed at the time of the incident. Thus, Plaintiff failed to demonstrate any reasonable basis to support its case against Luxor and no justification for rejecting the offer of judgment. As such, Plaintiff acted unreasonably by rejecting the Offer of Judgment and proceeding to trial. Therefore, Luxor should be entitled to any attorney's fees incurred after service of the offer of judgment pursuant to NRCP 68, totaling $207,323.00 incurred in defending Plaintiff's allegations, as Luxor received a more favorable judgment at the time of trial and Plaintiff rejected a reasonable offer.

2. Plaintiff and Plaintiff's Counsel unreasonably maintained and extended the action against Luxor and, thus, is subject to an award of attorney's fees

As shown above and in the original Motion, Luxor is entitled to an award of costs totaling $53,182.77 as the prevailing party pursuant to NRS 18.020. Plaintiff did not file a motion to retax those costs and, thus, waived any objection. Luxor also seeks an award of $207,323.00 in attorney's fees pursuant to NRCP 68, NRS 7.085 and NRS 18.010.

Although Plaintiff submits an opposition to Luxor's request for fees under NRS 18.010, Plaintiff concedes that "Defendant should not be entitled for attorney's fees for work completing in preparing for trial, including time to prepare and perform depositions and time preparing and defending Motions. If they [sic] court were to grant Defendants [sic] any fees in this case they should be limited to the time spent during the 9 days of trial." (*See* Plaintiff's opposition, Page 5 line 26 through Page 6 line 4). Based on Plaintiff's logic and opposition, Luxor should be granted, at a minimum, an award of $45,207.00 in attorney's fees incurred for trial.

In addition to the concession, Luxor seeks the remaining attorney's fees incurred as Plaintiff maintained this action and extended the litigation without reasonable grounds against Luxor and, thus, is subject to the additional penalties under NRS 18.010 and NRS 7.085.

Nevada Revised Statute § 7.085 provides:

> 1. If a court finds that an attorney has:
>
> (a) Filed, maintained or defended a civil action or proceeding in any court in this State and such action or defense is not well-grounded in fact or is not warranted by existing law or by an argument for changing the existing law that is made in good faith; or
>
> (b) Unreasonably and vexatiously extended a civil action or proceeding before any court in this State, the court shall require the attorney personally to pay the additional costs, expenses and attorney's fees reasonably incurred because of such conduct.
>
> 2. The court **shall** liberally construe the provisions of this section **in favor of awarding costs, expenses and attorney's fees** in all appropriate situations. It is the intent of the Legislature that the court award costs, expenses and attorney's fees pursuant to this section and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public. (emphasis added).

A "groundless" claim is synonymous with a "frivolous" claim. *See United States v. Capener*, 590 F.3d 1058, 1066 (9th Cir. 2010). Under Nevada law, a claim is frivolous if "it is not well grounded in fact or warranted either by existing law or by a good faith argument for the extension, modification, or reversal of existing law." *Simonian v. Univ. & Cmty. College Sys. of Nev.*, 122 Nev. 187, 196, 128 P.3d 1057, 1063 (2006). "A frivolous claim is one that is legally unreasonable, or without legal foundation." *In re Grantham Bros.*, 922 F.2d 1438, 1442 (9th Cir. 1991) (internal quotations omitted). "A claim is frivolous if it is utterly lacking in legal merit . . . ." *United States ex rel. J. Cooper & Assocs. v. Bernard Hodes Group, Inc.*, 422 F. Supp. 2d 225, 238 (D.D.C. 2006). "A trial court is not required to find an improper motive to support an award of attorney fees; rather, an award may be based solely upon the lack of a good faith and rational argument in support of the claim." *Breining v. Harkness*, 872 N.E.2d 155, 161 (Ind. App. 2007) (applying an attorney fees statute substantively similar to Nevada's). A claim lacks reasonable grounds if it is ***"not supported by any credible evidence at trial."*** *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1354, 971 P.2d 383, 387 (1998) (internal quotation marks omitted)(emphasis added). Courts must "liberally construe [NRS 18.010(2)(b)] in favor of awarding attorney's fees in all appropriate situations."

In the opposition, Plaintiff asserts that there is no legal authority that would support an award of fees and costs against Plaintiff and Plaintiff's counsel jointly and severally. (*See* Opposition, Page 7 lines 9-17). Under NRS 7.085(1), the district court can hold an attorney personally liable for the attorney fees and costs an opponent incurs when the attorney "[u]nreasonably and vexatiously extends a civil action or proceeding" or "[f]ile[s], maintain[s] or defend[s] a civil action . . . not well-grounded in fact or is not warranted by existing law or by an argument for changing the existing law that is made in good faith." *Public Employees' Ret. Sys. v. Gitter*, 393 P.3d 673, 682, 133 Nev. Adv. Rep. 18 (April 27, 2017). When awarding attorney fees, "a district court abuses its discretion by making such an award without including in its order sufficient reasoning and findings in support of its ultimate determination." *Watson Rounds. P.C. v. Eighth Judicial Dist. Court*, 358 P.3d 228 at 233, 131 Nev. Adv. Rep. 79 (September 24, 2015). Thus, the District Court may order and find the Plaintiff and Plaintiff's attorney jointly and severally liable for an award of attorney's fees and costs if the District Court's order sufficiently explains why and articulates sufficient facts under NRS 7.085 for the order. *Id*. The court shall liberally construe the statute in favor of awarding attorney's fees

As noted in prior pleadings, motion for summary judgment, and again at trial, Plaintiff asserted many different facts, allegations, and theories against Luxor that were not grounded in any fact. Plaintiff fails to acknowledge the evidence did not change at any time throughout discovery or at trial and that the lack of evidence demonstrating a dangerous condition was present from the outset. There was no evidence of a dangerous condition nor was there any evidence to suggest the deli was maintained in an unreasonable condition. Plaintiff's narrative throughout the case changed, but Luxor maintained the same position throughout the entirety of the case. This was a simple case, Plaintiff struck the base of a table with her scooter. The Court recognized it, Luxor recognized it, yet Plaintiff still believes that because she sustained injuries, liability must lie with someone else.

The following is a list of allegations maintained in Plaintiff's complaint that were proven to be false:

1. Plaintiff was entering the Deli at the time of the incident - ¶10
2. Luxor (Deli) employees moved dining tables and chairs- ¶10
3. Luxor (Deli) employees moved furniture to accommodate Plaintiff's scooter- ¶10

4. As Plaintiff operated the scooter over the base of the table, the front wheel gave way- ¶11

5. After Plaintiff struck the based of the table, Plaintiff fell to the right - ¶11

6. Plaintiff was unaware of a dangerous condition - ¶12

7. That the table was a dangerous condition to unsuspecting guests, including Plaintiff - ¶16

(*See* Complaint, attached as Exhibit B to Luxor's original Motion for Attorney's fees and costs). After the inaccuracies were brought to Plaintiff's attention, Plaintiff refused to withdraw the false allegations, refused to amend the complaint, refused to dismiss Luxor, and maintained a civil action not well-grounded in fact, and unreasonably and vexatiously extended a civil action against Luxor requiring Luxor to incur substantial attorney's fees and costs reasonably incurred because of such conduct. NRS §7.085

From the date of the offer of judgment almost two years ago, Luxor has incurred $207,323 in fees, which are more than reasonable and appropriately reflect the work performed by Luxor's team in litigating this matter as demonstrated by the outcome. This total does not include all fees and costs incurred by Luxor before the offer.

After the Offer was made, Luxor was forced to continue to litigate and defend this matter for twenty-one months. This time included extensive preparation for trial and intensive document review due to Plaintiff unjustifiably redacting entire pages of medical records. Luxor was forced to participate in lengthy motion work, including motions in limine, a motion for summary judgment, and several other motions, and culminating in a two week trial that resulted in a justifiable defense verdict. Thus, the *Brunzell* factors are satisfied and $207,323.00 in fees is reasonable and should be awarded.

III.

CONCLUSION

For the foregoing reasons, Defendant RAMPARTS, INC. dba LUXOR HOTEL & CASINO respectfully requests this Court grant its Motion for Attorney's Fees and Costs and award Luxor its' costs incurred in this matter totaling $53,160.03 pursuant to NRS 18.020 and 18.005. Further, Defendant RAMPARTS, INC. dba LUXOR HOTEL & CASINO respectfully requests this Court grant

its Motion for Attorney's Fees and award Luxor $207,323.00 for the reasonable attorney's fees incurred in defending against Plaintiff's unfounded allegations, entering a total award in favor of Luxor and against Plaintiff and Plaintiff's counsel for $260,505.77 pursuant to NRCP 68, NRS 18.010(2)(b), NRS 18.020 and NRS 7.085. Further, this award must first be offset from other funds received by Plaintiff and Plaintiff's attorney as part of the trial judgment and take priority over any other lien, including an attorney's lien. *John J. Mutje, Ltd. v. North Las Vegas Cab Co.*, 106 Nev. 664, 666, 799 P.2d 559, 560 (1990).

DATED this 20 day of February, 2019.

LINCOLN, GUSTAFSON & CERCOS, LLP

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THOMAS W. MARONEY, ESQ.
Nevada Bar No. 13913
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Las Vegas, NV 89169
Attorneys for Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO

Vivia Harrison v. Ramparts, Inc. dba Luxor Hotel & Casino, et al.
Clark County Case No. A-16-732342-C

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of February, 2019, I served a copy of the attached **DEFENDANT RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO'S REPLY IN SUPPORT OF ITS MOTION FOR ATTORNEY'S FEES AND COSTS** via electronic service to all parties on the Odyssey E-Service Master List.

Barbara J. Pederson, an employee
of the law offices of
Lincoln, Gustafson & Cercos, LLP

Exhibit “A”

THOMAS J. LINCOLN*+
RANDALL D. GUSTAFSON*+◊
THEODORE R. CERCOS*▲
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CHARLES K. EGAN*
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MANAGING PARTNER
NEVADA

SUSAN COUGHLIN
LEGAL ADMINISTRATOR

MONICA J. YOON*
OF COUNSEL

March 23, 2017

VIA ESERVICE ONLY

Matthew G. Pfau, Esq.
PARRY & PFAU
880 Seven Hills Dr., Suite 210
Henderson, NV 89052

RE: Harrison, Vivia v. Ramparts, Inc. d/b/a Luxor Hotel & Casino, et al.
Your Client: Vivia Harrison
Our Client: Ramparts, Inc. d/b/a Luxor Hotel & Casino
Our File Ref.: 16-304

Dear Mr. Pfau:

As you know, Luxor produced the video of the subject accident in both the original format on VHS as well as converted in DVD format. As you may be able to observe, the VHS tape ironically is better quality to visually observe the incident. I encourage you to evaluate the video again to understand the issues asserted in Plaintiff's complaint against Luxor.

Plaintiff's complaint asserts that Plaintiff was operating a motorized scooter and was entering the Backstage Deli at the Luxor. (*See* Second Amended Complaint ¶¶10 & 11). The Complaint continues stating as Plaintiff was entering the Deli, in an effort to accommodate Plaintiff and Plaintiff's scooter passageway, Plaintiff alleges that Backstage Deli employees proceeded to move the dining tables and chairs. *Id.* at ¶ 11. It is asserted that Plaintiff unknowingly drove the scooter over the base of a table and the scooter's front wheel gave way and the scooter tipped over, to the right, causing injuries. *Id.* at ¶¶11, 12 & 14.

Starting in paragraph 15 of the complaint, Plaintiff asserts negligence against Luxor for failure to properly inspect and maintain the Backstage Deli. Although the complaint neither identifies nor defines the "dangerous conditions," it appears Plaintiff contends the base of the table Plaintiff ran over is the condition. Plaintiff's complaint continues asserting negligent hiring, training, maintenance and supervision based on the placement of the subject table. This allegation appears to be based on the facts alleged that the Deli employees moved the tables and chairs.

As you discussed with my associate on February 21, 2017, the video of the area and the subject incident reveals that Plaintiff had already entered the Deli, without incident and, in fact, Plaintiff was exiting the Deli when the incident occurred. During the telephone conference, you acknowledged the video is correct and these facts alleged in the complaint are incorrect. The video also clearly reveals that Plaintiff's friends and Mr. Sawamoto moved the tables in the deli to accommodate Plaintiff. I spoke with Mr. Sawamoto's counsel who also confirmed with his client that Deli employees did not move tables and chairs at any time, but he and the others with Plaintiff moved the tables and chairs. You were advised of these facts. Thus, if it is Plaintiff's contention that the alleged "dangerous condition" was location of the tables and chairs, this condition was created by Plaintiff and Mr. Sawamoto, not Luxor. There simply are no facts to support a negligence claim against Luxor.

During the February 21, 2017 telephone conference, Luxor respectfully requested a voluntary dismissal of the complaint against Luxor and, in exchange, Luxor would agree to waive attorney's fees and costs. You rejected this proposal.

Based on the lack of evidence and valid claims against my client, please find enclosed an offer of judgment to Plaintiff for $1,000.00. If this is acceptable, please immediately advise so a motion for good faith settlement can be filed. However, if Luxor is forced to remain in this action, we will pursue the appropriate motion work and seek recovery of all applicable attorney's fees, costs, and other appropriate remedies.

Thank you for your prompt attention to this matter. I look forward to receiving your response.

Very truly yours,

LINCOLN, GUSTAFSON & CERCOS, LLP

LOREN S. YOUNG, ESQ.

Enclosure
LSY/bp

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Attorneys for Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO

DISTRICT COURT

CLARK COUNTY, NEVADA

VIVIA HARRISON, an individual,

Plaintiff,

v.

RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, a Nevada Domestic Corporation; DESERT MECHANICAL EQUIPMENT, a Nevada Domestic Corporation; PRIDE MOBILITY PRODUCTS CORP., a Nevada Domestic Corporation; DOES I through XXX, inclusive, and ROE BUSINESS ENTITIES I through XXX, inclusive,

Defendants.

DESERT MEDICAL EQUIPMENT, a Nevada Domestic Corporation,

Third-Party Plaintiff,

v.

STAN SAWAMOTO, an individual,

Third-Party Defendant.

Case No. A-16-732342-C

Dept. No. I

DEFENDANT RAMPARTS, INC. D/B/A LUXOR HOTEL & CASINO'S OFFER OF JUDGMENT TO PLAINTIFF, VIVIA HARRISON

TO: Plaintiff, VIVIA HARRISON; and

TO: MATTHEW G. PFAU, ESQ., PARRY & PFAU, Attorneys for Plaintiff.

Defendant, RAMPARTS, INC. dba LUXOR HOTEL & CASINO, hereby offers to allow judgment to be taken in Plaintiff's favor as provided in Rule 68 of the Nevada Rules of Civil Procedure in the above-entitled action in exchange for ONE THOUSAND DOLLARS AND ZERO CENTS ($1,000.00), which amount includes any applicable attorneys' fees, costs, and pre-judgment interest.

Acceptance by Plaintiff will therefore result in satisfaction of past, present and future damages with respect to Plaintiff's claims in this case as against RAMPARTS, INC. dba LUXOR HOTEL & CASINO, and will serve to dismiss and bar the bringing of any and all present and future causes of action by Plaintiff, and any other party named in this action, arising out of this matter as identified and referenced in the Complaint filed by Plaintiff in this action. This offer and acceptance is contingent upon the Court granting a motion for determination of good faith settlement and release of all claims against RAMPARTS, INC. dba LUXOR HOTEL & CASINO.

If you accept this offer and give written notice thereof within ten (10) days, you may file this offer with proof of service and notice of acceptance. You are further notified that if notice of acceptance is not given as provided as in Rule 68 of the Nevada Rules of Civil Procedure within ten (10) days of the date of the service of this Offer upon you, this Offer will be withdrawn. If withdrawn, you will then be responsible for the RAMPARTS, INC. dba LUXOR HOTEL & CASINO's court costs, attorneys' fees, if any are allowed, incurred from this date forward in the event you fail to obtain a judgment in any amount greater than that offered herein.

DATED this 15 day of March, 2017.

LINCOLN, GUSTAFSON & CERCOS, LLP

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Attorneys for Defendant, RAMPARTS, INC.
d/b/a LUXOR HOTEL & CASINO

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Vivia Harrison v. Ramparts, Inc. dba Luxor Hotel & Casino, et al.
Clark County Case No. A-16-732342-C

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of March, 2017, I served a copy of the attached **DEFENDANT RAMPARTS, INC. DBA LUXOR HOTEL & CASINO'S OFFER OF JUDGMENT TO PLAINTIFF, VIVIA HARRISON** via electronic service to all parties on the Odyssey E-Service Master List.

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Barbara J. Pederson, an employee
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Exhibit “B”

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THEODORE R. CERCOS*+
TERESA M. BECK*◇
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LEGAL ADMINISTRATOR

MONICA J. YOUN*
OF COUNSEL

June 15, 2017

VIA ESERVICE ONLY

Matthew G. Pfau, Esq.
PARRY & PFAU
880 Seven Hills Dr., Suite 210
Henderson, NV 89052

RE: Harrison, Vivia v. Ramparts, Inc. d/b/a Luxor Hotel & Casino, et al.
Your Client: Vivia Harrison
Our Client: Ramparts, Inc. d/b/a Luxor Hotel & Casino
Our File Ref.: 16-304

Dear Mr. Pfau:

Please allow this letter to serve as Luxor's renewed attempt to reach an amicable resolution of this matter prior to incurring substantial fees and costs. As you know, Plaintiff's Third Amended Complaint alleges the Luxor negligently maintained and inspected the Backstage Deli and that "unreasonably dangerous conditions" were present. (*See* ¶¶18 & 19). In Plaintiff's answers to Luxor's interrogatories, Plaintiff asserts Luxor was "negligent in the design and configuration of the subject premises." Yet, to date, Plaintiff has neither provided supporting evidence nor has identified what the "unreasonably dangerous conditions" were.

On the other hand, the surveillance video of the subject incident illustrates that Luxor did not move any tables or chairs prior to the incident. In fact, all witnesses deposed thus far have confirmed that Ms. Harrision not only has extensive experience in using and driving these types of scooters, but Plaintiff was able to drive the scooter to the table at the Deli without a any issues or problem and without anyone moving chairs and tables. Further, both Plaintiff and Mr. Sawamoto testified that Mr. Sawamoto's daughter, Diane Lucas, moved tables and/or chairs in the area to allow Plaintiff to exit the deli easier, however, this action by Diane Lucas clearly contributed and caused Plaintiff to run over the table base when exiting the Deli. Thus, it was the actions of Plaintiff and those with her that were the unequivocal cause of the incident.

As previously discussed, the evidence confirmed that Plaintiff was provided an adequate and safe access to the deli since Plaintiff was able to arrive at the table and eat lunch without incident. The only difference between Plaintiff's entry and exit was the moving of tables and chairs by Plaintiff and/or her surrogates. No "unreasonably dangerous conditions existed" at the Backstage Deli, and Luxor did nothing to cause or contribute to the subject incident. There simply are no facts to support a negligence claim against Luxor.

Since Plaintiff's rejection of Luxor's prior Offer of Judgment, Luxor has been forced to remain in this action and has continues to incur fees to defend this frivolous claim. As you know, the parties are in the process of scheduling multiple depositions of witnesses to the subject incident, who live in Florida, which will likely consume a week's time requiring Luxor to incur substantial attorney's fees and costs. At this point, if Plaintiff is willing to voluntarily dismiss Luxor, I will recommend my client waive recovery of any attorney's fees and costs. However, if Luxor is forced to continue to defend this action that is based on unreasonable positions unsupported by Nevada law, Luxor will seek recovery of all applicable attorney's fees and costs pursuant to *Public Employees' Ret. Sys. v. Gitter*, 393 P.3d 673, 133 Nev. Adv. Rep. 18 (Nev. Apr. 27, 2017).

I would like to discuss this issue with you before pursuing motion work and before the depositions in Florida to see if there is a possible solution. Thank you for your attention to this matter. I look forward to receiving your response.

Very truly yours,

LINCOLN, GUSTAFSON & CERCOS, LLP

KYLEE L. GLOECKNER, ESQ.

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Exhibit "C"

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

VIVIA HARRISON, Plaintiff(s), vs. MGM RESORTS INTERNATIONAL, Defendant(s).	)	CASE NO. A-16-732342-C
	)	DEPT. NO. XXIX

BEFORE THE HONORABLE DAVID M. JONES, DISTRICT COURT JUDGE

MONDAY, SEPTEMBER 24, 2018

RECORDER'S TRANSCRIPT OF HEARING:
DEFENDANT DESERT MEDICAL EQUIPMENT'S RENEWED MOTION FOR SUMMARY JUDGMENT, DEFENDANT RAMPARTS INC. D/B/A LUXOR HOTEL AND CASINO'S MOTION FOR SUMMARY JUDGMENT

APPEARANCES:

For the Plaintiffs: BOYD MOSS, ESQ
MATTHEW PFAU

For the Defendants: LOREN YOUNG
STACEY A. UPSON
COURTNEY CHRISTOPHER

RECORDED BY: MELISSA DELGADO-MURPHY, COURT RECORDER
TRANSCRIBED BY: ALLISON SWANSON, CSR No. 13377

Las Vegas, Nevada, Monday, September 24, 2018

[Case called at 9:42 a.m.]

THE COURT: -- two, Harrison versus MGM Resorts International.

Counsel, go ahead, appearances for the record.

MR. PFAU: Yes. Matthew Pfau for the Plaintiff, Ms. Harrison.

MR. MOSS: Boyd Moss for the Plaintiff as well.

MS. CHRISTOPHER: Courtney Christopher for Defendant Desert Medical.

MR. YOUNG: Loren Young and Thomas Maroney for the Luxor.

MS. UPSON: Stacy Upson for Stanley Sawamoto.

THE COURT: Anyone else?

All right. Got 'em all?

All right. We've got Defendant Desert Medical's renewed motion for summary judgment then backed up with Luxor's.

Let's go with Medical.

MS. CHRISTOPHER: Okay, Your Honor. I have four points I want to address quickly with you.

First, I want to talk about causation. No amount of warning or instruction could have prevented this accident for the Plaintiff. She testified that she unknowingly ran over

the base of the table. So, sure, we could have told her, "Hey, it's not safe to run over stuff with this scooter," but she did it unknowingly. So it wouldn't have mattered if we told her not to run over a table. She didn't even know she did it.

She didn't mean to do it. She didn't stop and think, "Hey, is this gonna be safe for me to run over?" She didn't mean to do it or know she did it.

So whether or not it was foreseeable doesn't matter because she didn't mean to. And she didn't even know it happened until it was too late. We could have talked about running over tables with her for an hour and it wouldn't have mattered.

So that's my first point.

Second, Plaintiff hasn't even established a duty between Desert Medical and Plaintiff. She talks about the breach, obviously, that we didn't provide enough instruction. But she never has established that a duty even existed between Desert Medical and the Plaintiff.

My third point, there is no duty to warn of obvious dangers in Nevada. To say she should have been warned not to run over the table would mean we would have to warn her of everything. "Hey, don't run into a wall." "Don't run into the slot machine." "Don't run into people."

You know, these are obvious dangers. She'd been using these scooters for over 20 years. She knew she wasn't supposed to run over stuff. She testified she knew she wasn't supposed to -- or that she needed to avoid hazards and running into things. But, like I said, it wouldn't have mattered because she didn't mean to do it.

And my last point, she doesn't even have a qualified expert to talk about what could have been wrong with this scooter. She's identified Tim Hicks as a scooter expert. He has absolutely no experience with scooters, mobility devices, wheelchairs, anything.

Sure, he's an engineer, but all of his experience is with automobiles. He's never done anything in the past with these types of devices. So how's he gonna get up here in front of a jury and talk about what could have been done differently in this case in regards to this scooter.

THE COURT: Okay. Counsel?

MR. PFAU: Thank you, Your Honor.

To address Defendant's points, first of all, there are safety operational instructions on the back of the contract that was signed by Mr. Sawamoto. Those instructions do cover some of the safety aspects of the scooter itself. However, do not cover very essential safety aspects.

And a material fact in this case is whether or not

cornering and cornering instructions should have been included in those safety instructions on the contract provided by Desert Medical.

They do owe a duty. Scooter was owned by them. It was -- the rental was facilitated by them through their contract provided to Ms. Harrison. They owe a duty to provide what this safe operating scooter and one that has proper safety operating instructions. So, again, second material fact.

There -- they make a big deal out of obvious dangers. Certainly, Ms. Harrison did not intend to roll over a wheel base. But the issue is, is whether or not a three-wheel scooter, with a 20-degree tipping radius, is potentially safe enough for her to ride -- and whether or not if she was not received the instructions that she didn't receive, the cornering instructions and so on -- that this incident may not have happened.

And she talks about causation. Causation's an issue of fact the jury has to decide. And it is our contention that if she was potentially provided with the right instructions and potentially trained properly and not just how to turn on and off the scooter and move forward and back and how to check the battery, she was actually offered instructions on how to operate a three-wheel scooter with potential instability, that

this situation would have turned out very differently. And causation can be determined by a jury for that fact.

And then, finally, Mr. Hicks. Defense states that she -- he was not a qualified expert. We had motions in limine on this subject. There's plenty of argument that's gonna happen on that. But Mr. Hicks was more than just a car design expert, as they like to say.

He is a vehicle expert. An expert on the understanding of how vehicles work. Their stabilities. Their design related to stability and cornering and understanding how this tip could have happened. And that is why he was hired in this case, to understand how this situation occurred.

And, therefore, he is a qualified expert, based on his engineering and mechanical design understanding of vehicles in general. In fact, he has actually worked on, for a mobility company, as an expert for their defense. So he has actual experience in this case, in these types of cases.

So, you know, it's also interesting to point out that Desert Medical and Luxor have opposed each other's motions for summary judgment on the fact that they're contending each person had the duty to train. That they're -- they're saying, "Well, it wasn't our job to train. It was your job to train." And vice versa.

Well, this is another issue of material fact. Whose job

was it to train? Whose job was it to make sure that she was given the appropriate scooter, given the appropriate instructions on that scooter, and send her off to make sure that she knew how to properly operate it so that if something did happen to her, it would have been her responsibility and not theirs?

And that is, again, another material issue of fact that needs to be determined by a jury.

THE COURT: Okay. Counsel?

MS. CHRISTOPHER: Just real quick. In regard to the instruction, she did testify -- the Plaintiff testified that she was given instruction by the Luxor employee. She didn't need to hear anymore instructions because she already knew how to use these things. That's also what she testified to. But she did get the instruction. So it's not like there was just no instruction provided to her at all.

And then number two, he talks about Mr. Hicks, how he's gonna testify about whether or not this three-wheeled scooter was stable or not. But, again, he's never tested these types of devices in the past. He has no experience with these things. How is he gonna get up here and tell us whether or not --

THE COURT: Counsel, isn't it basic engineering? Slope radiuses and turn radiuses are engineering. A tip over

radius of any vehicle is basic engineering. It's math.

MS. CHRISTOPHER: Well, why couldn't they have just got a scooter expert to do it? Someone who actually has experience? Our expert has tons of experience in [inaudible] --

THE COURT: And I understand, Counsel. It's the battle of the experts. Just because they chose a non-scooter expert versus a licensed engineer -- you don't have to be a scooter expert to understand the dynamics of engineering. The math doesn't change depending on what you're in; okay?

Just because he doesn't have years and years and years of building a scooter -- I would imagine there's probably people at the plant that actually built this scooter who know a lot more than your expert does. But they have no education in it.

Would they qualify as an expert? Absolutely. Are they the best expert? You'd probably say, no, your learned one is versus the guy who's a blue collared worker who's been working on the line for 40 years building scooters. But he probably has a whole lot more experience on the scooters than you do.

Would you agree with that?

MS. CHRISTOPHER: I would agree with that.

THE COURT: Okay.

MS. CHRISTOPHER: But I don't think that's the same thing. This guy has no experience with scooters. Why -- he's

not tested one. Why didn't he test one -- you know, another model, the same version, see --

THE COURT: And we'll deal with that in the motions in limine. Here's the question is (sic), was it foreseeable by your company that these individual scooters would be driven over things such as, like you said, open and obvious things: Floor bases, debris in the road, uneven pathways. Would that not be foreseeable by your own company that you would rent these scooters out and they possibly could be run over some kind of obstacle in the hotel?

MS. CHRISTOPHER: Would it be foreseeable that they could run over anything? A person? Anything? Of course you're gonna cause injury if that sort of thing happens. She said she knew she wasn't supposed to run over stuff. So it wouldn't have mattered if we told her not to run over a table.

THE COURT: Oh, I understand. Now we're talking about not running over, but it was foreseeable by your company that these scooters get driven over table bases, chair bases, maybe even the other patrons, as you said. They foresee that. They know it's out there.

When they rent these places, these scooters in hotels, they realize they're congested areas. They realize they could be running over debris; right? That's foreseeable for them.

MS. CHRISTOPHER: Could be.

THE COURT: Okay.

MS. CHRISTOPHER: But you don't need to run over stuff. She could have stopped, moved a --

THE COURT: Well, here comes -- now, the question is, is she's saying that they didn't instruct me on cornering and tipping all that sort of stuff. And whether or not that's valid, I think we're gonna have to find out.

Motion for summary judgment's denied at this time without prejudice.

I failed to mention -- and I want to make sure I understand this. Ms. Upson worked for me for a year? Thirteen months?

MS. UPSON: Thirteen months.

THE COURT: Thirteen months when I was the head of Farmers. I've also worked, I'm sure, with half of the Thorndale people. My tenure at Ron Olson, Cannon and Lewis Brisbois, we basically hired most defense -- I think every defense attorney either went through our firm or Alverson Taylor.

So if anyone believes that there's conflict in regards to the fact that Ms. Upson worked with me or for me -- and I believe I had cases with opposing counsel during that time -- but if anyone sees -- believes there's a conflict, let me know.

Anyone speaking?

MR. PFAU: Your Honor, we're okay. Thank you.

THE COURT: Okay. Co-defense? Okay.

THE CLERK: [Inaudible] motion [inaudible].

THE COURT: No. Well, this motion -- we're dealing with Desert Medical's Equipment renewed motion.

THE CLERK: Thank you.

THE COURT: Okay?

All right. Next motion? Luxor's.

MR. YOUNG: Thank you, Your Honor.

This motion has to deal with negligence of premises liability to Luxor. As noted in the opposition, as well in the motion, the Plaintiff's claim of a dangerous condition at the Luxor deli was that there was no accessible route.

And so that has already been shown to be erroneous because the Plaintiff and their own witnesses testified that the Plaintiff was able to get from the entrance to the table. And then Plaintiff's own witnesses testified that they moved tables and chairs to provide an accessible route.

So the Plaintiff can't argue in one sense that there was no accessible route but then also present the testimony in the evidence that they made an accessible route. And so that also goes to the argument of the ADA requirements not being applicable to this particular situation 'cause it only applies

to standards for accessible route of fixed and non-moveable furniture. Here, the tables and chairs are moveable, i.e., that's why the Plaintiff and their party moved chairs and tables to allow an accessible route.

The Plaintiff then throws another second theory in here saying, "Well, there's no evidence that the Luxor employees ever clean the floor." Because Diane Lucas said that they were there for approximately 30 to 40 minutes. And had someone come out and cleaned the floor, then they more likely -- I think what they said -- would have -- would have helped the Plaintiff somehow.

I don't even know what to do with that. Because, Your Honor, the floor did not contribute, cause, have anything to do with the subject incident. The Plaintiff claims, through speculation, that potentially they hit a table that was moved by the Plaintiff's own daughter-in-law. Not because it was moved by the Luxor employee. It was moved by them and then she allegedly hit it.

So the flooring and whether somebody actually went out there to clean the flooring has nothing to do with this incident. There is no dangerous condition related to the flooring.

Now, if the Plaintiff were to come up with, you know, a picture or something to say, "Hey there was liquid and that's

what caused the scooter to fall," or there was, you know, a big, you know, plate of French fries or somebody'd spilled something, then that would be an issue. But there's no issue here with the flooring.

So that's just a red herring. And I don't know why that was really thrown out there. Because there's really no evidence that the flooring caused or contributed to the incident.

And so really, that's what it is. There has to be a proven or there has to be some admissible evidence that there was a dangerous condition that caused or contributed to the incident. And there's simply nothing. The tables and chairs complied with the ADA requirements. They were removable. They were moved by the Plaintiff and their party to allow an accessible route. And Plaintiff simply either fell out of the scooter or hit something that was not a dangerous condition for the Luxor.

And finally, Your Honor, there are no prior instances at the deli or the Luxor of people hitting these [inaudible] and falling out of their scooters or tipping scooters over. So there is no priors. There is no foreseeability and we would move for summary judgment.

THE COURT: Counsel?

MR. PFAU: Thank you, Your Honor.

To address Defendant's arguments, first of all, he argues that there was a clear route for them to get in and out of the restaurant. I think Defense Counsel forgets that they entered in one way and exited out another way. So on the way in that they entered into the restaurant that -- they said that they didn't have an issue getting in, but on the way out they had to move tables to get out -- or chairs. They had to move furniture, some sort of furniture to get out of the restaurant.

There's also a misunderstanding of what our argument is as related to the 30, 40 minutes of maintaining the floor. The floor does not relate to -- only to the floor itself but also to the entire dinning room floor. Meaning, the tables and the chairs are in the floor.

The witnesses testified that in the dinning area it was a mess when they went in there. And to get in there, it seemed like there was a ton of people there, but they had all left and there was nobody in the restaurant at the time. They were there 30 to 40 minutes.

And according to the ADA regulations, section 362.211 that the Luxor has a duty to maintain an accessible route in and through a dinning area during operational hours. And it is an issue of material facts as whether or not 30 to 40 minutes is enough time for them to go in there and properly

maintain that dinning area. And that is the contention of Ms. Harrison.

Did they or did they not? That's a material fact that the jury has to decide.

Finally, they failed to mention the fact, again, that this contention between Luxor and Desert Medical as to who's responsible for training, making sure that she received the proper training is, again, a material fact, pointed out in our opposition that they were the ones that provided the scooter. They provided some training.

Was that sufficient enough? That's a material fact that needs to be decided. Therefore, their motion should be denied.

Thank you, Your Honor.

THE COURT: Counsel? You talk about the terrain. Here's the debris field and where everyone -- I heard it everything called different things. People move these things around. They have to deal with that issue, due to the fact that if Luxor -- you know, they have a nice staff there that works on that deli.

And if they're basically walking around and they set up tables a certain way because they know their manager says, "Look, we have to provide ingress and egress to all these places." They have a schematic. Tables go here. You have

to -- basically, if you want them to move 'em, it's an act of congress because they have to have someone come in and say, "Okay. We can drag this one table."

So if patrons then turn around and modify that. They've now destroyed this template that staff knows they have to do. Does the staff have an obligation to go back, when those parties leave, or even before when they start to move chairs around improperly or tables, do they have a duty to make sure that they continue the paths that they had originally set up as part of their overall plan? Or do they just allow patrons to move the tables in any way, shape, or fashion and they have no responsibility whatsoever?

If they block a fire exit, for example, is that -- Luxor can walk away and say, "You know, our patrons did it. We didn't do it."

MR. YOUNG: I completely agree and understand what you're saying, Your Honor. In this type of a situation, as I'm sure everyone in this courtroom is experienced going to any type of a, you know, kind of a fast food type of a restaurant where there's moveable tables, they can take two tables and put 'em together. So instead of two people there could be four people. That happens all the time.

And yes, the owner of the store, slash, cafe restaurant does have an obligation, then, after patrons are done using,

to then reestablish their chair -- their tables and their chairs. I agree.

And there's no evidence in this case that that was not done. In fact --

THE COURT: The testimony -- unless I misread, there's testimony that said, basically, in their opinion -- it's their opinion -- that it was basically a maze going through this area.

MR. YOUNG: It was a mess. But -- that's what they say. But, Your Honor --

THE COURT: Okay. Isn't eyewitness testimony the best [inaudible] of facts I can ever get? A lot more important to a jury than a schematic. Eyewitness people who saw it at that time, is that not facts?

MR. YOUNG: If I could finish that fact. I mean, what they're alleging is, is that when they got to the deli, they went to this table area. And they actually modified this area to sit their party.

THE COURT: Okay.

MR. YOUNG: Okay? They moved tables and chairs to put 'em together so they could all fit around a single area to eat their food.

So they initially modified -- what you're saying is that we potentially have to then go back out and fix. So they

modified it. And then they're on their way leaving. And that's when they modify it again to make another humongous pathway. Okay?

So we're not talking about, like, that they're done eating and they -- or someone else is done eating and left and left chairs and tables in a way where they could not leave.

THE COURT: Counsel, have you ever been to restaurant and a manager tell you, you can't do certain things? "We can't have you move this." "We can't have you move that." "We can't have you taking that table over here." Have you ever gone to a restaurant and had that happen? Seen people that were told by the management, "No. Sorry. We understand, but you have to keep these tables separate. We have to have clear aisle ways."

MR. YOUNG: Personally, no, I haven't.

THE COURT: Okay.

MR. YOUNG: In this situation, that didn't happen either. And in this situation, if you look at the tables and the chairs, the way they're set up is they still allow access. They're still -- and just as Plaintiff just argued, they were able to enter one way to the get the table. Then they modified it and then they're on their way out to leave.

So an employee -- if there was an employee that was going to fix the tables and the chairs, after the Plaintiff and her

party left, it was -- it would have been done after they had left. So they were on their way leaving when this incident occurs.

THE COURT: I understand.

MR. YOUNG: And they had already cleared out the pathway. So I don't know how they can argue there was no accessible route if they made the accessible route.

And then as for the training, Your Honor, as was pointed out already, in the deposition testimony, the Plaintiff herself testified that she did receive the training. That she didn't even know why she was giving it to her because she already knew how to use this particular scooter.

And so when she was given the scooter, she expressly said, "I know how to use these. Can I go now?" And then she left.

And so there is no other obligation needed for training in this particular situation on behalf of Luxor because that was not our scooter.

THE COURT: Okay. Counsel for the scooter, you want to add to this?

MS. CHRISTOPHER: No, thank you.

THE COURT: Other than your opposition?

MS. CHRISTOPHER: No.

THE COURT: Counsel, anything else?

MR. PFAU: Yeah, Your Honor.

It's an interesting argument that they're making that Ms. Harrison created a pathway out that was therefore accessible, as if it was her duty to do so.

The contention is it was Luxor's duty, in the 30 to 40 minutes that they were there, to make sure there was a safe pathway. So they really didn't have to touch any [inaudible]. That is what ADA requires.

THE COURT: So your client and your client's family had no liability here whatsoever that they modified what would have been an open access area?

MR. PFAU: Well, I think that's an issue of material fact that needs to be determined by a jury. Because what they did modify was creating a path -- hopefully, a clear enough pathway for Vivia to get out of. Clearly wasn't. And that's our contention.

That because the restaurant was such disarray for 30 to 40 minutes that -- that they had to move furniture for her to even get out of there appropriately and safely because it was not in compliance with ADA code. And then even despite their efforts to do so, it still wasn't enough space for her to get out and she had to roll over a table base to -- she -- why would anybody intentionally roll over a table base? Nobody would; right? She didn't --

THE COURT: Counsel, I see people jump over curbs every single day --

MR. PFAU: Sure.

THE COURT: -- and I see 'em cut through parking lots every day. Don't --

MR. PFAU: But, again, it's an issue of material fact that needs to be determined by a jury as whether -- why she did that in the first place. Was it a safe condition? Based on eyewitness testimony, was it safe there? Was it in compliance with ADA?

Contention is, no, we have evidence and eyewitness testimony that was not the case.

THE COURT: Okay.

MR. YOUNG: Since this is my motion, can I respond?

THE COURT: I'm going to.

MR. YOUNG: Appreciate it.

So I want to make sure that it's understood that we don't agree that the deli was a mess.

THE COURT: I understand that.

MR. YOUNG: That there were tables and chairs -- okay. I'm assuming that to be completely accurate and true. So that's the argument that the Plaintiff created the pathway. I believe that there was already a pathway.

And we did submit evidence. And I hope Your Honor --

THE COURT: I saw the photographs.

MR. YOUNG: -- was given a better photograph than this because this is black and white and I can barely make it out. But if you look at this photograph of the surveillance video. This is before any of the other table -- because what they did is after the incident and paramedics got here. They move everything out so they can have enough room to do whatever they need for the Plaintiff --

THE COURT: Understood.

MR. YOUNG: -- take care of her.

But before all of those tables and chairs got moved by the first-aid medicals. You can see in this photograph the other tables and chairs in the background of this deli. And it completely disputes and defies the testimony that this deli was in a shambles and that there were tables and chairs all over the place and there was access either to or from.

This area right here -- and I'm pointing to Exhibit K --

THE COURT: Okay.

MR. YOUNG: -- of the original motion. This specifically shows the exit that the Plaintiff was trying to go out of. And that is more than a ten-foot wide access, entry access area. And there is nothing, as you can see, nothing in the path.

The scooter is well past this tall table that the

Plaintiff's counsel alleges that the Plaintiff hit. No one actually saw that. And there are no other tables or chairs in her pathway.

So there's simply nothing to confirm what these facts are being alleged as. And the reason I say that, Your Honor, is because Diane Lucas and Stan Sawamoto did see the incident. They were the other two with the Plaintiff. The Plaintiff's memory is just simply not with us. You know, she cannot recall. She couldn't remember very many specifics at all.

THE COURT: Counsel, that goes to weight. That's all weight.

MR. YOUNG: I understand.

THE COURT: You're making weight arguments.

MR. YOUNG: But what I'm trying to do is if you can go to the physical, objective evidence of the video in the photographs of what exactly is being alleged, it doesn't comport with the story that there was no access, there was no ADA access to and from this area.

THE COURT: Counsel, here it comes down to, when an eyewitness says something, that doesn't mean it's fact. That's for those people to determine. If we have a witness who's saying, "This is what it was." And we have a surveillance tape that says it's different. You don't get to win just because you have the surveillance tape. It's still

their perception as to what this person saw.

This person may have zero credibility with them. But trust me, we just had a case with two surveillance officers in the jury. And photos to them were immaterial. It was the witness testimony they wanted to hear. And these people make a living being eyes in the sky.

So here's my -- my question is, I understand that looking at it, in your opinion, it's not a disarray. Their opinion, it's a disarray. If -- let me ask you this: If you own a deli and you're gonna have thousands of customers on a daily basis. So you're gonna try to make it, as best you can, just put as many seats as you can. Because the more people in the seats the more money you make.

And you see a patron that comes in a wheelchair or a disabled patron with a scooter or with some type of mechanical device that's assisting them with walking. Does the deli then have to go on to and look at and go, "Okay. When that individual wants to get up or leave or get into the area, do I have to make special accommodations for them?" Because that's what the ADA's all about, making accommodations for these individuals -- okay -- that have these disabilities or need this assistance.

So when your waitress goes up there or the busboy says, "Oh, we've got a wheelchair" or "we've got a scooter on table

21." Does that bring any kind of duty to you, then, to say, "Okay. When that person needs to leave, we need to make sure there's nothing in their way."?

Because, clearly, their access to certain things is a lot more limited than someone like yourself and mine. So do they have a different duty to that person -- I don't mean a heightened duty -- a different duty to that type of person?

MR. YOUNG: I'm not aware of any.

THE COURT: Okay.

MR. YOUNG: I have not heard that. And --

THE COURT: Does the ADA really fit you and me? I mean, I'm old and I have a lot of disabilities, but does it really fit you or me?

MR. YOUNG: I don't think it fits the Plaintiff either, in this case. Because she was not considered disabled. The reason why she rented this scooter is so she could walk faster or travel faster --

THE COURT: Keep up.

MR. YOUNG: Exactly. With the rest of the family. It wasn't as if she was disabled.

THE COURT: Well, unfortunately, age itself is a disability, Counselor.

MR. YOUNG: Yeah, I'm feeling it, as the days go on.

But, Your Honor -- but this particular situation -- I see

where you're going at with if we have a waitress and we seat somebody and they need a special accommodation and we arrange for that, I can see that. But this is not a sit-down restaurant. This is a "you walk into a line, you order your food" --

THE COURT: Yeah, it's a get and go.

MR. YOUNG: -- "and then you leave." There's tables there, if you'd like to sit down. But this is not something that -- like a "sit down, waitress takes your order and brings your food," that type of a restaurant.

THE COURT: I understand the deli.

MR. YOUNG: So there's not that -- I don't believe that duty would apply in this situation from the mere fact -- it's undisputed that the Plaintiff was able to get to the table and able to leave. It was just simply that she ran into a table that her own party moved.

THE COURT: I understand.

Counsel, I can tell you this: I'm gonna deny it this time. Major uphill battle. Major uphill battle in this case; okay? Gonna deny it at this time without prejudice.

Plaintiff, you prepare both orders. Pass them by.

MR. PFAU: Yes, Your Honor.

THE COURT: Okay. Anything else?

MR. MOSS: I believe we're on a status check as

well, didn't we?

MS. CHRISTOPHER: Yeah, you're right. It's at 10:30.

THE COURT: Yeah, well let me see if I've got more 9:00 o'clocks out there before I --

MR. MOSS: No problem.

THE COURT: -- worry about my 10:30. And then of course, you might have heard, I have an 11:00 o'clock trial right behind you, so --

MR. MOSS: We'll make [inaudible].

THE COURT: All right. Anyone else that both sides are here for my 9:00 o'clock calendar, which is now my 10:00 o'clock calendar?

[Hearing concluding at 10:09 a.m.]

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

ALLISON SWANSON, CSR NO. 13377
CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA

A-16-732342-C Vivia Harrison, Plaintiff(s)
vs.
MGM Resorts International, Defendant(s)

February 27, 2019 **09:00 AM** **Defendant Ramparts Inc dba Luxor Hotel and Casino's Motion for Attorney's Fees and Costs**

HEARD BY: Jones, David M **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Maldonado, Nancy

RECORDER: Murphy-Delgado, Melissa

REPORTER:

PARTIES PRESENT:

Boyd B. Moss, ESQ	**Attorney for Plaintiff**
Loren Young	**Attorney for Defendant**
Matthew Pfau	**Attorney for Plaintiff**

JOURNAL ENTRIES

Arguments by Mr. Young. Mr. Pfau argued the fees are not reasonable. COURT ORDERED under the factors under the Nevada Supreme Court, Expert Fees in the amount of $5,000.00 and $7,500.00, reduce the one requested from $16,000.00 to $7,000.00, the ones requested at $7,000.00 reduced to $5,000.00 each, Costs in the amount of $22,097.28 for the other costs that were not imposed and re-taxed, GRANTED. Arguments by counsel regarding fees. COURT FURTHER ORDERED, fees incurred in December, allowed, in the amount of $69,688.00. Counsel for the Defendant to prepare the order.

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

VIVIA HARRISON,	)	
	)	
Plaintiff,	)	CASE NO. A-16-732342-C
	)	
vs.	)	
	)	DEPT. NO. XXIX
MGM RESORTS INTERNATIONAL,	)	
	)	
Defendants.	)	
	)	
	)	
	)	
	)	

BEFORE THE HONORABLE DAVID M. JONES, DISTRICT COURT JUDGE

WEDNESDAY, FEBRUARY 27, 2019

RECORDER'S TRANSCRIPT OF HEARING

DEFENDANT RAMPARTS INC. DBA LUXOR HOTEL AND CASINO'S MOTION FOR ATTORNEY'S FEES AND COSTS

APPEARANCES:

For the Plaintiff: MATTHEW PFAU, ESQ.
BOYD B. MOSS, ESQ.

For the Defendants: LOREN YOUNG, ESQ.

COURT RECORDER: MELISSA MURPHY-DELGADO, DISTRICT COURT

TRANSCRIBED BY: ZACH KIMBLE, KENNEDY COURT REPORTERS

LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 27, 2019

[CASE CALLED AT 9:27 A.M.]

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THE COURT: Page 13. A16-732342, Harrison versus MGM Resorts.

MR. PFAU: Good morning, Your Honor. Matthew --

THE COURT: Good morning, Counsel.

MR. PFAU: -- Pfau for Plaintiff.

MR. MOSS: Good morning, Your Honor. Boyd Moss on behalf of Ms. Harrison.

MR. YOUNG: Good morning, Your Honor. Loren Young for Defendant Luxor.

THE COURT: Okay. Defendant's motion for fees and costs.

MR. YOUNG: Thank you, Your Honor. I'll give you a brief. I kind of have a slight cough. So I just want to start with the cost issue. The -- I think I set out in reply our mo- -- our memorandum was timely filed on the 17th. There was no motion to reattached those costs. And so we believe that those -- any objections to those costs would be weighed. However, in abundance of caution, under the Gitter case I'd like to make sure the Court provides a reasonable basis in regard to the expert fees, in order to make sure there's no appeal issues there, and that those issues are discussed.

In the Gitter case, it specifically states, for example, if the plaintiff's opposition attempts to address this untimely, that it's necessary for an expert to testify in order to have their fees granted. However, the Gitter case actually specifically clarified that issue. And just for your Court reference, the citation for the Gitter case is -- well, it was actually -- it's called Public Employees --

THE COURT: PERS --

MR. YOUNG: -- Retirement System versus Gitter.

THE COURT: We call it PERS.

MR. YOUNG: You call it what?

THE COURT: PERS.

MR. YOUNG: Oh, okay. I guess that makes it a little bit better. Gitter's more remember -- more easier for me to remember. But on page -- it looks like it's 16 of that opinion -- I'm looking at the advanced print-out -- it specifically says that they're taking the opportunity to clarify that law. And it says, under 18.005, subsection five, "An expert witness who does not testify and they recover costs equal to, or under, 1,500, and consistent with Khoury" -- the Khoury case -- "when a district court awards expert fees in excess of 1,500 per expert, it must state the basis for its decision."

So essentially, the Gitter case clarified that, if it's a

consultant and they don't testify at trial, you can get up to 1,500. But even if they're an expert and they're disclosed and they have a report but don't testify, you can still get above the 1,500 if it's reasonable and you state the basis therefore. Just same for the other experts. And the reason why I state that, or I've started with that, is because the Plaintiffs complain that Aubrey Corwin, our vocational diagnostic expert, did not testify at trial.

But if you recall, Your Honor, they spent about, you know, a little bit more than a half a day with their life care expert, and then when Ms. Corwin was in the hallway about to come in to testify, there was a stipulation put on the record that the Plaintiffs were not going to pursue any of the damages put on by their life care planner. Thus, based on that stipulation put on the record, we did not feel it necessary to bring in a life care planner and waste another half-day of the Court's time.

So that's why she was not -- she did not testify at trial. But she was a designated expert. She did review all the records. She did provide a very detailed expert report. And then as for the other elements --

THE COURT: Counsel, the question there is --

MR. YOUNG: Sure.

THE COURT: -- did she charge you full price for her

appearance even though she didn't testify?

MR. YOUNG: She -- well, she did. I mean --

THE COURT: Okay.

MR. YOUNG: -- if you look on the memorandum of costs --

THE COURT: I did. I just wanted to make sure that that's how she did it, or she was an automatic once-I-appear. Some experts it's "once I leave my threshold, my door of my office and/or my house, I charge you whether we go forward or not." Other ones do travel time, and then change it depending on whether or not they've actually testified.

MR. YOUNG: Well, she did give a little bit of break. I think if you look at her bill, I mean, she -- I mean, before the December bill, which was the $4,000 bill, and that was because she had to travel from Colorado to here, the -- you know, the other bills were only $3,000 for reviewing all the records and coming to her conclusions. And so that cost was incurred, and, you know, we had asked prior to having her come here whether they were going to pursue those issues, and it wasn't done until at the moment that she was in the hallway.

And then as for the other experts, you know, if you recall, Your Honor, I believe all three experts it's undisputed that they're all qualified. You know, Shelly --

Michelle Robbins was the architect expert. They -- there was a motion in limine on her. The Court found that she was more than qualified to talk about those issues, as well as Dr. Siegel was the neurologist who came in and testified. And his bill was approximately $7,000. And if you recall, Your Honor, the Plaintiff's exhibits alone were ten binders and over 4,000 pages, so there was a lot of records that Dr. Siegel had to, you know, review, understand, and provide a very good not only summary, but a very articulate testimony from the stand as well.

So under the Frazier versus Drake case, Your Honor, which is a court appeals case, September 3rd, 2015, they give various factors to determine whether the court has exercised sound discretion to award fees greater than 1,500 per expert. And these particular factors include the importance of the expert's testimony, whether it aided the trier of fact, whether it was repetitive of other expert witnesses, the extent and nature of the work or form by that expert, whether the expert had conducted independent investigations or testing, the amount of time the expert spent preparing a report, preparing for trial, the expert's area of expertise, education and training, the fee charged, comparable expert fees, and whether the expert was retained outside the area would've been comparable to -- well, no, that's combined --

and if the expert was retained outside the area where the trial is held.

And so if we start with Michelle Robbins, who is here locally Las Vegas, she is a qualified architectural expert. She did all the investigation regarding these claims on liability, whether there was an unreasonable dangerous condition, the ADA requirements, the building codes. She did an investigation into the history of what was applicable or not at the time the Luxor was built. She gave testimony. She gave multiple reports. And she was the one that had to continually evaluate these new allegations being made by Plaintiffs as they continually changed their theory on what was going to be their allegations of what was wrong with the Luxor deli.

And so that's why her -- and she actually had to attend all the multiple inspections that were requested by multiple experts at various times. And so that's why her fees and costs are a little bit higher than the other ones, but then she had majority of the work to do. And I think we can go over those factors as we talked about. She did her reports. She prepared for trial. You know, she is qualified as is found by this Court in the motions in limine. And she did multiple investigations, and an investigation into the codes and requirements of the ADA.

If you go to Dr. Siegel, a qualified neurologist, he provided an excellent summary of this significant volume of medical records and issues related to the neurologic condition, the mini-strokes, and such. Summarized the more than 4,000 pages in reports. It wasn't repetitive of any other experts. More than qualified and trained to do so.

And as well, as we already talked about with Ms. Corwin, she's more than qualified. She's got an extensive background in vocation rehabilitation, and she responded to all those issues initially proposed by the Plaintiff's expert, who was then withdrawn. So we would support, or we would move, that all of those fees and expert costs be granted, not only as because it was not moved to re-tax, but it's also reasonable under the Frazier case.

THE COURT: Thank you, Counsel.

MR. YOUNG: Any questions on the costs?

THE COURT: Let's deal with this one, and then we'll deal with fees after I hear from them.

MR. YOUNG: Okay.

THE COURT: Let's go ahead and do the costs.

MR. PFAU: Thank you, Your Honor. So addressing each one of these, our argument is that these fees were not reasonable, and they are based on the factors that were represented by Defense counsel. First of all, just addressing

one by one, Ms. Corwin. Ms. Corwin's testimony, or her report, was completely repetitive of our own expert's report, with the exception of two minor expenses. She had determined that there were distinguishing -- she thought that the value of two different expenses were different. And the testimony that she may have offered would have only been that difference, because that was the only difference in her report.

Everything that she did and everything that she analyzed essentially supported our expert, with the exception of those two things, so therefore her testimony was very much unnecessary with the exception. Because we ended up waiving those expenses and they had nothing else to -- they had nothing else to testify to because of that, because her -- their testimony would've been, yes, she does need ongoing care, and yes, she does need these different things, with the exception of the value of the expenses.

Secondly, Ms. Robbins. Ms. Robbins's testimony was in direct contradiction to the jury instructions that were presented to the jury. Her testimony was not -- it was based on her understanding of building codes, but it was not in correlation with the law itself; and therefore, it was not helpful to the triers of fact, it was not helpful to the jury. The jury, in fact, in deliberations actually stated such.

They didn't like her demeanor; they didn't like what she was presenting.

Mr. Siegel. The factor that Defense counsel did not mention in his analysis was the one that is the biggest issue with Mr. Siegel, is he is not from this state. There's additional expense to flying him here, to get him here, and to have him be part of this process; therefore, his expenses are unreasonable for that reason.

Therefore, we ask the Court to award the amount of 1,500 for each one of these experts.

THE COURT: Okay. Counsel, rebuttal on that?

MR. YOUNG: Briefly, Your Honor. $7,000 for a neurologist from out of state is unreasonable? I couldn't get an expert locally to do that, or to review 4,000 pages of medical records and medical bills and then come to trial and testify about that as well. I'm sorry, but that is clearly well below what a lot of neurologists would charge here locally. I would love to see what Plaintiff's expert charged them to come to trial and testify at -- but with that said, Your Honor, Dr. Siegel, although was out of state, there's nothing that shows that his fees were out of the ordinary of what would normally be charged of a neurologist here in the Las Vegas community.

And I like the argument that Ms. Robbins, the jury didn't

like her demeanor. Well, that's not in the factors that set out in the Frazier case, whether the jury liked her demeanor or not. Although it was helpful, there was no other expert that talked about the specific codes and requirements here in Clark County. Their expert simply did not know, did not understand it, and didn't investigate it. And that was a different issue. And their expert also talked about the ADA issues, which our expert had to address and rebut.

Now, whether it was successful or not, I don't know if Plaintiff has a leg to stand on whether it was successful or not since there was a Defense verdict here. And then as for Corwin, the Frazier case says whether it's repetitive of other experts on the -- well, it doesn't say on the same side, but that's what it means. It means I don't want to be bringing two of the same experts and saying the same thing. She's a rebuttal expert to their expert, so of course she's going to address the same issues. She's going to respond to those issues. And his interpretation of what Corwin's testimony was and her opinions about the costs is drastically contrary to what she put in her report and what she was going to testify at trial.

The reason why she was here is because she was going to testify and rebut those opinions provided by the Plaintiff's expert. Otherwise, if she was going to come here and testify

to the same thing, why would we have her here? Why would we pay those expenses during trial? That just doesn't -- that's -- just doesn't even make sense, Your Honor. And so we would say that the -- and in addition, Your Honor, nobody addressed the issue that they waived their objections for failing to file a motion to re-tax the costs.

THE COURT: Okay. Based upon this, this is what I'm going to do. Under the factors basically that's set forth by the Nevada Supreme Court in regards to going over the statutory limitation for experts, I think we all agree that the expert fee number that we now have is probably a little bit undervalued for what it goes on in today's life. Anybody who's ever practiced in personal injury knows that -- I don't even think you can get a chiropractor for $1,500 to do the work that is being requested of individuals at trial.

I'm going to allow expert fees in the amount of 5,000 and then $7,500. I'm going to reduce down the one that was requested for 16,000 to $7,500. The other requests that were $7,000 I went down and reduced them to $5,000 apiece. Costs in the amount of $22,097.28 for the other costs that were not opposed and re-taxed will be granted. Let's deal with fees. Talking about your offer of judgment, Counsel. Because you know what my concern is. Is it a valid offer of judgment, the $1,000?

MR. YOUNG: Thank you, Your Honor. Well, let's start off with -- so an offer of judgment. We served an offer of judgment for $1,000, and it was back in -- I believe it was March of 2017, almost two years before trial. All right. And this was fairly close to the beginning of the case, but the case had been going for some time. The Plaintiff had already known about the facts. The Plaintiff had all the facts. The Plaintiff's attorneys easily should have or did talk to all of the family members that were there with the Plaintiff, and knew all those facts.

And so the law requires that the offer has to be reasonable and good faith. And so based upon the facts that we do know -- and as I put in the reply, the complaint included a lot of erroneous facts. A lot. And I just want to make sure that those were clear. Because, Your Honor, we pointed that out on several occasions. In the complaint, it specifically alleged that Plaintiff was entering the deli at the time the incident occurred. That was proven to be wrong in the beginning of the case.

If you noted, in my reply brief I attached the letters that I sent back in March 2017, and again I sent another letter in June of 2017. That -- the one in June was after we took some more depositions of the witnesses that clarified these facts. So that was clearly wrong. We all know that.

And at trial it was proven that it wasn't true that this incident occurred while she was entering.

The next fact that they alleged, that Luxor employees moved the dining tables and chairs. Well, we know that that's not true as well. The video showed that wasn't true. The witnesses testified that that was not true. Luxor employees moved furniture to accommodate Plaintiff's scooter. Well, we know that's not true. I mean, that was proven before trial and at trial. Plaintiff operated a scooter over the base of the table, the front wheel gave way. Well, we know that's not true because there were photographs taken after the fact, and the Plaintiffs confirmed that there was nothing wrong. And we saw in the video where they just rode the scooter back off the screen.

The next one, Plaintiff struck the base of the table and Plaintiff fell to the right. Well, we know that's not true. Plaintiff was unaware of a dangerous condition. Well, we know that's not true because there was no dangerous condition there, and the Plaintiff also testified that she was aware that there were tables and chairs. And then she was also aware that their -- her family or friends are the ones that moved the tables and chairs, and that the table was a dangerous condition to unsuspecting guests. Plaintiff testified to the contrary to that.

These are all the allegations that they were claiming supported a premises liability case against the Luxor. We told them, we asked them in telephone calls and in the multiple letters that we sent, where's the basis for your premises liability claim against the Luxor. What was the dangerous condition. What did we do. They never, ever even fixed these allegations. They never gave us any type of a response when we sent these letters, when we did the phone calls. No response. We sent the offer of judgment for $1,000, no response.

I mean, generally, as Your Honor is more than well aware, generally in these cases the plaintiffs will send a letter, and say, "Look, here's why you guys are at fault. Here's how much my damages are, I want this much money to settle." We didn't even get that in response to our offer of judgment. So then, when I followed up with another letter, saying, "Look, we just took these depositions, that confirmed that your allegations are wrong. Dismiss us. And now I've incurred a lot of fees and costs. I'll be willing to even waive that." No response. No demand. Not one settlement demand from the Plaintiffs during discovery in this case. None.

THE COURT: Is that one of the factors I'm to consider, Counsel?

MR. YOUNG: But this is the --

THE COURT: Is that one of the factors I'm to consider?

MR. YOUNG: I think it goes to the good faith nature --

THE COURT: Okay.

MR. YOUNG: -- of this claim. And I think -- so for purposes of the offer of judgment, was it reasonable? I believe it was for the fact that there was no evidence to show liability on Luxor. Whether there was liability on the other defendants is another question. But as to the Luxor there was no evidence of liability. And in addition, Plaintiffs claimed that the $1,000 was too low. Well, the $1,000, if you take into consideration based upon what they presented at trial, they presented not one shred of evidence of medical bills incurred. Not one. They didn't ask for medical bills incurred. They didn't ask for future medical bills.

At trial they only asked for pain and suffering. So if you take that into consideration, and the evidence that shows liability was not going to lie with Luxor, $1,000 based upon zero medical bills is not unreasonable. It is a reasonable offer.

THE COURT: For a fractured bone.

MR. YOUNG: Well, when it's not your fault, Your Honor. I mean, and the evidence shows that. And I tried to

clarify, if there's something else I'm missing, tell me, and they don't give it to me. And then they haven't presented any evidence during discovery to prove their medical bills. You know, Your Honor, I mean, sometimes you look at these facts, and the facts are completely in opposite of what their own witnesses testified to, I believe that's maintained in bad faith.

I think that qualifies under Rule 18 as well as 7.085 that shows that they had the ability to evaluate this case, and they could've said, well, you know what? It doesn't look like these facts are turning out the way we alleged them. And they could've had that chance to resolve the case, but they didn't. And they could've dismissed the case. They could've responded to my letters. They could've done something, but they didn't. And they maintained this action. And if you recall, we filed a motion for summary judgment. Your Honor denied that motion for summary judgment, and specifically told them, look, you got a major uphill battle.

And the main thing that only -- the main question in this case that they finally landed on at the end of discovery and for trial was their hired gun from across the country came out here and testified that it was plausible. That was what their case was based upon against the Luxor. It was plausible. That was it. That's what they were hanging their hat on

against Luxor. That's why the offer was reasonable, the rejection was clearly unreasonable, the amount was based upon what the damages were at that time, and they weren't seeking -- they didn't have the ability to prove that $400,000 in medical bills. And so we believe that was reasonable. We believe that it was maintained contrary to the law, and I believe I set that out in my brief. I don't need to -- I don't think I need to go through that --

THE COURT: You don't need to go through --

MR. YOUNG: -- again.

THE COURT: -- all the factors. I was just asking if that one is one that I'm to consider.

MR. YOUNG: Yeah. And the other thing I just wanted to point out, Your Honor, you know, because there's those two issues of why I believe we're entitled to attorney's fees, is under the offer of judgment -- we meet the offer of judgment -- but then, in addition, it was maintained not grounded in fact, and it was unreasonable. And I look to the statute under NRS 18 as well as 7.085, and it specifically states that if the case was filed, maintained, or defended -- so that means it has to -- it can be maintained, a civil action or proceeding that is not well grounded in fact. It was not well grounded in fact.

The facts show that the Plaintiff's family moved these

tables and chairs, created a larger pathway for this Plaintiff to exit, and this Plaintiff struck a stationary table and fell over and injured herself. It was not the Luxor's fault. The jury agreed and found for the Defense. It was -- the facts, that's -- I mean, there was just no -- it wasn't grounded in any specific fact. It was pointed out to them several times, and we -- I believe we should be entitled to our fees. Thank you, Your Honor.

THE COURT: Counsel.

MR. PFAU: Thank you, Your Honor. So I think what we're arguing is what facts were known at the time this offer of judgment was presented, and it's clear that at the time the offer of judgment was presented discovery was not done yet. There were no 30B(6) depositions done of Luxor. There was no investigation as to what Luxor knew, that they should've done, or did do at the time of the events. There was no floor plans available to us.

The 30B(6) representatives at the time when they were actually deposed gave us the information we needed, which was the basis of our case. And as it was mentioned, and I think you read and you of course sat through the trial, the information presented by Lindsay Stoll [phonetic] that the -- that floor plan was approved by the safety director and didn't show all the tables that were actually present, the fact that

there was -- Lindsay Stoll stated that there was supposed to be somebody on that dining room floor all the time to keep it and maintain it. There was no evidence that there was anybody there.

And finally, from their other representative that -- I can't remember her name -- DiGiacomo -- Kimberly DiGiacomo [phonetic], that said that they didn't have a screening policy at the desk where they actually rent these scooters, the bell desk. Just gave a scooter to anybody, and that was their policy and that's what they did for everybody. And both of those issues remain issues in this case. And without having the full scope of knowledge, it's true, we didn't have all the facts, we didn't know all the information. We knew what we were being told. And until discovery's done, we don't know everything, and that's -- that is the main issue here, is because discovery wasn't complete, and they didn't renew an offer of judgment after they knew all the facts.

There was no discussion need to be had. They were at the same depositions we were. They heard all the same facts we heard, and we'll always have a -- you know, plaintiffs and defense will never agree that Lindsay Stoll's testimony was bad for the Luxor. They just won't agree to that. But they knew the information at that point, and if they still felt it was worth $1,000, or $1,001, they could've renewed that offer

of judgment knowing everything that was out there, and they chose not to do that. And we --

THE COURT: When were the 30B(6) depositions completed? I know we had some issues with those.

MR. PFAU: The offer of judgment was presented on March 23rd --

THE COURT: I know it's March for the offer --

MR. PFAU: 20- -- yeah. And December 20th is when the 30B(6)s were done.

THE COURT: That's what I thought --

MR. PFAU: But that's --

THE COURT: -- it was almost the end of the year.

MR. PFAU: Yes. So we don't have -- we didn't have evidence of -- you know, we didn't have the facts. That is what evi- -- that's what discovery is, is presenting the facts, getting the facts on the table, knowing what is actually out there. And without those facts, there's no way to accept an offer of judgment of $1,000, especially when you have a severely injured client. And that is not in good faith. A good faith represent -- offer is one that is -- could be accepted knowing all the facts. There were no facts. It couldn't be accepted because we didn't know all the facts, and if they really wanted to give an offer of judgment that would be valid before the Court today, they could've presented

a new one after discovery was completed.

THE COURT: After the 30B(6), after discovery was completed, did you attempt to resolve the matter by sending them an offer of judgment, or asking or making a demand?

MR. PFAU: Your Honor, in all communications they continued to state that they were -- they didn't have any liability. They felt like they had zero liability, and therefore they weren't -- there was conversations that were had about liability and about whether or not they wanted to pay everything that was stated in conversations between Defense and Plaintiffs. There is nothing in writing related to any offers we made --

THE COURT: So no demands were made --

MR. PFAU: -- because --

THE COURT: -- after the discovery was completed.

MR. PFAU: Not from us, Your Honor.

THE COURT: Okay. Counsel?

MR. YOUNG: As just admitted, no demands were ever made to the Luxor, whether during discovery or after discovery. Not one. And I pose the question, after discovery, why would Luxor renew its offer of judgment that it previously did, when the case law specifically says a newer or more recent offer of judgment basically extinguishes your first one, and then I lose all that time of fees and costs?

That's just nonsense.

THE COURT: That's what the old rule says. The new rule is going to change that, Counsel.

MR. YOUNG: Thanks goodness. Thank goodness. So, Your Honor, that just doesn't make sense. There's no reason why I would renew my offer of judgment if my position was the same. There would be no reason why I would bet against myself if Plaintiff never gives me any type of demand, never gives me any evaluation or response as to why my client was at fault. Not one.

THE COURT: Okay. Let's deal with the delay on the 30B(6)s. If I recall, the [indiscernible] fell on Luxor because they didn't have someone or they couldn't produce someone or there's all those issues going back and forth as to the delay in getting the 30B(6)s done.

MR. YOUNG: Well, actually, that's -- I think you're mis- --

THE COURT: Like, I remember, because I've got multiple cases with this same issue; so --

MR. YOUNG: I think you're misremembering that. Because on this particular one, at trial our 30B(6) was no longer available. She had moved already.

THE COURT: That's the one. Okay.

MR. YOUNG: But it --

THE COURT: I knew there was some facts about 30B(6) being no longer --

MR. YOUNG: Exactly.

THE COURT: -- available.

MR. YOUNG: But these depositions, the 30B(6) depositions were not requested by the Plaintiffs until these depositions were taken. There was some dispute as to the topics, which we worked out within a couple weeks or so, and then we had arranged for three independent witnesses to talk about the topics and areas that they wanted to hear. But it wasn't requested by the Plaintiffs until the -- until that date, until that time period in December.

And so any delay was not on the Luxor. And the fact that Plaintiffs allege they did not have the facts to evaluate an offer of judgment just blows my mind, because they say that the things they discover was the floor plan. Well, okay, they had already done an inspection. They had the photographs. They had already seen what it looked like. They had the video of the incident. How did the floor plan change that?

THE COURT: Well, Counsel, what if you didn't -- if you had a floor plan that you approved through your safety director, and it was completely opposite of that, wouldn't that have been evidence?

MR. YOUNG: But it --

THE COURT: That you didn't even follow your own safety plan?

MR. YOUNG: But it -- but that's a hypothetical. But it didn't happen. And if it did, that wasn't the cause of action. Their cause of action was that there was some type of dangerous condition, and the only thing they could finally develop was they went and hired somebody to say something was plausible under the ADA. That was all they had.

THE COURT: So if your floor plan through your safety director called for 12 tables and 26 chairs, and you guys snuck in two or three more, would that be in clear -- through the safety director -- would that be evidence?

MR. YOUNG: Would it be evidence?

THE COURT: Would that go -- yeah. Could that be evidence --

MR. YOUNG: It could be.

THE COURT: -- that the trier of fact would've look at, and said, okay, well, this company set up through its own safety director what they considered a valid safety plan for ingress and egress going through this area, noting we would have handicapped individuals. I mean, it's why your safety directors go through it. And then after he approved it, someone at the deli or the Luxor said, look, we've got a ton of people wanting service at the deli, want to go in there, we

need to throw a couple more tables in there.

Okay. So if that had occurred -- because they didn't have the floor plan. They didn't know what the original design was -- and those facts had occurred, that would be valid evidence at least the trier of fact could look at, and say, look, the company didn't even follow their own plan.

MR. YOUNG: Exactly.

THE COURT: Okay.

MR. YOUNG: Had that occurred --

THE COURT: So it wasn't until that 30B -- isn't until that, quote, "floor plan" gets disseminated that we can say that they didn't do it? You're saying, we'll take a look at the video, they could look at the pictures, but if the safety plan was totally different than what was represented in the pictures, isn't that evidence that they could've presented to the trier of fact, and said, look, they don't even follow their own safety plans?

MR. YOUNG: Sure. In theory. But it didn't happen here.

THE COURT: Right.

MR. YOUNG: And --

THE COURT: But didn't they need to discover that?

MR. YOUNG: Well, sure. And then so why didn't they notice the depositions? Why didn't they then call me, and

say, "You know what? I want to consider your offer, but I need that deposition first. Let's take a look at that." Nothing. Radio silence until December. And in addition, Your Honor, and the reason why during trial that I was trying to get a live -- excuse me -- a live witness here in place of Lindsay Stoll, is because they were taking her testimony out of context in that deposition.

But when they finally pieced it together, it still didn't make sense, and I didn't want to fight it. But they were taking her testimony out of context, that that particular pink plan, if you remember, that pink background, that was the final plan, and those were exactly where all the tables were. That was completely out of context, and it was not the questions that were being posed to her, and it was not the answers that she was providing. So that's the reason why I was trying to get a live person here, to clarify that issue. But it just didn't make sense the way they were playing it anyway, so it didn't -- I didn't want to muddle up the waters.

But given the fact is, if they were going to try to prove that claim, why didn't they bring that forward? Why didn't they put that in their interrogatory responses? Why didn't they just respond to me and look right, and say, "This is what I want to do. I need this information before I can consider you offer"? I send those letters all the time. "I can't

consider your offer of judgment until I get this information." Not -- nothing. Nothing was done.

And how -- a person to monitor the deli? A person to monitor the deli and a screening policy to rent the scooter. Well, screening policy to rent the scooter, that was Desert Medical's issue. That was Desert Medical, and that deals with a whole other thing. As for the deli itself, even the 30B(6) witnesses didn't develop any type of evidence to support their theory that there was a dangerous condition. And so if we come all back to what we're really here about, we're here about whether this re- -- this offer was reasonable in time as well as in amount.

At the time that I made the offer, I included a letter as well after I had phone calls with the Plaintiff's attorney explaining our position, explaining why we believe that their allegations are wrong. We even told them, talk to Mr. Sawamoto's counsel who told us this stuff. Because we hadn't taken Plaintiff's deposition yet at that time. And I agree, we hadn't taken Plaintiff's deposition, but they should've talked to their own client. Their own client --

THE COURT: That's what my problem is, Counsel, is you sit here and talk about developing of evidence, you don't even know what the Plaintiff was going to say and you shoot over a $1,000 OJ. So if your own logic is, we did it based

upon the facts, the primary fact finder or the primary fact witness on the Plaintiff's side would've been the Plaintiff.

MR. YOUNG: Exactly.

THE COURT: So you didn't have those facts. You didn't even know what she was going to say when you made an offer judgment of $1,000.

MR. YOUNG: Well, I didn't have her deposition testimony, but I did have her responses to interrogatories. I had the other statements in her medical records. I also had --

THE COURT: So you didn't need to take her deposition?

MR. YOUNG: Well, no. I didn't say that. I didn't -- actually, I didn't notice it, but I went there. But --

THE COURT: And you asked questions.

MR. YOUNG: Yeah.

THE COURT: I saw it.

MR. YOUNG: Yeah. And I mean, but --

THE COURT: So it was important to get her information.

MR. YOUNG: Well --

THE COURT: You had something you wanted. You had little holes you wanted to fill in.

MR. YOUNG: Exactly. And if you remember, Your

Honor -- excuse me -- I'm choking here. The Plaintiff has a hard time remembering this stuff. That was -- with remembering --

THE COURT: Okay.

MR. YOUNG: -- was testified to or represented at trial. And so at the time of her deposition that was also an issue. So that's how come in my letter I specifically said, "This is what Mr. Sawamoto's counsel is representing to us that he is going to testify to. Ask him. Confirm that. Let's find these facts out." And then we went and took the depositions because they wouldn't confirm that stuff, or didn't want to acknowledge that stuff. And then we had to incur more fees and costs going to Alabama, and then we had to go to Florida as well to take these depositions.

Then after -- even after we had those sworn testimony, still nothing. That's how come I believe it was maintained and unreasonable, Your Honor.

THE COURT: Okay. This is what I'm going to do, Counsel. In regards to the offer of judgments, when I get numbers like this -- and I understand, because it's always this turmoil. You know, you say you have $420,000 in medical bills, so $1,000 isn't reasonable. But 420,000 in medical bills, $200,000 might not be reasonable, $300,000 might not be reasonable. All the years of my practice, both on the

plaintiff and defense side, we looked at these $1,000 offers of judgment from the plaintiff's side as just ludicrous. There's no way we could settle it. We got more than that in just our initial costs.

But once all the facts were generated and all the parties knew exactly what the positions were going to be, that's when I consider what should've been done. As a result therein, I'm going to allow the fees that were incurred in December. My total is $69,688. Counsel for the Defendant, go ahead and prepare the order. You got that number?

MR. YOUNG: 69,688?

THE COURT: Yes, sir.

MR. YOUNG: And, Your Honor, I actually didn't get the numbers on the --

THE COURT: Okay.

MR. YOUNG: -- costs.

THE COURT: The costs were $22,097.28, excluding the experts. The total for experts, I broke it down five, five, and 7.5, for a total of 17,500.

MR. YOUNG: Okay.

THE COURT: Total costs, then, would be $39,597.28. Go ahead and prepare the order, Counsel.

MR. YOUNG: Thank you, Your Honor.

THE COURT: Thank you.

MR. PFAU: Thank you, Your Honor.

MR. MOSS: Thank you.

[HEARING CONCLUDED AT 10:04 A.M.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.

Zach Von Kimble
Transcriber

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DISTRICT COURT

CLARK COUNTY, NEVADA

VIVIA HARRISON, an individual,

Plaintiff,

v.

RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, a Nevada Domestic Corporation; DESERT MEDICAL EQUIPMENT, a Nevada Domestic Corporation; DOES I through XXX, inclusive, and ROE BUSINESS ENTITIES I through XXX, inclusive,

Defendants.

CASE NO.: A-16-732342-C
DEPT. NO.: XXIX

ORDER GRANTING DEFENDANT RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO'S MOTION FOR ATTORNEY'S FEES AND COSTS

Defendant RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO's Motion for Attorney's Fees and Costs and Memorandum of Costs and Disbursements coming on for hearing on February 27, 2019; the Honorable David M. Jones presiding with appearances by Loren S. Young, Esq. appearing on behalf of Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO; Boyd B. Moss, Esq.

of Moss Berg Injury Lawyers and Matthew Pfau, Esq. of Parry & Pfau appearing on behalf of Plaintiff, VIVIA HARRISON; the Court, having reviewed the papers and pleadings on file herein, having heard the arguments of counsel, and good cause appearing therefore, the Court hereby finds and enters the following:

FINDINGS OF FACT

Trial in this matter started on December 10, 2018 and concluded on December 20, 2018 with the Jury returning a Defense Verdict against Plaintiff and in Luxor's favor. Thus, Luxor is the prevailing party pursuant to NRS §18.000 et seq.

Judgment was entered on the Jury Verdict on January 16, 2019. As the prevailing party, Luxor moved for recovery of costs pursuant to NRS §18.020 and NRS §18.005 by filing a memorandum of costs and disbursements on January 17, 2019. Plaintiff did not file a motion to re-tax the costs.

Luxor also filed a motion for recovery of attorney's fees and costs on January 17, 2019 pursuant to NRS §18.010, NRS §18.020, NRS §18.005, NRS 7.085, and NRCP 68. Plaintiff filed an Opposition to the Motion for attorney's fees and costs on February 4, 2019 opposing the award of fees and only disputing costs of the experts. Luxor filed a Reply brief on February 20, 2019.

CONCLUSIONS OF LAW

As the prevailing party, Luxor is entitled to award of costs pursuant to NRS §18.005 and NRS §18.020. Pursuant to NRS §18.110, a memorandum of costs must be filed within 5 days after the entry of order or judgment. NRS §18.110(4) provides, "Within 3 days after service of a copy of the memorandum, the adverse party may move the court, upon 2 days' notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing party claiming costs. Upon the hearing of the motion the court or judge shall settle the costs." *See* Nev. Rev. Stat. Ann. § 18.110(4).

Under NRS 18.005(5), an expert witness who does not testify may recover costs equal to or under $1,500, and consistent with *Khoury*, "[w]hen a district court awards expert fees in excess of $1,500 per expert, it must state the basis for its decision." *Public Employees' Ret. Sys. v. Gitter*, 393 P.3d 673, 681, 133 Nev. Adv. Rep. 18 (April 27, 2017).

Any award of expert witness fees in excess of $1,500 per expert under NRS 18.005(5) must be supported by an express, careful, and preferably written explanation of the court's analysis of factors

pertinent to determining the reasonableness of the requested fees and whether "the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee." *Frazier v. Drake*, 357 P.3d 365, 377-378, 131 Nev. Adv. Rep. 64 (Nev. 2015).

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

From review of the Memorandum, Motion, and related briefs, the Court finds the uncontested costs incurred by Luxor were reasonable and necessary pursuant to NRS §18.005 and NRS §18.020. Costs must be allowed of course to the prevailing party against an adverse party again whom judgment is rendered when money damages of $2,500 or greater is sought. Here, Plaintiff sought recovery of damages in excess of $2,500. Thus, the Court finds that Luxor is entitled to an award of reasonable and necessary costs incurred that were uncontested totaling **$22,097.28**.

From review of the Memorandum, Motion, and related briefs, and the factors identified in *Frazier v. Drake*, the Court finds the contested costs incurred by Luxor for the three experts were reasonable and necessary pursuant to NRS §18.005 and NRS §18.020, however, the Court hereby exercises its' discretion and reduces the recoverable expert costs to the following amounts to be awarded to Luxor as follows: Dr. Clifford Segil = $5,000.00; Michelle Robbins = $7,500.00; Aubrey Corwin = $5,000.00. Thus, the Court finds that Luxor is entitled to an award of reasonable and necessary expert costs incurred that were contested totaling **$17,500.00,** for a total award of costs to Luxor equaling **$39,597.28**.

The Nevada Supreme Court outlined a four factor test for awarding discretionary attorneys' fees under NRCP 68 in *Beattie v. Thomas*, 99 Nev. 579, 588 (1983). The four *Beattie* factors include: (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendant's offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount. As the prevailing party, Luxor seeks recovery of attorney's fees incurred pursuant to NRCP 68, NRS §18.010(2)(b), and NRS 7.085. Nevada's statute provides that a prevailing party may also be awarded attorney's fees if a claim is brought or maintained without reasonable ground. Id.

To apply the *Beattie* factors to the case at bar, the Court finds: (1) Plaintiff's complaint included many statements of fact and allegations contrary to their own witnesses testimony; (2) Luxor's offer of judgment was made after some discovery was conducted and renewed after additional discovery was performed, and prior to trial; however, deposition of Luxor's witnesses were not conducted until much later in discovery; (3) Plaintiff was aware of the substantial defects in the case and still rejected Luxor's offer of judgment; and (4) Luxor's requested attorneys' fees, in the amount of $202,398.00, reflect the actual and reasonable attorneys' fees incurred by Luxor from the date of service on the offer of judgment to the date of entry of the final judgment. Thus, under the *Beattie* factors, this Court finds an award of a portion of the post-offer attorneys' fees is appropriate.

On March 23, 2017, Luxor served an offer of judgment to Plaintiff for $1,000.00 pursuant to NRCP 68. Pursuant to the rule, if an offeree rejects an offer and fails to obtain a more favorable judgment, the Court may order the offeree to pay reasonable attorney's fees incurred from the date of the service of the offer. As Plaintiff did not prove a claim or damages against Luxor, leading to a defense verdict, this Court finds the offer served by Luxor was reasonable and Plaintiff did not obtain a more favorable judgment than the offer. Thus, the Court finds that Luxor is entitled to a partial award of attorney's fees incurred during the month of December only.

In considering an award of attorney's fees, the Court examines: (1) the qualities of the advocate; (2) the character of the work to be done; (3) the work actually performed; and (4) the result.

Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31 (1969). "Hourly time schedules are helpful in establishing the value of counsel services." Id.

After analyzing a request attorney's fees, this Court finds Luxor's Counsel, Loren S. Young, Esq. and Thomas W. Maroney, Esq. are qualified, competent, and experienced attorneys and are respected and qualified attorneys. The character of the work involved legal issues, medical complaints and damages, as well as oral arguments that required a competent and skilled trial attorney. The work actually performed by Luxor's Counsel was significant in time and effort, preparing the motion work, trial preparation, and attendance at the two week trial. The result obtain by way of a defense verdict was a success in Luxor's favor. Thus, this Court finds that Luxor's motion fully addressed and satisfied the factors enumerated in *Brunzell*, namely, the advocate's professional qualities, the nature of the litigation, the work performed, and the result. *Brunzell*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

The Court finds that Luxor is entitled to recover attorney's fees pursuant to the *Brunzell* factors, however, the Court exercises its discretion to reduce the amount of fees based on the forgoing facts and findings. The Court reviewed Luxor's attorneys' invoices and affidavits and finds that Luxor's attorneys' fees are reasonable and utilizes its discretion to award a portion of Luxor's attorney's fees for the month of December 2018 that would include trial preparation and trial. Accordingly, Luxor shall be awarded attorneys' fees in the total amount of **$69,688.00**.

ORDER AND JUDGMENT

Based on the forgoing, and for good cause shown, **IT IS HEREBY ORDERED** that Defendant Luxor's Memorandum of Allocated Costs and Disbursements and Motion and Application for Costs is hereby **GRANTED** in the amount of Thirty Nine Thousand Five Hundred and Ninety Seven Dollars and Twenty-Eight Cents **($39,597.28)**.

Based on the forgoing, and for good cause shown, **IT IS HEREBY FURTHER ORDERED** that Defendant, Luxor's Motion and Application for Attorney's Fees is hereby **GRANTED** pursuant to NRCP 68 from the date of the offer of judgment totaling Sixty Nine Thousand Six Hundred and Eighty Eight Dollars and No Cents **($69,688.00).**

Based on the forgoing, **IT IS HEREBY FURTHER ORDERED** that total final judgment is entered against Plaintiff, VIVIA HARRISON, in favor of Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, totaling One Hundred and Nine Thousand Two Hundred and Eighty Five Dollars and Twenty-Eight cents **($109,285.28).**

Based on the forgoing, **IT IS HEREBY FURTHER ORDERED** that this total final judgment must first be offset from other settlement funds received by Plaintiff and Plaintiff's attorney as part of the trial judgment before any distribution and this total final judgment in favor of Luxor takes priority over any other lien, including an attorney's lien. *John J. Muije, Ltd. v. North Las Vegas Cab Co.*, 106 Nev. 664, 666, 799 P.2d 559, 560 (1990).

DATED this 15 day of March, 2019.

DISTRICT COURT JUDGE

Respectfully Submitted by:

LINCOLN, GUSTAFSON & CERCOS, LLP

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Attorneys for Defendant, RAMPARTS, INC.
d/b/a LUXOR HOTEL & CASINO

DISTRICT COURT

CLARK COUNTY, NEVADA

VIVIA HARRISON, an individual,

Plaintiff,

v.

RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, a Nevada Domestic Corporation; DESERT MECHANICAL EQUIPMENT, a Nevada Domestic Corporation, DOES I through XXX, inclusive, and ROE BUSINESS ENTITIES I through XXX, inclusive,

Defendants.

DESERT MEDICAL EQUIPMENT, a Nevada Domestic Corporation.

Third-Party Plaintiff,

v.

STAN SAWAMOTO, an individual,

Third Party Defendant.

CASE NO.: A-16-732342-C
DEPT. NO.: XXIX

NOTICE OF ENTRY OF ORDER

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

YOU AND EACH OF YOU will please take notice that an Order was entered on the 18th day of March, 2019; a true and correct copy is attached hereto.

DATED this 18th day of March, 2019.

LINCOLN, GUSTAFSON & CERCOS, LLP

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Nevada Bar No. 7567
THOMAS W. MARONEY, ESQ.
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Attorneys for Defendant, RAMPARTS, INC.
d/b/a LUXOR HOTEL & CASINO

DISTRICT COURT

CLARK COUNTY, NEVADA

VIVIA HARRISON, an individual, Plaintiff, v. RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, a Nevada Domestic Corporation; DESERT MEDICAL EQUIPMENT, a Nevada Domestic Corporation, DOES I through XXX, inclusive, and ROE BUSINESS ENTITIES I through XXX, inclusive, Defendants.	CASE NO.: A-16-732342-C DEPT. NO.: XXIX **ORDER GRANTING DEFENDANT RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO'S MOTION FOR ATTORNEY'S FEES AND COSTS**

Defendant RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO's Motion for Attorney's Fees and Costs and Memorandum of Costs and Disbursements coming on for hearing on February 27, 2019; the Honorable David M. Jones presiding with appearances by Loren S. Young, Esq. appearing on behalf of Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO; Boyd B. Moss, Esq.

of Moss Berg Injury Lawyers and Matthew Pfau, Esq. of Parry & Pfau appearing on behalf of Plaintiff, VIVIA HARRISON; the Court, having reviewed the papers and pleadings on file herein, having heard the arguments of counsel, and good cause appearing therefore, the Court hereby finds and enters the following:

FINDINGS OF FACT

Trial in this matter started on December 10, 2018 and concluded on December 20, 2018 with the Jury returning a Defense Verdict against Plaintiff and in Luxor's favor. Thus, Luxor is the prevailing party pursuant to NRS §18.000 et seq.

Judgment was entered on the Jury Verdict on January 16, 2019. As the prevailing party, Luxor moved for recovery of costs pursuant to NRS §18.020 and NRS §18.005 by filing a memorandum of costs and disbursements on January 17, 2019. Plaintiff did not file a motion to re-tax the costs.

Luxor also filed a motion for recovery of attorney's fees and costs on January 17, 2019 pursuant to NRS §18.010, NRS §18.020, NRS §18.005, NRS 7.085, and NRCP 68. Plaintiff filed an Opposition to the Motion for attorney's fees and costs on February 4, 2019 opposing the award of fees and only disputing costs of the experts. Luxor filed a Reply brief on February 20, 2019.

CONCLUSIONS OF LAW

As the prevailing party, Luxor is entitled to award of costs pursuant to NRS §18.005 and NRS §18.020. Pursuant to NRS §18.110, a memorandum of costs must be filed within 5 days after the entry of order or judgment. NRS §18.110(4) provides, "Within 3 days after service of a copy of the memorandum, the adverse party may move the court, upon 2 days' notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing party claiming costs. Upon the hearing of the motion the court or judge shall settle the costs." *See* Nev. Rev. Stat. Ann. § 18.110(4).

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pertinent to determining the reasonableness of the requested fees and whether "the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee." *Frazier v. Drake*, 357 P.3d 365, 377-378, 131 Nev. Adv. Rep. 64 (Nev. 2015).

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

From review of the Memorandum, Motion, and related briefs, the Court finds the uncontested costs incurred by Luxor were reasonable and necessary pursuant to NRS §18.005 and NRS §18.020. Costs must be allowed of course to the prevailing party against an adverse party again whom judgment is rendered when money damages of $2,500 or greater is sought. Here, Plaintiff sought recovery of damages in excess of $2,500. Thus, the Court finds that Luxor is entitled to an award of reasonable and necessary costs incurred that were uncontested totaling **$22,097.28**.

From review of the Memorandum, Motion, and related briefs, and the factors identified in *Frazier v. Drake*, the Court finds the contested costs incurred by Luxor for the three experts were reasonable and necessary pursuant to NRS §18.005 and NRS §18.020, however, the Court hereby exercises its' discretion and reduces the recoverable expert costs to the following amounts to be awarded to Luxor as follows: Dr. Clifford Segil = $5,000.00; Michelle Robbins = $7,500.00; Aubrey Corwin = $5,000.00. Thus, the Court finds that Luxor is entitled to an award of reasonable and necessary expert costs incurred that were contested totaling **$17,500.00**, for a total award of costs to Luxor equaling **$39,597.28**.

The Nevada Supreme Court outlined a four factor test for awarding discretionary attorneys' fees under NRCP 68 in *Beattie v. Thomas*. 99 Nev. 579, 588 (1983). The four *Beattie* factors include: (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendant's offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount. As the prevailing party, Luxor seeks recovery of attorney's fees incurred pursuant to NRCP 68, NRS §18.010(2)(b), and NRS 7.085. Nevada's statute provides that a prevailing party may also be awarded attorney's fees if a claim is brought or maintained without reasonable ground. Id.

To apply the *Beattie* factors to the case at bar, the Court finds: (1) Plaintiff's complaint included many statements of fact and allegations contrary to their own witnesses testimony; (2) Luxor's offer of judgment was made after some discovery was conducted and renewed after additional discovery was performed, and prior to trial; however, deposition of Luxor's witnesses were not conducted until much later in discovery; (3) Plaintiff was aware of the substantial defects in the case and still rejected Luxor's offer of judgment; and (4) Luxor's requested attorneys' fees, in the amount of $202,398.00, reflect the actual and reasonable attorneys' fees incurred by Luxor from the date of service on the offer of judgment to the date of entry of the final judgment. Thus, under the *Beattie* factors, this Court finds an award of a portion of the post-offer attorneys' fees is appropriate.

On March 23, 2017, Luxor served an offer of judgment to Plaintiff for $1,000.00 pursuant to NRCP 68. Pursuant to the rule, if an offeree rejects an offer and fails to obtain a more favorable judgment, the Court may order the offeree to pay reasonable attorney's fees incurred from the date of the service of the offer. As Plaintiff did not prove a claim or damages against Luxor, leading to a defense verdict, this Court finds the offer served by Luxor was reasonable and Plaintiff did not obtain a more favorable judgment than the offer. Thus, the Court finds that Luxor is entitled to a partial award of attorney's fees incurred during the month of December only.

In considering an award of attorney's fees, the Court examines: (1) the qualities of the advocate; (2) the character of the work to be done; (3) the work actually performed; and (4) the result.

Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31 (1969). "Hourly time schedules are helpful in establishing the value of counsel services." Id.

After analyzing a request attorney's fees, this Court finds Luxor's Counsel, Loren S. Young, Esq. and Thomas W. Maroney, Esq. are qualified, competent, and experienced attorneys and are respected and qualified attorneys. The character of the work involved legal issues, medical complaints and damages, as well as oral arguments that required a competent and skilled trial attorney. The work actually performed by Luxor's Counsel was significant in time and effort, preparing the motion work, trial preparation, and attendance at the two week trial. The result obtain by way of a defense verdict was a success in Luxor's favor. Thus, this Court finds that Luxor's motion fully addressed and satisfied the factors enumerated in *Brunzell*, namely, the advocate's professional qualities, the nature of the litigation, the work performed, and the result. *Brunzell*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

The Court finds that Luxor is entitled to recover attorney's fees pursuant to the *Brunzell* factors, however, the Court exercises its discretion to reduce the amount of fees based on the forgoing facts and findings. The Court reviewed Luxor's attorneys' invoices and affidavits and finds that Luxor's attorneys' fees are reasonable and utilizes its discretion to award a portion of Luxor's attorney's fees for the month of December 2018 that would include trial preparation and trial. Accordingly, Luxor shall be awarded attorneys' fees in the total amount of **$69,688.00**.

ORDER AND JUDGMENT

Based on the forgoing, and for good cause shown, **IT IS HEREBY ORDERED** that Defendant Luxor's Memorandum of Allocated Costs and Disbursements and Motion and Application for Costs is hereby **GRANTED** in the amount of Thirty Nine Thousand Five Hundred and Ninety Seven Dollars and Twenty-Eight Cents **($39,597.28)**.

Based on the forgoing, and for good cause shown, **IT IS HEREBY FURTHER ORDERED** that Defendant, Luxor's Motion and Application for Attorney's Fees is hereby **GRANTED** pursuant to NRCP 68 from the date of the offer of judgment totaling Sixty Nine Thousand Six Hundred and Eighty Eight Dollars and No Cents **($69,688.00).**

Based on the forgoing, **IT IS HEREBY FURTHER ORDERED** that total final judgment is entered against Plaintiff. VIVIA HARRISON, in favor of Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, totaling One Hundred and Nine Thousand Two Hundred and Eighty Five Dollars and Twenty-Eight cents **($109,285.28).**

Based on the forgoing, **IT IS HEREBY FURTHER ORDERED** that this total final judgment must first be offset from other settlement funds received by Plaintiff and Plaintiff's attorney as part of the trial judgment before any distribution and this total final judgment in favor of Luxor takes priority over any other lien, including an attorney's lien. *John J. Muije, Ltd. v. North Las Vegas Cab Co.*, 106 Nev. 664, 666, 799 P.2d 559, 560 (1990).

DATED this 15 day of March, 2019.

DISTRICT COURT JUDGE

Respectfully Submitted by:

LINCOLN, GUSTAFSON & CERCOS, LLP

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Attorneys for Defendant, RAMPARTS, INC.
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Approved as to form and content by:

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Attorneys for Plaintiff, VIVIA HARRISON

Vivia Harrison v. Ramparts, Inc. dba Luxor Hotel & Casino, et al.
Clark County Case No. A-16-732342-C

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of March. 2019, I served a copy of the attached **NOTICE OF ENTRY OF ORDER** via electronic service to all parties on the Odyssey E-Service Master List.

Barbara J. Pederson, an employee
of the law offices of
Lincoln, Gustafson & Cercos, LLP

MRCN
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matt@p2lawyers.com

Attorneys for Plaintiff,
Vivia Harrison

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

Vivia Harrison, an individual Plaintiff, vs. **Ramparts, Inc., dba Luxor Hotel & Casino,** a Nevada Domestic Corporation; **Desert Medical Equipment,** a Nevada Domestic Corporation; Does I-X; Roe Corporations I-X, Defendants.	Case No.: A-16-732342-C Dept. No.: XXIX HEARING REQUESTED **Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset**

PARRY & PFAU

Notice of Motion

Plaintiffs will bring this Motion for hearing on the _____ day of _____ 2019 in Department 29 of the Eighth Judicial District Court at the hour of _____ __.m. or as soon thereafter as counsel may be heard.

I.

Statement of Facts

Ms. Harrison's personal injury lawsuit arises from injured sustained as she was thrown from a motorized scooter. The motorized scooter tipped over when she was navigating out of a restaurant owned by Ramparts Inc., dba Luxor Hotel & Casino ("Luxor"). Ms. Harrison filed suit against Luxor, Desert Medical Equipment ("DME") and Pride Mobility on February 24, 2016.

Luxor served an Offer of Judgment for $1,000 to plaintiff on March 23, 2017. The Offer was served before Luxor's 30(b)6 representatives had been deposed, before Ms. Harrison had conducted an inspection of the Luxor's Deli and before Ms. Harrison had been deposed by the defendants.

On December 20, 2018, a jury returned a verdict in favor of Luxor. Luxor sought reimbursement for the fees it incurred from March 23, 2017 through present. In Luxor's Motion for Fees and Costs filed on January 17, 2019, they did not brief the attorney lien offset issue that they raised in their Reply.[1]

A hearing was held on February 27, 2019, where this Court denied Luxor's request for fees from the time of the Offer of Judgment stating that it was unreasonable.[2] This Court cited the amount of Vivia's medical bills and the fact that the Offer was made before substantial discovery had completed as reasons for its decision.[3] The Court granted Luxor's fees for trial prep and for trial in the month of December.[4] No oral argument was heard regarding the attorney lien offset issue that Luxor raised in their Reply.[5]

On March 5, 2019, Luxor filed a proposed Order that was not agreed upon by the Ms. Harrison. Luxor and Ms. Harrison's counsel had discussed the proposed

[1] See Exhibit 1, Luxor's Motion for Fees and Costs.
[2] *See* Exhibit 2, Harrison v. Rampart 2/27/19 Hearing Transcript.
[3] *Id*.
[4] *Id*.
[5] *Id*.

language via email but before a phone conversation could be held, Luxor filed their proposed Order to the Court.[6] The primary disputes with Luxor's proposed Order were 1) that it did not properly reflect the Court's reasoning behind its ruling that the Offer was unreasonable and 2) that the Order language giving Luxor an offset from other settlement funds does not properly apply Nevada law and does not reflect Luxor's Order regarding attorney lien offsets.[7] Ms. Harrison objected to the attorney offset issue because it was not briefed by Ms. Harrison's counsel and because it was not addressed by the Court in its ruling.

On March 11, 2019, Plaintiff filed an alternate proposed Order that reflects this Court's reasoning in its ruling and that did not include the additional language regarding the attorney offset. On March 18, 2019, this Court signed the Luxor's proposed Order without entertaining a rebuttal argument from Ms. Harrison so that the Court could consider all aspects of the attorney lien offset issue as it related to this case.

PARRY & PFAU

II.

Law and Argument

This Court has authority to reconsider its own decision where a party asserts that a mistake has been made.[8] Such a motion must be brought within 10 days of service of notice of the order or judgment,[9] and where a post-judgment motion for consideration it is in writing, timely filed, states its grounds with particularity, and requests a substantive alteration of a judgment, it also tolls the 30-day time limit to file a notice of appeal.[10]

---

[6] *See* Exhibit 3, Luxor Emails Regarding Proposed Harrison Order.
[7] *Id*.
[8] *See* N.R.C.P. 60(b)(1); N.R.C.P. 59(e).
[9] EDCR 2.24.
[10] *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1195 (2010); NRAP 4(a)(4)(C).

A. The Court's Order Does Not Properly Reflect the Nevada Supreme Court's Position on Attorney's Liens

Ms. Harrison contends that the Court should have permitted a proper breifing of the lien offset issue addressed in Luxors Reply and in Luxor's proposed Order signed by the Court. Accordingly, Ms. Harrison's attorney's have briefed herein the issue of an attorney's liens priority over other liens according to the Nevada Supreme Court. Further, Ms. Harrison's attorney's, contend that the cases cited by the Luxor to support the contradiction of the Suprement Court's ruling are not on point and are not applicable in this case.

1. Case Law Cited by the Defendant Does Not Support a Ruling that Makes Private Out of Court Settlements Subject to Offset.

Luxor sites *Muije, Ltd. v. North Las Vegas Cab Co*. as their primary authority in support of their claim for attorney lien offset.[11] However, Muije is unrelated because it deals with a jury verdict in favor of the Plaintiff against a single defendant which did not cover the Offer of Judgment.[12] The *Muije* facts are disctinctly different than the facts at issue as this case involves monies recieved from a private settlment with another defendant who is not a party to the award for fees and costs.

In *Muije*, the Nevada Supreme Court held that an equitable offset took priority over a perfected attorney lien because the attorney lien attached solely to the net judgment after the offset was taken.[13] In so concluding, this court then observed that, "[o]nce a net judgment is determined, then the attorney lien is superior to any later lien asserted against that judgment."[14] The Nevada Supreme Court found that "equity" requires settlement of the net verdict between the two parties before

[11] *John J. Muije, Ltd. v. North Las Vegas Cab Co.,* 106 Nev. 664 (1990).
[12] *Id*.
[13] *Id*. at 667, 799 P.2d at 561.
[14] *Id.*

attorneys' liens may attach.[15]

The Nevada Supreme Court based its holding in *Muije* on the basis that the court's award to the defendant of attorney's fees and costs was part of the trial judgment and therefore held that plaintiff's counsel lien was only attached to the net judgment after the defendant's attorney's fees and costs were satisfied.[16] However, the issue in this case is not solely whether an attorney lien attached to a plaintiff's recovery from a judgment has priority over the defendant's award of attorney's fees and costs in this case as it was in *Muije*.

In this case, prior to the jury's verdict, Ms. Harrison entered into a private agreement with DME. DME is not seeking an award for fees and costs in this case. Pursuant to this private agreement, no matter what the jury's verdict was, DME would be obligated to pay Ms. Harrison according to the terms of a high low agreement. This was a contract entered into between Ms. Harrison and DME and is not a part of the net judgment. Luxor was not privy to this contract and therefore has no claim to any part of this recovery.

Since there were no moneys awarded from the Luxor and therefore there is no "net judgment" against Luxor that can take priority over an attorney's lien, *Muije* does not apply. Further, since there were multiple defendants and attorney's fees or costs were only awarded to Luxor, *Mujie* cannot be applied. The agreement with DME – created before the verdict – was also not a part of the net judgment and not connected to Luxor in any way, further disconnecting this case from *Muije's* decision. Given these facts, Ms. Harrison's attorney's lien would have priority by perfecting the lien (as discussed below) and by contract.

Luxor further cites *Salaman v. Bolt* in their Reply to support their argument for offset.[17] Luxor cites *Salaman* to argue that an offset arising from an unrelated matter

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[15] *Id.*

[16] *Id.*

[17] See Exhibit 4, Defendant's Reply in Support of Motion for Fees and Costs.

should get priority and that an attorney's lien attaches to the net judgment after all offsets from that action have been paid. However, they fail to address the facts of *Salaman* and how the California Supreme Court arrived at its decision.

In *Salaman*, the dispute arose between a lessee and lessor.[18] The lessee sued the lessor.[19] The lessor hired counsel to defend him.[20] The lessor got a judgment in his favor and was awarded $8k in attorney's fees.[21] The lessor's attorney had an attorney lien on the lessor's recovery in the amount of $32K.[22] Then, in a completely unrelated matter that the Court does not even go into, the lessee gets a judgment against the lessor.[23] In summary now, the lessee owes the lessor money and the lessor owes the lessee money. This issue before the California Supreme Court in *Salaman* is whether the attorney's lien has priority over the $8K before there is an offset between the two unrelated judgments.

The Court defined "Equitable Offset" as a means by which a debtor may satisfy in whole or in part a judgment or claim held against him out of a judgment or claim which he has subsequently acquired against his judgment creditor.[24] The court found that an equitable offset applied to the facts and circumstances in *Salaman*, and that the equitable offset had priority over the attorney lien.[25]

The facts and the issue before the court in *Salaman* are entirely different than this case. The Court in *Salaman* based its entire decision on the fact that these two parties owed each other money pursuant to two judgments and this idea about an "equitable offset."[26] Here "equitable offset" does not apply. There is no lessee/lessor

[18] *Salaman v. Bolt*, 74 Cal. App. 3d 907 (1977).
[19] *Id*.
[20] *Id*.
[21] *Id*.
[22] *Id*.
[23] *Id*.
[24]
[25]
[26] *Id*.

relationship between the parties. Unlike *Salaman*, this is not a situation where Defendant owes Harrison money and Harrison owes Defendant money that would require an offset between judgments. The California Supreme Court in *Salaman* gave priority to an offset on completely different facts, and on a completely different basis than what exists in the present case. Therefore, *Salaman* does not support Luxor's argument for an offset.

2. Attorney's Liens Enjoy a Priorty Over Other Liens When Properly Noticed

The Nevada Supreme Court determined that attorney liens have precedence over other liens, and attorney liens are not subject to distribution on a pro rata basis in the event of a dispute among lienholders.[27] In *Cetenko v. United California Bank*, cited with approval by the Nevada Supreme Court in *Muije*, the California Supreme Court explained the policy rationale for holding an attorney lien superior to that of a judgment creditor when the funds from the judgment are insufficient to satisfy all liens:

"[P]ersons with meritorious claims might well be deprived of legal representation because of their inability to pay legal fees or to assure that such fees will be paid out of the sum recovered in the latest lawsuit. Such a result would be detrimental not only to prospective litigants, but to their creditors as well."[28]

In *Golightly & Vannah, PLLC v. TJ Allen, LLC*, the Nevada Supreme Court provided more clarification about how attorneys can secure payment in their cases using the statutory attorney lien created by Nevada Revised Statutes ("NRS") 18.015.[29] In *Golightly & Vannah*, the Nevada Supreme Court clarified that the plaintiff's attorney must serve written notice, in person or by certified mail, return receipt requested,

[27] *Michel v. Eighth Jud. Dist. Ct.*, 117 Nev. 145, 150-151, 17 P.3d 1003, 1007 (2001).
[28] *Cetenko v. United California Bank,* 30 Cal.3d 528, 179 Cal.Rptr. 902, 638 P.2d 1299, 1301 (1982).
[29] *Golightly & Vannah, PLLC v. TJ Allen, LLC,* 132 Nev. Adv. Rep. 41 (2016).

upon the plaintiff's client and the defendant claiming the lien and stating the amount of the lien.[30]

Ms. Harrison's attorneys sent notice to all parties on two separate occasions. The first notice was sent on September 20, 2016.[31] The second notice was sent on January 8, 2019 for the purposes of updating the costs of the case up to that date.[32] Given that these notices conformed with the *Golightly* decision, Ms. Harrison's attorneys liens were perfected on September 20, 2016 and then renewed again on January 8, 2019. Since the attorney's liens were perfected, they have priority over other liens.

3. Public Policy Supports Ms. Harrison's Position that Private Settlements Should Not be Subject to Offset.

In addition to the arguments above, the Court should consider the implications of a ruling permiting private settlements to be subject to later awards for fees and costs. If a party settles out of court a year before a verdict with one of two defendants and the second defendant prevails at trial, any settlement proceeds recieved a year before would be subject to the second defendant's potential award for fees and costs.

If this were the scenario that all plaintiffs faced when deciding whether to settle with a single defendant before trial, there would be a chilling effect on any settlment negotiations held in private with separate defendants. If an agreement cannot be reached with all parties in a case with multiple defendants, a ruling like this would possibly incentivise plaintiffs to forgo settlment with any one of the parties for fear that the settlment would be subject to an award for attorney fees and costs. A ruling like this could therefore chill the impact of the ADR's Mediation program and all work

[30] *Id*.
[31] *See* Exhibit 5, Notice of Attorney's Lien sent 9/20/16.
[32] *See* Exhibit 6, Notice of Attorney's Lien sent 1/8/19.

that the settlement judges engage in regularly to aid in settlement.

B. The Lien Offset Issue Raised in Luxor's Reply is Not Properly Before the Court Because There Was no Opportunity for Ms. Harrison to Brief the Cited Cases and for the Court to Hear the Issue on its Merrits

According to Rule 2.23(c), the judge may consider a Reply to a Motion on its merits at any time with or without oral argument. In this case, Luxor cited cases and arguments in their Reply that Ms. Harrison had no opportunity to brief. Therefore, the new issues brought up in the Reply could not have been heard on its merits since only one party presented their view of the case history and evidence. Ms. Harrison hereby makes a briefing of the issues raised in Luxor's Reply for the Court's full consideration in this Motion for Reconsideration.

III.

Conclusion

Vivia Harrison's private out of court settlement should not be subject to offset based on Luxor's award for fees and costs based on the arguments made herein. The attorney's lien was properly noticed and *Mujie* and *Salaman* do not apply to this factual scenario. This Court should accordingly reconsider the form and content of the signed order for Luxor's fees and costs.

DATED this 28th day of March 2019.

PARRY & PFAU

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Attorney for Plaintiff,
Vivia Harrison

Certificate of Service

I hereby certify that on the 28th day of March 2019, service of the foregoing **Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset** was made by required electronic service to the following individuals:

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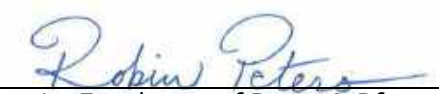

An Employee of Parry & Pfau

PARRY & PFAU

EXHIBIT “1”

MAFC
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Attorneys for Defendant, RAMPARTS, INC.
d/b/a LUXOR HOTEL & CASINO

DISTRICT COURT

CLARK COUNTY, NEVADA

VIVIA HARRISON, an individual,

Plaintiff,

v.

RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, a Nevada Domestic Corporation; DESERT MEDICAL EQUIPMENT, a Nevada Domestic Corporation, DOES I through XXX, inclusive, and ROE BUSINESS ENTITIES I through XXX, inclusive,

Defendants.

DESERT MEDICAL EQUIPMENT, a Nevada Domestic Corporation,

Third-Party Plaintiff,

v.

STAN SAWAMOTO, an individual,

Third Party Defendant.

CASE NO.: A-16-732342-C
DEPT. NO.: XXIX

DEFENDANT RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO'S MOTION FOR ATTORNEY'S FEES AND COSTS

Hearing Date:
Hearing Time:

COMES NOW, Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO (hereinafter referred to as "Luxor"), by and through its attorneys of record, the law firm of LINCOLN, GUSTAFSON & CERCOS, LLP, and hereby submits the following Motion for Attorney's Fees and Costs.

This Motion is made and based upon the attached Memorandum of Points and Authorities and supporting documentation, the papers and pleadings on file in this action, and any oral argument this Court may allow at the time of hearing.

DATED this 17 day of January, 2019.

LINCOLN, GUSTAFSON & CERCOS, LLP

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Nevada Bar No. 7567
THOMAS W. MARONEY, ESQ.
Nevada Bar No. 13913
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Las Vegas, NV 89169
Attorneys for Defendant, RAMPARTS, INC.
d/b/a LUXOR HOTEL & CASINO

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE that RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO'S MOTION FOR ATTORNEY'S FEES AND COSTS will be brought before Department XXIX of the above-entitled Court on the 27 day of Feb., 2019 at 9:00am a.m./p.m.

DATED this 17 day of January, 2019.

LINCOLN, GUSTAFSON & CERCOS, LLP

LOREN S. YOUNG, ESQ.
Nevada Bar No. 7567
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d/b/a LUXOR HOTEL & CASINO

DECLARATION OF THOMAS W. MARONEY, ESQ. IN SUPPORT OF MOTION FOR ATTORNEY'S FEES AND COSTS

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, THOMAS W. MARONEY, ESQ., declare as follows:

1. I am a licensed attorney in good standing to practice law in the State of Nevada and before this Court. I am an attorney in the law firm of Lincoln, Gustafson & Cercos, LLP (hereinafter "LGC"), 3960 Howard Hughes Parkway, Suite 200, Las Vegas, NV 89169, and am trial counsel representing Defendant Ramparts, Inc. d/b/a Luxor Hotel & Casino (hereinafter "Luxor") in the instant matter. I have personal knowledge of the matters contained herein and am competent to testify regarding the same.

2. LGC was retained to represent Defendant Luxor in the instant matter. Loren S. Young, Esq. and I were the primary attorneys from LGC who represented Luxor at trial in the instant matter.

3. On March 23, 2017, Luxor served an Offer of Judgment ("Offer") on Plaintiff Vivia Harrison for $1,000.00. A true and correct copy of the Offer is attached hereto as Exhibit "A." The Offer expired on April 10, 2017.

4. This matter proceeded to trial on December 10, 2018. The jury returned a verdict on December 20, 2018. The jury found in favor of Defendant, Luxor and against Plaintiff.

5. From the time the Offer was served to the date the verdict was reached, 637 days elapsed. Luxor incurred $202,398.00 in attorney's fees defending this matter. True and correct copies of Redacted Bills and Invoices from LGC for March 23, 2018 through December 20, 2018 will be produced to the Court *in camera*, with copies of same served on counsel for all parties. On behalf of Luxor, we engaged in extensive pretrial motion practice, diligently prepared for trial, and appeared and defended Luxor at trial, resulting in a defense verdict.

6. The attorney's fees incurred were reasonable in light of the qualities of the advocates, character of the work to be done, work actually performed, and the results obtained.

7. Loren S. Young has been licensed to practice law since 2000 and is licensed to practice law in Nevada State and Federal Courts, and the U.S. Court of Appeals for the Ninth Circuit. Mr.

Young has litigated hundreds of complex matters ranging from personal injury to business litigation since obtaining his license.

8. I have been licensed to practice law since 2015 and I am licensed to practice law in Nevada State and Federal Courts. I have participated in and helped litigate numerous complex matters ranging from personal injury to construction defect litigation since obtaining my license.

9. Mr. Young and I were assisted by several highly skilled associate attorneys, paralegals, secretaries and assistants. All of their work was supervised by either Mr. Young or myself.

10. The rates charged in this matter were $200.00 per hour for Partners, $180.00 per hour for Associates, and $110.00 per hour for paralegals with LGC.

11. I am familiar with rates charged in similar litigation throughout United States, including rates charged in the state of Nevada. The rates charged by LGC are reasonable based upon the experience of the personnel and nature of the work performed.

12. I have reviewed the bills and redacted invoices which will be provided *in camera*. In addition to the $202,398.00 in fees incurred in the defense of this action from the date of the Offer through the verdict, Luxor incurred $53,160.03 in costs, as evidenced by its verified Memorandum of Costs filed concurrently herewith.

13. The fees and expenses incurred by Luxor were reasonable and necessary.

14. I declare the foregoing is true and correct.

THOMAS W. MARONEY, ESQ.

MEMORANDUM OF LEGAL POINTS AND AUTHORITIES

Defendant Ramparts, Inc. d/b/a Luxor Hotel & Casino (hereinafter "Luxor") is entitled to an award of reasonable attorney's fees and costs. Luxor served a valid Offer of Judgment ("Offer") for $1,000.00 on Plaintiff, Vivia Harrison (hereinafter "Plaintiff") on March 23, 2017. Plaintiff rejected this Offer, and this matter proceeded to trial on December 10, 2018. After nine days of trial spanning December 10 through December 20, the jury returned a verdict in favor of the defense. As Plaintiff failed to obtain a better result at trial than the March 23, 2017, Offer, Luxor is entitled to an award of reasonable attorney's fees and costs, pursuant to NRCP 68 and NRS 18.010.

From March 23, 2017, when the Offer was served, and December 20, 2018, 637 days elapsed. From the time the Offer expired through the verdict, Luxor incurred $202,398.00 in attorney's fees and $53,160.03 in costs to litigate the matter and defend the matter at trial, and ultimately prevailing by obtaining a defense verdict. The fees and costs incurred are more than reasonable, given the qualities of the advocate, the character and nature of the work to be done, the work performed, and the results obtained. Therefore, this Court should award Luxor its requested attorney's fees and costs.[1]

I. FACTUAL BACKGROUND

This case stems from allegations of personal injuries by Plaintiff against Luxor from an incident that occurred at the Backstage Deli located with the Luxor Hotel & Casino on December 10, 2014. Plaintiff was injured when she inadvertently struck the base of a high top table with a rented mobility scooter. The fall resulted in a broken femur and Plaintiff was transported to Spring Valley Hospital for treatment. While undergoing surgery or shortly thereafter, Plaintiff sustained a stroke leading to months of hospitalization and treatment. Further, the stroke resulted in a litany of ongoing medical issues ultimately resulting in recommendations for future care and treatment.

Plaintiff originally alleged the Deli employees failed to properly maintain the premises, but when that was found to be untrue, Plaintiff then alleged the Deli was improperly maintained and failed to provide an accessible route pursuant to the Americans with Disabilities Act (hereinafter "ADA") despite the tables and furnishings in the Deli being entirely moveable. In addition, Plaintiff originally

[1] A separate Memorandum of Costs is being filed concurrently herewith.

alleged the front wheel of her scooter struck the base of the high top table resulting in her fall. However, when that was found to be impossible, Plaintiff then asserted the back wheel of the scooter struck the base of the table resulting in the fall.

Plaintiff filed suit on February 24, 2016 and later amended the Complaint to include Ramparts, Inc. d/b/a Luxor Hotel & Casino, alleging the following claims: (1) negligence; and (2) negligent hiring training, maintenance, and supervision. (*See* Plaintiff's Complaint, filed February 24, 2016, attached hereto as Exhibit "B"; *See also* Plaintiff's Second Amended Complaint, filed on August 19, 2016, attached hereto as Exhibit "C").

The parties engaged in significant discovery regarding the liability and damages alleged in this matter, and discovery formally closed in July 2018. Thereafter, Luxor filed a Motion for Summary Judgment due to Plaintiff's lack of ability to demonstrate a dangerous condition existed at the Deli, which the Court denied. Luxor also engaged in motion in limine practice wherein the Court agreed with Luxor's Motion and Plaintiff's experts were limited because their opinions were based on speculation and conjecture.

On March 23, 2017, Luxor served an Offer of Judgment for $1,000.00 to Plaintiff. (*See* Exhibit "A"). Plaintiff allowed the Offer to expire on April 10, 2018. Plaintiff then proceeded to trial on December 10, 2018. At no time during discovery did Plaintiff ever make a settlement demand to Luxor or respond to the Offer of Judgment.

After 10 days of trial over the course two weeks, on December 20, 2018, a jury returned a verdict in favor of Luxor. Luxor now seeks reimbursement for the fees it incurred from March 23, 2017 through the present, pursuant to NRCP 68 and NRS 18.010; as well as, its costs.

II. LEGAL ARGUMENT

Nevada Revised Statute Rule (hereinafter "NRS") 18.010 states as follows:

Award of attorney's fees.

1. The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law.

2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:

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(a) When the prevailing party has not recovered more than $20,000; or

(b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall *liberally* construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public. (Emphasis added).

Nevada Rule of Civil Procedure 68 also allows for the recovery of reasonable attorney's fees and costs if an offer of judgment is made more than ten (10) days before trial, the offer is rejected, and the offeree fails to obtain a result more favorable that the offer: "A party who makes an unimproved-upon offer of judgment—an offer that is more favorable to the opposing party than the judgment ultimately rendered by the district court—is entitled to recover costs and reasonable attorney fees incurred after making the offer of judgment." Nev. R. Civ. P. 68; *Logan v. Abe*, 131 Nev. Adv. Op. 31, 350 P.3d 1139, 1140 (2015).

"The purpose of NRCP 68 is to save time and money for the court system, the parties and the taxpayers. They reward a party who makes a reasonable offer and punish the party who refuses to accept such an offer." *Muije v. A North Las Vegas Cab Co.*, 106 Nev. 664, 667, 799 P.2d 559, 561 (1990); *Morgan v. Demille*, 106 Nev. 671, 674, 799 P.2d 561, 563 (1990). The purpose of the requirement that an offer be made more than ten days prior to trial is to ensure that an offeree has adequate time after service and before trial to consider the offer. *Morgan*, 106 Nev. at 674, 799 at 563.

For a Court to award fees and costs pursuant to an Offer of Judgment, the offer must be timely, and it must satisfy the factors outlined by the Court in *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268, 274 (1983). Should the Court determine the offers of judgment are valid, then the Court *must* make a finding that the fees and costs sought are reasonable under the factors outlined in *Brunzell v. Golden Gate Nat. Bank.*, 85 Nev. 345, 455 P.2d 31 (1969)(Emphases added). Luxor's Offer to Plaintiff in the instant matter was valid and more than reasonable based on the facts, allegations and pursuant

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to NRCP 68, and it satisfies all of the factors outlined in both *Beattie* and *Brunzell*. Therefore, Luxor is entitled to an award of reasonable attorney's fees and costs.[2]

A. Luxor Made a Valid Offer of Judgment Pursuant to NRCP 68.

NRCP 68 states that for the penalties of an offer of judgment to be triggered, the offer must have been served more than 10 days before trial. Luxor's Offer was timely made, as it was served on March 23, 2017, and trial in the instant matter did not commence until December 10, 2018, with the first witness being sworn in on December 12, 2018. Thus, service was effectuated 10 days before trial commenced. Therefore, Luxor's Offer satisfies the time requirement of NRCP 68. The March 23, 2017 Offer of Judgment served by Luxor on Plaintiff was valid and Plaintiff's rejection of the Offer triggers the penalties of NRCP 68.

B. Luxor is Entitled to An Award of Reasonable Attorney's Fees.

Once the Court determines an Offer of Judgment satisfies the requirements outlined in NRCP 68, it must then make further findings under the following four factors:

> (1) whether the plaintiffs claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer . . . was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.

Beattie, 99 Nev. at 588, 668 at 274. Each factor need not favor awarding attorney fees because "no one factor under Beattie is determinative." *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252 n. 16, 955 P.2d 661, 673 n. 16 (1998). Instead, a district court must consider and balance the factors in determining the reasonableness of an attorney fees award. After weighing the factors, the district judge may, where warranted, award up to the full amount of fees requested. *Beattie*, 99 Nev. at 589, 668 P.2d at 274.

Once the Court determines the *Beattie* factors weigh in favor of an award of attorney's fees, the Court must then determine the reasonableness of the fees requested. Courts determine reasonableness by analyzing a separate set of factors outlined in *Brunzell v. Golden Gate Nat. Bank*. In *Brunzell*, the Nevada Supreme Court stated that the reasonableness of attorney's fees depends on:

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[2] As noted above, the specific costs are set forth in Luxor's Memorandum of Costs, filed concurrently herewith.

> (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.

Brunzell, 85 Nev. at 350, 455 P.2d at 33. Additionally, while it is preferable for a district court to expressly analyze each factor relating to an award of attorney fees, express findings on each factor are not necessary for a district court to properly award fees. *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 385, 283 P.3d 250, 258 (2012). Instead, the district court need only demonstrate that it considered the required factors, and that the award was supported by substantial evidence. *See Uniroyal Goodrich Tire v. Mercer*, 111 Nev. 318, 324, 890 P.2d 785, 789 (1995) (superseded by statute on other grounds).

Attorney's fees may be calculated two primary ways, (1) the equivalent to the contingency fee, or (2) an hourly fee, or loadstar, including deviations up or down due to various factors, including the existence of a contingency fee agreement. *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864–65, 124 P.3d 530. 549 (2005). In Nevada, the method upon which a reasonable fee is determined is subject to the discretion of the court, which is tempered only by reason and fairness. *Id.* In determining the amount of fees to award, the Court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, including those based on a "loadstar" amount or a contingency fee. *Id.* Regardless of the method used to calculate the fees, the *Brunzell* factors still must be analyzed to determine the reasonableness of the fees incurred.

An analysis of the *Beattie* and *Brunzell* factors supports an award of $202,326 in fees incurred by Luxor from the time the Offer of Judgment was made on March 23, 2017, through the verdict reached on December 20, 2018.

i. Luxor's Offer of Judgment Satisfies the *Beattie* Factors.

The *Beattie* factors support an award of Luxor's attorney's fees:

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a. Good Faith of Plaintiff's Claims.

Solely for the purposes of this Motion, Luxor does not wish to challenge whether Plaintiff's claims were brought in good faith, but does believe Plaintiff's claims are highly suspect given her and her counsel's constantly changing narrative. Certainly, Luxor contests the veracity and legal sufficiency of Plaintiff's claims, but the veracity of such claims was left for the jury to decide.

b. Good Faith and Reasonableness of Luxor's Offer.

Luxor's Offer was made in good faith and reasonable in light of the facts of the case. Although Plaintiff claimed significant damages, at the time Luxor made the Offer, the facts of the case were well established. Plaintiff's motorized scooter struck the base of a table resulting in her fall and injuries. At no time did Plaintiff nor her experts ever provide evidence that the layout of the Deli or table itself somehow created a dangerous condition and contributed to Plaintiff's fall. Luxor made the good faith Offer based on its evaluation of potential liability and exposure at trial, and in light of the defense costs it had already incurred and would anticipate occurring through the trial process. In considering all of those factors, Luxor's Offer was clearly made in good faith and more than reasonable given Plaintiff's own admission that she simply struck the base of a table and how knew it was her own responsibility to drive the scooter safely.

The reasonableness of the Offer was justified when the jury reached its verdict in favor of Luxor. This shows that, the offer Luxor made was in good faith, and in an effort to resolve a disputed liability claim. Plaintiff's claims were contested and involved the retention of numerous experts with a variety of specialties. The jury clearly took the experts' testimonies into consideration in rendering their verdict. Against this backdrop, Luxor made a fair and reasonable settlement offer, to which Plaintiff rejected.

When speaking with the jurors after the verdict, the jurors at no time believed a dangerous condition existed at the Luxor Deli. Rather, the jurors focused on unrelated issues such as contract language, type of scooter available, and Plaintiff's medical history. This demonstrates Plaintiff's claim that an unreasonably dangerous condition existed in the Deli and caused her injuries was meritless. Thus, Luxor's Offer was more than reasonable based upon the jury's examination of the available evidence.

c. Plaintiff's Decision to Reject the Offer and Proceed to Trial.

At the time Luxor extended the Offer to Plaintiff, Plaintiff already knew the pertinent facts of the case. Plaintiff, with the assistance of her counsel, had the ability to narrow the scope of their claims and could reasonably evaluate the reasonableness of Luxor's Offer. By rejecting the Offer and choosing to go to trial against Luxor, Plaintiff was aware she was exposing herself to the risk of an award of attorney's fees. Presumably she was thoroughly counseled by her attorneys and competently chose to reject the Offer and gamble at trial. Plaintiff even ignored the Court's guidance when the Court informed Plaintiff she was fighting an uphill battle. Therefore, Plaintiff deliberately chose to disregard common sense and guidance from the Court when she rejected the Offer and continued to trial.

d. Reasonableness of Fees Sought.

Although an Offer was made, Luxor had to continue to litigate and defend this matter for 637 days, culminating in a verdict for Luxor. The $202,398.00 in fees sought by Luxor are more than reasonable and appropriately reflect the work performed by Luxor's defense team in litigating this complex matter. The reasonableness of the fees are discussed in detail below, *infra*, with respect to the *Brunzell* factors.

ii. Luxor's Attorney's Fees Are Reasonable Under *Brunzell*.

a. Qualities of the Advocates.

The law firm of Lincoln, Gustafson & Cercos, LLP ("LGC") is a regional trial firm that has successfully litigated matters in many states, including, Nevada, Arizona, and California. Since opening its Nevada office in 1997, LGC has been involved in some of the largest and well-known litigations in Clark County, involving personal injury and construction defect claims, including, but not limited to the *Hayward v. Sun City* matter.

Trial counsel Loren S. Young, Esq. has been licensed to practice law since 2000, and is licensed to practice law in Nevada State and Federal Courts and the Supreme Court of the United States of America. He has tried numerous cases in Clark County. Mr. Young was the past President and founder of the Las Vegas Defense Lawyers, and currently sits on the Nevada Rules of Civil Procedure Committee.

Trial counsel Thomas W. Maroney, Esq. has been licensed to practice law since 2015 and is licensed to practice law in Nevada State and Federal Courts. Mr. Maroney has participated in and helped litigate numerous complex matters ranging from personal injury to construction defect litigation since obtaining his license.

Mr. Young and Mr. Maroney were assisted throughout this matter by competent and highly skilled associate attorneys, paralegals, and staff. Reasonable attorney's fees include the work performed not only by licensed attorneys but also by paralegals, secretaries, and staff assistants. *See LVMPD v. Yeghiazarian*, 129 Nev. 760, 769–70, 312 P.3d 503, 510 (2013) (citing to *Missouri v. Jenkins*, 491 U.S. 274, 285, 109 S.Ct. 2463, 105 L.Ed.2d 229 (1989)).

b. Character of the Work Done and the Work Performed.

The instant matter was highly contested and complex. Numerous witnesses, documents, and evidence were disclosed at trial by all parties, and in order to adequately prepare for trial, Luxor's counsel was required to efficiently and expertly process all such information to competently defend against Plaintiff's multi-million dollar claims.

At the time of trial, Plaintiff valued her case at approximately $12 million dollars. Although Plaintiff only requested pain and suffering, Plaintiff's extensive medical history involved evaluation of: (a) TIAs and an extensive pre-existing history of comorbidities; (b) stroke with cognitive and memory difficulty and future treatment recommendations; and (c) ongoing treatment and in-home help for the remainder of Plaintiff's life. Luxor's attorneys not only engaged in significant discovery regarding liability and damages prior to the close of discovery, but after the Offer expired, Luxor's counsel engaged in additional motion practice, including a Motion for Summary Judgment, the completion of Motions in Limine arguments, preparation for trial, and defending the matter at trial.

Trial lasted nine days spanning over the course of two weeks. Testimony from at least ten (10) witnesses and experts was presented at trial. Certainly, the work performed, and the time spent defending the matter from the Offer through to the verdict is reasonable. Moreover, Luxor's counsel utilized non-attorney staff (paralegals, secretaries, assistants) when feasible to minimize costs.

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c. Results Obtained.

During closing arguments. Plaintiff requested that the jury render a verdict in favor of Plaintiff anywhere from $3,000,000.00 to $12,000,000.00. Luxor's defense team's work resulted in a defense verdict. Luxor's defense team obtained the expected result given the evidence in the case.

A. Luxor is Entitled to An Award of Reasonable Costs Pursuant to NRCP 68 and NRS 18.020.

As this Court is aware, NRCP 68 mandates an award of costs to a party that obtains a verdict more favorable than a previously rejected offer of judgment submitted pursuant to these provisions. Moreover, NRS 18.020 provides that costs *must* be allowed of course to the prevailing party, against any adverse party against whom judgment is rendered, in an action for the recovery of money or damages, where the plaintiff seeks to recover more than $2,500. NRS 18.020(3) (Emphasis added).

The Nevada Supreme Court held a party moving for costs should "provide sufficient documentation and itemization in their respective cost memorandum." *Berosini v. People for The Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383 (1998). NRS § 18.005 defines "costs" as:

1. Clerk's fees.
2. Reporters' fees for depositions, including a reporter's fee for one copy of each deposition.
3. Juror's fees and expenses, together with reasonable compensation of an officer appointed to act in accordance with NRS 16.120.
4. Fees for witnesses at trial, pretrial hearings and deposing witnesses, unless the court finds that the witness was called at the instance of the prevailing party without reason or necessity.
5. Reasonable fees of not more than five expert witnesses in an amount of not more than $1,500.00 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee.
6. Reasonable fees of necessary interpreters.
7. The fee of any sheriff or licensed process server for the delivery of service of any summons or subpoena used in the action, unless the court determines that the service was not necessary.
8. The fees of the official reporter or reporter pro tempore.
9. Reasonable costs for any bond or undertaking required as part of the action.
10. Fees of a court bailiff who was required to work overtime.
11. Reasonable costs for telecopies.
12. Reasonable costs for photocopies.
13. Reasonable costs for long distance telephone calls.
14. Reasonable costs for postage.

15. Reasonable costs for travel and lodging incurred taking depositions and conducting discovery.
16. Any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research.

As noted above, at the conclusion of closing arguments, Plaintiff asked the jury to return a verdict of approximately $12,000,000.00, well in excess of the $2,500 required by NRS 18.020. Ultimately, a verdict for the defense was rendered. Thus, as Plaintiff failed to obtain a more favorable judgment than the Offer, Luxor is entitled to recover the costs incurred during the litigation which total $53,160.03. These costs have been documented and itemized in detail in Luxor's Memorandum of Costs and Disbursements submitted concurrently with this Motion. The costs sought by Luxor include, but are not necessarily limited to: clerk costs, court reporter costs, transcription costs, expert costs, deposition costs; and miscellaneous charges for transportation, meals, trial supply costs, postage costs, and photocopies.

NRS 18.005(5) gives the Court discretion to award expert costs exceeding $1,500 per witness when circumstances surrounding the expert's testimony were of such necessity as to require the larger fee. The circumstances of this case required fees in excess of $1,500 per witness as contemplated by the statute. As this Court is aware, this matter was complex, with many different liability issues and claimed injuries along with future medical treatments. These issues included most notably: (a) violation of the Americans with Disabilities Act; (b) negligent supervision, training, and evaluation; (c) stroke with cognitive and memory difficulty and future treatment recommendations; and (d) future lifecare plans. Plaintiff originally claimed medical costs in excess of $400,000.00 in a future lifecare plan. Please recall, Plaintiff's trial exhibits consisted of approximately ten binders and over 4000 pages of medical records and bills that each of Luxor's attorneys and experts had to review to provide accurate and complete opinions.

In response to Plaintiff's claimed injuries, Luxor had to retain the services of a number of experts including: Dr. Clifford Segil (Neurologist); and Michelle Robbins (Architect and General Contractor/ADA Issues). From the date of the Offer to verdict, Luxor's experts reasonably incurred the following costs:

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- Dr. Clifford Segil - $7,155.00
- Michelle Robbins - $16,595.90

Based on Plaintiff's ADA complaints, the medical damages, and pain and suffering she intended and did seek at trial. it was reasonable for Luxor's experts to prepare for and attend trial, if called, and the costs incurred by Luxor's experts are reasonable in light of the complexity of this case.

Plaintiff also asserted economic damages in the form of past loss of household services and future loss of household services totaling over $400,000.00. As this Court may recall, Plaintiff retained vocational expert Sarah Lustig to opine as to these losses. Ms. Lustig recommendations were based on discussion with Plaintiff and her treating physicians. In response to Plaintiff's economic claims, Luxor had prepared to and retained the services of a vocational/rehabilitation expert, Aubrey Corwin with Vocational Diagnostics. Ms. Corwin was at the courthouse and prepared to testify when Plaintiff informed Luxor they would no longer be seeking damages related to the lifecare plan. Instead, Plaintiff only sought damages related to Plaintiff's pain and suffering due to Ms. Lustig's lack of justification for the costs. From the date of the Offer to verdict, Ms. Corwin reasonably incurred $7,311.05 to prepare for and attend trial to give testimony.

Thus, Luxor respectfully requests this Court exercise its discretion and award Luxor its experts' costs, as well as all other costs reasonably incurred, as laid out in the Memorandum of Costs and Disbursements.

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III. CONCLUSION

For the foregoing reasons, Defendant Luxor respectfully requests this Court grant its Request for Attorney's Fees and Costs and award Defendant $202,398.00 for reasonable attorney's fees incurred and $53,160.03 in costs as to Plaintiff and her counsel jointly and severally.

DATED this 17 day of January, 2019.

LINCOLN, GUSTAFSON & CERCOS, LLP

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d/b/a LUXOR HOTEL & CASINO

Vivia Harrison v. Ramparts, Inc. dba Luxor Hotel & Casino, et al.
Clark County Case No. A-16-732342-C

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of January, 2019, I served a copy of the attached **DEFENDANT RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO'S MOTION FOR ATTORNEY'S FEES AND COSTS** via electronic service to all parties on the Odyssey E-Service Master List.

Staci D. Ibarra, an employee
of the law offices of
Lincoln, Gustafson & Cercos, LLP

EXHIBIT “2”

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

VIVIA HARRISON, Plaintiff,	)	CASE NO. A-16-732342-C
vs.	)	DEPT. NO. XXIX
MGM RESORTS INTERNATIONAL, Defendants.	)	

BEFORE THE HONORABLE DAVID M. JONES, DISTRICT COURT JUDGE

WEDNESDAY, FEBRUARY 27, 2019

RECORDER'S TRANSCRIPT OF HEARING

DEFENDANT RAMPARTS INC. DBA LUXOR HOTEL AND CASINO'S MOTION FOR ATTORNEY'S FEES AND COSTS

APPEARANCES:

For the Plaintiff: MATTHEW PFAU, ESQ.
BOYD B. MOSS, ESQ.

For the Defendants: LOREN YOUNG, ESQ.

COURT RECORDER: MELISSA MURPHY-DELGADO, DISTRICT COURT

TRANSCRIBED BY: ZACH KIMBLE, KENNEDY COURT REPORTERS

LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 27, 2019

[CASE CALLED AT 9:27 A.M.]

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THE COURT: Page 13. A16-732342, Harrison versus MGM Resorts.

MR. PFAU: Good morning, Your Honor. Matthew --

THE COURT: Good morning, Counsel.

MR. PFAU: -- Pfau for Plaintiff.

MR. MOSS: Good morning, Your Honor. Boyd Moss on behalf of Ms. Harrison.

MR. YOUNG: Good morning, Your Honor. Loren Young for Defendant Luxor.

THE COURT: Okay. Defendant's motion for fees and costs.

MR. YOUNG: Thank you, Your Honor. I'll give you a brief. I kind of have a slight cough. So I just want to start with the cost issue. The -- I think I set out in reply our mo- -- our memorandum was timely filed on the 17th. There was no motion to reattached those costs. And so we believe that those -- any objections to those costs would be weighed. However, in abundance of caution, under the Gitter case I'd like to make sure the Court provides a reasonable basis in regard to the expert fees, in order to make sure there's no appeal issues there, and that those issues are discussed.

In the Gitter case, it specifically states, for example, if the plaintiff's opposition attempts to address this untimely, that it's necessary for an expert to testify in order to have their fees granted. However, the Gitter case actually specifically clarified that issue. And just for your Court reference, the citation for the Gitter case is -- well, it was actually -- it's called Public Employees --

THE COURT: PERS --

MR. YOUNG: -- Retirement System versus Gitter.

THE COURT: We call it PERS.

MR. YOUNG: You call it what?

THE COURT: PERS.

MR. YOUNG: Oh, okay. I guess that makes it a little bit better. Gitter's more remember -- more easier for me to remember. But on page -- it looks like it's 16 of that opinion -- I'm looking at the advanced print-out -- it specifically says that they're taking the opportunity to clarify that law. And it says, under 18.005, subsection five, "An expert witness who does not testify and they recover costs equal to, or under, 1,500, and consistent with Khoury" -- the Khoury case -- "when a district court awards expert fees in excess of 1,500 per expert, it must state the basis for its decision."

So essentially, the Gitter case clarified that, if it's a

consultant and they don't testify at trial, you can get up to 1,500. But even if they're an expert and they're disclosed and they have a report but don't testify, you can still get above the 1,500 if it's reasonable and you state the basis therefore. Just same for the other experts. And the reason why I state that, or I've started with that, is because the Plaintiffs complain that Aubrey Corwin, our vocational diagnostic expert, did not testify at trial.

But if you recall, Your Honor, they spent about, you know, a little bit more than a half a day with their life care expert, and then when Ms. Corwin was in the hallway about to come in to testify, there was a stipulation put on the record that the Plaintiffs were not going to pursue any of the damages put on by their life care planner. Thus, based on that stipulation put on the record, we did not feel it necessary to bring in a life care planner and waste another half-day of the Court's time.

So that's why she was not -- she did not testify at trial. But she was a designated expert. She did review all the records. She did provide a very detailed expert report. And then as for the other elements --

THE COURT: Counsel, the question there is --

MR. YOUNG: Sure.

THE COURT: -- did she charge you full price for her

appearance even though she didn't testify?

MR. YOUNG: She -- well, she did. I mean --

THE COURT: Okay.

MR. YOUNG: -- if you look on the memorandum of costs --

THE COURT: I did. I just wanted to make sure that that's how she did it, or she was an automatic once-I-appear. Some experts it's "once I leave my threshold, my door of my office and/or my house, I charge you whether we go forward or not." Other ones do travel time, and then change it depending on whether or not they've actually testified.

MR. YOUNG: Well, she did give a little bit of break. I think if you look at her bill, I mean, she -- I mean, before the December bill, which was the $4,000 bill, and that was because she had to travel from Colorado to here, the -- you know, the other bills were only $3,000 for reviewing all the records and coming to her conclusions. And so that cost was incurred, and, you know, we had asked prior to having her come here whether they were going to pursue those issues, and it wasn't done until at the moment that she was in the hallway.

And then as for the other experts, you know, if you recall, Your Honor, I believe all three experts it's undisputed that they're all qualified. You know, Shelly --

Michelle Robbins was the architect expert. They -- there was a motion in limine on her. The Court found that she was more than qualified to talk about those issues, as well as Dr. Siegel was the neurologist who came in and testified. And his bill was approximately $7,000. And if you recall, Your Honor, the Plaintiff's exhibits alone were ten binders and over 4,000 pages, so there was a lot of records that Dr. Siegel had to, you know, review, understand, and provide a very good not only summary, but a very articulate testimony from the stand as well.

So under the Frazier versus Drake case, Your Honor, which is a court appeals case, September 3rd, 2015, they give various factors to determine whether the court has exercised sound discretion to award fees greater than 1,500 per expert. And these particular factors include the importance of the expert's testimony, whether it aided the trier of fact, whether it was repetitive of other expert witnesses, the extent and nature of the work or form by that expert, whether the expert had conducted independent investigations or testing, the amount of time the expert spent preparing a report, preparing for trial, the expert's area of expertise, education and training, the fee charged, comparable expert fees, and whether the expert was retained outside the area would've been comparable to -- well, no, that's combined --

and if the expert was retained outside the area where the trial is held.

And so if we start with Michelle Robbins, who is here locally Las Vegas, she is a qualified architectural expert. She did all the investigation regarding these claims on liability, whether there was an unreasonable dangerous condition, the ADA requirements, the building codes. She did an investigation into the history of what was applicable or not at the time the Luxor was built. She gave testimony. She gave multiple reports. And she was the one that had to continually evaluate these new allegations being made by Plaintiffs as they continually changed their theory on what was going to be their allegations of what was wrong with the Luxor deli.

And so that's why her -- and she actually had to attend all the multiple inspections that were requested by multiple experts at various times. And so that's why her fees and costs are a little bit higher than the other ones, but then she had majority of the work to do. And I think we can go over those factors as we talked about. She did her reports. She prepared for trial. You know, she is qualified as is found by this Court in the motions in limine. And she did multiple investigations, and an investigation into the codes and requirements of the ADA.

If you go to Dr. Siegel, a qualified neurologist, he provided an excellent summary of this significant volume of medical records and issues related to the neurologic condition, the mini-strokes, and such. Summarized the more than 4,000 pages in reports. It wasn't repetitive of any other experts. More than qualified and trained to do so.

And as well, as we already talked about with Ms. Corwin, she's more than qualified. She's got an extensive background in vocation rehabilitation, and she responded to all those issues initially proposed by the Plaintiff's expert, who was then withdrawn. So we would support, or we would move, that all of those fees and expert costs be granted, not only as because it was not moved to re-tax, but it's also reasonable under the Frazier case.

THE COURT: Thank you, Counsel.

MR. YOUNG: Any questions on the costs?

THE COURT: Let's deal with this one, and then we'll deal with fees after I hear from them.

MR. YOUNG: Okay.

THE COURT: Let's go ahead and do the costs.

MR. PFAU: Thank you, Your Honor. So addressing each one of these, our argument is that these fees were not reasonable, and they are based on the factors that were represented by Defense counsel. First of all, just addressing

one by one, Ms. Corwin. Ms. Corwin's testimony, or her report, was completely repetitive of our own expert's report, with the exception of two minor expenses. She had determined that there were distinguishing -- she thought that the value of two different expenses were different. And the testimony that she may have offered would have only been that difference, because that was the only difference in her report.

Everything that she did and everything that she analyzed essentially supported our expert, with the exception of those two things, so therefore her testimony was very much unnecessary with the exception. Because we ended up waiving those expenses and they had nothing else to -- they had nothing else to testify to because of that, because her -- their testimony would've been, yes, she does need ongoing care, and yes, she does need these different things, with the exception of the value of the expenses.

Secondly, Ms. Robbins. Ms. Robbins's testimony was in direct contradiction to the jury instructions that were presented to the jury. Her testimony was not -- it was based on her understanding of building codes, but it was not in correlation with the law itself; and therefore, it was not helpful to the triers of fact, it was not helpful to the jury. The jury, in fact, in deliberations actually stated such.

They didn't like her demeanor; they didn't like what she was presenting.

Mr. Siegel. The factor that Defense counsel did not mention in his analysis was the one that is the biggest issue with Mr. Siegel, is he is not from this state. There's additional expense to flying him here, to get him here, and to have him be part of this process; therefore, his expenses are unreasonable for that reason.

Therefore, we ask the Court to award the amount of 1,500 for each one of these experts.

THE COURT: Okay. Counsel, rebuttal on that?

MR. YOUNG: Briefly, Your Honor. $7,000 for a neurologist from out of state is unreasonable? I couldn't get an expert locally to do that, or to review 4,000 pages of medical records and medical bills and then come to trial and testify about that as well. I'm sorry, but that is clearly well below what a lot of neurologists would charge here locally. I would love to see what Plaintiff's expert charged them to come to trial and testify at -- but with that said, Your Honor, Dr. Siegel, although was out of state, there's nothing that shows that his fees were out of the ordinary of what would normally be charged of a neurologist here in the Las Vegas community.

And I like the argument that Ms. Robbins, the jury didn't

like her demeanor. Well, that's not in the factors that set out in the Frazier case, whether the jury liked her demeanor or not. Although it was helpful, there was no other expert that talked about the specific codes and requirements here in Clark County. Their expert simply did not know, did not understand it, and didn't investigate it. And that was a different issue. And their expert also talked about the ADA issues, which our expert had to address and rebut.

Now, whether it was successful or not, I don't know if Plaintiff has a leg to stand on whether it was successful or not since there was a Defense verdict here. And then as for Corwin, the Frazier case says whether it's repetitive of other experts on the -- well, it doesn't say on the same side, but that's what it means. It means I don't want to be bringing two of the same experts and saying the same thing. She's a rebuttal expert to their expert, so of course she's going to address the same issues. She's going to respond to those issues. And his interpretation of what Corwin's testimony was and her opinions about the costs is drastically contrary to what she put in her report and what she was going to testify at trial.

The reason why she was here is because she was going to testify and rebut those opinions provided by the Plaintiff's expert. Otherwise, if she was going to come here and testify

to the same thing, why would we have her here? Why would we pay those expenses during trial? That just doesn't -- that's -- just doesn't even make sense, Your Honor. And so we would say that the -- and in addition, Your Honor, nobody addressed the issue that they waived their objections for failing to file a motion to re-tax the costs.

THE COURT: Okay. Based upon this, this is what I'm going to do. Under the factors basically that's set forth by the Nevada Supreme Court in regards to going over the statutory limitation for experts, I think we all agree that the expert fee number that we now have is probably a little bit undervalued for what it goes on in today's life. Anybody who's ever practiced in personal injury knows that -- I don't even think you can get a chiropractor for $1,500 to do the work that is being requested of individuals at trial.

I'm going to allow expert fees in the amount of 5,000 and then $7,500. I'm going to reduce down the one that was requested for 16,000 to $7,500. The other requests that were $7,000 I went down and reduced them to $5,000 apiece. Costs in the amount of $22,097.28 for the other costs that were not opposed and re-taxed will be granted. Let's deal with fees. Talking about your offer of judgment, Counsel. Because you know what my concern is. Is it a valid offer of judgment, the $1,000?

MR. YOUNG: Thank you, Your Honor. Well, let's start off with -- so an offer of judgment. We served an offer of judgment for $1,000, and it was back in -- I believe it was March of 2017, almost two years before trial. All right. And this was fairly close to the beginning of the case, but the case had been going for some time. The Plaintiff had already known about the facts. The Plaintiff had all the facts. The Plaintiff's attorneys easily should have or did talk to all of the family members that were there with the Plaintiff, and knew all those facts.

And so the law requires that the offer has to be reasonable and good faith. And so based upon the facts that we do know -- and as I put in the reply, the complaint included a lot of erroneous facts. A lot. And I just want to make sure that those were clear. Because, Your Honor, we pointed that out on several occasions. In the complaint, it specifically alleged that Plaintiff was entering the deli at the time the incident occurred. That was proven to be wrong in the beginning of the case.

If you noted, in my reply brief I attached the letters that I sent back in March 2017, and again I sent another letter in June of 2017. That -- the one in June was after we took some more depositions of the witnesses that clarified these facts. So that was clearly wrong. We all know that.

And at trial it was proven that it wasn't true that this incident occurred while she was entering.

The next fact that they alleged, that Luxor employees moved the dining tables and chairs. Well, we know that that's not true as well. The video showed that wasn't true. The witnesses testified that that was not true. Luxor employees moved furniture to accommodate Plaintiff's scooter. Well, we know that's not true. I mean, that was proven before trial and at trial. Plaintiff operated a scooter over the base of the table, the front wheel gave way. Well, we know that's not true because there were photographs taken after the fact, and the Plaintiffs confirmed that there was nothing wrong. And we saw in the video where they just rode the scooter back off the screen.

The next one, Plaintiff struck the base of the table and Plaintiff fell to the right. Well, we know that's not true. Plaintiff was unaware of a dangerous condition. Well, we know that's not true because there was no dangerous condition there, and the Plaintiff also testified that she was aware that there were tables and chairs. And then she was also aware that their -- her family or friends are the ones that moved the tables and chairs, and that the table was a dangerous condition to unsuspecting guests. Plaintiff testified to the contrary to that.

These are all the allegations that they were claiming supported a premises liability case against the Luxor. We told them, we asked them in telephone calls and in the multiple letters that we sent, where's the basis for your premises liability claim against the Luxor. What was the dangerous condition. What did we do. They never, ever even fixed these allegations. They never gave us any type of a response when we sent these letters, when we did the phone calls. No response. We sent the offer of judgment for $1,000, no response.

I mean, generally, as Your Honor is more than well aware, generally in these cases the plaintiffs will send a letter, and say, "Look, here's why you guys are at fault. Here's how much my damages are, I want this much money to settle." We didn't even get that in response to our offer of judgment. So then, when I followed up with another letter, saying, "Look, we just took these depositions, that confirmed that your allegations are wrong. Dismiss us. And now I've incurred a lot of fees and costs. I'll be willing to even waive that." No response. No demand. Not one settlement demand from the Plaintiffs during discovery in this case. None.

THE COURT: Is that one of the factors I'm to consider, Counsel?

MR. YOUNG: But this is the --

THE COURT: Is that one of the factors I'm to consider?

MR. YOUNG: I think it goes to the good faith nature --

THE COURT: Okay.

MR. YOUNG: -- of this claim. And I think -- so for purposes of the offer of judgment, was it reasonable? I believe it was for the fact that there was no evidence to show liability on Luxor. Whether there was liability on the other defendants is another question. But as to the Luxor there was no evidence of liability. And in addition, Plaintiffs claimed that the $1,000 was too low. Well, the $1,000, if you take into consideration based upon what they presented at trial, they presented not one shred of evidence of medical bills incurred. Not one. They didn't ask for medical bills incurred. They didn't ask for future medical bills.

At trial they only asked for pain and suffering. So if you take that into consideration, and the evidence that shows liability was not going to lie with Luxor, $1,000 based upon zero medical bills is not unreasonable. It is a reasonable offer.

THE COURT: For a fractured bone.

MR. YOUNG: Well, when it's not your fault, Your Honor. I mean, and the evidence shows that. And I tried to

clarify, if there's something else I'm missing, tell me, and they don't give it to me. And then they haven't presented any evidence during discovery to prove their medical bills. You know, Your Honor, I mean, sometimes you look at these facts, and the facts are completely in opposite of what their own witnesses testified to, I believe that's maintained in bad faith.

I think that qualifies under Rule 18 as well as 7.085 that shows that they had the ability to evaluate this case, and they could've said, well, you know what? It doesn't look like these facts are turning out the way we alleged them. And they could've had that chance to resolve the case, but they didn't. And they could've dismissed the case. They could've responded to my letters. They could've done something, but they didn't. And they maintained this action. And if you recall, we filed a motion for summary judgment. Your Honor denied that motion for summary judgment, and specifically told them, look, you got a major uphill battle.

And the main thing that only -- the main question in this case that they finally landed on at the end of discovery and for trial was their hired gun from across the country came out here and testified that it was plausible. That was what their case was based upon against the Luxor. It was plausible. That was it. That's what they were hanging their hat on

against Luxor. That's why the offer was reasonable, the rejection was clearly unreasonable, the amount was based upon what the damages were at that time, and they weren't seeking -- they didn't have the ability to prove that $400,000 in medical bills. And so we believe that was reasonable. We believe that it was maintained contrary to the law, and I believe I set that out in my brief. I don't need to -- I don't think I need to go through that --

THE COURT: You don't need to go through --

MR. YOUNG: -- again.

THE COURT: -- all the factors. I was just asking if that one is one that I'm to consider.

MR. YOUNG: Yeah. And the other thing I just wanted to point out, Your Honor, you know, because there's those two issues of why I believe we're entitled to attorney's fees, is under the offer of judgment -- we meet the offer of judgment -- but then, in addition, it was maintained not grounded in fact, and it was unreasonable. And I look to the statute under NRS 18 as well as 7.085, and it specifically states that if the case was filed, maintained, or defended -- so that means it has to -- it can be maintained, a civil action or proceeding that is not well grounded in fact. It was not well grounded in fact.

The facts show that the Plaintiff's family moved these

tables and chairs, created a larger pathway for this Plaintiff to exit, and this Plaintiff struck a stationary table and fell over and injured herself. It was not the Luxor's fault. The jury agreed and found for the Defense. It was -- the facts, that's -- I mean, there was just no -- it wasn't grounded in any specific fact. It was pointed out to them several times, and we -- I believe we should be entitled to our fees. Thank you, Your Honor.

THE COURT: Counsel.

MR. PFAU: Thank you, Your Honor. So I think what we're arguing is what facts were known at the time this offer of judgment was presented, and it's clear that at the time the offer of judgment was presented discovery was not done yet. There were no 30B(6) depositions done of Luxor. There was no investigation as to what Luxor knew, that they should've done, or did do at the time of the events. There was no floor plans available to us.

The 30B(6) representatives at the time when they were actually deposed gave us the information we needed, which was the basis of our case. And as it was mentioned, and I think you read and you of course sat through the trial, the information presented by Lindsay Stoll [phonetic] that the -- that floor plan was approved by the safety director and didn't show all the tables that were actually present, the fact that

there was -- Lindsay Stoll stated that there was supposed to be somebody on that dining room floor all the time to keep it and maintain it. There was no evidence that there was anybody there.

And finally, from their other representative that -- I can't remember her name -- DiGiacomo -- Kimberly DiGiacomo [phonetic], that said that they didn't have a screening policy at the desk where they actually rent these scooters, the bell desk. Just gave a scooter to anybody, and that was their policy and that's what they did for everybody. And both of those issues remain issues in this case. And without having the full scope of knowledge, it's true, we didn't have all the facts, we didn't know all the information. We knew what we were being told. And until discovery's done, we don't know everything, and that's -- that is the main issue here, is because discovery wasn't complete, and they didn't renew an offer of judgment after they knew all the facts.

There was no discussion need to be had. They were at the same depositions we were. They heard all the same facts we heard, and we'll always have a -- you know, plaintiffs and defense will never agree that Lindsay Stoll's testimony was bad for the Luxor. They just won't agree to that. But they knew the information at that point, and if they still felt it was worth $1,000, or $1,001, they could've renewed that offer

of judgment knowing everything that was out there, and they chose not to do that. And we --

THE COURT: When were the 30B(6) depositions completed? I know we had some issues with those.

MR. PFAU: The offer of judgment was presented on March 23rd --

THE COURT: I know it's March for the offer --

MR. PFAU: 20- -- yeah. And December 20th is when the 30B(6)s were done.

THE COURT: That's what I thought --

MR. PFAU: But that's --

THE COURT: -- it was almost the end of the year.

MR. PFAU: Yes. So we don't have -- we didn't have evidence of -- you know, we didn't have the facts. That is what evi- -- that's what discovery is, is presenting the facts, getting the facts on the table, knowing what is actually out there. And without those facts, there's no way to accept an offer of judgment of $1,000, especially when you have a severely injured client. And that is not in good faith. A good faith represent -- offer is one that is -- could be accepted knowing all the facts. There were no facts. It couldn't be accepted because we didn't know all the facts, and if they really wanted to give an offer of judgment that would be valid before the Court today, they could've presented

a new one after discovery was completed.

THE COURT: After the 30B(6), after discovery was completed, did you attempt to resolve the matter by sending them an offer of judgment, or asking or making a demand?

MR. PFAU: Your Honor, in all communications they continued to state that they were -- they didn't have any liability. They felt like they had zero liability, and therefore they weren't -- there was conversations that were had about liability and about whether or not they wanted to pay everything that was stated in conversations between Defense and Plaintiffs. There is nothing in writing related to any offers we made --

THE COURT: So no demands were made --

MR. PFAU: -- because --

THE COURT: -- after the discovery was completed.

MR. PFAU: Not from us, Your Honor.

THE COURT: Okay. Counsel?

MR. YOUNG: As just admitted, no demands were ever made to the Luxor, whether during discovery or after discovery. Not one. And I pose the question, after discovery, why would Luxor renew its offer of judgment that it previously did, when the case law specifically says a newer or more recent offer of judgment basically extinguishes your first one, and then I lose all that time of fees and costs?

That's just nonsense.

THE COURT: That's what the old rule says. The new rule is going to change that, Counsel.

MR. YOUNG: Thanks goodness. Thank goodness. So, Your Honor, that just doesn't make sense. There's no reason why I would renew my offer of judgment if my position was the same. There would be no reason why I would bet against myself if Plaintiff never gives me any type of demand, never gives me any evaluation or response as to why my client was at fault. Not one.

THE COURT: Okay. Let's deal with the delay on the 30B(6)s. If I recall, the [indiscernible] fell on Luxor because they didn't have someone or they couldn't produce someone or there's all those issues going back and forth as to the delay in getting the 30B(6)s done.

MR. YOUNG: Well, actually, that's -- I think you're mis- --

THE COURT: Like, I remember, because I've got multiple cases with this same issue; so --

MR. YOUNG: I think you're misremembering that. Because on this particular one, at trial our 30B(6) was no longer available. She had moved already.

THE COURT: That's the one. Okay.

MR. YOUNG: But it --

THE COURT: I knew there was some facts about 30B(6) being no longer --

MR. YOUNG: Exactly.

THE COURT: -- available.

MR. YOUNG: But these depositions, the 30B(6) depositions were not requested by the Plaintiffs until these depositions were taken. There was some dispute as to the topics, which we worked out within a couple weeks or so, and then we had arranged for three independent witnesses to talk about the topics and areas that they wanted to hear. But it wasn't requested by the Plaintiffs until the -- until that date, until that time period in December.

And so any delay was not on the Luxor. And the fact that Plaintiffs allege they did not have the facts to evaluate an offer of judgment just blows my mind, because they say that the things they discover was the floor plan. Well, okay, they had already done an inspection. They had the photographs. They had already seen what it looked like. They had the video of the incident. How did the floor plan change that?

THE COURT: Well, Counsel, what if you didn't -- if you had a floor plan that you approved through your safety director, and it was completely opposite of that, wouldn't that have been evidence?

MR. YOUNG: But it --

THE COURT: That you didn't even follow your own safety plan?

MR. YOUNG: But it -- but that's a hypothetical. But it didn't happen. And if it did, that wasn't the cause of action. Their cause of action was that there was some type of dangerous condition, and the only thing they could finally develop was they went and hired somebody to say something was plausible under the ADA. That was all they had.

THE COURT: So if your floor plan through your safety director called for 12 tables and 26 chairs, and you guys snuck in two or three more, would that be in clear -- through the safety director -- would that be evidence?

MR. YOUNG: Would it be evidence?

THE COURT: Would that go -- yeah. Could that be evidence --

MR. YOUNG: It could be.

THE COURT: -- that the trier of fact would've look at, and said, okay, well, this company set up through its own safety director what they considered a valid safety plan for ingress and egress going through this area, noting we would have handicapped individuals. I mean, it's why your safety directors go through it. And then after he approved it, someone at the deli or the Luxor said, look, we've got a ton of people wanting service at the deli, want to go in there, we

need to throw a couple more tables in there.

Okay. So if that had occurred -- because they didn't have the floor plan. They didn't know what the original design was -- and those facts had occurred, that would be valid evidence at least the trier of fact could look at, and say, look, the company didn't even follow their own plan.

MR. YOUNG: Exactly.

THE COURT: Okay.

MR. YOUNG: Had that occurred --

THE COURT: So it wasn't until that 30B -- isn't until that, quote, "floor plan" gets disseminated that we can say that they didn't do it? You're saying, we'll take a look at the video, they could look at the pictures, but if the safety plan was totally different than what was represented in the pictures, isn't that evidence that they could've presented to the trier of fact, and said, look, they don't even follow their own safety plans?

MR. YOUNG: Sure. In theory. But it didn't happen here.

THE COURT: Right.

MR. YOUNG: And --

THE COURT: But didn't they need to discover that?

MR. YOUNG: Well, sure. And then so why didn't they notice the depositions? Why didn't they then call me, and

say, "You know what? I want to consider your offer, but I need that deposition first. Let's take a look at that." Nothing. Radio silence until December. And in addition, Your Honor, and the reason why during trial that I was trying to get a live -- excuse me -- a live witness here in place of Lindsay Stoll, is because they were taking her testimony out of context in that deposition.

But when they finally pieced it together, it still didn't make sense, and I didn't want to fight it. But they were taking her testimony out of context, that that particular pink plan, if you remember, that pink background, that was the final plan, and those were exactly where all the tables were. That was completely out of context, and it was not the questions that were being posed to her, and it was not the answers that she was providing. So that's the reason why I was trying to get a live person here, to clarify that issue. But it just didn't make sense the way they were playing it anyway, so it didn't -- I didn't want to muddle up the waters.

But given the fact is, if they were going to try to prove that claim, why didn't they bring that forward? Why didn't they put that in their interrogatory responses? Why didn't they just respond to me and look right, and say, "This is what I want to do. I need this information before I can consider you offer"? I send those letters all the time. "I can't

consider your offer of judgment until I get this information." Not -- nothing. Nothing was done.

And how -- a person to monitor the deli? A person to monitor the deli and a screening policy to rent the scooter. Well, screening policy to rent the scooter, that was Desert Medical's issue. That was Desert Medical, and that deals with a whole other thing. As for the deli itself, even the 30B(6) witnesses didn't develop any type of evidence to support their theory that there was a dangerous condition. And so if we come all back to what we're really here about, we're here about whether this re- -- this offer was reasonable in time as well as in amount.

At the time that I made the offer, I included a letter as well after I had phone calls with the Plaintiff's attorney explaining our position, explaining why we believe that their allegations are wrong. We even told them, talk to Mr. Sawamoto's counsel who told us this stuff. Because we hadn't taken Plaintiff's deposition yet at that time. And I agree, we hadn't taken Plaintiff's deposition, but they should've talked to their own client. Their own client --

THE COURT: That's what my problem is, Counsel, is you sit here and talk about developing of evidence, you don't even know what the Plaintiff was going to say and you shoot over a $1,000 OJ. So if your own logic is, we did it based

upon the facts, the primary fact finder or the primary fact witness on the Plaintiff's side would've been the Plaintiff.

MR. YOUNG: Exactly.

THE COURT: So you didn't have those facts. You didn't even know what she was going to say when you made an offer judgment of $1,000.

MR. YOUNG: Well, I didn't have her deposition testimony, but I did have her responses to interrogatories. I had the other statements in her medical records. I also had --

THE COURT: So you didn't need to take her deposition?

MR. YOUNG: Well, no. I didn't say that. I didn't -- actually, I didn't notice it, but I went there. But --

THE COURT: And you asked questions.

MR. YOUNG: Yeah.

THE COURT: I saw it.

MR. YOUNG: Yeah. And I mean, but --

THE COURT: So it was important to get her information.

MR. YOUNG: Well --

THE COURT: You had something you wanted. You had little holes you wanted to fill in.

MR. YOUNG: Exactly. And if you remember, Your

Honor -- excuse me -- I'm choking here. The Plaintiff has a hard time remembering this stuff. That was -- with remembering --

THE COURT: Okay.

MR. YOUNG: -- was testified to or represented at trial. And so at the time of her deposition that was also an issue. So that's how come in my letter I specifically said, "This is what Mr. Sawamoto's counsel is representing to us that he is going to testify to. Ask him. Confirm that. Let's find these facts out." And then we went and took the depositions because they wouldn't confirm that stuff, or didn't want to acknowledge that stuff. And then we had to incur more fees and costs going to Alabama, and then we had to go to Florida as well to take these depositions.

Then after -- even after we had those sworn testimony, still nothing. That's how come I believe it was maintained and unreasonable, Your Honor.

THE COURT: Okay. This is what I'm going to do, Counsel. In regards to the offer of judgments, when I get numbers like this -- and I understand, because it's always this turmoil. You know, you say you have $420,000 in medical bills, so $1,000 isn't reasonable. But 420,000 in medical bills, $200,000 might not be reasonable, $300,000 might not be reasonable. All the years of my practice, both on the

plaintiff and defense side, we looked at these $1,000 offers of judgment from the plaintiff's side as just ludicrous. There's no way we could settle it. We got more than that in just our initial costs.

But once all the facts were generated and all the parties knew exactly what the positions were going to be, that's when I consider what should've been done. As a result therein, I'm going to allow the fees that were incurred in December. My total is $69,688. Counsel for the Defendant, go ahead and prepare the order. You got that number?

MR. YOUNG: 69,688?

THE COURT: Yes, sir.

MR. YOUNG: And, Your Honor, I actually didn't get the numbers on the --

THE COURT: Okay.

MR. YOUNG: -- costs.

THE COURT: The costs were $22,097.28, excluding the experts. The total for experts, I broke it down five, five, and 7.5, for a total of 17,500.

MR. YOUNG: Okay.

THE COURT: Total costs, then, would be $39,597.28. Go ahead and prepare the order, Counsel.

MR. YOUNG: Thank you, Your Honor.

THE COURT: Thank you.

MR. PFAU: Thank you, Your Honor.

MR. MOSS: Thank you.

[HEARING CONCLUDED AT 10:04 A.M.]

******

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.

Zach Von Kimble
Transcriber

EXHIBIT “3”

Subject: RE: Harrison v. Luxor
Date: Monday, March 4, 2019 at 3:24:08 PM Pacific Standard Time
From: Loren Young
To: Boyd Moss, Matthew Pfau
CC: Barbara Pederson, Courtney Christopher, Bruce Alverson, Brian K. Terry, Stacey Upson (stacey.upson@farmersinsurance.com)
Attachments: image001.jpg, image002.png, image003.png, image004.png, image005.jpg, image006.png

Dear Mr. Moss:

In anticipation of a potential phone call, I revised the paragraph on page 4 and let me know if this is better:

> On March 23, 2017, Luxor served an offer of judgment to Plaintiff for $1,000.00 pursuant to NRCP 68. Pursuant to the rule, if an offeree rejects an offer and fails to obtain a more favorable judgment, the Court may order the offeree to pay reasonable attorney's fees incurred from the date of the service of the offer. As Plaintiff did not prove a claim or damages against Luxor, leading to a defense verdict, this Court finds the offer served by Luxor was reasonable and Plaintiff did not obtain a more favorable judgment than the offer. Thus, the Court finds that Luxor is entitled to a partial award of attorney's fees incurred during the month of December only.

As for the second paragraph objected to on page 6, this is was addressed in the briefing. See my reply brief on page 3:16 – page 4:11. Not sure why you believe that the *Muije* case does not support the statement. Here is a quote from the case with my added emphasis:

> "Many cases in other jurisdictions have held that an **offset** is part of the trial judgment, and thus it **takes priority** over an attorney's lien. *Salaman v. Bolt*, 141 Cal.Rptr. 841 (Ct.App. 1977); *Galbreath v. Armstrong*, 193 P.2d 630 (Mont. 1948); *Hobson Constr. Co., Inc. v. Max Drill, Inc.*, 385 A.2d 1256 (N.J. Super.App.Div. 1978); *Johnson v. Johnston*, 254 P. 494 (Okla. 1927).
>
> In *Salaman*, the court **gave priority to an offset arising from an unrelated matter between the two parties**. In explaining that an offset must be satisfied before attorney's fees, the court stated:
>
> > **[E]quitable offset is a means** by which a debtor may satisfy in whole or in part a judgment or claim held against him out of a judgment or claim which he has subsequently acquired against his judgment creditor. The right exists independently of statute and rests upon the inherent power of the court to do justice to the parties before it.
>
> *Salaman*, 141 Cal.Rptr. at 847.

Thus, the *Salaman* court determined that equity **requires** settlement of the net verdict between the two parties **before** attorneys' liens may attach.

> The argument that Cab Company is not a lienholder nor a secured creditor **ignores Cab Company's status as a party to the case**. The purpose of the suit was to determine what Cab Company owed, and the net result of the suit was that Cab Company owed nothing. In *Hobson*, the plaintiff won a judgment in the Law Division but lost a greater judgment in a related action in the Chancery Division. The court held that, "[u]nder such circumstances the attorney's lien could not be enforced for there would be no judgment or fund available to the client to which it could attach. . . ." *Hobson*, 385 A.2d at 1258. The *Hobson* court reasons that the prevailing party should not be burdened by the claims asserted by the losing party's attorney. *Id*. at 1258. **The purpose of a lawsuit is to settle a dispute between two parties. Only after that dispute is settled**, should the courts or legislature supervise the division of a recovery between attorney and client.

John J. Muije, Ltd. v. North Las Vegas Cab Co., 106 Nev. 664, 666-667, 799 P.2d 559, 560-561, (1990). Clearly, equity requires the offset before the attorneys' lien attaches. I believe this is an accurate statement of the law. However, if you believe this is inaccurate, I believe it will be necessary for you to file a motion to adjudicate the lien.

If you would like to discuss the proposed changes, give me a call. However, since the second paragraph is going to remain in the proposed order, I understand that you will still object, so I will submit the order with the above changes. If your position has changed, please let me know. Thanks.

Loren S. Young, Esq.
Managing Partner - Nevada
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From: Boyd Moss <Boyd@mossberglv.com>
Sent: Friday, March 1, 2019 3:46 PM
To: Loren Young <lyoung@lgclawoffice.com>; Matthew Pfau <matt@p2lawyers.com>
Cc: Barbara Pederson <BPederson@lgclawoffice.com>; Courtney Christopher <cchristopher@alversontaylor.com>; Bruce Alverson <BAlverson@AlversonTaylor.com>; Brian K. Terry <BKT@thorndal.com>; Stacey Upson (stacey.upson@farmersinsurance.com) <stacey.upson@farmersinsurance.com>
Subject: RE: Harrison v. Luxor

Mr. Young:

Please be advised that object to the following paragraphs of the order:

Page 4, lines 19-25:

"On March 23, 2017, Luxor served an offer of judgment to Plaintiff for $1,000.00 pursuant to NRCP 68. Pursuant to the rule, if an offeree rejects an offer and fails to obtain a more favorable judgment, the Court may order the offeree to pay reasonable attorney's fees incurred from the date of the service of the offer. Given the fact that Plaintiff has not provided any proof to support a claim against Luxor, this Court finds the offer served by Luxor was reasonable and Plaintiff did not obtain a more favorable judgment than the offer. Thus, the Court finds that Luxor is entitled to a partial award of attorney's fees incurred from the date of the offer."

We believe that the judge said that the OOJ was not the reasonable value under NRCP 68 and the award for fees was for the month of December (the trial) based on NRS 18.010. Additionally, I think the two jurors that did not vote in favor of a defense verdict would indicate that the statement "Plaintiff did not provide any proof to support a claim against Luxor" is not accurate.

Page 6, lines 5-9:

"Based on the forgoing, IT IS HEREBY FURTHER ORDERED that this total final judgment must first be offset from other settlement funds received by Plaintiff and Plaintiff's attorney as part of the trial judgment before any distribution and this total final judgment in favor of Luxor takes priority over any other lien, including an attorney's lien. John J. Muije, Ltd. v. North Las Vegas Cab Co., 106 Nev. 664, 666, 799 P.2d 559, 560 (1990)."

This issue was never addressed in briefing or oral argument. Accordingly, our position that it would be improper to include any ruling on this issue as part of the Order. We have an attorney lien for services against any recovery on Ms. Harrison's behalf. Your client has a judgment for attorneys' fees and costs. We are unaware of any Nevada authority that would support the position that your client's "judgement" for attorney's fees and costs takes priority over our attorney lien for fees and costs on a prior recovery. The case cited certainly doesn't stand for that.

If you are agreeable to either re-work the first paragraph we object to and remove the second, we can agree to sign the order. If not, we will file our own competing order that removes the two paragraphs.

On a related note, if you want to brief the issue regarding your client's judgement and where it falls in line of priority with our attorney lien we will hold the money in trust until the issue is adjudicated, but this issue was ever addressed by the Court.

BOYD B. MOSS III, ESQ.
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From: Loren Young <lyoung@lgclawoffice.com>
Sent: Thursday, February 28, 2019 12:21 PM
To: Boyd Moss <Boyd@mossberglv.com>; Matthew Pfau <matt@p2lawyers.com>
Cc: Barbara Pederson <BPederson@lgclawoffice.com>; Courtney Christopher <cchristopher@alversontaylor.com>; Bruce Alverson <BAlverson@AlversonTaylor.com>; Brian K. Terry <BKT@thorndal.com>; Stacey Upson (stacey.upson@farmersinsurance.com) <stacey.upson@farmersinsurance.com>
Subject: Harrison v. Luxor

Mr. Moss and Mr. Pfau:

Please find attached a proposed order and judgment regarding the Court's ruling yesterday on Luxor's motion for fees and costs. Please advise by March 1, 2019 or any objections or requested changes. If acceptable, please sign and return to my office for handling with the court.

As noted, this award must first be offset from other funds received by Plaintiff and Plaintiff's attorney as part of the trial judgment and take priority over any other lien, including an attorney's lien. *John J. Muije, Ltd. v. North Las Vegas Cab Co.*, 106 Nev. 664, 666, 799 P.2d 559, 560 (1990). Thus, please refrain from distribution of any funds received from other sources and settlements until this judgment is entered and paid. Thank you.

Loren S. Young, Esq.
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EXHIBIT “4”

RPLY
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Attorneys for Defendant, RAMPARTS, INC.
d/b/a LUXOR HOTEL & CASINO

DISTRICT COURT

CLARK COUNTY, NEVADA

VIVIA HARRISON, an individual,

Plaintiff,

v.

RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, a Nevada Domestic Corporation; DESERT MEDICAL EQUIPMENT, a Nevada Domestic Corporation, DOES I through XXX, inclusive, and ROE BUSINESS ENTITIES I through XXX, inclusive,

Defendants.

DESERT MEDICAL EQUIPMENT, a Nevada Domestic Corporation,

Third-Party Plaintiff,

v.

STAN SAWAMOTO, an individual,

Third Party Defendant.

CASE NO.: A-16-732342-C
DEPT. NO.: XXIX

DEFENDANT RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO'S REPLY IN SUPPORT OF ITS MOTION FOR ATTORNEY'S FEES AND COSTS

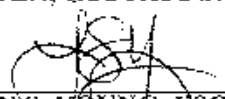
Hearing Date: February 27, 2019
Hearing Time: 9:00 a.m.

COMES NOW, Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO (hereinafter referred to as "Luxor"), by and through its attorneys of record, the law firm of LINCOLN, GUSTAFSON & CERCOS, LLP, and hereby submits the following Points and Authorities in support of its Reply to Plaintiff's Opposition to Luxor's Motion for Attorney's Fees and Costs.

This Reply is made and based upon the attached Memorandum of Points and Authorities and supporting documentation, the papers and pleadings on file in this action, and any oral argument this Court may allow at the time of hearing.

DATED this 20th day of February, 2019.

LINCOLN, GUSTAFSON & CERCOS, LLP



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I.

INTRODUCTION

As this Court is aware, trial started on December 10, 2018 and concluded on December 20, 2018 with the Jury returning a Defense Verdict against Plaintiff and in Luxor's favor. As such, Luxor is the prevailing party and, thus, entitled to award of costs pursuant to NRS §18.005 and NRS §18.020. Pursuant to NRS §18.110 and case law, a memorandum of costs must be filed within 5 days after the entry of order or judgment. Here, the Entry of Judgment on the Verdict was filed and served on January 16, 2019 and the Memorandum of Costs was timely filed on January 17, 2019. As the prevailing party, Luxor respectfully requests the Court grant its costs incurred in this matter to defend the allegations made by Plaintiff.

NRS §18.110(4) expressly provides that if Plaintiff wished to dispute and/or retax and settle those costs, "**Within 3 days after service** of a copy of the memorandum, the adverse party may move

the court, upon 2 days' notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing party claiming costs. Upon the hearing of the motion the court or judge shall settle the costs." *See* Nev. Rev. Stat. Ann. § 18.110(4). Thus, Plaintiff's motion to retax and settle Luxor's costs was due on or before January 28, 2019. Plaintiff did not file a motion to retax and settle Luxor's costs and, thus, Plaintiff has waived any objection to the Memorandum of Costs and the Court should enter an order granting Luxor's costs totaling **$53,160.03**. *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 493, 117 P.3d 219, 227 (2005). Plaintiff's faltering argument that Luxor is not entitled to recover costs pursuant to NRCP 68 is inapplicable here.

Plaintiff's opposition fails to cite any applicable law or statute in support of the arguments made. In fact, Plaintiff contends that the standard of care in considering an award of attorney's fees is that Defendant must show Plaintiff "brought forth this lawsuit and proceeded to trial in 'bad faith'." (*See* Plaintiff's Opposition, Page 2; *See also* Page 3 line 15, which contradictorily states "Defendant concedes the argument that Vivia's claims were not in good faith..."). Tellingly, although Plaintiff includes quotation marks, there is no citation for the argument. Plaintiff is clearly flummoxed regarding legal arguments of "good faith" and "bad faith," which are not equal opposites.

As a preliminary matter, it must be brought to the Court's attention that Luxor seeks recovery of costs and fees against Plaintiff and Plaintiff's counsel, which award should be offset from settlement funds received by Plaintiff from other sources. It is Luxor's understanding that during trial and before the jury verdict, Plaintiff reached a high/low agreement with Desert Medical Equipment that guaranteed Plaintiff would receive a certain amount no matter what the verdict would be. In Nevada, as well as in other jurisdictions, "an offset is part of the trial judgment, and thus it takes priority over an attorney's lien." *John J. Muije, Ltd. v. North Las Vegas Cab Co.*, 106 Nev. 664, 666, 799 P.2d 559, 560 (1990)(*citing Salaman v. Bolt*, 141 Cal.Rptr. 841 (Ct.App. 1977); *Galbreath v. Armstrong*, 193 P.2d 630 (Mont. 1948); *Hobson Constr. Co., Inc. v. Max Drill, Inc.*, 385 A.2d 1256 (N.J. Super.App.Div. 1978); *Johnson v. Johnston*, 254 P. 494 (Okla. 1927)).

It is anticipated Plaintiff may argue that Plaintiff's counsel has perfected an attorney's lien and, thus, the attorney's lien takes priority over everything, including any award of fees and costs to Luxor. This is incorrect. In *Salaman*, the court gave priority to an offset arising from an unrelated matter

between the two parties. The Court explained that an offset must be satisfied before attorney's fees are calculated. The *Salaman* court determined that equity requires settlement of the net verdict between the two parties before an attorney's liens may attach. *Salaman*, 141 Cal.Rptr. 841. A perfected attorney's lien attaches to the net judgment that the client receives after all setoffs arising from that action have been paid. *See John J. Muije, Ltd.*, 106 Nev. at 667. After the net judgment is finalized, then the attorney's lien will be superior to a later lien asserted. (*Id. citing See United States Fidelity & Guarantee v. Levy*, 77 F.2d 972 (5th Cir. 1935) (attorney's lien is superior to offset from a claim arising out of a different matter from which the judgment arose); *Cetenko v. United California Bank*, 638 P.2d 1299 (Cal. 1982) (attorney's lien is superior to that of another creditor who obtained a lien on the same judgment); *Haupt v. Charlie's Kosher Market*, 112 P.2d 627 (Cal. 1941) (attorney's lien is superior to that of third-party judgment creditor).

Plaintiff's opposition attempts to utilize the *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268, 274 (1983), factors to oppose Luxor's request for attorney's fees based on the following:

- Luxor's Offer was not in good faith
- Luxor should not be awarded attorney's fees pursuant to NRS 18.010

As noted, Plaintiff's opposition is void of any supporting case law or statute. Plaintiff's opposition is fatally flawed based on the forgoing;

- Based on the lack of evidence to support liability against Luxor, and no special damages sought, the offer of judgment was reasonable, timely and in good faith; and
- Plaintiff and Plaintiff's Counsel unreasonably maintained and extended the action against Luxor and, thus, is subject to an award of attorney's fees.

In addition to Luxor's argument as the prevailing party and obtaining a judgment more favorable than its' NRCP 68 offer of judgment, Luxor respectfully requests the Court award Luxor's attorneys' fees incurred in this action to defend the baseless, unreasonable, and frivolous allegations made by Plaintiff pursuant to NRS §18.010 and NRS §7.085. All the jurors concluded, including the two dissenters, that all the evidence showed that Plaintiff was at a minimum of 51% at fault and, thus, no recovery. The evidence and trial confirmed that the action was maintained without reasonable grounds triggering an award of attorney's fees pursuant NRS §18.010(2)(b). Because Plaintiff brought

and maintained this lawsuit against Luxor "without reasonable ground," Defendant is entitled to an award of attorney fees. The Nevada legislature requires courts to "liberally construe" NRS § 18.010(2)(b)'s allowance for attorney fees to a prevailing party in groundless lawsuits "in favor of awarding attorney's fees in all appropriate situations."

II.

ARGUMENT

1. Based on the lack of evidence to support liability against Luxor, and no special damages sought, the offer of judgment was reasonable, timely and in good faith

The purpose of offers of judgment is to promote settlement of suits by rewarding defendants who make reasonable offers and penalizing plaintiffs who refuse to accept them. **Early** settlement saves time and money for the court system, the parties, and the taxpayers. NRCP 68 requires a plaintiff's attorney to advise his or her client to accept reasonable offers. The possibility that a client will not heed sound advice is a risk that the attorney, not the opposing party, must bear. *John J. Mutje, Ltd. v. North Las Vegas Cab Co.*, 106 Nev. 664, 667, 799 P.2d 559, 561 (1990).

Plaintiff complains that Luxor's offer was too little and too early and, thus, not in good faith. Plaintiff asserts that at the time of the offer was made (March 23, 2017), little information was known to allow Plaintiff to evaluate the claim. This argument is ironic given that Plaintiff was the keeper of the facts from the beginning with knowledge of the accident and statements from Plaintiff and her family showing there was little to no chance Plaintiff would not be found at least 51% at fault for driving her scooter into a stationary table.

Plaintiff claims that the $1,000 was too little given that Plaintiff had over $400,000 in medical bills. This argument is twisted since Plaintiff did not present any evidence of medical bills at trial. Although Plaintiff presented a life care planner at trial, Plaintiff later stipulated on the record during trial that Plaintiff would not be asking the jury to award any damages for past medical bills or future medical bills. Therefore, given that Plaintiff's medical bills sought at trial was Zero, and liability was unlikely against Luxor, an offer of $1,000 early in the case, almost two years before trial, and months before incurring substantial fees and costs in taking depositions, retaining experts, and other discovery, was not only reasonable, but predictive.

This case against Luxor was never about damages. It was about liability. Was Luxor responsible for Plaintiff's injuries because Plaintiff drove her scooter into a table at Luxor's Deli; the unequivocal answer was No. Luxor informed Plaintiff of that position early on in the litigation. On February 21, 2017, Luxor's counsel discussed the allegations in the complaint, how the allegations were inaccurate, false, and did not support a negligence claim against Luxor. (*See* letter to Matthew Pfau, Esq., dated March 23, 2017, a true and correct copy is attached hereto as Exhibit "A"). Luxor confirmed the inaccurate and false allegations in the complaint, confirmed the facts that Plaintiff and her family moved the furniture causing any "obstruction" and, thus, requested a dismissal. *Id.* At this point, Luxor also served the offer of judgment. After incurring substantial fees and costs, as well as fees and costs to travel to Alabama to take depositions of Plaintiff and Plaintiff's family, Luxor again attempted to encourage Plaintiff to resolve the claim against Luxor and even offered to waive its attorney's fees and costs, which were substantial. (*See* letter to Matthew Pfau, Esq., dated June 15, 2017, a true and correct copy is attached hereto as Exhibit "B"). Plaintiff continued to ignore Luxor's requests and maintained the frivolous action.

"The district court may consider the oral offers of settlement in determining whether discretionary fees should be awarded under NRS Chapter 18 or the amount of fees." *Parodi v. Budetti*, 115 Nev. 236, 242 (1999). When considering a motion for attorney's fees pursuant to subdivision (2)(a) in a case in which a non-statutory offer of settlement has been rejected, the district court must consider the reasonableness of the rejection. Factors which go to reasonableness include whether the offeree eventually recovered more than the rejected offer and whether the offeree's rejection unreasonably delayed the litigation with no hope of greater recovery. *Cormier v. Manke*, 108 Nev. 316, 830 P.2d 1327 (1992).

Subsequently, on August 20, 2018, Luxor moved for summary judgment. Plaintiff mainly relied on an expert opinion to defeat the motion. The expert opinion suggested that it was "plausible" that there was an ADA violation in the Deli. This Court narrowly denied Luxor's motion for summary judgment and stated: "Counsel, I can tell you this: I'm gonna deny it this time. Major uphill battle. Major uphill battle in this case; okay? Gonna deny it at this time without prejudice." (*See* Hearing

Transcript of hearings on September 24, 2108, Page 26:18-20, a true and correct copy is attached hereto as Exhibit "C").

As shown at trial, there was never any evidence to suggest a dangerous condition existed inside the Deli at the time of the incident. On December 10, 2018, this matter proceeded to trial resulting in a full defense verdict in favor of Luxor. Plaintiff at no time in this case, whether in discovery or at trial, provided any facts to establish a dangerous condition existed at the time of the incident. Thus, Plaintiff failed to demonstrate any reasonable basis to support its case against Luxor and no justification for rejecting the offer of judgment. As such, Plaintiff acted unreasonably by rejecting the Offer of Judgment and proceeding to trial. Therefore, Luxor should be entitled to any attorney's fees incurred after service of the offer of judgment pursuant to NRCP 68, totaling $207,323.00 incurred in defending Plaintiff's allegations, as Luxor received a more favorable judgment at the time of trial and Plaintiff rejected a reasonable offer.

2. Plaintiff and Plaintiff's Counsel unreasonably maintained and extended the action against Luxor and, thus, is subject to an award of attorney's fees

As shown above and in the original Motion, Luxor is entitled to an award of costs totaling $53,182.77 as the prevailing party pursuant to NRS 18.020. Plaintiff did not file a motion to retax those costs and, thus, waived any objection. Luxor also seeks an award of $207,323.00 in attorney's fees pursuant to NRCP 68, NRS 7.085 and NRS 18.010.

Although Plaintiff submits an opposition to Luxor's request for fees under NRS 18.010, Plaintiff concedes that "Defendant should not be entitled for attorney's fees for work completing in preparing for trial, including time to prepare and perform depositions and time preparing and defending Motions. If they [sic] court were to grant Defendants [sic] any fees in this case they should be limited to the time spent during the 9 days of trial." (*See* Plaintiff's opposition, Page 5 line 26 through Page 6 line 4). Based on Plaintiff's logic and opposition, Luxor should be granted, at a minimum, an award of $45,207.00 in attorney's fees incurred for trial.

In addition to the concession, Luxor seeks the remaining attorney's fees incurred as Plaintiff maintained this action and extended the litigation without reasonable grounds against Luxor and, thus, is subject to the additional penalties under NRS 18.010 and NRS 7.085.

Nevada Revised Statute § 7.085 provides:

> 1. If a court finds that an attorney has:
>
> (a) Filed, maintained or defended a civil action or proceeding in any court in this State and such action or defense is not well-grounded in fact or is not warranted by existing law or by an argument for changing the existing law that is made in good faith; or
>
> (b) Unreasonably and vexatiously extended a civil action or proceeding before any court in this State, the court shall require the attorney personally to pay the additional costs, expenses and attorney's fees reasonably incurred because of such conduct.
>
> 2. The court **shall** liberally construe the provisions of this section **in favor of awarding costs, expenses and attorney's fees** in all appropriate situations. It is the intent of the Legislature that the court award costs, expenses and attorney's fees pursuant to this section and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public. (emphasis added).

A "groundless" claim is synonymous with a "frivolous" claim. *See United States v. Capener*, 590 F.3d 1058, 1066 (9th Cir. 2010). Under Nevada law, a claim is frivolous if "it is not well grounded in fact or warranted either by existing law or by a good faith argument for the extension, modification, or reversal of existing law." *Simonian v. Univ. & Cmty. College Sys. of Nev.*, 122 Nev. 187, 196, 128 P.3d 1057, 1063 (2006). "A frivolous claim is one that is legally unreasonable, or without legal foundation." *In re Grantham Bros.*, 922 F.2d 1438, 1442 (9th Cir. 1991) (internal quotations omitted). "A claim is frivolous if it is utterly lacking in legal merit . . . ." *United States ex rel. J. Cooper & Assocs. v. Bernard Hodes Group, Inc.*, 422 F. Supp. 2d 225, 238 (D.D.C. 2006). "A trial court is not required to find an improper motive to support an award of attorney fees; rather, an award may be based solely upon the lack of a good faith and rational argument in support of the claim." *Breining v. Harkness*, 872 N.E.2d 155, 161 (Ind. App. 2007) (applying an attorney fees statute substantively similar to Nevada's). A claim lacks reasonable grounds if it is "***not supported by any credible evidence at trial.***" *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1354, 971 P.2d 383, 387 (1998) (internal quotation marks omitted)(emphasis added). Courts must "liberally construe [NRS 18.010(2)(b)] in favor of awarding attorney's fees in all appropriate situations."

In the opposition, Plaintiff asserts that there is no legal authority that would support an award of fees and costs against Plaintiff and Plaintiff's counsel jointly and severally. (*See* Opposition, Page 7 lines 9-17). Under NRS 7.085(1), the district court can hold an attorney personally liable for the attorney fees and costs an opponent incurs when the attorney "[u]nreasonably and vexatiously extends a civil action or proceeding" or "[f]ile[s], maintain[s] or defend[s] a civil action . . . not well-grounded in fact or is not warranted by existing law or by an argument for changing the existing law that is made in good faith." *Public Employees' Ret. Sys. v. Gitter*, 393 P.3d 673, 682, 133 Nev. Adv. Rep. 18 (April 27, 2017). When awarding attorney fees, "a district court abuses its discretion by making such an award without including in its order sufficient reasoning and findings in support of its ultimate determination." *Watson Rounds, P.C. v. Eighth Judicial Dist. Court*, 358 P.3d 228 at 233, 131 Nev. Adv. Rep. 79 (September 24, 2015). Thus, the District Court may order and find the Plaintiff and Plaintiff's attorney jointly and severally liable for an award of attorney's fees and costs if the District Court's order sufficiently explains why and articulates sufficient facts under NRS 7.085 for the order. *Id.* The court shall liberally construe the statute in favor of awarding attorney's fees

As noted in prior pleadings, motion for summary judgment, and again at trial, Plaintiff asserted many different facts, allegations, and theories against Luxor that were not grounded in any fact. Plaintiff fails to acknowledge the evidence did not change at any time throughout discovery or at trial and that the lack of evidence demonstrating a dangerous condition was present from the outset. There was no evidence of a dangerous condition nor was there any evidence to suggest the deli was maintained in an unreasonable condition. Plaintiff's narrative throughout the case changed, but Luxor maintained the same position throughout the entirety of the case. This was a simple case, Plaintiff struck the base of a table with her scooter. The Court recognized it, Luxor recognized it, yet Plaintiff still believes that because she sustained injuries, liability must lie with someone else.

The following is a list of allegations maintained in Plaintiff's complaint that were proven to be false:

1. Plaintiff was entering the Deli at the time of the incident - ¶10
2. Luxor (Deli) employees moved dining tables and chairs- ¶10
3. Luxor (Deli) employees moved furniture to accommodate Plaintiff's scooter- ¶10

4. As Plaintiff operated the scooter over the base of the table, the front wheel gave way- ¶11

5. After Plaintiff struck the based of the table, Plaintiff felt to the right - ¶11

6. Plaintiff was unaware of a dangerous condition - ¶12

7. That the table was a dangerous condition to unsuspecting guests, including Plaintiff - ¶16

(*See* Complaint, attached as Exhibit B to Luxor's original Motion for Attorney's fees and costs). After the inaccuracies were brought to Plaintiff's attention, Plaintiff refused to withdraw the false allegations, refused to amend the complaint, refused to dismiss Luxor, and maintained a civil action not well-grounded in fact, and unreasonably and vexatiously extended a civil action against Luxor requiring Luxor to incur substantial attorney's fees and costs reasonably incurred because of such conduct. NRS §7.085

From the date of the offer of judgment almost two years ago, Luxor has incurred $207,323 in fees, which are more than reasonable and appropriately reflect the work performed by Luxor's team in litigating this matter as demonstrated by the outcome. This total does not include all fees and costs incurred by Luxor before the offer.

After the Offer was made, Luxor was forced to continue to litigate and defend this matter for twenty-one months. This time included extensive preparation for trial and intensive document review due to Plaintiff unjustifiably redacting entire pages of medical records. Luxor was forced to participate in lengthy motion work, including motions in limine, a motion for summary judgment, and several other motions, and culminating in a two week trial that resulted in a justifiable defense verdict. Thus, the *Brunzell* factors are satisfied and $207,323.00 in fees is reasonable and should be awarded.

III.

CONCLUSION

For the foregoing reasons, Defendant RAMPARTS, INC. dba LUXOR HOTEL & CASINO respectfully requests this Court grant its Motion for Attorney's Fees and Costs and award Luxor its' costs incurred in this matter totaling $53,160.03 pursuant to NRS 18.020 and 18.005. Further, Defendant RAMPARTS, INC. dba LUXOR HOTEL & CASINO respectfully requests this Court grant

its Motion for Attorney's Fees and award Luxor $207,323.00 for the reasonable attorney's fees incurred in defending against Plaintiff's unfounded allegations, entering a total award in favor of Luxor and against Plaintiff and Plaintiff's counsel for $260,505.77 pursuant to NRCP 68, NRS 18.010(2)(b), NRS 18.020 and NRS 7.085. Further, this award must first be offset from other funds received by Plaintiff and Plaintiff's attorney as part of the trial judgment and take priority over any other lien, including an attorney's lien. *John J. Muije, Ltd. v. North Las Vegas Cab Co.*, 106 Nev. 664, 666, 799 P.2d 559, 560 (1990).

DATED this 20 day of February, 2019.

LINCOLN, GUSTAFSON & CERCOS, LLP

LOREN S. YOUNG, ESQ.
Nevada Bar No. 7567
THOMAS W. MARONEY, ESQ.
Nevada Bar No. 13913
3960 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169
Attorneys for Defendant, RAMPARTS, INC.
d/b/a LUXOR HOTEL & CASINO

Vivia Harrison v. Ramparts, Inc. dba Luxor Hotel & Casino, et al.
Clark County Case No. A-16-732342-C

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of February, 2019, I served a copy of the attached **DEFENDANT RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO'S REPLY IN SUPPORT OF ITS MOTION FOR ATTORNEY'S FEES AND COSTS** via electronic service to all parties on the Odyssey E-Service Master List.

Barbara J. Pederson, an employee
of the law offices of
Lincoln, Gustafson & Cercos, LLP

EXHIBIT “5”

PICKARD PARRY PFAU

KEITH F. PICKARD, ESQ.*†
ZACHARIAH B. PARRY, ESQ.*†
MATTHEW G. PFAU, ESQ.*‡

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* licensed in Nevada
† licensed in Utah
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September 29, 2016

Via Certified Mail No.: 7015 0640 0002 1611 1975

Loren S. Young, Esq.
LINCOLN, GUSTAFSON, & CERCOS, LLP
3960 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169

RE: Our Client: Vivia Harrison
Date of Loss: 12/01/2014

NOTICE OF ATTORNEY LIEN

Ms. Young,

This correspondence serves as notice of our right to an attorney lien for injuries arising from a slip and fall which occurred on or around December 1, 2014.

Pursuant to our retainer agreement and NRS 18.015, the law firm of PICKARD PARRY PFAU is entitled to $33^{1}/_{3}$% of all sums recovered prelitigation and 40% for all sums recovered after litigation is commenced.

We also claim a right to recover all costs advanced in an amount to be determined at the time of disbursal of any award or settlement.

Sincerely,

PICKARD PARRY PFAU

Matthew G. Pfau, Esq.

PICKARD PARRY PFAU

KEITH F. PICKARD, ESQ.*†
ZACHARIAH B. PARRY, ESQ.*†
MATTHEW G. PFAU, ESQ.*‡

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September 29, 2016

Via Certified Mail No.: 7015 0640 0002 1611 1982

David J. Mortensen, Esq.
Jared F. Herling, Esq.
ALVERSON TAYLOR MORTENSEN SANDERS
7401 West Charleston Blvd
Las Vegas, Nevada 89117-1401

RE: Our Client: Vivia Harrison
Date of Loss: 12/01/2014

NOTICE OF ATTORNEY LIEN

Mr. Mortensen & Mr. Herling,

This correspondence serves as notice of our right to an attorney lien for injuries arising from a slip and fall which occurred on or around December 1, 2014.

Pursuant to our retainer agreement and NRS 18.015, the law firm of PICKARD PARRY PFAU is entitled to $33^1/_3$% of all sums recovered prelitigation and 40% for all sums recovered after litigation is commenced.

We also claim a right to recover all costs advanced in an amount to be determined at the time of disbursal of any award or settlement.

Sincerely,

PICKARD PARRY PFAU

Matthew G. Pfau, Esq.

PICKARD
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PFAU

KEITH F. PICKARD, ESQ.*†
ZACHARIAH B. PARRY, ESQ.*†
MATTHEW G. PFAU, ESQ.*‡

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September 29, 2016

Via Certified Mail No.: 7015 0640 0002 1611 1968

Vivia Harrison
491 Country Road, #404
Haleyville, Alabama 35565

RE: Our Clients: Vivia Harrison
Date of Loss: 12/01/2014

NOTICE OF ATTORNEY LIEN

Ms. Harrison,

This correspondence serves as notice of our right to an attorney lien for injuries arising from a slip and fall which occurred on or around December 1, 2014.

Pursuant to our retainer agreement and NRS 18.015, the law firm of PICKARD PARRY PFAU is entitled to $33^{1}/_{3}$% of all sums recovered prelitigation and 40% for all sums recovered after litigation is commenced.

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Sincerely,

PICKARD PARRY PFAU

Matthew G. Pfau, Esq.

EXHIBIT “6”

PARRY
&PFAU
courtroom proven | client praised

ZACHARIAH B. PARRY, ESQ.*†
MATTHEW G. PFAU, ESQ.*‡

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January 8, 2019

Via Certified US Mail: 7015 0640 0002 1611 2750

ALVERSON TAYLOR & SANDERS
Attn: Courtney Christopher, Esq.
Attn: LeAnn Sanders, Esq.
6605 Grand Montecito Parkway, Suite 200
Las Vegas, Nevada 89149

Re: Harrison v. Ramparts, Inc. dba Luxor Hotel & Casino and Desert Medical Equipment

NOTICE OF ATTORNEY LIEN

Ms. Christopher and Ms. Sanders,

This correspondence serves as a supplement to the attorney lien we perfected in September 2016.

Pursuant to our retainer agreement and NRS 18.015, the law firm of PARRY & PFAU is entitled to $33^{1}/_{3}$% of all sums recovered prelitigation and 40% for all sums recovered after litigation has commenced.

We also claim a right to recover all costs. The total costs associated with this case are $169,246.73.

Please contact our office if you have any questions.

Sincerely,

PARRY & PFAU

Matthew G. Pfau, Esq.

PARRY & PFAU
courtroom proven | client praised

ZACHARIAH B. PARRY, ESQ.*†
MATTHEW G. PFAU, ESQ.*‡

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January 24, 2019

Via Certified US Mail: 7018 1830 0001 0148 7272

David and Vivia Harrison
491 Country Road, # 404
Haleyville, Alabama 35565

Re: Harrison v. Ramparts, Inc. dba Luxor Hotel & Casino and Desert Medical Equipment

NOTICE OF ATTORNEY LIEN

David and Vivia,

This correspondence serves as a supplement to the attorney lien we perfected in September 2016.

Pursuant to our retainer agreement and NRS 18.015, the law firm of PARRY & PFAU is entitled to $33^{1}/_{3}$% of all sums recovered prelitigation and 40% for all sums recovered after litigation has commenced.

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Please contact our office if you have any questions.

Sincerely,

PARRY & PFAU

Matthew G. Pfau, Esq.

PARRY & PFAU
courtroom proven | client praised

ZACHARIAH B. PARRY, ESQ.*†
MATTHEW G. PFAU, ESQ.*‡

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January 8, 2019

Via Certified US Mail: 7015 0640 0002 1611 2767

LINCOLN, GUSTAFSON & CERCOS
Attn: Loren S. Young, Esq.
3960 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169

Re: Harrison v. Ramparts, Inc. dba Luxor Hotel & Casino and Desert Medical Equipment

NOTICE OF ATTORNEY LIEN

Mr. Young,

This correspondence serves as a supplement to the attorney lien we perfected in September 2016.

Pursuant to our retainer agreement and NRS 18.015, the law firm of PARRY & PFAU is entitled to $33^{1}/_{3}$% of all sums recovered prelitigation and 40% for all sums recovered after litigation has commenced.

We also claim a right to recover all costs. The total costs associated with this case are $169,246.73.

Please contact our office if you have any questions.

Sincerely,

PARRY & PFAU

Matthew G. Pfau, Esq.

OPPS
LOREN S. YOUNG, ESQ.
Nevada Bar No. 7567
THOMAS W. MARONEY, ESQ.
Nevada Bar No. 13913
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tmaroney@lgclawoffice.com

Attorneys for Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO

DISTRICT COURT

CLARK COUNTY, NEVADA

VIVIA HARRISON, an individual,

Plaintiff,

v.

RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, a Nevada Domestic Corporation; DESERT MEDICAL EQUIPMENT, a Nevada Domestic Corporation, DOES I through XXX, inclusive, and ROE BUSINESS ENTITIES I through XXX, inclusive,

Defendants.

DESERT MEDICAL EQUIPMENT, a Nevada Domestic Corporation,

Third-Party Plaintiff,

v.

STAN SAWAMOTO, an individual,

Third Party Defendant.

CASE NO.: A-16-732342-C
DEPT. NO.: XXIX

DEFENDANT RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO'S OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER THE COURT'S ORDER GRANTING LUXOR AN ATTORNEY LIEN OFFSET

Hearing Date: May 8, 2019
Hearing Time: Chambers

COMES NOW, Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO (hereinafter "Luxor"), by and through its counsel of record, the law firm of LINCOLN, GUSTAFSON & CERCOS, LLP, and hereby submits the following Points and Authorities in support of its Opposition to Plaintiff's Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset.

This Opposition is based upon the accompanying Memorandum of Points and Authorities, all papers and pleadings on file in this action, and any oral argument that may be entered at the time of the hearing of this Motion.

DATED this 11th day of April, 2019.

LINCOLN, GUSTAFSON & CERCOS, LLP

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d/b/a LUXOR HOTEL & CASINO

POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiff seeks reconsideration of the Court's March 18, 2019 decision to grant Luxor's Motion for Fees and Costs and the offset which resulted therefrom. The Court agreed and Ordered Luxor's fees and costs be offset from other funds before Plaintiff's counsel's lien attaches. The Court ordered the offset pursuant to Nevada law and despite counsel's assertion of a perfected attorney's lien. Plaintiff now seeks reconsideration of the Court's order that includes offset as Plaintiff's counsel argues their attorney's lien is superior to the offset for Luxor's fees and costs.

Plaintiff's assertions regarding offset priority are unsupported by prior precedent. Several courts including the Nevada Supreme Court have addressed the issue of offsets related to judgments and attorney's liens. *John J. Muije, Ltd. v. North Las Vegas Cab Co.*, 106 Nev. 664, 666 (1990);

Hobson Constr. Co. v. Max Drill, Inc. 158 N.J. Super. 263, 268 (1978); *Margott v. Gem Properties, Inc.* 34 Cal. App. 3d 849, 856 (1973); *Galbreath v. Armstrong*, 121 Mont. 387 (1948); *Salaman v. Bolt*, 74 Cal. App. 3d 907, 918 (1975). The courts are in agreement that a prevailing party should not be burdened by the claims of a losing party. Therefore, when the judgments and/or amounts originate from the same case or causes of action, then the prevailing party is entitled to an offset and enjoy priority over any attorney's lien. In this circumstance, Luxor was awarded fees and costs as the prevailing party against Plaintiff. Additionally, Plaintiff reached a high/low deal with Desert Medical Equipment (hereinafter "Desert Medical") that still required Desert Medical to go to verdict. However, notwithstanding the verdict, Plaintiff would receive a certain amount from Desert Medical. These amounts stem from the same case and causes of action, and, thus are subject to offset.

In the instant Motion, Plaintiff attempts to "educate" the Court regarding offset application and lien priority through Nevada case law and statute by arguing the following:

- Settlement proceeds should not be subject to offset, and if they were, it would have a chilling effect on settlement; and
- Perfected attorney's liens receive priority over all other liens.

However, Plaintiff's arguments are entirely unsupported by the applicable rules and law. Thus, Plaintiff's arguments fail for the following reasons:

- Nevada law provides that an offset of Luxor's judgment for fees and costs must occur from all proceeds recovered by Plaintiff prior to Plaintiff's attorney's lien attaching; and
- The Court's order entering judgment against Plaintiff for Luxor's attorneys' fees and costs is first in order, superior to a perfected attorney's lien, and must be satisfied prior to the attachment of an attorney's lien.

Prior precedent demonstrates that Luxor is subject to an offset and this Opposition will demonstrate for the Court that Plaintiff's positions are entirely unsupported and unjustified.

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II.

STATEMENT OF FACTS

This case relates to allegations of personal injuries by Plaintiff against Luxor from an incident that occurred at the Backstage Deli located within the Luxor Hotel & Casino on December 10, 2014. The matter proceeded to trial on December 10, 2018 and concluded on December 20, 2018 when the jury returned a defense verdict in favor Luxor.

Luxor entered the Judgment on the Jury Verdict on January 16, 2019. As the prevailing party, Luxor moved for attorney's fees and costs pursuant to NRS §18.010, NRS §18.020, NRS §18.005, NRS 7.085, and NRCP 68 on January 17, 2019. Plaintiff filed her Opposition to Luxor's Motion on February 4, 2019 opposing the award of fees and contesting the costs associated with Luxor's experts. Additionally, Luxor moved for recovery of its costs pursuant to NRS §18.020 and NRS §18.005 by filing its Memorandum of Costs and Disbursements on January 17, 2019. Plaintiff did not file a motion to retax. In the pleadings, it was specifically noted for the Court and argued that:

> "As a preliminary matter, it must be brought to the Court's attention that Luxor seeks recovery of costs and fees against Plaintiff and Plaintiff's counsel, which award should be offset from settlement funds received by Plaintiff from other sources. It is Luxor's understanding that during trial and before the jury verdict, Plaintiff reached a high/low agreement with Desert Medical Equipment that guaranteed Plaintiff would receive a certain amount no matter what the verdict would be. In Nevada, as well as in other jurisdictions, "an offset is part of the trial judgment, and thus it takes priority over an attorney's lien." *John J. Muije, Ltd. v. North Las Vegas Cab Co.*, 106 Nev. 664, 666, 799 P.2d 559, 560 (1990)(*citing Salaman v. Bolt*, 141 Cal.Rptr. 841 (Ct.App. 1977); *Galbreath v. Armstrong*, 193 P.2d 630 (Mont. 1948); *Hobson Constr. Co., Inc. v. Max Drill, Inc.*, 385 A.2d 1256 (N.J. Super.App.Div. 1978); *Johnson v. Johnston*, 254 P. 494 (Okla. 1927)).
>
> It is anticipated Plaintiff may argue that Plaintiff's counsel has perfected an attorney's lien and, thus, the attorney's lien takes priority over everything, including any award of fees and costs to Luxor. This is incorrect. In *Salaman*, the court gave priority to an offset arising from an unrelated matter between the two parties. The Court explained that an offset must be satisfied before attorney's fees are calculated. The *Salaman* court determined that equity requires settlement of the net verdict between the two parties before an attorney's liens may attach. *Salaman*, 141 Cal.Rptr. 841. A perfected attorney's lien attaches to the net judgment that the client receives after all setoffs arising from that action have been paid. *See John J. Muije, Ltd.*, 106 Nev. at 667. After the net judgment is finalized, then the attorney's lien will be superior to a later lien asserted. (*Id. citing See United States Fidelity & Guarantee v. Levy*, 77 F.2d 972 (5th Cir. 1935) (attorney's lien is superior to offset from a claim arising out of a different matter from which the judgment arose); *Cetenko v. United California Bank*, 638 P.2d 1299 (Cal. 1982) (attorney's lien is superior to that of another creditor who obtained a lien on the same judgment); *Haupt v. Charlie's Kosher Market*, 112 P.2d 627 (Cal. 1941) (attorney's lien is superior to that of third-party judgment creditor)."

(*See* Luxor's Reply brief, P.3-4).

The Court heard Luxor's Motion for Attorney's Fees and Costs on February 27, 2019. As the prevailing party, the Court awarded Luxor $109,285.28 in fees and costs for the time Luxor spent preparing and defending the case at trial. Further, the Court requested that Luxor prepare the Order on the Motion.

Due to differences with respect to the language of the proposed order, the parties submitted competing orders to the Court. Luxor submitted its Order on March 5, 2019 and Plaintiff submitted her Order on March 11, 2019. The Court evaluated both orders and signed Luxor's Order. Luxor then filed the Notice of the Entry of the Order on March 18, 2019.

III.

LEGAL DISCUSSION

A. APPLICABLE AUTHORITY

1. Motion for Reconsideration

Nevada Rule of Civil Procedure Rule 60(b) provides:

> On Motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
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> (1) mistake, inadvertence, surprise, or excusable neglect;
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> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

Additionally, EDCR 2.24(a) states: (a) No motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties. Plaintiff's motion fails to satisfy any of the enumerated reasons.

2. Application of Offsets

Costs must be allowed to a prevailing party in any action where Plaintiff seeks damages in excess of $1,250. NRS §18.020. These costs are to be paid by any losing party against whom a judgment is rendered. *Schouweiler v. Yancey Co.*, 101 Nev. 827, 831-2 (1985). However, when there are multiple parties and judgments in a given lawsuit, judgments may be offset amongst the parties. *Id.* at 832.

Additionally, equitable principles demand that the party holding the excess judgment not be encumbered by the fee of the losing attorney. *Hobson,* 158 N.J. Super. at 268. Thus, "a perfected attorney's lien attaches to the net judgment that the client receives after all setoffs arising from that action have been paid." *Muije.*, 106 Nev. at 666. After the net judgment is decided, the attorney's lien takes priority over any subsequent lien that is asserted against the judgment. *Id.* at 667. However, when a contingency fee exists, the contingency fee is not due when a judgment debtor's perfected attorney's lien results in the judgment creditor receiving nothing. *Margott*, 34 Cal. App. 3d at 856.

A setoff for fees and costs to the prevailing party is required before a perfected attorney's lien attaches. In *Muije*, a plaintiff refused to accept two separate offers of judgment to settle a case and proceeded to trial. *Muije*, 106 Nev. at 665. Prior to the jury verdict, plaintiff's counsel perfected an attorney lien pursuant to NRS 18.015. *Id.* Eventually, the jury reached a verdict in favor of plaintiff, but the award was much less than the prior offer of judgment. *Id.* As a result, defendant filed a motion for fees and costs which was granted by the court. *Id.* Defendant enforced its judgment against plaintiff which resulted in plaintiff's attorney receiving nothing despite the existence of an attorney's lien. *Id.* Plaintiff's counsel then challenged the setoff of plaintiff's verdict against defendant's fees and costs arguing *inter alia*, that a perfected attorney's lien outweighs the provision of fees and costs to the prevailing party and that failure to satisfy the attorney's lien has a chilling effect on litigation. *Id.* at 666. The Nevada Supreme Court upheld the lower court ruling and held that the purpose of the suit was to determine the net result of the instant matter, and, thus, the defendant's setoff was appropriate. *Id.* Further, the Nevada Supreme Court held that a perfected attorney's lien is superior to any later lien asserted, but the attorney's lien would only be satisfied after all setoffs arising from the case have been paid. *Id.* at 667. (Emphasis added.).

3. Priority of Attorney's Liens

The general rule is that an attorney's lien is subordinate to an adverse party's offset judgment in the same or similar actions. *Galbreath*, 121 Mont. at 396. Among third-party claimants, priority is determined by the order in which the liens are created. *Salaman*, 74 Cal. App. 3d at 918. However, when there is a conflict between a statutory lien and a right of equitable offsets, the offset is given an equitable preference over any lien. *Id.*

B. ARGUMENT

Plaintiff moves the Court for reconsideration of its' Order granting Luxor's attorneys' fees and costs and ordering offset occur before Plaintiff's attorney's lien attaches, but Plaintiff has not provided an explanation for the motion pursuant to Rule 60. Presumably, Plaintiff's motion is based upon some alleged excusable neglect asserting Plaintiff did not fully brief the offset issue. Unfortunately, here, Plaintiff confuses the lack of briefing with a lack of understanding of the offset issue and applicable case law. It is clear from the Court's order and application of the offset that the Court understood the offset issue and applied it in a manner which conforms to prior precedent. Thus, Plaintiff's instant Motion should fail as there is no reasonable basis to support a Rule 60 motion. However, assuming *arguendo* that the instant Motion is considered, Luxor provides the following Points and Authorities.

1. Nevada law provides that an offset of Luxor's judgment for fees and costs must occur from all proceeds recovered by Plaintiff prior to Plaintiff's attorneys' lien attaching

The proceeds Plaintiff received from other sources related to this case, including those from Desert Medical, are subject to offset for Luxor's Judgment for Fees and Costs as it stems from the instant matter. When Plaintiff proceeded to trial against Luxor and Desert Medical, all of Plaintiff's causes of action related to the same incident, product, and parties. Plaintiff did not introduce any new theories or pursue allegations which were unrelated to the incident. Plaintiff's agreement with Desert Medical did not dismiss Desert Medical nor did it dismiss any claims against Desert Medical, rather, the agreement simply limited Desert Medical's exposure. As in *Schouweiler*, where some defendants prevailed at trial and others did not, the prevailing parties were permitted to offset their judgments for fees and costs against the losing parties before distribution of funds and payments were provided to Plaintiff. This case is analogous to the instant matter as the Court permitted Luxor to offset its award

of fees and costs against the amount Plaintiff recovered from Desert Medical. This shows that, the case law fully supports offsets amongst the parties when the judgments stem from the same claim or causes of action. *See Galbreath*, 121 Mont. at 396. Therefore, the proceeds Plaintiff received from Desert Medical are subject to offset before any attorney's lien attaches.

Plaintiff's counsel may satisfy their attorney's lien after calculation of the "net" judgment. *See Muije*, 106 Nev. at 666; (citing *Galbreath*, 121 Mont. At 387; *Salaman*, 74 Cal. App. 3d at 918; *Hobson Constr. Co.*, 158 N.J. Super. at 268). Plaintiff entered into an agreement with Desert Medical wherein Desert Medical agreed to provide Plaintiff with a certain sum. In that same trial, the jury returned a verdict in favor of Luxor and determined that Luxor owed nothing to Plaintiff. As the prevailing party, Luxor motioned the Court for fees and costs which was granted in the amount of $109,285.28. This means that any calculation of the "net" judgment should include any proceeds Plaintiff received from Desert Medical and satisfy the $109,285.28 judgment in favor of Luxor and against Plaintiff. *Id.* Once Plaintiff deducts Luxor's judgment from those recovered proceeds, then Plaintiff's counsel may assert their lien based on the remaining funds. *Id.* The rationale for an offset and assertion of a lien on the "net" judgment is common sense and conforms with the jury's verdict as the jury believed Luxor owed nothing. Thus, in accordance with the verdict returned by the jury, Luxor is entitled to an offset as the prevailing party and Plaintiff should only receive the "net" judgment.

Plaintiff's assertion that if settlement funds are subject to an offset that it would chill settlement is entirely unfounded and unsupported as this has been the law in Nevada for nearly 30 years. *See Muije*, 106 Nev. 664 (1990). Plaintiff provides no support for the assertion that settlement funds subject to offset would chill settlement. Plaintiff provides no case law, studies, or other relevant information. This assertion is speculation and a feeble attempt at a scare tactic. Plaintiff's theories about settlement funds and subjection to offset, if anything, would be irrelevant for the purposes of determining whether to proceed to trial. If a party is confident in its position, then the expected outcome at trial is a jury verdict in the party's favor. In this circumstance, fear of incurring fees and costs would not have any bearing on whether to proceed to trial. However, if a party is concerned about an adverse jury verdict, then the party may choose to settle to avoid fees and costs. Here,

Plaintiff's counsel wants the best of both worlds. Plaintiff's counsel wants the ability to settle early and, if the case proceeds to trial, then Plaintiff wants to avoid incurring fees and costs for an adverse verdict by prioritizing their attorney's lien over any offsets. This assertion is clearly devoid of logic or reasoning and is entirely unjustified and contrary to long standing Nevada law. *Id. See also Schouweiler*, 101 Nev. 827 (1985). It is clear, offsets at trial would not affect settlement and would play no role in quelling settlement negotiations.

Ultimately, as the prevailing party, Luxor should not be encumbered by the losing party's attorney's lien. Luxor was the victor at trial and the verdict determined that Luxor owed nothing. As such, Luxor's Motion for Fees and Costs should be offset against the proceeds Plaintiff received from Desert Medical as they both originated from the same case and causes of action. Further, case law clearly supports offsets in the interest of judicial economy. *Id.* If there is any amount remaining after Luxor's offset, Plaintiff's counsel may assert their attorney's lien against that net judgment.

2. The Court's order entering judgment against Plaintiff for Luxor's attorney's fees and costs is first in order, superior to a perfected attorney's lien, and must be satisfied prior to the attachment of an attorney's lien.

Plaintiff attempts to mischaracterize Luxor's Judgment for attorney's fees and costs as a lien to create the illusion that Plaintiff's attorney's lien is superior to Luxor's Judgment for fees and costs and subject to priority of creation. However, prioritization of liens is not applicable here as Luxor received a judgment against Plaintiff. As in *Muije*, where the Nevada Supreme Court held that a judgment offset is superior to a perfected attorney's lien, here, too, this Court's offset of the judgment against the agreement amount should not be disturbed. It is clear, Luxor was the prevailing party at trial and should not be burdened with the losing party's expenses. *See Hobson Constr. Co.*, 158 N.J. Super. at 268. Plaintiff's counsel has not provided any evidence to the contrary and simply asserts their lien is superior to a judgment for the prevailing party. Prior precedent clearly states "a perfected attorney's lien attaches to the net judgment that the client receives after all setoffs arising from that action have been paid." *See Muije*, 106 Nev. at 666; (citing *Galbreath*, 121 Mont. At 387; *Salaman*, 74 Cal. App. 3d at 918; *Hobson Constr. Co.*, 158 N.J. Super. at 268). Therefore, Luxor's judgment is superior to counsel's lien and their lien may only be asserted against the "net" judgment after offsets and payment of Luxor's judgment.

Case law and equitable principles provide that a losing party's attorney lien should not be prioritized over the winning party's offset. *Margolt*, 34 Cal. App. 3d at 856; *See also Salaman* 74 Cal. App. 3d at 907; *See also Hobson Constr. Co.* 158 N.J. Super. 263. If the jury is the ultimate decider and makes a determination as to which party is liable, then any procedural step which would circumvent the jury's decision is not appropriate. Here, Plaintiff's counsel is requesting that the Court ignore Luxor's prevailing party status and allow Plaintiff's counsel to assert their lien over funds which stemmed from the instant matter. Thus, Plaintiff wants the prevailing party to bear fees and costs related to this litigation despite the fact that funds are readily available for offset. This is not the law nor the standard. *See Mutje*, 106 Nev. at 666; *See also Salaman* 74 Cal. App. 3d at 907; *See also Hobson Constr. Co.* 158 N.J. Super. 263; *See also Galbreath*, 193 P.2d at 630. Counsel's argument regarding superiority of their lien over an offset, taken to its logical conclusion, would lead to trial in nearly every case as plaintiff's counsel would never be fearful of incurring fees and costs because an attorney's lien would take priority win or lose. This is not just or fair and interferes with the entire jury system.

Plaintiff provides no case law which supports prioritizing an attorney's lien over an offset for the prevailing party. Plaintiff's Motion is entirely devoid of case law which addresses the priority of offsets. Instead, Plaintiff provides case law regarding the timing for perfecting an attorney's lien. *Golightly & Vannah, PLLC v. TJ Allen, LLC*, 373 P.3d 103 (2016). Luxor is not disputing the fact that Plaintiff has an attorney's lien or that Plaintiff's counsel is not entitled to enforce their attorney's lien. However, this lien does not attach to any funds received until after all setoffs are paid. *Mutje*, 106 Nev. at 666. The lien only attaches to the net judgment. *Id.*

Clearly, the case law supports Luxor's position that offsets should occur prior to enforcement of any attorney's lien. *See Mutje*, 106 Nev. at 666; (citing *Galbreath*, 121 Mont. At 387; *Salaman*, 74 Cal. App. 3d at 918; *Hobson Constr. Co.*, 158 N.J. Super. at 268). Luxor's judgment is not a third-party lien nor is it subject to priority based upon creation. The case law supports Luxor's offset and Plaintiff has failed to provide any evidence which would contradict this position. *Id.* Therefore, this Court's offset of Luxor's judgment for fees and costs is proper and attachment of counsel attorney's lien should occur following the offset.

IV.

CONCLUSION

Based on the foregoing, Defendant, RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO, respectfully requests that Plaintiff's Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset be denied.

DATED this 11th day of April, 2019.

LINCOLN, GUSTAFSON & CERCOS, LLP

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Attorneys for Defendant, RAMPARTS, INC.
d/b/a LUXOR HOTEL & CASINO

Vivia Harrison v. Ramparts, Inc. dba Luxor Hotel & Casino, et al.
Clark County Case No. A-16-732342-C

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of April, 2019, I served a copy of the attached **DEFENDANT RAMPARTS, INC. d/b/a LUXOR HOTEL & CASINO'S OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER THE COURT'S ORDER GRANTING LUXOR AN ATTORNEY LIEN OFFSET** via electronic service to all parties on the Odyssey E-Service Master List.

Staci D. Ibarra, an employee
of the law offices of
Lincoln, Gustafson & Cercos, LLP

A-16-732342-C Vivia Harrison, Plaintiff(s)
vs.
MGM Resorts International, Defendant(s)

May 01, 2019 **03:00 AM** **Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset**

HEARD BY: Jones, David M **COURTROOM:** Chambers

COURT CLERK: Maldonado, Nancy

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

No parties present.

Court advised there was a valid motion and opposition thereto, COURT ORDERED, motion DENIED.

A-16-732342-C Vivia Harrison, Plaintiff(s)
vs.
MGM Resorts International, Defendant(s)

May 10, 2019 **07:30 AM** **Minute Order**

HEARD BY: Jones, David M **COURTROOM:** Chambers

COURT CLERK: Maldonado, Nancy

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

This matter came before the Court in a Chambers Hearing on May 1, 2019. After considering the papers and pleadings on file, this Court DENIES Plaintiff's Motion to reconsider the Court's Order Granting Luxor an Attorney Lien Offset.

CLERK'S NOTE: The above minute order has been distributed to:

Boyd B. Moss, Esq. - boyd@mossberglv.com
Loren Young, Esq. - lyoung@lgclawoffice.com
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NEO

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Attorneys for Plaintiff,
Vivia Harrison

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

Vivia Harrison, an individual Plaintiff, vs. **Ramparts, Inc., dba Luxor Hotel & Casino,** a Nevada Domestic Corporation; **Desert Medical Equipment,** a Nevada Domestic Corporation; Does I-X; Roe Corporations I-X, Defendants.	Case No.: A-16-732342-C Dept. No.: XXIX **Notice of Entry of Minute Order Denying Plaintiff's Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset**

Please take NOTICE that a minute order denying Plaintiff's Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset was entered on May 10, 2019. A copy is attached.

PARRY & PFAU

DATED this 13th day of May 2019.

PARRY & PFAU

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702 879 9556 FAX

Attorney for Plaintiff,
Vivia Harrison

Certificate of Service

I hereby certify that on the 13th day of May 2019, service of the foregoing **Notice of Entry of Minute Order Denying Plaintiff's Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset** was made by required electronic service to the following individuals:

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PARRY & PFAU

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **May 10, 2019**

A-16-732342-C Vivia Harrison, Plaintiff(s)
vs.
MGM Resorts International, Defendant(s)

May 10, 2019 **7:30 AM** **Minute Order**

HEARD BY: Jones, David M **COURTROOM:** Chambers

COURT CLERK: Nancy Maldonado

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- This matter came before the Court in a Chambers Hearing on May 1, 2019. After considering the papers and pleadings on file, this Court DENIES Plaintiff's Motion to reconsider the Court's Order Granting Luxor an Attorney Lien Offset.

CLERK'S NOTE: The above minute order has been distributed to:

Boyd B. Moss, Esq. - boyd@mossberglv.com
Loren Young, Esq. - lyoung@lgclawoffice.com
Matthew Pfau, Esq.- matt@p2lawyers.com

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Attorneys for Defendant
DESERT MEDICAL EQUIPMENT

DISTRICT COURT
CLARK COUNTY, NEVADA
*****

VIVIA HARRISON, an individual Plaintiff, vs. RAMPARTS, INC, dba Luxor Hotel & Casino, a Nevada Domestic Corporation; DESERT MEDICAL EQUIPMENT, a Nevada Domestic Corporation; PRIDE MOBILITY PRODUCTS CORPORATION., a Nevada Domestic Corporation; DOES I through XXX, inclusive and ROE BUSINESS ENTITIES I through XXX, inclusive, Defendants.	CASE NO.: A-16-732342-C DEPT. NO.: 29 **DEFENDANT DESERT MEDICAL EQUIPMENT'S MOTION FOR INTERPLEADER AND TO DEPOSIT FUNDS WITH THE COURT** **HEARING REQUESTED**

DEFENDANT DESERT MEDICAL EQUIPMENT'S MOTION FOR INTERPLEADER AND TO DEPOSIT FUNDS WITH THE COURT

COMES NOW Defendant DESERT MEDICAL EQUIPMENT, by and through its attorneys of record, the law firm of ALVERSON TAYLOR & SANDERS, and hereby submits the following Motion for Interpleader and to Deposit Funds with the Court.

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This Motion is made and based upon the points and authorities contained herein, and any oral argument that may be heard at the hearing on this Motion.

DATED this 20th day of May, 2019.

ALVERSON TAYLOR & SANDERS

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MEMORANDUM OF LEGAL POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

On December 10, 2018, a nine-day trial took place. Prior to the jury's verdict, Plaintiff and Defendant Desert Medical Equipment entered into a high-low settlement agreement. Pursuant to the settlement agreement, no matter what the jury's verdict was, Desert Medical Equipment would be obligated to pay Plaintiff according to the terms of the high-low settlement agreement. A contract was entered into between the two parties and is not part of a net judgment. The settlement amount was not confidential.

On December 20, 2018, the jury returned a verdict in favor of the Defendants, Desert Medical Equipment and Ramparts, Inc. d/b/a Luxor Hotel & Casino. In light of the defense verdict, Desert Medical is to pay Plaintiff $150,000.00 following Plaintiff's execution of a Release.

Immediately after the verdict on December 20, 2018, Desert Medical Equipment sent a Release to Plaintiff's counsel.[1]

On January 8, 2019, Plaintiff's counsel sent a Notice of Attorney Lien to all parties.[2]

On January 17, 2019, Defendant Luxor filed a Motion for Attorney's Fees and Costs, which was granted in part on February 27, 2019. Luxor was awarded a judgment against Plaintiff in the amount of $109,285.28, and an Order was entered on March 18, 2019.[3] In the Order, Luxor set forth that the judgment against Plaintiff must be offset from other settlement funds received by Plaintiff prior to satisfaction of any liens.[4]

On March 5, 2019, Plaintiff's counsel emailed a partially signed Release to Desert Medical Equipment's insurance carrier, Philip Pancoast. Mr. Pancoast responded immediately requesting that Plaintiff *fully* execute the Release, as parts of the Release were incomplete.[5]

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1 *See* December 20, 2018 E-mail from Philip Pancoast, attached hereto as **Exhibit "A."**
2 *See* Notice of Attorney's Lien, sent January 8, 2019, attached hereto as **Exhibit "B."**
3 *See* Notice of Entry of Order (March 18, 2019).
4 *Id.*
5 *See* March 15, 2019 E-mail from Philip Pancoast, attached hereto as **Exhibit "C."**

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On March 28, 2019, Plaintiff filed a Motion for Reconsideration, asking the Court to reconsider the Order granting Luxor an attorney lien offset.[6]

On May 7, 2019, Plaintiff's counsel emailed a fully signed Release to Desert Medical Equipment's insurance carrier, Mr. Pancoast.[7]

On May 10, 2019, the Court issued a Minute Order denying Plaintiff's Motion for Reconsideration.[8]

On May 14, 2019, Loren Young, Esq., counsel for Luxor, sent e-mail correspondence to all counsel requesting that a check for $109,285.28, be made payable to Ramparts, LLC and be sent to his attention.[9]

Immediately thereafter, Matthew Pfau, Esq., counsel for Plaintiff, responded to Mr. Young's e-mail, representing that this issue was being appealed further and *"[t]therefore, it would be premature to send any payment at this time."*[10]

This Motion to Interplead Settlement Funds and Deposit Funds with the Court has become necessary in order for Defendant Desert Medical Equipment to ensure that all parties with claims to the settlement funds be permitted to seek recovery based on their alleged entitlement to a portion of the total settlement proceeds.

II.

LEGAL ARGUMENT

Defendant Desert Medical Equipment seeks to deposit the settlement funds with the Court pursuant to Nevada Rules of Civil Procedure 67, which provides as follows:

> **(a) Depositing Property:**
>
> (1) In an action in which any part of the relief sought is a money judgment, the disposition of a sum of money, or the disposition of any other deliverable thing, a party, upon notice to every other party and by leave of court, may deposit with the court all or any part of the money or thing.

---

6 *See Plaintiff's Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset.* (March 28, 2019).
7 *See* May 7, 2019 E-mail from Philip Pancoast, attached hereto as **Exhibit "D."**
8 *See* Notice of Entry of Minute Order Denying Plaintiff's Motion to Reconsider the Court's Order Granting Luxor an Attorney Lien Offset. (May 13, 2019).
9 *See* May 14, 2019 E-mail from Loren Young, Esq., attached hereto as **Exhibit "E."**
10 *See* May 14, 2019 E-Mail from Matthew G. Pfau, Esq., attached hereto as **Exhibit "F."**

ALVERSON TAYLOR & SANDERS
LAWYERS
6605 GRAND MONTECITO PARKWAY, SUITE 200
LAS VEGAS, NEVADA 89149
(702) 384-7000

(2) When a party admits having possession or control of any money or other deliverable thing, which, being the subject of litigation, is held by the party as trustee for another party, or which belongs or is due to another party, on motion the court may order all or any part of the money or thing to be deposited with the court.

(b) Custodian; Investment of Funds:

(1) Unless ordered otherwise, the deposited money or thing shall be held by the clerk of the court.

(2) The court may order that: (i) money deposited with the court be deposited in an interest-bearing account or invested in a court-approved interest-bearing instrument, subject to withdrawal, in whole or in part, at any time thereafter upon order of the court, or (ii) money or a thing held in trust for a party be delivered to that party, upon such conditions as may be just, subject to the further direction of the court.

Plaintiff's counsel has represented that the issue of the attorney lien offset is being appealed and Defendant Desert Medical Equipment does not wish to be involved with the disbursement of the settlement fund proceeds at issue in this dispute. This Motion to Interplead Settlement Funds and Deposit Funds with the Court has become necessary in order for Defendant Desert Medical Equipment to ensure that all parties with claims to the settlement funds be permitted to seek recovery based on their alleged entitlement to a portion of the total settlement proceeds.

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LAWYERS
6605 GRAND MONTECITO PARKWAY, SUITE 200
LAS VEGAS, NEVADA 89149
(702) 384-7000

III.

CONCLUSION

Defendant Desert Medical Equipment respectfully requests that the Court enter an Order granting its Motion to Interplead the Settlement Funds and Deposit the Funds with the Court.

DATED this 20th day of May, 2019.

ALVERSON TAYLOR & SANDERS

LEANN SANDERS, ESQ.
Nevada Bar No. 390
COURTNEY CHRISTOPHER, ESQ.
Nevada Bar No. 12717
6605 Grand Montecito Parkway, Suite 200
Las Vegas, Nevada 89149
Phone: (702) 384-7000
E-File: efile@alversontaylor.com
Attorneys for Defendant
DESERT MEDICAL EQUIPMENT

ALVERSON TAYLOR & SANDERS
LAWYERS
6605 GRAND MONTECITO PARKWAY, SUITE 200
LAS VEGAS, NEVADA 89149
(702) 384-7000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 20th day of May, 2019, the foregoing **DEFENDANT DESERT MEDICAL EQUIPMENT'S MOTION FOR INTERPLEADER AND TO DEPOSIT FUNDS WITH THE COURT** was served on the following by Electronic Service to all parties on the Odyssey Service List.

Zachariah B. Parry, Esq.
Matthew G. Pfau, Esq.
PARRY & PFAU
880 Seven Hills Drive, Suite 210
Henderson, Nevada 89052
Phone: (702) 879-9555
Email: zach@p2lawyers.com
-and-
Boyd B. Moss III, Esq.
Marcus A. Berg, Esq.
MOSS BERG INJURY LAWYERS
4101 Meadows Lane, Suite 110
Las Vegas, Nevada 89107
Telephone: (702) 222-4555
Email: boyd@mossberglv.com

Attorneys for Plaintiff

~~Brian K. Terry, Esq.~~
~~THORNDAL, AMRSTRONG, DELK, BALKENBUSH & EISINGER~~
~~1100 East Bridger Avenue~~
~~Las Vegas, Nevada 89101~~
~~Phone: (702) 366-0622~~
~~Email: bkterry@thorndal.com~~
~~*Attorneys for Defendant*~~
~~*Pride Mobility Products Corporation*~~

Loren S. Young, Esq.
LINCOLN, GUSTAFSON & CEROS
3960 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Phone: (702) 257-1997
Email: lyoung@lgclawoffice.com
Attorneys for Defendant
Ramparts, Inc., d/b/a Luxor Hotel & Casino

An Employee of
Alverson Taylor & Sanders

ALVERSON TAYLOR & SANDERS
LAWYERS
6605 GRAND MONTECITO PARKWAY, SUITE 200
LAS VEGAS, NEVADA 89149
(702) 384-7000

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **DEFENDANT DESERT MEDICAL EQUIPMENT'S MOTION FOR INTERPLEADER AND TO DEPOSIT FUNDS WITH THE COURT** filed in District Court Case No. A-16-732342-C.

X Does not contain the social security number of any person.

-OR-

___ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 20th day of May, 2019.

ALVERSON TAYLOR & SANDERS

LEANN SANDERS, ESQ.
Nevada Bar No. 390
COURTNEY CHRISTOPHER, ESQ.
Nevada Bar No. 12717
6605 Grand Montecito Parkway, Suite 200
Las Vegas, Nevada 89149
Phone: (702) 384-7000
E-File: efile@alversontaylor.com
Attorneys for Defendant
DESERT MEDICAL EQUIPMENT

n:\courtney.grp\cases\23646\pleadings\mtn to interplead.docx

#23646/LS:

ALVERSON TAYLOR & SANDERS
LAWYERS
6605 GRAND MONTECITO PARKWAY, SUITE 200
LAS VEGAS, NEVADA 89149
(702) 384-7000

EXHIBIT “A”

EXHIBIT “A”

From: PANCOAST, PHILIP W.
To: Boyd@mossberglv.com
Subject: 15-00476748 Release Viva Harrison
Date: Thursday, December 20, 2018 3:18:54 PM
Attachments: 15-00476748 Viva Harrison Release.doc

Dear Attorney Moss:

Attached please find Hanover's release in this matter.

If this is to be executed by anyone other than Ms. Harrison under a Power of Attorney, please provide copies of the appointment.

Sincerely:
Philip Pancoast
Philip W. Pancoast, AIC, CCLA
Regional General Adjuster
The Hanover Insurance Group
Underwriting Company: AIX Specialty Insurance Company
Liability Claim Department
P.O. Box 15148
Worcester, MA 01615-0146
1-800-628-0250 Ext. 4716841
1-603-471-6841
Fax: 508-635-0759

"Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects that person to criminal and civil penalties (In Oregon, the aforementioned actions may constitute a fraudulent insurance act which may be a crime and may subject the person to penalties). (In New York, the civil penalty is not to exceed five thousand dollars ($5,000) and the stated value of the claim for each such violation)."

EXHIBIT “B”

EXHIBIT “B”

PARRY
&PFAU
courtroom proven | client praised

ZACHARIAH B. PARRY, ESQ.*†
MATTHEW G. PFAU, ESQ.*‡

880 SEVEN HILLS DRIVE,
SUITE 210
HENDERSON, NEVADA 89052
702 879 9555 TEL
702 879 9556 FAX

www.p2lawyers.com

* licensed in Nevada
† licensed in Utah
‡ licensed in California

January 8, 2019

Via Certified US Mail: 7015 0640 0002 1611 2750

ALVERSON TAYLOR & SANDERS
Attn: Courtney Christopher, Esq.
Attn: LeAnn Sanders, Esq.
6605 Grand Montecito Parkway, Suite 200
Las Vegas, Nevada 89149

Re: Harrison v. Ramparts, Inc. dba Luxor Hotel & Casino and Desert Medical Equipment

NOTICE OF ATTORNEY LIEN

Ms. Christopher and Ms. Sanders,

This correspondence serves as a supplement to the attorney lien we perfected in September 2016.

Pursuant to our retainer agreement and NRS 18.015, the law firm of PARRY & PFAU is entitled to 33 1/3% of all sums recovered prelitigation and 40% for all sums recovered after litigation has commenced.

We also claim a right to recover all costs. The total costs associated with this case are $169,246.73.

Please contact our office if you have any questions.

Sincerely,

PARRY & PFAU

Matthew G. Pfau, Esq.

PARRY
&PFAU
courtroom proven | client praised

ZACHARIAH B. PARRY, ESQ.*†
MATTHEW G. PFAU, ESQ.*‡

880 SEVEN HILLS DRIVE,
SUITE 210
HENDERSON, NEVADA 89052
702 879 9555 TEL
702 879 9556 FAX

www.p2lawyers.com

* licensed in Nevada
† licensed in Utah
‡ licensed in California

January 24, 2019

Via Certified US Mail: 7018 1830 0001 0148 7272

David and Vivia Harrison
491 Country Road, # 404
Haleyville, Alabama 35565

Re: Harrison v. Ramparts, Inc. dba Luxor Hotel & Casino and Desert Medical Equipment

NOTICE OF ATTORNEY LIEN

David and Vivia,

This correspondence serves as a supplement to the attorney lien we perfected in September 2016.

Pursuant to our retainer agreement and NRS 18.015, the law firm of PARRY & PFAU is entitled to 33 1/3% of all sums recovered prelitigation and 40% for all sums recovered after litigation has commenced.

We also claim a right to recover all costs. The total costs associated with this case are $169,246.73.

Please contact our office if you have any questions.

Sincerely,

PARRY & PFAU

Matthew G. Pfau, Esq.

PARRY
&PFAU
courtroom proven | client praised

ZACHARIAH B. PARRY, ESQ.*†
MATTHEW G. PFAU, ESQ.*‡

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HENDERSON, NEVADA 89052
702 879 9555 TEL
702 879 9556 FAX

www.p2lawyers.com

* licensed in Nevada
† licensed in Utah
‡ licensed in California

January 8, 2019

Via Certified US Mail: 7015 0640 0002 1611 2767

LINCOLN, GUSTAFSON & CERCOS
Attn: Loren S. Young, Esq.
3960 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169

Re: Harrison v. Ramparts, Inc. dba Luxor Hotel & Casino and Desert Medical Equipment

NOTICE OF ATTORNEY LIEN

Mr. Young,

This correspondence serves as a supplement to the attorney lien we perfected in September 2016.

Pursuant to our retainer agreement and NRS 18.015, the law firm of PARRY & PFAU is entitled to $33^{1}/_{3}$% of all sums recovered prelitigation and 40% for all sums recovered after litigation has commenced.

We also claim a right to recover all costs. The total costs associated with this case are $169,246.73.

Please contact our office if you have any questions.

Sincerely,

PARRY & PFAU

Matthew G. Pfau, Esq.

EXHIBIT “C”

EXHIBIT “C”

From:	PANCOAST, PHILIP W.
To:	matt@p2lawyers.com
Cc:	Boyd@mossberglv.com
Subject:	15-00476748 : Harrison Signed Release
Date:	Tuesday, March 5, 2019 9:44:20 AM
Attachments:	15-00476748 Vivia Harrison v. Desert Medical.msg 15-00476748 Release Viva Harrison.msg Re 15-00476748 Vivia Harrison v. Desert Medical.msg Vivia Harrison Release.pdf

---

Dear Atty. Pfau:

This is not a fully executed release.

Your client did not execute the release, only the Medicare addendum.

Cousel did not execute the medcare addendum.

In order for the release to be effective, these missing items need to be resolved.

For ease of use, in addition to the items being in bold on the original release, I have ade highlights to the document to further point in the right direction.

Sincerely:
Philip Pancoast

Philip W. Pancoast, AIC, CCLA
Regional General Adjuster
The Hanover Insurance Group
Underwriting Company: AIX Specialty Insurance Company
Liability Claim Department
P.O. Box 15148
Worcester, MA 01615-0146
1-800-628-0250 Ext. 4716841
1-603-471-6841
Fax: 508-635-0759

"Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects that person to criminal and civil penalties (In Oregon, the aforementioned actions may constitute a fraudulent insurance act which may be a crime and may subject the person to penalties). (In New York, the civil penalty is not to exceed five thousand dollars ($5,000) and the stated value of the claim for each such violation)."

From: Matthew Pfau <matt@p2lawyers.com>
Sent: Tuesday, March 05, 2019 12:29 PM
To: PANCOAST, PHILIP W. <PPANCOAST@hanover.com>
Cc: Boyd Moss <Boyd@mossberglv.com>
Subject: Harrison Signed Release

Hello Phillip,

Please see the attached release for Vivia Harrison. The original is in our office. If you'd like a copy of the original, please forward a mailing address.

Thank you,
Matt

Matthew G. Pfau, Esq.
880 Seven Hills Drive, Suite 210
Henderson, Nevada 89052
702 879 9555 TEL
702 879 9556 FAX
www.p2lawyers.com

EXHIBIT “D”

EXHIBIT “D”

From:	PANCOAST, PHILIP W.
To:	Courtney Christopher
Cc:	Julie Kraig
Subject:	15-00476748 : Harrison Signed Release
Date:	Tuesday, May 07, 2019 10:27:05 AM

From: Matthew Pfau <matt@p2lawyers.com>
Sent: Tuesday, May 07, 2019 1:20 PM
To: PANCOAST, PHILIP W. <PPANCOAST@hanover.com>
Cc: Boyd@mossberglv.com
Subject: Re: 15-00476748 : Harrison Signed Release

Philip,

Please see the attached executed release for the above referenced case.

Matt

From: "PANCOAST, PHILIP W." <PPANCOAST@hanover.com>
Date: Tuesday, March 5, 2019 at 9:45 AM
To: Matthew Pfau <matt@p2lawyers.com>
Cc: "Boyd@mossberglv.com" <Boyd@mossberglv.com>
Subject: 15-00476748 : Harrison Signed Release

Dear Atty. Pfau:

This is not a fully executed release.

Your client did not execute the release, only the Medicare addendum.

Counsel did not execute the Medicare addendum.

In order for the release to be effective, these missing items need to be resolved.

For ease of use, in addition to the items being in bold on the original release, I have made highlights to the document to further point in the right direction.

Sincerely:
Philip Pancoast

Philip W. Pancoast, AIC, CCLA
Regional General Adjuster
The Hanover Insurance Group
Underwriting Company: AIX Specialty Insurance Company
Liability Claim Department

P.O. Box 15148
Worcester, MA 01615-0146
1-800-628-0250 Ext. 4716841
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From: Matthew Pfau <matt@p2lawyers.com>
Sent: Tuesday, March 05, 2019 12:29 PM
To: PANCOAST, PHILIP W. <PPANCOAST@hanover.com>
Cc: Boyd Moss <Boyd@mossberglv.com>
Subject: Harrison Signed Release

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Thank you,
Matt

Matthew G. Pfau, Esq.
880 Seven Hills Drive, Suite 210
Henderson, Nevada 89052
702 879 9555 TEL
702 879 9556 FAX
www.p2lawyers.com

EXHIBIT “E”

EXHIBIT “E”

From: Loren Young
To: Boyd Moss (Boyd@mossberglv.com); Matthew Pfau; Courtney Christopher
Cc: Barbara Pederson; Bruce Alverson; Julie Kraig
Subject: RE: Harrison v. Luxor
Date: Tuesday, May 14, 2019 11:41:54 AM
Attachments: A732342 MO 051019.pdf
20190318_OGM_MFAC_lsy.pdf

Dear Mr. Moss, Mr. Pfau, and Ms. Christopher:

Based on the attached Judgment against Plaintiff in Luxor's favor and the attached minute order from the Court denying Plaintiff's motion for reconsideration, I respectfully request that payment be forwarded to my attention totaling $109,285.28. Please made the check payable to: Ramparts, LLC; TIN is [redacted].

Thank you for your prompt attention to this matter. Please call with any questions.

Loren S. Young, Esq.
Managing Partner - Nevada
LINCOLN, GUSTAFSON & CERCOS LLP
Experience. Integrity. Results.

California Nevada Arizona

550 West "C" Street, Suite 1400
San Diego, California 92101
619.233.1150; 619.233.6949 Fax

3960 Howard Hughes Parkway, Suite 200
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702.257.1997; 702.257.2203 Fax

2415 E. Camelback Rd., Suite 700
Phoenix, Arizona 85016
602.606.5735; 602.508.6099 Fax

www.lgclawoffice.com

From: Loren Young <lyoung@lgclawoffice.com>
Sent: Thursday, February 28, 2019 12:21 PM
To: Boyd Moss (Boyd@mossberglv.com) <Boyd@mossberglv.com>; Matthew Pfau <matt@p2lawyers.com>
Cc: Barbara Pederson <BPederson@lgclawoffice.com>; Courtney Christopher <cchristopher@alversontaylor.com>; Bruce Alverson <BAlverson@AlversonTaylor.com>; Brian K. Terry <BKT@thorndal.com>; Stacey Upson (stacey.upson@farmersinsurance.com) <stacey.upson@farmersinsurance.com>
Subject: Harrison v. Luxor

Mr. Moss and Mr. Pfau:

Please find attached a proposed order and judgment regarding the Court's ruling yesterday on Luxor's motion for fees and costs. Please advise by March 1, 2019 or any objections or requested changes. If acceptable, please sign and return to my office for handling with the court.

As noted, this award must first be offset from other funds received by Plaintiff and Plaintiff's attorney as part of the trial judgment and take priority over any other lien, including an attorney's lien. *John J. Muije, Ltd. v. North Las Vegas Cab Co.*, 106 Nev. 664, 666, 799 P.2d 559, 560 (1990). Thus, please refrain from distribution of any funds received from other sources and settlements until this judgment is entered and paid. Thank you.

Loren S. Young, Esq.
Managing Partner - Nevada
LINCOLN, GUSTAFSON & CERCOS LLP
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California Nevada Arizona

550 West "C" Street, Suite 1400
3960 Howard Hughes Parkway, Suite 200
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San Diego, California 92101
619.233.1150; 619.233.6949 Fax

Las Vegas, Nevada 89169
702.257.1997; 702.257.2203 Fax

Phoenix, Arizona 85016
602.606.5735; 602.508.6099 Fax

www.lgclawoffice.com

EXHIBIT “F”

EXHIBIT “F”

From:	Matthew Pfau
To:	Loren Young; Boyd Moss (Boyd@mossberglv.com); Courtney Christopher
Cc:	Barbara Pederson; Bruce Alverson; Julie Kraig
Subject:	Re: Harrison v. Luxor
Date:	Tuesday, May 14, 2019 1:08:31 PM
Attachments:	image001.jpg image002.jpg image003.jpg image004.jpg image005.jpg image006.jpg

Mr. Young,

This matter will be appealed further. Therefore, it would be premature to send any payment at this time.

Matt

Matthew G. Pfau, Esq.
880 Seven Hills Drive, Suite 210
Henderson, Nevada 89052
702 879 9555 TEL
702 879 9556 FAX
www.p2lawyers.com

From: Loren Young <lyoung@lgclawoffice.com>
Date: Tuesday, May 14, 2019 at 11:41 AM
To: "Boyd Moss (Boyd@mossberglv.com)" <Boyd@mossberglv.com>, Matthew Pfau <matt@p2lawyers.com>, Courtney Christopher <cchristopher@alversontaylor.com>
Cc: Barbara Pederson <BPederson@lgclawoffice.com>, Bruce Alverson <BAlverson@AlversonTaylor.com>
Subject: RE: Harrison v. Luxor

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Loren S. Young, Esq.
Managing Partner - Nevada
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2415 E. Camelback Rd., Suite 700
Phoenix, Arizona 85016
602.606.5735; 602.508.6099 Fax

www.lgclawoffice.com

From: Loren Young <lyoung@lgclawoffice.com>

Sent: Thursday, February 28, 2019 12:21 PM
To: Boyd Moss (Boyd@mossberglv.com) <Boyd@mossberglv.com>; Matthew Pfau <matt@p2lawyers.com>
Cc: Barbara Pederson <BPederson@lgclawoffice.com>; Courtney Christopher <cchristopher@alversontaylor.com>; Bruce Alverson <BAlverson@AlversonTaylor.com>; Brian K. Terry <BKT@thorndal.com>; Stacey Upson (stacey.upson@farmersinsurance.com) <stacey.upson@farmersinsurance.com>
Subject: Harrison v. Luxor

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Loren S. Young, Esq.
Managing Partner - Nevada
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