

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

BARRY JAMES RIVES, M.D.; and  
LAPAROSCOPIC SURGERY OF NEVADA,  
LLC,

Appellants/Cross-Respondents,

vs.

TITINA FARRIS and PATRICK FARRIS,

Respondents/Cross-Appellants.

BARRY JAMES RIVES, M.D.; and  
LAPAROSCOPIC SURGERY OF NEVADA,  
LLC,

Appellants,

vs.

TITINA FARRIS and PATRICK FARRIS,

Respondents.

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**APPELLANTS' APPENDIX**  
**VOLUME 14**

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	<u>Exhibit “4”</u> : Plaintiff Titina Farris’s Answers to Defendant’s First Set of Interrogatories	12/29/16	8	1773-1785
	<u>Exhibit “5”</u> : Expert Report of Lance R. Stone, DO	12/19/18	8	1786-1792
	<u>Exhibit “6”</u> : Expert Report of Sarah Larsen, R.N., MSN, FNP, C.L.C.P.	12/19/18	8	1793-1817
	<u>Exhibit “7”</u> : Expert Report of Erik Volk, M.A.	12/19/18	8	1818-1834
49.	Trial Subpoena – Civil Regular re Dr. Naomi Chaney	10/29/19	9	1835-1839
50.	Offer of Proof re Bruce Adornato, M.D.’s Testimony	11/1/19	9	1840-1842
	<u>Exhibit A</u> : Expert Report of Bruce T. Adornato, M.D.	12/18/18	9	1843-1846
	<u>Exhibit B</u> : Expert Report of Bruce T. Adornato, M.D.	9/20/19	9	1847-1849
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51.	Offer of Proof re Defendants’ Exhibit C	11/1/19	9	1974-1976
	<u>Exhibit C</u> : Medical Records (Dr. Chaney) re Titina Farris		10	1977-2088
52.	Offer of Proof re Michael Hurwitz, M.D.	11/1/19	10	2089-2091
	<u>Exhibit A</u> : Partial Transcript of Video Deposition of Michael Hurwitz, M.D.	10/18/19	10	2092-2097
	<u>Exhibit B</u> : Transcript of Video Deposition of Michael B. Hurwitz, M.D., FACS	9/18/19	10 11	2098-2221 2222-2261

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	<u>Exhibit A</u> : Expert Report of Brian E. Juell, MD FACS	12/16/18	11	2265-2268
	<u>Exhibit B</u> : Expert Report of Brian E. Juell, MD FACS	9/9/19	11	2269-2271
	<u>Exhibit C</u> : Transcript of Video Transcript of Brian E. Juell, M.D.	6/12/19	11	2272-2314
54.	Offer of Proof re Sarah Larsen	11/1/19	11	2315-2317
	<u>Exhibit A</u> : CV of Sarah Larsen, RN, MSN, FNP, LNC, CLCP		11	2318-2322
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	<u>Exhibit C</u> : Life Care Plan for Titina Farris by Sarah Larsen, R.N., M.S.N., F.N.P., L.N.C., C.L.C.P	12/19/18	11	2326-2346
55.	Offer of Proof re Erik Volk	11/1/19	11	2347-2349
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56.	Offer of Proof re Lance Stone, D.O.	11/1/19	11	2437-2439
	<u>Exhibit A</u> : CV of Lance R. Stone, DO		11	2440-2446
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59.	Judgment on Verdict	11/14/19	12	2479-2482
60.	Notice of Entry of Judgment	11/19/19	12	2483-2488
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77.	<i>Jury Trial Transcript — Day 2</i> (Tuesday)	10/15/19	18	3910-4068
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80.	<i>Jury Trial Transcript — Day 5</i> (Friday)	10/18/19	20	4332-4533
81.	<i>Jury Trial Transcript — Day 6</i> (Monday)	10/21/19	21	4534-4769
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83.	<i>Jury Trial Transcript</i> — Day 8 (Wednesday)	10/23/19	23	4939-5121
84.	<i>Jury Trial Transcript</i> — Day 9 (Thursday)	10/24/19	24	5122-5293
85.	<i>Jury Trial Transcript</i> — Day 10 (Monday)	10/28/19	25 26	5294-5543 5544-5574
86.	<i>Jury Trial Transcript</i> — Day 11 (Tuesday)	10/29/19	26	5575-5794
87.	<i>Jury Trial Transcript</i> — Day 12 (Wednesday)	10/30/19	27 28	5795-6044 6045-6067
88.	<i>Jury Trial Transcript</i> — Day 13 (Thursday)	10/31/19	28 29	6068-6293 6294-6336
89.	<i>Jury Trial Transcript</i> — Day 14 (Friday)	11/1/19	29	6337-6493

#### **ADDITIONAL DOCUMENTS<sup>1</sup>**

91.	Defendants Barry Rives, M.D. and Laparoscopic Surgery of, LLC's Supplemental Opposition to Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and Litigation And Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time	10/4/19	30	6494-6503
92.	Declaration of Thomas J. Doyle in Support of Supplemental Opposition to Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and litigation and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time	10/4/19	30	6504-6505

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<sup>1</sup> These additional documents were added after the first 29 volumes of the appendix were complete and already numbered (6,493 pages).

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93.	<i>Partial Transcript re: Trial by Jury – Day 4 Testimony of Justin Willer, M.D. (Filed 11/20/19)</i>	10/17/19	30	6514-6618
94.	Jury Instructions	11/1/19	30	6619-6664
95.	Notice of Appeal	12/18/19	30	6665-6666
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96.	Notice of Cross-Appeal	12/30/19	30	6673-6675
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97.	<i>Transcript of Proceedings Re: Pending Motions</i>	1/7/20	31	6683-6786
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99.	Order on Plaintiffs’ Motion for Fees and Costs and Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs	3/30/20	31	6802-6815
100.	Notice of Entry Order on Plaintiffs’ Motion for Fees and Costs and Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs	3/31/20	31	6816-6819
	<u>Exhibit “A”</u> : Order on Plaintiffs’ Motion for Fees and Costs and Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs	3/30/20	31	6820-6834
101.	Supplemental and/or Amended Notice of Appeal	4/13/20	31	6835-6836
	<u>Exhibit 1</u> : Judgment on Verdict	11/14/19	31	6837-6841



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1 RTRAN

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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TITINA FARRIS and PATRICK  
FARRIS,

CASE#: A-16-739464-C

9

Plaintiffs,

DEPT. XXXI

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vs.

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BARRY RIVES, M.D.;  
LAPAROSCOPIC SURGERY OF  
NEVADA, LLC., ET AL.,

13

Defendants.

14

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BEFORE THE HONORABLE JOANNA S. KISHNER  
DISTRICT COURT JUDGE  
TUESDAY, JULY 16, 2019

16

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**RECORDER'S TRANSCRIPT OF STATUS CHECK**

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19

APPEARANCES:

20

For the Plaintiffs:

KIMBALL JONES, ESQ.  
SAMANTHA HERBECK, ESQ.

21

For the Defendants:

AIMEE LEA CLARK NEWBERRY, ESQ.

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RECORDED BY: SANDRA HARRELL, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, July 16, 2019

2

3 [Case called at 9:01 a.m.]

4 MR. JONES: Good morning, Your Honor. Kimball Jones for  
5 the Plaintiff.

6 SAMANTHA HERBECK: Good morning. Samantha Herbeck  
7 for the Plaintiff.

8 MS. CLARK NEWBERRY: Good morning, Your Honor. Amy  
9 Clark Newberry for Dr. Rives.

10 THE COURT: Do appreciate it. Thank you so very much. So  
11 this is a status check pursuant to trial order of January 22nd, 2019.  
12 You're set for trial, firm trial setting number one, October 14th, 2019,  
13 because it's a medical malpractice case. Pretrial conference September  
14 12th at 10:15. Calendar call currently set October 8th at 9:00 a.m. I  
15 haven't seen you all a lot on this. This was one that you had -- well, we  
16 have, because you've stippled to reset trial. You waived the three-year  
17 rule back in January. Everybody good to go now. October's working  
18 wonderfully. You're thinking pre-Halloween, so there's no trick or treats.  
19 Life is good.

20 You're about to tell me something different. Go ahead,  
21 counsel.

22 MR. JONES: Yes, Your Honor. My understanding is Mr.  
23 Hand had a conversation with lead counsel for the Defense. There's  
24 some additional discovery that needs to be done, and they want to  
25 have -- there's a number of depositions that are still going forward, one

1 of which is not yet scheduled. And they want to have enough space  
2 there to be able to appropriately file motions and everything after that  
3 has been done. And so if it's possible to extend things out a couple of  
4 months and push it to the next stack, if possible, that's ideal.

5 THE COURT: Counsel, you understand the challenges with a  
6 firm setting in medical malpractice, right?

7 MR. JONES: Yes, Your Honor.

8 THE COURT: That as every -- see how many times you all  
9 have done this. Do you recall off the top of your head or do I need to go  
10 and look it up?

11 MR. JONES: Your Honor, I associated in yesterday on the  
12 case, so I'm not familiar with how many times.

13 THE COURT: So that's why you came in to do this.

14 MR. JONES: No. They're actually taking depositions right  
15 now in New York today and so I'm covering for that purpose, but --

16 MS. CLARK NEWBERRY: And Your Honor, we're not in a  
17 position to let go. We're still evaluating counsel's request to move out  
18 the trial date.

19 THE COURT: Oh. Yeah -- because let me see -- let me  
20 double-check when your stip is through, you're waiver. Oh, your  
21 waiver -- I can't do it. The current waiver is only good to November 10th,  
22 2019. So as you know, statutorily, this Court's not changing anything,  
23 unless there is a written stipulation that somehow changes things.  
24 Otherwise, your case goes statutorily goodbye, right?

25 MR. JONES: Okay. My understanding was that there had

1 already been conversation on this, so I --

2 MS. CLARK NEWBERRY: And we have spoken about it.

3 MR. JONES: Uh-huh.

4 MS. CLARK NEWBERRY: It's my understanding, Mr. Doyle  
5 and Mr. Hand have spoken about it, but we've not cleared anything with  
6 our experts and we're not in a position -- we haven't also cleared  
7 anything with our experts and we're not in a position -- we haven't also  
8 cleared anything with the waiver through your rule with our client, so --

9 MR. JONES: Okay.

10 THE COURT: Okay.

11 MS. CLARK NEWBERRY: -- per -- we'll have to talk further.  
12 I'm sorry.

13 THE COURT: Yeah.

14 MR. JONES: Okay. So yes, we'll keep it for now, Your  
15 Honor.

16 THE COURT: You have to. I mean --

17 MR. JONES: Yes. No, understood.

18 THE COURT: -- let's put it this way. You want to risk --

19 MR. JONES: No. Of course not, Your Honor.

20 THE COURT: I have to ask the silly question, but I assumed  
21 that was the answer. So since your stipulation says through November  
22 10th, October 14th, let's you have your trial date before then, so the  
23 Court has to leave it as is. So particularly -- that is what it is. Did you all  
24 do or demand a settlement conference besides mediation in this case?  
25 The last time I checked, the answer was no. You're getting close to time,

1 if you're thinking --

2 MR. JONES: I don't --

3 THE COURT: Now, of course you've got a lot of options,  
4 remember. When the Court uses the term settlement  
5 conference/mediation, you know, right, that means lots of different  
6 options. But you're getting close, if you're thinking of utilizing the Eight  
7 Judicial District's free program. When I say free, that means, you know,  
8 the Judge is free, not you all's time, obviously.

9 MR. JONES: Right.

10 THE COURT: Because they're running 60, 75 days out. And  
11 tick-tock, right?

12 MR. JONES: Right. And I'm brand new coming --

13 THE COURT: I know you're brand new.

14 MR. JONES: -- in, Your Honor, but I --

15 THE COURT: I'm just --

16 MR. JONES: -- I don't think that that's -- at least from my  
17 understanding, there hasn't -- there doesn't appear to be a likelihood of  
18 resolution.

19 THE COURT: Okay. I just -- written stip November 10th.

20 MR. JONES: Understood, Your Honor.

21 THE COURT: Trial date October 14th as being --

22 MR. JONES: Got it.

23 THE COURT: -- mid to late Jul -- you know. Okay. So what  
24 can the Court do for you?

25 MR. JONES: I guess just at least with respect to the

1 remaining depositions we have. Some of them, I think necessarily are  
2 going to go outside the close of discovery, so if the -- with the Court's  
3 allowance to allow that to happen --

4 THE COURT: Unless there's a --

5 MR. JONES: -- I guess for now and --

6 THE COURT: -- stipulation of the parties, the Court can't  
7 allow --

8 MR. JONES: Oh.

9 THE COURT: -- the Court can't sua sponte allow it, unless  
10 there's an agreement by the parties. Otherwise, the dates remain as is,  
11 right?

12 MS. CLARK NEWBERRY: And I am more comfortable doing  
13 everything by writing, so --

14 MR. JONES: Okay.

15 MS. CLARK NEWBERRY: -- I'm happy to meet and confer  
16 with you. We can figure out something that works and submit it to the  
17 Court for its --

18 MR. JONES: Perfect.

19 MS. CLARK NEWBERRY: -- Court for its approval.

20 THE COURT: Okay. Because from the Court's standpoint, as  
21 you know, what you all wish to do, just remember dispositive motion  
22 deadlines, motion in limine deadlines can't be changed that puts the  
23 Court in a situation where it doesn't have enough time to fully prepare to  
24 hear them for you all, because take a gander at part of today's morning.  
25 You know what I mean? You can appreciate. Want to ensure that

1 everyone has a full opportunity to have everything heard, but you want  
2 to make sure that there is sufficient time to get everything prepped, so  
3 everything can be heard, right?

4 MR. JONES: Absolutely, Your Honor.

5 THE COURT: So wish you best of luck and I guess we will  
6 see what comes before us in writing or whatever. For us right now, your  
7 next date is September 12th, which is the pretrial conference. Even  
8 though you're set for a firm trial, we still have you come to the pretrial  
9 conference to ensure that all of the cases on the stack know what your  
10 date is, okay?

11 MR. JONES: And the pretrial conference, is that when you  
12 want jury instructions, voir dire --

13 THE COURT: No, no, no, no.

14 MR. JONES: Okay.

15 THE COURT: Outcome. Further, I -- oh, sorry. We have  
16 someone else helping us out today. Do you need another copy of the  
17 information? Is calendar call -- Marshal, would you mind the -- can you  
18 pop up --

19 MS. CLARK-NEWBERRY: I do not need a marigold.

20 THE COURT: I was going to usually you all have these --

21 MR. JONES: I'd love one, Your Honor.

22 THE COURT: -- several copies of respective offices. The  
23 goldenrods -- and they're also available online if you look under the  
24 department, okay?

25 MR. JONES: Thank you very much.



1 MS. CLARK-NEWBERRY: I have one. Thank you.

2 THE COURT: Those are -- yeah. Most people by now have  
3 several copies. And that basically covers EDCR 2.67 through 2.69. Goes  
4 over the audiovisual information. All this stuff is otherwise available.  
5 We just try and compile it for you, okay?

6 MR. JONES: Perfect.

7 THE COURT: It tells you when different dates are and it's on  
8 pretty paper with nice bold writing. Okay. So anything else the Court  
9 can do?

10 MS. CLARK-NEWBERRY: No. Thank you, Your Honor.

11 MR. JONES: No, Your Honor.

12 THE COURT: I do appreciate it. Thank you so very much.

13 [Proceedings concluded at 9:08 a.m.]

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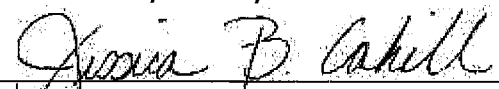
20

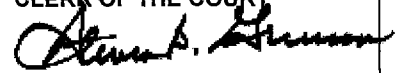
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio-visual recording of the proceeding in the above entitled case to the  
best of my ability.

23

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Maukele Transcribers, LLC  
Jessica B. Cahill, Transcriber, CER/CET-708



TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

TITINA FARRIS, PATRICK FARRIS, )

Plaintiffs, )

vs. )

BARRY RIVES, M.D., )  
LAPAROSCOPIC SURGERY OF )  
NEVADA, LLC, )

Defendants. )

CASE NO.: A-16-739464

DEPT. NO.: XXXI

**Transcript of Proceedings**

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

**MANDATORY IN-PERSON STATUS CHECK PER COURT'S MEMO DATED  
AUGUST 30, 2019**

THURSDAY, SEPTEMBER 5, 2019

APPEARANCES:

For the Plaintiffs: GEORGE F. HAND, ESQ.  
JACOB G. LEAVITT, ESQ.

For the Defendants: THOMAS J. DOYLE, ESQ.

RECORDED BY: SANDRA HARRELL, DISTRICT COURT  
TRANSCRIBED BY: KRISTEN LUNKWITZProceedings recorded by audio-visual recording; transcript  
produced by transcription service.

1 THURSDAY, SEPTEMBER 5, 2019 AT 10:22 A.M.

2 THE COURT: Okay. So, we're now going to circle  
3 back to page 11 on our 9 o'clock calendar, *Farris versus*  
4 *Rives*, 739464. Can I have appearances, please? I'm sorry  
5 for your wait.

6 MR. HAND: For plaintiffs, George Hand, bar number  
7 8483.

8 MR. LEAVITT: Good morning, Your Honor. Jacob  
9 Leavitt for plaintiff as well.

10 MR. DOYLE: Tom Doyle for Dr. Rives.

11 THE COURT: Okay. So, welcome.

12 Counsel, counsel, counsel. We are here today  
13 because you win for the case that has requested the most  
14 extensions, I think, since I've been on the bench. Eight.  
15 With no good cause. And the case that we have tried to  
16 contact you and track you down to actually get you to  
17 respond to us on extensions with no luck that we finally  
18 had to call you in, in person.

19 So, I will tell you the Court's inclination is to  
20 deny this eight request because you all have known for a  
21 long time you're going to trial next month. You're a med-  
22 mal case that's been told you were going to trial October  
23 14<sup>th</sup> since way back when you all had a med-mal conference  
24 that you all asked for that date, you got the date you  
25 wanted, you were told about this date. I'm sure you all

1 don't need me to go back to all the minutes and everything  
2 that people said and different times and people said. And  
3 you all know how many times this Court tried to reach out  
4 to you to see if you really needed something.

5           And you all know you passed your deadlines. You  
6 all know you didn't respond to us. You all know what  
7 people said in open court. You all know as sophisticated  
8 litigators of med-mals that you get your firm date. You  
9 all know you did seven prior ones. You all know that we  
10 had you in here back in -- what was it? April? May? It's  
11 so -- so that's the Court's inclination because the Court  
12 doesn't see any good cause at all presented to the Court on  
13 why people needed any more time on this case or that  
14 anything that's been done on this case other than a series  
15 of stipulations to extend discovery and trial since dating  
16 back to 2017.

17           So, that's what you all have presented to the  
18 Court. So, --

19           MR. HAND: Judge, the reason for the Joint  
20 Application to Move the Trial --

21           THE COURT: The eighth one?

22           MR. HAND: Well --

23           THE COURT: It's the eighth.

24           MR. HAND: I understand that. This case has, I  
25 think, over 20,000 pages of records. We've done

1 depositions all over the country. The last remaining  
2 experts, through really no fault of ours, were not  
3 available. Defendant wanted to depose the treating  
4 witness. They subpoenaed him within the time frame. He  
5 couldn't appear. So, that's --

6 THE COURT: Since 2016 on this case though?

7 MR. HAND: Well, --

8 THE COURT: Because there's not ongoing treatment.  
9 Right?

10 MR. HAND: I'm sorry?

11 THE COURT: There was not ongoing -- when was the  
12 last time your client treated?

13 MR. HAND: Still treating. So, I think that was  
14 the basis. There were three or four experts that we tried  
15 to get done and, for various reasons, they weren't  
16 available. Not the lawyers' fault.

17 THE COURT: Which experts? Because this is the  
18 first time anyone is saying this because you realize this  
19 is the first time anyone is telling me. Which experts were  
20 not available? Which dates were they asked to be available  
21 for? And if you're paying --

22 MR. HAND: Well, Dr. --

23 THE COURT: -- them, why are they not making  
24 themselves available?

25 MR. HAND: Well, we sought to depose the

1 defendants' life care planner, life expectancy expert, this  
2 is back in May, June, couldn't get dates. They weren't  
3 communicating with Mr. Doyle's office for some reason and I  
4 don't blame him for this, but they weren't available. We  
5 had one expert that we tried to get scheduled. It's a  
6 surgeon. Couldn't get him done in time. The treating  
7 surgeon that they had noticed and served with a subpoena  
8 said that he couldn't appear on that date.

9           This was all done within the time frame that they  
10 -- for scheduling reasons, we couldn't get people done.  
11 And that's, you know, the reason.

12           THE COURT: Okay. When were they sought out and  
13 how many times were they sought out to be done?

14           MR. HAND: Corresponding e-mails going -- between  
15 my paralegal, Mr. Doyle's paralegal, since May, June, July.  
16 I've been to New York with Mr. Doyle. I've been to Oakland  
17 on depositions. I've been to Tucson, Reno. I've been all  
18 over the country on this case doing their experts. The --  
19 we've done economists, I've deposed their economist,  
20 they've deposed our economist. They've deposed our life  
21 care planner. We couldn't get their life care planner  
22 scheduled. She wouldn't communicate with them.

23           So, that's the reason. We -- this has been going  
24 on for three months trying to get these people done. And  
25 we've been pretty --

1 THE COURT: I realize --

2 MR. HAND: -- diligent with it.

3 THE COURT: You realize you all came in July 16<sup>th</sup>,  
4 2019, and this wasn't said to the Court?

5 MR. HAND: Well, we came in, but --

6 THE COURT: But no one said this to the Court on  
7 July 16<sup>th</sup>. In fact, that --

8 MR. HAND: I wasn't here that day.

9 THE COURT: I understand. That's why I am -- none  
10 of the three of you all were here. That's --

11 MR. LEAVITT: Your Honor, I was in the back --

12 THE COURT: In the gallery. I -- making  
13 appearances. That's why --

14 MR. LEAVITT: You got it. Yeah.

15 THE COURT: You were in the gallery over there on  
16 the left-hand side. Yes.

17 MR. LEAVITT: Wow.

18 THE COURT: Making appearances. That's why I was  
19 trying to be clear on -- no. I'm -- so, --

20 MR. DOYLE: Your Honor, if I may?

21 THE COURT: You were there and you know what the  
22 Court said. Right? And you know --

23 MR. LEAVITT: I do.

24 THE COURT: You know I warned everyone, trial date  
25 stands. People weren't in agreement. That was the

1 seventh. Somebody had submitted -- defendants' counsel  
2 wasn't sure if the client would even do so. I mean, --

3 MR. LEAVITT: That's correct.

4 THE COURT: You know, the Court warned way back  
5 July 16<sup>th</sup>. We're now on September 5<sup>th</sup>. I told everyone the  
6 trial date stands. Listen to everything. See, that's the  
7 challenge here.

8 Counsel?

9 MR. DOYLE: Your Honor, when Mr. Hand first  
10 approached me about continuing the trial date, and I can't  
11 tell you when it was, but it was a few months ago, I  
12 believe he had not yet associated Kimball Jones and he was  
13 managing this case by himself. He asked if I had any  
14 objection to continuing the trial and I told him I needed  
15 to check. I checked and I told him I did not have any  
16 objection to continuing the trial, which was my custom and  
17 practice to accommodate opposing counsel unless there's  
18 some detriment or prejudice to my client or my client's  
19 case.

20 So, I did indicate to him that we would agree to  
21 the continuance and that Mr. Hand agreed to take whatever  
22 steps were necessary to bring our request to the Court's  
23 attention and --

24 THE COURT: Counsel. Mr. Jones was here on July  
25 16<sup>th</sup>. So I'm hearing what you're saying, but that doesn't



1 apply.

2 MR. DOYLE: My problem now is based on my  
3 assumption --

4 THE COURT: Assumption on what? You had  
5 representation here on July 16<sup>th</sup>. It was your  
6 representation on behalf of your client that said you  
7 wouldn't agree. Trial date stood as a result of your  
8 representation on behalf of your client.

9 MR. DOYLE: Well, the matter had not been resolved  
10 and, subsequent to that, then, we said we would agree to  
11 the continuance, in part, because of the difficulty  
12 accomplishing the remaining depositions that needed to be  
13 done. Mr. Hand's request that we do continue the trial,  
14 plus my own trial calendar where I have a multi-party case  
15 set in Reno to start on the same day, --

16 THE COURT: And when did that get set? What date  
17 did that get set?

18 MR. DOYLE: I would have to check. I can't tell  
19 you that date off the top of my head, but --

20 THE COURT: And you submitted a stipulation  
21 yesterday at 8:48.

22 MR. HAND: Judge, this --

23 THE COURT: I -- counsel, one at a time.

24 MR. HAND: The stipulation was submitted a while  
25 ago. It was --

1 THE COURT: No. The stipulation was submitted  
2 yesterday at 8:48, counsel.

3 MR. HAND: No. I think it was sent down. There  
4 were issues with putting the blocks with dates. It was  
5 probably sent down a few weeks ago and then we --

6 THE COURT: Counsel, you've got to send an  
7 appropriate stipulation. It doesn't count if you don't  
8 send something that's appropriate, does it? If you don't  
9 send something that complies with the rules, it's as if you  
10 don't send anything.

11 MR. DOYLE: Your Honor, based upon my, perhaps  
12 unreasonable, assumption that the trial was going to be  
13 continued, I am now committed in Reno and --

14 THE COURT: Well you can't be committed. You have  
15 to tell that Judge that this was set previously and that  
16 this was set previously and this case is going. That's  
17 what you have to tell that judge, right? This case was a  
18 firm setting that you knew about and was previously set.  
19 That's really what it is.

20 MR. DOYLE: Well, then, can I have the opportunity  
21 -- well, it's in Reno. So, you know, --

22 THE COURT: You chose to set something when you  
23 had a firm trial date in this department. How you choose  
24 to do that is really your choice, counsel.

25 MR. DOYLE: And I don't know that that's accurate.

1 I would need to check the data.

2 THE COURT: This case has been set for this date  
3 and this case has been set -- what date do we show that we  
4 set it for the 14<sup>th</sup>?

5 MR. DOYLE: And, if I may, Your Honor?

6 THE COURT: Sure.

7 MR. DOYLE: I practice in a number of different  
8 jurisdictions and I can tell the Court the challenge that I  
9 face is --

10 THE COURT: And that's your choice.

11 MR. DOYLE: -- judges in different jurisdictions,  
12 frankly, don't care what judges are doing in other  
13 jurisdictions in terms of setting trials and whether I have  
14 a conflict already or not. And I will register conflicts,  
15 but --

16 THE COURT: And, counsel, that is your choice in  
17 how many clients you choose to take on and if you choose to  
18 agree to trial dates in multiple places when you already  
19 have commitments in other places. Right? So, that is --  
20 the Court is fully appreciative of that, but, remember,  
21 even when the Court signed the stipulation on May 16, 2019,  
22 which was your seventh one, right? Where it said that the  
23 trial date of October 14<sup>th</sup> stands, the Court hand-  
24 interlineated: All other dates closed per prior orders,  
25 other than motions in limine which are due eight weeks

1 before trial dates. So the Court even reminded you back on  
2 your seventh one that that was the case, back on May 16<sup>th</sup>  
3 which was two months before when you all came in in July.  
4 The Court also did it back when it was your sixth request -  
5 - I'm going back specifically to the orders.

6 Sixth request that was in front of -- sixth  
7 request, you had two -- trial date. You even knew it back  
8 when you were in front of the Discovery Commissioner when  
9 she handwrote that in back on February 21<sup>st</sup>, March 29.  
10 Scheduling order, the trial date of 10/14 stands. So, you  
11 had that back from Commissioner Bulla back on February 21  
12 that you knew it. And you even had it before then. Let's  
13 see. You had it -- trial order of January 22<sup>nd</sup>, 2019, bold,  
14 underlined: Firm trial; number one setting. October 14<sup>th</sup>,  
15 2019.

16 And that was based on your -- back to January.  
17 Without taking too much time, because we have got so many  
18 other people here in court. So, at least it's from January  
19 but that January would be -- scheduling telephonic. Hold  
20 on.

21 [Pause in proceedings]

22 THE COURT: Yeah. January 7<sup>th</sup>, pursuant to the  
23 telephonic call that you all requested that specific date.  
24 Where you specifically waived the three-year rule and  
25 that's going to be one of the -- because, you, defense,

1 would only agree to waive the three-year rule through the  
2 October date, which is why you got the October 14<sup>th</sup> date.  
3 And that's where you got the trial, specifically October  
4 14<sup>th</sup>, with a pretrial conference in -- and parties were on  
5 the phone and specifically requested that, the telephonic,  
6 on January 7<sup>th</sup> because that's what you did.

7           And then you did a stipulation to memorialize your  
8 specific request because defense would only agree to the  
9 extension of the three-year rule up to that October time.  
10 So, that was what you all wanted. You've known about this  
11 since that date.

12           This Court is very cognizant -- now you can get  
13 things done, but your trial date remains. To the extent  
14 that you're having an agreement to get your experts and  
15 everything taken care of, that's perfectly fine. You all  
16 can do that by informal agreement. But if you're asking  
17 whether this Court is extending your trial date, the answer  
18 is no. There is no good cause, folks, for eight extensions  
19 of continue -- you know what I mean? They're not all the  
20 trial date, but this Court has been telling you all for  
21 months and months and months. And I appreciate that you  
22 have things that need to get done. I appreciate new  
23 counsel came in, but that new counsel even knew about it  
24 when he came in in July. He sat there in the gallery and  
25 Court made sure that it walked through all of the issues

1 because I kind of thought that possibly new counsel, as  
2 they were potentially coming in, would want to know about  
3 where this case was so that they would have a full  
4 opportunity to know that they were coming into a case, what  
5 was going on. I made sure everybody knew. I made sure  
6 things were going.

7 We even called and checked and you know the Court  
8 can never grant a stipulation on a med-mal case just on  
9 dates that -- anyway, because you have to have a firm trial  
10 setting. And, if you all choose not to get back to the  
11 Court between July and September, that's you all's choice.

12 So, it is what it is.

13 MR. DOYLE: Your Honor, --

14 THE COURT: Your trial date remains. October 14<sup>th</sup>.

15 To the extent that you all, by mutual agreement,  
16 need to get your dates done to get your experts' things  
17 done, that's all by you all's mutual agreement. The Court  
18 takes no position. The only thing this Court is is your  
19 motion in limine date is eight weeks before. Right? And  
20 your dispositive motion date is your dispositive motion  
21 date. All your other dates, by agreement of parties, you  
22 can do what you need to do. Attorneys do it all the time.  
23 Right? Take depositions up and to close by agreement.  
24 That's perfectly fine but the trial date is your firm trial  
25 date that you all specifically requested back in January

1 7<sup>th</sup>, 2019. Reaffirmed multiple times throughout the time,  
2 specifically by the parties' agreement, by court order.

3 And, in fairness to your clients, you all never  
4 even put in any of your stipulations that your specific  
5 underlying doctor client even knows the impact of potential  
6 fees, costs, prejudgment interest, the impact on witnesses'  
7 knowledges, the availability of witnesses, and things like  
8 that if these dates keep on changing. The lack of -- the  
9 longer it is, people -- witnesses' knowledge, their  
10 memories and things like that, things that can happen in  
11 all these different areas. So, in fairness to your  
12 underlying clients, this trial has got to stay on from a  
13 case that's this old.

14 So, --

15 MR. DOYLE: Your Honor, --

16 THE COURT: -- the trial date remains. The trial  
17 date remains, counsel.

18 MR. DOYLE: May I then, for the record? This is  
19 not a situation where one party is making a request and the  
20 other party is opposing. Both parties are requesting that  
21 the trial be continued. So, I have consulted with my  
22 clients and they're okay. And, frankly, having made the  
23 erroneous assumption now that the trial would be continued,  
24 my client now is going to be prejudiced because of the --  
25 because he has assumed now that the trial was not going to

1 go in October. The --

2 THE COURT: But you can't have told him that. You  
3 can't have told him that because you know the rules and the  
4 Nevada Rules of Civil Procedure specifically require that  
5 the Court must evaluate things and must find good cause.  
6 And you know, by definition, as an experienced litigator,  
7 under the Nevada Rules that there would be no way that this  
8 Court could ever put its signature and find good cause for  
9 an eighth continuance on a case of this age when you  
10 haven't established -- read your own stipulation. Read  
11 your eighth stipulation in comparison to your seventh, your  
12 sixth, your fifth. Okay? Read those.

13 They in no way establish any good cause. There is  
14 no way you could ask this Court in good conscience to sign  
15 its name to your eighth stipulation, particularly with what  
16 was said and represented to the Court at all the different  
17 hearings. The fact that you didn't even do anything and  
18 didn't respond to the Court in this time period, there's no  
19 way you could ask this Court -- this Court is required to  
20 do a determination. 16 requires it specifically. The  
21 Court can only modify it if it finds good cause. So  
22 there's no way you could, under the Nevada Rules, have  
23 advised your client that the Court could find good cause.  
24 So, I'm sure no one did advise their clients in that regard  
25 because the rules clearly say that the Court has to find



1 good cause. So, --

2 MR. DOYLE: Your Honor, I'm --

3 THE COURT: -- it is what it is.

4 MR. DOYLE: I have been doing this for a long  
5 time, only in medical malpractice cases. I've never had a  
6 case where the parties agree by stipulation to continue a  
7 trial date and then present reasons and an explanation why  
8 the parties are stipulating to the continuance and have  
9 never -- have never had a stipulation denied in that  
10 circumstance.

11 THE COURT: Counsel, could you restate --

12 MR. DOYLE: And --

13 THE COURT: Did you read NRCP 16?

14 MR. DOYLE: I am familiar with NRCP 16.

15 THE COURT: Okay. So you -- so NRCP 16 says --

16 MR. DOYLE: And the declaration does set forth, in  
17 my judgment, good cause for the continuance.

18 THE COURT: It doesn't say the parties' judgment,  
19 though, counsel. NRCP 16, okay. You've read the 2019  
20 version?

21 MR. DOYLE: Yes. But this --

22 THE COURT: A schedule -- modifying a schedule, a  
23 schedule may be modified by the Court for good cause.  
24 That's -- the Court has to do an independent determination  
25 that there is or is not good cause. It doesn't say the

1 parties get to make that determination. It says the Court.  
2 A schedule may be modified by the Court for good cause.  
3 You've heard me all day today. There's ones that are good  
4 cause. There's ones that aren't good cause. There's  
5 nothing in your eighth stipulation that shows there's good  
6 cause.

7 And, by the way, there's -- I mean, it says --  
8 read what it says: Discovery conducted to date, discovery  
9 to be conducted. It says:

10 Despite reasonable repeated attempts by the  
11 parties to conduct, the availability of certain experts  
12 and treating witnesses were difficult to obtain. The  
13 witnesses' schedules were too full to accommodate any  
14 dates when both parties can be present. Additional  
15 time is needed for the parties to conduct discovery.

16 Where's there -- how is that any good cause? Read  
17 that in comparison to all your other ones. That's not --

18 MR. DOYLE: It's been good cause in every other  
19 case that I have seen over the years.

20 THE COURT: Counsel.

21 MR. DOYLE: When the parties have stipulated and  
22 agree amongst themselves to the continuance.

23 Again, I would argue that the situation -- the  
24 situation would be very different if one side is opposing  
25 the motion. I guess I've -- I'm throwing myself at the

1 mercy of the court just because I know my availability in  
2 October, based upon my erroneous assumption that this was  
3 going --

4 THE COURT: Your availability is diff -- first  
5 off, your availability is never mentioned anywhere in this,  
6 but the point is the Court in no way is precluding -- let  
7 me clear. The parties from conducting your experts and  
8 doing the things you need to do. The Court is stating you  
9 can do all that by agreement of the parties. There's  
10 nothing that precludes you all from doing that. The Court  
11 is just stating your trial date remains. Your calendar  
12 call remains. And your motion in limine date remains. And  
13 your dispositive motion date remains.

14 To the extent that the parties have an agreement  
15 to conduct those various things outside of the schedules,  
16 that can be done by agreement of the parties, EDCR 7.50.  
17 Court's not precluding you from doing any of that. The  
18 Court is saying your trial date remains, as the parties  
19 requested a firm trial setting way back in January, and the  
20 Court has granted several extensions of the underlying  
21 dates since then, at the parties' request.

22 But in what was provided to this Court yesterday,  
23 okay, yesterday. Right? On September 4<sup>th</sup>, as an eight  
24 stipulation, there is not good cause under the NRCP for  
25 this Court to say that it can sign its name to say that

1 there is good cause to extend the dates requested.  
2 Particularly, you even submitted to this after dates have  
3 already passed. There can't be good cause, counsel. You  
4 submitted something after dates are passed that just says  
5 certain people's schedule too full to accommodate it.  
6 Additional time is needed to conduct discovery.

7           Comparing this to your prior ones, the fact that  
8 the dates have passed and what you put in here, it doesn't  
9 show good cause as this Court can, in good conscience, do  
10 it under the Nevada Rules of Civil Procedure, 2019.

11           I'd love to help you out. I'd be glad to do it.  
12 Bend over backwards to look at it. That's why I looked at  
13 every single aspect to see if there's any way possible I  
14 could try to find good cause for you. But I can't, in good  
15 conscience, after reading the statements on behalf of your  
16 client, where you wouldn't agree to different things. I  
17 mean, the statements during the telephonic. There's  
18 nothing in here that gives this Court any basis that I can  
19 try and stretch it out to try and say there's good cause.  
20 I can't. I'd love to do so for you. I'd be glad to try to  
21 do so for you, but there's just nothing in this record that  
22 allows me to do so. And I can't sign my name to something  
23 that doesn't, in good conscience, give me any basis to do  
24 so.

25           If you chose to submit it this way, this is the

1 way you chose to submit it. You chose to submit it  
2 yesterday in this manner, after dates have passed, which,  
3 in it and of itself is in violation of the rules, but okay.  
4 It was all your choice in how you did it and what you chose  
5 to do, that you put the Court in a position where I  
6 couldn't sign it and that was all your choice.

7           So, as much as I would love to assist the parties,  
8 I can't. The way you've presented it, the timing how  
9 you've presented it, and by what you put in here. So I  
10 have to tell you that your court date remains as set.  
11 Sorry, as much as I'd like to help you out, that's where  
12 the Court is stuck doing in this case based on what you all  
13 did. So, that's where it is.

14           MR. LEAVITT: Very good. Thank you, Your Honor.

15           THE COURT: Thank you so much.

16

17           PROCEEDING CONCLUDED AT 10:48 A.M.

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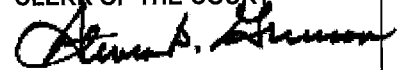
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9/24/2019 3:52 PM  
Steven D. Grierson  
CLERK OF THE COURT



1 TRAN

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 \* \* \* \* \*

5  
6 TITINA FARRIS, PATRICK FARRIS, )

7 Plaintiffs, )

8 vs. )

9 BARRY RIVES, M.D., )  
10 LAPAROSCOPIC SURGERY OF )  
11 NEVADA, LLC, )

12 Defendants. )

CASE NO.: A-16-739464

DEPT. NO.: XXXI

Transcript of Proceedings

13 BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

14 **PRETRIAL CONFERENCE**

15 THURSDAY, SEPTEMBER 12, 2019

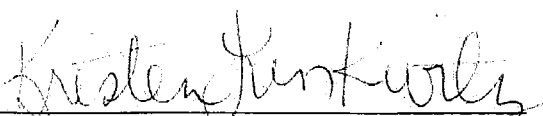
16 **APPEARANCES:**17 For the Plaintiffs: KIMBALL JONES, ESQ.  
18 JACOB G. LEAVITT, ESQ.19 For the Defendants: THOMAS J. DOYLE, ESQ.  
20 AIMEE LEA CLARK NEWBERRY, ESQ.21 RECORDED BY: SANDRA HARRELL, DISTRICT COURT  
22 TRANSCRIBED BY: KRISTEN LUNKWITZ23  
24 Proceedings recorded by audio-visual recording; transcript  
25 produced by transcription service.

**CERTIFICATION**

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

**AFFIRMATION**

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ  
INDEPENDENT TRANSCRIBER

1 THURSDAY, SEPTEMBER 12, 2019 AT 10:14 A.M.

2 THE COURT: Okay. So, that means we know who is  
3 first. Right? That would be *Farris versus Rives* because  
4 you're my med-mal. A739464. This is page 2.

5 MR. DOYLE: Your Honor, I know a couple of  
6 plaintiffs' counsel are out in the hallway.

7 THE COURT: Okay. Marshal, can you go get them,  
8 please? Because we need them. Because oh. We have more  
9 defense counsel, but we still don't have any plaintiffs'  
10 counsel.

11 MS. CLARK NEWBERRY: They're in the hall, Your  
12 Honor.

13 THE COURT: Thank you so much. Marshal is about  
14 to go get them so we can get you taken care of.

15 MR. CLARK NEWBERRY: They're by the smoking area,  
16 Marshal.

17 THE COURT: But they need to be here because we  
18 need them. It's 10:15.

19 [Colloquy on another case]

20 [Pause in proceedings]

21 THE COURT: Okay. So, counsel, can I have your  
22 appearances, please? On page 2, *Farris versus Rives*.

23 MR. LEAVITT: Yes, Your Honor. Jacob Leavitt on  
24 behalf of plaintiff.

25 MR. JONES: Good morning, Your Honor. Kimball



1 Jones also for the plaintiff.

2 MS. CLARK NEWBERRY: Good morning, Your Honor.  
3 Aimee Clark Newberry for Dr. Rives and Laparoscopic Surgery  
4 of Nevada, LLC.

5 MR. DOYLE: And Tom Doyle for the defendants as  
6 well.

7 THE COURT: Oh, welcome back, counsel. Okay.

8 So, you know you're going. You know your date.  
9 You're first up because you're med-mal. You know you're  
10 the 14<sup>th</sup>. I know you got four dates for settlement  
11 conferences from the Senior Judge Program so I'm sure you -  
12 -

13 MR. JONES: I think it's locked in, Your Honor.

14 THE COURT: October 2<sup>nd</sup>.

15 MR. JONES: We verified our experts are good to  
16 go.

17 THE COURT: Right.

18 MR. LEAVITT: On 10/2. October 2<sup>nd</sup>.

19 THE COURT: 10/2. Okay. Understood and you  
20 hopefully fully appreciate you sent a fax at 4:51, by 9:15  
21 the following morning, I think you realized you had it  
22 approved by me, approved by the Chief, and were already in  
23 the pc of getting the Senior Judge Program and Anna from  
24 George Hand's office was coordinating and you got four  
25 dates.

1 MR. JONES: Incredible, Your Honor. Thank you  
2 very much.

3 THE COURT: So, you are good to go on your  
4 settlement conference. Right?

5 MR. LEAVITT: Yes.

6 MR. JONES: Yes.

7 THE COURT: And they've -- she even got some  
8 senior judges for Friday dates for you. Woah. I'm just  
9 saying Ileen Spoor is absolutely wonderful. I don't know -  
10 - she does amazing and what she does to help everyone is  
11 just incredible. I'm so appreciative of what her work in  
12 helping people. So you're taking care of there. Right? So  
13 you've got the settlement conference. You've got the 14<sup>th</sup>  
14 here.

15 Anything unique that I need to 30-days out-ish?

16 MR. DOYLE: What is the Court's general schedule  
17 for those couple of weeks in terms of full days or part  
18 days, if we could just confirm that?

19 THE COURT: Tuesdays and Thursdays are motion  
20 calendars. So, generally, it's 11 o'clock but sometimes  
21 attorneys -- and that's a general. You know, I mean, that  
22 assumes attorneys show up on time. Right? Okay.

23 Sometimes attorneys prefer 1 o'clock because they  
24 don't like that one hour before the lunch break. Okay.  
25 So, that's going to be up to you all. Sometimes it's

1 earlier. I can't tell you today exactly what every day --  
2 October 14<sup>th</sup> is a Monday. So, on Mondays and Fridays, we  
3 start generally at 9 o'clock, unless there's some unheard  
4 of special setting, which currently there's none. But I  
5 can't guarantee that somebody's not going to do some rush  
6 TRO that I don't know yet about. Right? But there's none  
7 currently on the Mondays and Fridays. We can also start  
8 sometimes at 8:30 if you give us advance notice, enough  
9 advance notice. Right? Usually the first day of trial,  
10 usually I'll ask the attorneys to get here by 8:30 and then  
11 we don't ask the jury because there's last minute things  
12 that you need taken care of, we can take care of that for  
13 you.

14           Wednesdays, generally, -- oh, actually, generally  
15 10 o'clock on Wednesdays, sometimes earlier, depending on  
16 how busy by CD day is. The 16<sup>th</sup> is currently -- the 23<sup>rd</sup> we  
17 don't yet know because the day has not passed for motions  
18 to be set yet. The 16<sup>th</sup> is right now status checks and  
19 motions for good faith, so I would say 9:30 or 10 o'clock  
20 on that Wednesdays, once again, subject to something I  
21 don't yet know about.

22           My Tuesdays are more realistically to be saying 11  
23 o'clock. Those two Thursdays are not -- let me see. That  
24 Thursday, the 19<sup>th</sup>, I'm going to have to talk to the case  
25 that was just up there because they have a whole bunch of

1 motions in limine but I'm going to have to move anyway, but  
2 I am just going to have to find out what day they want it  
3 moved for because right now they've got a whole bunch of  
4 motions in limine at 9 o'clock. So it depends on when  
5 they're going to want their motions in limine, which is  
6 going to depend on when their trial is. So that 19<sup>th</sup> is  
7 right now questionable day, but those other days,  
8 currently, -- I'm sorry. I misspoke. That's September.  
9 Thank you. Anyway, thank you, Madeline, JEA. I just  
10 oopsed anyway. Ignore what I just said.

11           The 17<sup>th</sup> is my pretrial conference. Thursday --  
12 actually, it's not a busy week right now. Because it's 30  
13 days out and people still can file motions, I can't give  
14 you a clear guidance on how many motions might get filed in  
15 the next couple of days, but right now those two weeks are  
16 not real busy other than the 17<sup>th</sup> is my pretrial for my  
17 November stack.

18           MS. CLARK NEWBERRY: And Nevada Day as well is  
19 recognized. Right?

20           THE COURT: The 25<sup>th</sup> is Nevada Day. Yes.

21           MR. CLARK NEWBERRY: Right.

22           MR. LEAVITT: Correct.

23           THE COURT: So, are you thinking you may run over  
24 to the 28<sup>th</sup> because of Nevada Day?

25           MR. DOYLE: Is that the Friday?

1 THE COURT: Yeah. Friday the 25<sup>th</sup>.

2 MR. DOYLE: Yes. Probably.

3 MR. LEAVITT: Yes.

4 THE COURT: Okay. So, then, we have to take that  
5 into account.

6 But, right now, not so much. But, once again,  
7 because of the filing dates, the next week people can file  
8 motions and they could get set those two weeks. So, right  
9 now, there's not a lot and there's no special settings that  
10 I am currently aware of or that anybody's asked me for.  
11 And I try not to do special settings when we're right in  
12 the midst of a trial, but that's where it is. So that's my  
13 guess. Okay?

14 MR. LEAVITT: Okay.

15 THE COURT: And then we'll talk about the number  
16 of jurors and things like that at your calendar call. Your  
17 calendar call will be the 8<sup>th</sup> at 9 a.m. Be -- make sure --  
18 you've got the golden rod, I see in front of you. They're  
19 also available online. Make sure you have everything that  
20 you need. I know you're doing a 2.67 and all that type of  
21 stuff or you've done it. I think you did it on the 11<sup>th</sup> or  
22 something.

23 MR. JONES: We have. Yesterday, Your Honor.

24 THE COURT: 11<sup>th</sup>? I thought I saw notice on a  
25 2.67. Okay. So, that takes care of all those issues.

1 Now, there is one challenge -- I'm sorry.

2 MR. DOYLE: Can I ask counsel a question?

3 THE COURT: Of course.

4 MR. DOYLE: We may or may not have an issue.

5 [Colloquy between counsel]

6 MR. DOYLE: We have a partial issue.

7 THE COURT: Speak now or forever --

8 MR. DOYLE: All right. So, we had properly  
9 noticed two depositions, Dr. Horowitz [phonetic], their  
10 general surgeon expert witness, plaintiff has agreed that  
11 we can do Dr. Horowitz next week, consistent with what you  
12 had to say last week. And, so, we will be doing Dr.  
13 Horowitz next week.

14 We had also, before the discovery cutoff, noticed  
15 the deposition of Dr. Gregg Ripplinger, who is a general  
16 surgeon who saw plaintiff between two points of time for a  
17 second opinion consultation. We had noticed Dr.  
18 Ripplinger's deposition. We could sent it. We served the  
19 notice before the discovery cutoff and then when we  
20 erroneously assumed the trial was going to be continued,  
21 Mr. Hand, and I, and Chad Couchot in my office agreed that  
22 we would take Horowitz, but we've got him rescheduled, and  
23 we would take Ripplinger off and reschedule it so that we  
24 would do Ripplinger first and then Dr. Horowitz. Plaintiff  
25 is, as of yesterday afternoon -- we have Dr. Ripplinger

1 scheduled and set for next week, but plaintiff is now  
2 objecting to us taking Dr. Ripplinger.

3 THE COURT: Okay. I appreciate that now is the  
4 time -- well, --

5 MR. LEAVITT: That's correct. We're not  
6 stipulating to Dr. Ripplinger's deposition.

7 THE COURT: You can appreciate now is the time for  
8 pretrial conferences. To the extent you all have any  
9 outstanding issues, those have to come by -- the rules are  
10 the rules.

11 MR. LEAVITT: Correct.

12 THE COURT: By proper motion. Right? So, I mean,  
13 the rules are the rules. You've got an EDCR 7.51 issue,  
14 that's you all's -- you know what I mean? You've got to  
15 bring what you have got to bring. The Court can't, with no  
16 notice, right, address issues for the first time at  
17 pretrial conference without the other side having judicial  
18 notice.

19 MR. DOYLE: Okay.

20 THE COURT: So, remember the rules. Please don't  
21 send letters that are impermissible that the Court cannot  
22 address. All right? Please make sure things are done  
23 appropriately so that the Court can address things for  
24 anybody.

25 MR. DOYLE: And then the other thing is we

1 discussed yesterday --

2 THE COURT: Yes.

3 MR. DOYLE: -- the --

4 THE COURT: Particularly when things that are  
5 already addressed in front of all counsel. And the Court's  
6 already said things.

7 MR. DOYLE: -- possibility of scheduling --  
8 briefing schedule for motions in limine, if the Court would  
9 still entertain --

10 THE COURT: Please make sure if anybody -- if  
11 anybody wishes anything addressed, please make sure it's  
12 done properly under the rules.

13 MR. DOYLE: Okay.

14 THE COURT: Right?

15 MR. LEAVITT: Very good. Thank you, Your Honor.

16 THE COURT: As the Court reminded the parties the  
17 last time they were here.

18 MR. LEAVITT: Very good. Thank you, Your Honor.

19 THE COURT: Thank you.

20 MR. JONES: Thank you, Your Honor.

21

22 PROCEEDING CONCLUDED AT 10:25 A.M.

23 \* \* \* \* \*

24

25

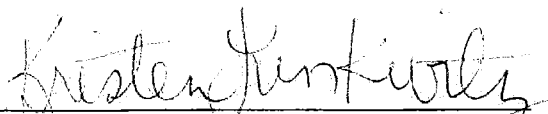


**CERTIFICATION**

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

**AFFIRMATION**

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ  
INDEPENDENT TRANSCRIBER

1 TRAN

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 \* \* \* \* \*

5  
6 TITINA FARRIS, PATRICK FARRIS, )

7 Plaintiffs, )

8 vs. )

9 BARRY RIVES, M.D., )  
10 LAPAROSCOPIC SURGERY OF )  
11 NEVADA, LLC, )

12 Defendants. )  
13 )

CASE NO.: A-16-739464

DEPT. NO.: XXXI

**Transcript of Proceedings**

14 BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

15 **ALL PENDING MOTIONS**

16 THURSDAY, SEPTEMBER 26, 2019

17 **APPEARANCES:**

18 For the Plaintiffs: KIMBALL JONES, ESQ.  
JACOB G. LEAVITT, ESQ.

19 For the Defendants: CHAD COUCHOT, ESQ.  
20 AIMEE LEA CLARK NEWBERRY, ESQ.

21 RECORDED BY: SANDRA HARRELL, DISTRICT COURT  
22 TRANSCRIBED BY: KRISTEN LUNKWITZ

23  
24 Proceedings recorded by audio-visual recording; transcript  
25 produced by transcription service.

1 THURSDAY, SEPTEMBER 26, 2019 AT 10:42 A.M.

2 THE COURT: Thank you very much for your patience.  
3 We're calling *Farris versus Rives*, 739464. Counsel, can I  
4 have your appearance, please?

5 MR. COUCHOT: Good morning, Your Honor. Chad  
6 Couchot for defendants.

7 MS. CLARK NEWBERRY: Good morning, Your Honor.  
8 Aimee Clark Newberry for the defendants.

9 MR. JONES: Good morning, Your Honor. Kimball  
10 Jones for the plaintiffs.

11 THE COURT: Okay.

12 MR. LEAVITT: Good morning, Your Honor. Jacob  
13 Leavitt on behalf of plaintiffs as well.

14 THE COURT: Okay. So, just one moment, please.  
15 Okay. So, we have two things teed up for you all. And,  
16 then, it appears while I was sitting on the bench, a few  
17 moments ago another thing came in on this case, surprise,  
18 surprise. Okay. So, feel free to sit down or stand up.

19 So, what we have is a couple of different things.  
20 We'll deal first with -- okay. We have Plaintiffs' Motion  
21 for Sanctions Under Rule 37 for Defendants' Intentional  
22 Concealment and Defendant Rives's History of Negligence and  
23 Litigation and Motion for Leave to Amend the Complaint to  
24 Add Claim for Punitive Damages on Order Shortening Time.  
25 And, then, as you all know, the Court also added -- in

1 light of additional conduct of counsel in this case, added  
2 to that. The Court also has additional motions that we've  
3 added for today that you saw what the Court did with its  
4 order. And, so, we put it on for some status check items  
5 as well.

6           So, you're all standing so you ready to address  
7 the Plaintiffs' Motion for Sanctions. Do you want a  
8 Court's inclination first or do you want to just argue?  
9 What would you like to do?

10           MR. JONES: Your Honor, I'd love to hear the  
11 Court's inclination first. In addition, Your Honor, we  
12 understand that we have a number of violations and my  
13 preference would be to hear those first. We do understand  
14 that we submitted some things that were improper and if  
15 there are some sanctions that are appropriate with that,  
16 we'd love to take those on the chin first before arguing if  
17 that would please the Court?

18           THE COURT: Well, I will tell you, in the Court  
19 considering part of Plaintiffs' Motion, is the Court has to  
20 -- I'm sure you can appreciate, take the totality of the --  
21 how this case has been handled by all counsel into  
22 consideration because that's really what the Court was  
23 going to partly discuss. The Court does have an  
24 inclination but, before the Court had an inclination,  
25 actually, the Court needed -- I had a couple of questions

1 but the questions really were of defense counsel. I need a  
2 couple of points of clarification before I give an  
3 inclination. Because, in the pleadings, the way I read  
4 them, I thought it was clear one way but I wanted to make  
5 sure I was reading it correctly. So, do you mind if I ask  
6 defense counsel a couple questions, a point of  
7 clarification, before I give an inclination?

8 MR. JONES: Not at all, Your Honor.

9 THE COURT: Defense counsel, that okay with you?

10 MR. LEAVITT: Please.

11 THE COURT: Okay. So, I did not see anywhere in  
12 the documentation that you provided doc -- is it Rives or  
13 Rives?

14 MR. COUCHOT: Rives.

15 THE COURT: Rives. Thank you so much. Dr. Rives,  
16 the interrogatories, was he ever provided the  
17 interrogatories for his review?

18 MR. COUCHOT: Your Honor, I don't know that -- my  
19 under -- I don't know the question -- the answer off the  
20 top of my head. I know we received verifications from the  
21 Laparoscopic Surgery of Nevada interrogatories but we did  
22 not have verifications for the interrogatories of Dr. Rives  
23 himself.

24 THE COURT: Because, in reading your declaration,  
25 it didn't appear that you ever had. Because part of your

1 analysis, both in the pleadings and in your declaration,  
2 was that you drafted them and that you did not include the  
3 Center case. So, that's why the Court's question --

4 MR. COUCHOT: Absolutely. That is absolutely  
5 correct, Your Honor.

6 THE COURT: Because -- so, I'd never saw a  
7 verification. So, --

8 MR. COUCHOT: There was no verification. They  
9 have since been supplemented and verified.

10 THE COURT: I did not -- well, that's another  
11 question the Court's going to ask. Because I never saw it  
12 and I said I never saw a verification, I was -- my question  
13 was: Are they going to be broken down in three points in  
14 time? I never saw a verification from 2017 up until the  
15 deposition in 2018. That's why my first question was: Did  
16 Dr. Rives ever see the interrogatories? I kind of was  
17 asking it in the big picture, global. Did he ever see  
18 them? Because your declaration says you supplement -- you  
19 wrote them and, then, you supplemented them. But it never  
20 mentioned Dr. Rives any time.

21 MR. COUCHOT: They were sent to Dr. Rives after  
22 they were supplemented.

23 THE COURT: So, in September of 2019?

24 MR. COUCHOT: Yes, Your Honor. And --

25 THE COURT: Bless you.

1 MR. COUCHOT: And Dr. Rives subsequently pointed  
2 out that his -- we made a couple of additional changes  
3 based on Dr. Rives's verifications.

4 THE COURT: Okay. This Court -- well, let me  
5 start over. Okay. So, 2017, no verification. You're not  
6 sure if Dr. Rives ever saw them?

7 MR. COUCHOT: Correct. My suspicion is he did  
8 not. But I don't know that to be a fact.

9 THE COURT: Okay. 2018, the deposition, when  
10 specifically, the interrogatories questions are asked of  
11 him by Dr. -- Mr. Hand. Right?

12 MR. COUCHOT: Correct.

13 THE COURT: You were there at the deposition. I -  
14 - this Court did not see anywhere in the pleadings any  
15 supplement on the duty to supplement. Right?

16 MR. COUCHOT: Correct.

17 THE COURT: Did not see any supplemental  
18 interrogatories in 2018, pre-September 13, 2019. Is that  
19 correct?

20 MR. COUCHOT: Correct.

21 THE COURT: Okay. Did not see any verification in  
22 that time span, even after Dr. Rives is asked about those  
23 interrogatories in his deposition?

24 MR. COUCHOT: Correct.

25 THE COURT: Okay. Thirdly, I did not see,

1 attached to any pleading provided to this Court in any of  
2 these pleadings for purposes of today, any verification of  
3 Dr. Rives whatsoever. Are you saying there was one  
4 provided to plaintiffs' counsel and neither of you attached  
5 it to your pleadings? Or are you saying it's inadvertently  
6 not attached to the courtesy copies and not attached to the  
7 electronic filings? Or --

8 MR. COUCHOT: The former.

9 THE COURT: -- do I need to double check my  
10 reading glasses?

11 MR. COUCHOT: The verifications were not completed  
12 at the time that I filed my Opposition. So, they were not  
13 attached to the Opposition.

14 THE COURT: Have they sub -- not even to your  
15 Opposition? Have they ever been provided to the Court? I  
16 didn't see a supplement to the Court.

17 MR. COUCHOT: No. Not to the Court.

18 THE COURT: Okay.

19 MR. COUCHOT: They have been served.

20 THE COURT: They were served when?

21 MR. COUCHOT: They were served -- I don't have  
22 that in front of me, Your Honor. To the best of my  
23 recollection, they were served -- it may have been  
24 yesterday morning.

25 THE COURT: Okay. And my other question was I did



1 not see anywhere in the pleadings provided to the Court  
2 that there was anything stated in either the declaration or  
3 anywhere in the pleadings about whether Dr. Rives was  
4 provided his deposition to review his 2018 deposition. Was  
5 he provided it to review?

6 MR. COUCHOT: I don't know the answer to that  
7 question. I do know he did not complete an erratum.

8 THE COURT: Okay. And I did not see anywhere in  
9 the declaration or anywhere in the pleadings any statement  
10 about whether counsel or anyone from counsel's office,  
11 doing the global paralegals, whole kit and caboodle, review  
12 Dr. Rives' deposition at anytime prior to this Motion --  
13 prior to September 13, 2019?

14 MR. COUCHOT: Well, I never -- I did not, until  
15 this Motion was filed. And I can only tell you that, based  
16 on our custom and practice, that it would not have been  
17 reviewed until the matter -- until trial preparation began.  
18 Because we -- after a deposition, we complete a deposition  
19 summary based on our written --

20 THE COURT: What -- but a depo is -- nobody looks  
21 at the depo to see if it's accurate?

22 MR. COUCHOT: No. We do not do that as part of  
23 our custom and practice. And we do not review the  
24 deposition for accuracy.

25 THE COURT: And you don't know if you sent it to

1 the client?

2 MR. COUCHOT: No. I can certainly find the answer  
3 to that question. But I can tell you that we do not review  
4 a deposition for accuracy. And --

5 THE COURT: Okay. Okay. That's -- those are --  
6 the reason why the Court needed to ask those questions is  
7 because there's clear -- I have to look at their sanctions  
8 ask -- request. And they're asserting intentional conduct  
9 and I need to have an understanding. I always directly say  
10 forthright what I'm looking at. And what I'm looking at is  
11 District Court, unlike Appellate Court -- okay? So, the  
12 law's a little bit different. Okay? So, there's a Supreme  
13 Court case on point about the different -- I think there  
14 is. Okay. Whether the conduct is Dr. Rives' conduct or  
15 his counsel's conduct when you're looking and evaluating  
16 the sanctions potentiality. Okay? And the Court also has  
17 to look at per se violations of 30 -- NRCP 33, 26, 37. I  
18 could keep going.

19 But that's why I was asking those questions  
20 because there's affirmative duties to supplement. There's  
21 26 affirmative duties to do reasonable. There's  
22 affirmative duties for things to be -- the discovery to be  
23 under oath. And, so, the -- the EDCR 2. -- I don't even  
24 have to get to the EDCRs. I mean, I've got the NRCPs but,  
25 then, EDCR 2.40 in addition. But -- okay. And that's why

1 the Court needed to have that understanding. Because, I  
2 mean, now that plaintiff argued, but I had to have a rubric  
3 of understanding of whether -- because you were asserting  
4 it being plaintiff and I need that understanding if it was  
5 plaintiff, or plaintiffs' counsel, or a combination  
6 thereof. So, I'm not going to have an inclination, I'm  
7 going to let you argue it. Thank you.

8 MR. JONES: Thank you, Your Honor.

9 So, we've laid out, I think, within our Motion, to  
10 the most detailed that we were capable of doing given the  
11 information we had in front of us, of the issues that we  
12 found and the failures to provide information that we had  
13 asked for. And when I say we, I'm talking about the  
14 plaintiffs, that they had asked for, because we came on the  
15 case in July, was when --

16 THE COURT: Which, by the way, you're -- sorry.  
17 The only reason why I'm interrupting you is because there  
18 was a whole analysis of you coming on on July 15<sup>th</sup> and that  
19 the discovery cutoff was already over. You know the  
20 discovery cutoff pursuant to your supplemental was not June  
21 14<sup>th</sup>, it was July 24<sup>th</sup>. So, that whole analysis was  
22 incorrect. It was -- I'm not sure if you really realize  
23 that inadvertently or it's just another one not checking  
24 the date. But it's your own stipulation. But -- okay. I  
25 --

1 MR. JONES: And, Your Honor, I was here before  
2 Your Honor at one time and I -- if Your Honor recalls, I  
3 had a -- it was before the close of discovery. And I had  
4 an understanding we had actually agreed to an extension but  
5 that was -- told that wasn't the case.

6 So, -- but, in any case, we dove in right away and  
7 I discovered that Dr. Rives, when I went into Odyssey, that  
8 he had been hit with a Judgment in this *Center* case for \$5  
9 million or something. And, so, I thought: What on Earth  
10 is that about? What did he do? And, so, I looked through  
11 the Answers to Interrogatories and I looked through his  
12 deposition and, of course, I started off doing a keyword  
13 search trying to find if he had been candid and had given  
14 us that information but he had not. And, in the  
15 Interrogatories, there was no indication that he was  
16 providing information that was even similar to the *Center*  
17 case.

18 When I went and I read his deposition word for  
19 word, I identified *Center* and I pointed that out to the  
20 Court and I thought -- and, although it wasn't Dr. Rives  
21 that was testifying about it, counsel had interjected and  
22 put that information on the record, and I identified that  
23 counsel likely was intending to say *Center* but that wasn't  
24 picked up because of the -- it came up a *Sinner*. And, so,  
25 we didn't have knowledge about this case.

1           So, I -- then I went and found out that there was  
2 a Motion for New Trial in the *Center* case. And I went down  
3 myself and I listened to the Motion for New Trial. I found  
4 out more about it and I talked to the attorney who was on  
5 the *Center* case and my mind was blown that we had a case  
6 where the patient has a vital organ that is cut, that she  
7 goes into septic shock the next day, exactly like our  
8 patient. And, then, does -- the doctor does not do  
9 anything to identify or gain source control for 11 days in  
10 *Center* and for 12 days in *Farris* and that the end result  
11 is, in addition to a colostomy bag that my client has to  
12 carry around for over a year, that she had her lower legs  
13 destroyed and she has lost all function, nerve function, in  
14 her lower legs.

15           And, in the *Center* case, it was so bad that they  
16 had to actually do multiple surgeries and remove pieces of  
17 her foot, piece by piece, until her feet were gone and  
18 because of the destruction that occurred by being septic  
19 for an extended period of time. This is the sort of thing  
20 that is known -- that is potentially known to happen. But  
21 the -- it's -- and the fact that it happened five months  
22 before our case. And that during the entirety of the  
23 *Farris* case, they knew about the *Center* case because they  
24 were defending the *Center* case, which was ongoing until  
25 just a short while ago. And, so, the idea that there was

1 not a knowledge about this case and the similarities is  
2 shocking.

3           And if you look at the electronically served  
4 Answers to Interrogatory Responses that is back in April  
5 17<sup>th</sup> of 2017, which were not corrected until less than 30  
6 days before trial, I believe, again, without clarification,  
7 they were just corrected. And, then, yesterday, I think,  
8 in the evening, I saw that something had come through and  
9 there were a couple of additional minor changes with a  
10 verification for the first time, I believe, yesterday. And  
11 I can't even verify that that's true. I believe that is  
12 correct but I didn't print it off for the Court when I saw  
13 that they had come in less than 30 days before trial.

14           But if you look just on page 1, it says: Under  
15 authority of Rule 33 of the Nevada Rules of Civil  
16 Procedure, defendant Barry Rives, M.D., hereby responds  
17 in writing and under oath to interrogatories directed  
18 to him by plaintiff Titina Farris as follows.

19           And, certainly, Your Honor, of course, the  
20 automatic sanction that comes out right away is that there  
21 are no objections, that the objections are stripped away.  
22 But, obviously, the sanctions go far beyond that in NRCP  
23 30(d)(2) when a party is untruthful. The -- or, excuse me.  
24 In the deposition.

25           And Dr. Rives is in the middle of this litigation

1 where he has so many facts that are so similar to the  
2 litigation in *Farris* and he is asked about his prior  
3 incidents and how he doesn't mention this, it really is  
4 remarkable that this would not have been on his mind. And  
5 that's not credible. And, so, the fact that he is asked  
6 about it at all and, then, fails -- omits, when he is under  
7 oath, under NRCP Rule 30, and, then, doesn't give that  
8 information, by itself, is an indication of untruthfulness.

9           Then, if you look, obviously, the sanctions find  
10 truthfulness, NRCP 30(d)(2), and, then, he had an  
11 opportunity under NRCP 30(e)(1) to read and sign to verify  
12 that his responses and -- to his deposition had been  
13 truthful, and complete, and candid, and he -- we don't know  
14 -- the information Your Honor has is all the information I  
15 have. I don't know why it didn't happen, how it didn't  
16 happen, I haven't ever seen anything like that.

17           And, again, right, the interrogatory responses  
18 automatically must be sworn. And it's appropriate for a  
19 plaintiff to believe they are sworn under oath when they  
20 receive that information. And that's under 33(b)(3), as  
21 Your Honor knows.

22           Now, in addition, Your Honor -- and this is going  
23 with where our Motion is. But you trace back all the way  
24 to the 16.1 duty to disclose and I think there's potential  
25 issues that go back that far.

1           The reason we believe, Your Honor, that this must  
2 have been intentional by Dr. Rives or for the reasons that  
3 are outlined there in our Motion, that I'll argue a little  
4 bit more in detail now, just the -- because of the  
5 similarities, the fact that he was -- he has these ongoing  
6 litigations side by side for almost identical behavior in  
7 these two cases, both hernia repair surgeries, where the  
8 same sort of event occurs. In our case, he punctures the  
9 colon; in the *Center* case, he punctures the stomach. But,  
10 in both cases, you have these litigations going side by  
11 side and how it never occurs to him to mention it when he  
12 is asked.

13           Your Honor, a few months ago, I was arguing a  
14 completely separate matter in front of the panel from the  
15 Nevada Supreme Court and Justice Abbi Silver made a  
16 statement -- and I'm going to botch it and I didn't record  
17 it word for word, but it's throughout case law and it was  
18 directly on point. She stated that prior similar incidents  
19 are the -- are perhaps -- I think she said, are perhaps the  
20 best way for a plaintiff to prove conduct was foreseeable  
21 and is perhaps -- and, therefore, negligent.

22           And, so, the idea that -- and we're not talking  
23 about going after prior bad acts for the purposes of  
24 showing conformity therewith or showing character, this  
25 isn't a question of character or conformity therewith.



1 Everybody knows the acts that occurred. It's not in  
2 question what Barry Rives did. Right? It's not in  
3 question that he failed to take her back to surgery for all  
4 of these days and that she developed septic shock and  
5 almost died. Or, perhaps, did die and was resuscitated by  
6 other caring physicians at the hospital. Right? That  
7 information is not in question. We're not identifying what  
8 Barry Rives did and what Barry Rives didn't do when we're  
9 talking about this. What we're talking about is looking at  
10 the foreseeability of his conduct in his mind that he knew  
11 exactly the likely consequences to Ms. Farris by his  
12 extraordinarily negligent conduct here.

13           Prior bad acts, if you even want to call this  
14 prior bad acts, are routinely permitted and are admissible  
15 for numerous purposes, including but not limited to habit,  
16 proof of motive, opportunity, intent, foreseeability,  
17 preparation, plan, knowledge, identity, absence of mistake  
18 or accident, for credibility purposes such as pointing out  
19 inconsistencies. So, the idea that this information would  
20 have never come in and therefore plaintiff wouldn't have  
21 been prejudiced is absurd.

22           A foundational element of defendants' defense is  
23 that the plaintiff, though diabetic, sometimes had a cookie  
24 now and again and was therefore not perfectly compliant.  
25 And they are going to try to talk about that. And they

1 asked her prior physician for, I think about an hour, about  
2 her prior history and trying to delve into any degree of  
3 bad acts or noncompliance. The idea that they -- and what  
4 happened here is plaintiffs have been entirely -- the  
5 opportunity for discovery has been entirely taken away.  
6 Defendants' Opposition throws out the point that: Hey,  
7 look, we have interrogatories in the *Center* case unverified  
8 that are -- that indicate that we did tell the *Center* case  
9 about the *Farris* case. Well, that's the first time we've  
10 seen them. Right? We would have liked to have dug in  
11 there a little bit further and found out exactly what is  
12 going on. We would have liked to, for example, have taken  
13 the deposition of the personnel at the hospital that were  
14 involved, of nursing staff, of others.

15           Certainly, when you have -- when you -- and,  
16 obviously, this Court handles all sorts of matters,  
17 including motor vehicle collisions, including slip and fall  
18 incidents. And, routinely, though you would classify them  
19 as prior bad acts, it comes in that a person has a history  
20 of driving in a reckless way or a company has a history  
21 with respect to a certain floor because it's important to  
22 identify that, you know, when that floor, right, that if  
23 there's a history and they know that people are being  
24 injured through a certain sort of -- certain type of  
25 behavior, that's directly now -- directly relevant and

1 critical to establish foreseeability, which is necessary  
2 for the plaintiff to establish negligence.

3           Yeah. Something that -- yeah. It -- and I  
4 mentioned it briefly. But, to the degree that they were  
5 permitted to get into my client's medical history, which  
6 has nothing to do with her actions when she's laying asleep  
7 on a table, to question that so that they could try to  
8 throw some blame on her and, then, prevent us from going  
9 into the history of Dr. Rives to identify how much of his  
10 actions were really knowing, did -- how much did he know he  
11 was going to do here?

12           In addition, it goes to there is some credibility  
13 issues, Your Honor. And this is something that we recently  
14 identified. I actually just discovered this yesterday  
15 because I gathered more information on Dr. Rives. Dr.  
16 Rives apparently, in the other case, testified under oath  
17 that during his second surgery, he punctured a hole in the  
18 woman's stomach, that was 11 days later. And, then, we  
19 find out that there was a CT scan taken that same day, like  
20 three hours before the second surgery, showing the hole  
21 already existed, demonstrating that Dr. Rives was  
22 apparently attempting to take ownership of the hole right  
23 then, which wouldn't have been negligence if he had  
24 punctured it then and, then, fixed it immediately. But it  
25 would have been negligent if he had punctured the hole 11

1 days earlier and left it there for those 11 days. But he  
2 hadn't read -- he hadn't looked at the CT scan to see that  
3 hole before he put in his note. And, so, his prior case is  
4 fraud with significant deceit and significant troubling  
5 matters that we just barely know anything about.

6 And, so, when we're looking at this, Your Honor,  
7 the prejudice we've suffered, there could be an entire case  
8 there. And what the -- and let's be clear, Your Honor.  
9 What the defense was intentionally trying to stop the  
10 plaintiffs from accomplishing here was from identifying  
11 foreseeability by Dr. Rives, that this exact, exact issue  
12 was foreseeable for him, not just generally because the  
13 medical literature says it's dangerous to do what he did,  
14 but he personally had caused his patient doing the same  
15 thing, to have her legs amputated five months earlier. And  
16 they didn't provide that information to us when it was  
17 asked for on multiple occasions. That is potentially a  
18 case killer. If plaintiff cannot establish foreseeability,  
19 plaintiff cannot win plaintiffs' case.

20 And the appropriate sanction for that sort of  
21 behavior where you are trying to hide evidence to ruin the  
22 other side's case are case terminating sanctions. The same  
23 strength of a sanction as was the conduct engaged in and  
24 what they were trying to prevent.

25 Your Honor, with respect to punitive damages, we

1 are clearly arguing punitive damages should be added in  
2 this case, at least be argued to the jury, and we're  
3 clearly arguing it on implied malice. This is a reckless  
4 disregard for the welfare and the safety of the plaintiff.  
5 That is the basis from which we are asking. This doctor  
6 specifically knew that this exact behavior was reckless.  
7 And the jury can judge that. And that it was absolutely  
8 done without intention of protecting this plaintiff. And  
9 we believe we will be able to prove that to the jury by  
10 clear and convincing evidence and there's all sorts of  
11 reasons why. Dr. Rives waits 11 days to order his first  
12 diagnostic anything of any importance to even try to figure  
13 out what's going on. He -- in the prior case, he actually  
14 canceled orders for CT scans that other doctors were trying  
15 -- when they're trying to figure out what was going on.  
16 This doctor has a history of deliberately putting his hand  
17 -- head in the sand and really putting his patients in  
18 severe risk.

19 [Colloquy at plaintiff counsel table]

20 MR. JONES: Yeah. Right. Right. And, I mean,  
21 ultimately, we don't know -- Your Honor, all we know now is  
22 the information that we found. But we have been barred by  
23 conducting discovery, which may have enabled us to have a  
24 completely different kind of case, a much stronger case,  
25 and that has been taken from us by the defense not

1 disclosing this information until after -- well, not  
2 disclosing it at all, Your Honor, and us discovering it  
3 after the close of discovery.

4 Right. And that, Your Honor, is their duty to  
5 disclose, it is not our duty. And, with that, we rest,  
6 Your Honor.

7 THE COURT: Okay.

8 MR. JONES: Unless you have any questions for me.

9 THE COURT: I do. But I'm going to hold them  
10 until -- see if you address it on your final response.

11 MR. JONES: Thank you.

12 THE COURT: And, then, I'll ask you a couple of  
13 questions. Go ahead, counsel.

14 MR. COUCHOT: And, Your Honor, the crux of their  
15 Motion is intentional concealment by Dr. Rives. You know,  
16 I acknowledged that I made various mistakes during  
17 discovery. I should have taken the affirmative duty of  
18 assuring that those responses were verified. I should have  
19 reviewed the deposition transcript. I should have made a  
20 note during the deposition that interrogatory discussing  
21 prior depositions did not include *Center* and to supplement  
22 that interrogatory. I acknowledge that, Your Honor, and I  
23 take full responsibility for that.

24 But the bottom line is there is absolutely no  
25 indication that Dr. Rives made any sort of effort to

1 conceal this information from the plaintiffs. If Dr. Rives  
2 or counsel wanted to intentionally conceal this information  
3 from plaintiffs, we would have concealed. In fact, we  
4 would have taken some effort to conceal that *Tucker*  
5 [phonetic] matter, the *Ducat* [phonetic] matter, the *Brown*  
6 matter. There are a number of other medical malpractice  
7 actions that Dr. Rives has had, including another one  
8 that's pending, that we were completely forthcoming about.  
9 Because I understand that that was our duty.

10 Now, it was a mistake by me to not include *Center*  
11 in the list of discovery responses and I laid out exactly  
12 the reason why that error occurred. I -- but there is  
13 absolutely no indication that there was any intentional  
14 misconduct or concealment by Dr. Rives himself.

15 Now, counsel is conflating two issues about -- in  
16 the deposition, which I've discussed in my Opposition,  
17 where he is representing that Dr. Rives was asked, are  
18 there any other cases, and he neglected to mention *Center*.  
19 He was not asked that question. He was asked: Are there  
20 any other cases in which you gave a deposition? He named a  
21 few of them and, then, that's when I chimed in and I said:  
22 The *Center* case. Now, I think that that is a -- that is  
23 proof in and of itself that there was no intentional  
24 concealment. He went on to answer every question that was  
25 posed to him about the *Center* case. I understand that it

1 was identified as *Center*. The -- his factual recitation of  
2 that case was correct. That information was available on  
3 the Court's website, it was not an intentional  
4 misrepresentation by Dr. Rives, and it was a mistake by me,  
5 his counsel.

6 The --

7 THE COURT: Counsel, I've got to interrupt you for  
8 a quick second. I've read your pleadings. It is not  
9 plaintiffs' obligation to go searching through websites to  
10 try and find out if your client has not been forthright in  
11 providing some information. Okay?

12 MR. COUCHOT: Yes, Your Honor.

13 THE COURT: You have the affirmative -- from 16.1,  
14 it's clear, affirmative obligation to disclose.

15 MR. COUCHOT: Yes, Your Honor.

16 THE COURT: Any -- when your pleading said that  
17 it's available on the website, are you trying to say that  
18 they had to go looking for it?

19 MR. COUCHOT: No, Your Honor. I --

20 THE COURT: Okay. That -- you said that  
21 repeatedly, that it was available the whole time for them  
22 to go find it. They're not supposed to have to go look.

23 MR. COUCHOT: I under --

24 THE COURT: From 16.1, you were supposed to  
25 disclose it.



1 MR. COUCHOT: I understand that, Your Honor. And  
2 the --

3 THE COURT: And, in the interrogatories, they did  
4 specifically ask. And it was required. Twenty-six, before  
5 you put your name on there. Right? What does 20 -- okay.  
6 The whole purpose of 26 is that the counsel did a diligent.  
7 Okay? And, separately, that under oath for the witness,  
8 those are affirmative obligations and ongoing supplement  
9 obligations. There's nothing for the other side to have to  
10 try and go find it.

11 MR. COUCHOT: I completely understand that, Your  
12 Honor.

13 THE COURT: And --

14 MR. COUCHOT: And the point that I was -- that the  
15 only point I was making with regard to that is to show that  
16 there was no intent on our part to conceal because we  
17 identified the jurisdiction where the case was venued.

18 THE COURT: When you say we, you said *Center* in  
19 December 2018 when your client was deposed in a case that's  
20 been around since 2016. Correct? That's the first time  
21 any indication of that case was ever mentioned?

22 MR. COUCHOT: Yes, Your Honor. And counsel asked  
23 where that case was and Dr. Rives responded: Las Vegas.

24 THE COURT: Okay. Go ahead.

25 MR. COUCHOT: And, Your Honor, with -- the --

1 counsel's point about notice to Dr. Rives is a red herring.  
2 It's been known at the out -- there's no question in any  
3 mind of any surgeon that there are dangers associated with  
4 a failure to timely treat sepsis. And the -- and there's a  
5 risk-benefit analysis about when do you take a patient back  
6 to surgery to look for a -- to look for a perforation or  
7 any other type of surgical indication to treat the sepsis.  
8 There's a risk-benefit analysis there and that's what --  
9 and that's exactly what happened in this case.

10           And the idea that Dr. Rives didn't know -- only  
11 through *Center* would he have known that you could cause  
12 damage to a patient's feet by not timely diagnosing sepsis,  
13 that is a false premise, Your Honor. Their experts  
14 wouldn't say that, my experts wouldn't say that, that is  
15 absolutely not the case. Every surgeon is aware of the  
16 urgency to retain -- to return a person to surgery if there  
17 is a perforation of the colon. The question in this case  
18 is whether or not there was adequate evidence of a  
19 perforation of the colon.

20           And what counsel -- I disagree with many of  
21 counsel's characterizations of how the evidence in this  
22 case played out and the evidence in *Center*. But I will  
23 tell you this. During what counsel neglected to mention  
24 about the facts in this case is that during that interval  
25 where Ms. Farris was not returned to surgery, there was a

1 second opinion evaluation by another surgeon and the other  
2 surgeon said that there needed to be -- that there was an  
3 index of suspicion for a -- that he was concerned about a  
4 possible perforation, let's look at what the CT scan says  
5 that's being scheduled for that day or the next day. That  
6 was exactly the same plan that Dr. Rives had, Your Honor.  
7 So, there are two surgeons who are basically making the  
8 same analysis about this.

9           Now, the fact that the *Center* case led to the  
10 amputation of Ms. Center's feet because of a -- they allege  
11 a delayed diagnosis of sepsis, does not add anything to the  
12 fact pattern of this case. It does not prove  
13 foreseeability. Dr. Rives and every other surgeon are well  
14 aware of the risks associated with a failure to timely  
15 diagnose sepsis. Those issues were identified in his  
16 deposition, at length that those issues were discussed,  
17 Your Honor.

18           And, so, the -- what this really is an attempt to  
19 do, it's an attempt to put the issues of the *Center* case  
20 before the jury in this case so that they can say: Ha,  
21 look, Dr. Rives did something significantly similar in  
22 another case so, therefore, he must have -- and he was  
23 found to be negligent in that case so, therefore, he must  
24 have been negligent in this case. And that's an entirely  
25 improper mechanism for proving the breach of the standard

1 of care in this case, Your Honor. It's entirely  
2 inappropriate.

3           The point -- counsel made a point that the Center  
4 case proves that Dr. Rives knew of likely consequences of  
5 his extraordinary conduct. There's no evidence that Dr.  
6 Rives was unaware of the potential damages in this  
7 particular case. Now, counsel wanted to -- everyone is  
8 well aware of -- every surgeon is well aware of the risks  
9 associated with an untimely treatment of sepsis. The  
10 question is it's a balancing act as to whether or not the  
11 patient should be returned to surgery because you don't  
12 operate on a surgeon -- I'm sorry. You don't operate on a  
13 patient unless there's a clear indication to do so.

14           Now, counsel repeatedly tried to conflate the  
15 issues of our inquiry into Ms. Farris's past medical  
16 history with inquiries into Dr. Rives's conduct as a  
17 physician. Now, Ms. Farris's past medical history is  
18 directly relevant on the issue of damages. As the Court is  
19 well aware, a party can only recover for damages that are  
20 causally related to the care at issue. The only point --  
21 the point that counsel was trying to make that defendants  
22 were making when they were deposing Dr. Chaney is that Ms.  
23 Farris had a variety of preexisting problems. We're not  
24 talking about any sort of culpability on our part. We're  
25 not alleging she's a bad person, that she shouldn't have

1 eaten a cookie, as counsel mentioned. We're merely -- we  
2 are merely are making the point that Ms. Farris had some  
3 preexisting problems that overlap with the problems that  
4 she developed after surgery and that the [indiscernible]  
5 relationship there is not an -- is not entirely  
6 attributable to the care at issue.

7           The idea that somehow that same sort of evidence  
8 of past conduct by Dr. Rives is admissible, it does not  
9 compute. There is no -- there is absolutely no reason that  
10 the evidence of Dr. -- that the evidence of Dr. Rives' care  
11 in another patient establishes that he fell below the  
12 standard of care in this case or that it -- that his  
13 conduct proximately caused her damages or the extent of the  
14 damages. It does not weigh to any of those things. It's  
15 an independent analysis in this case as to whether or not  
16 Dr. Rives breached the standard of care. It -- and every  
17 surgeon knows that if you have a patient who is becoming  
18 septic, you -- there are dangers associated with that and  
19 you want to do everything in your power to prevent that and  
20 to stop the sepsis. And there is absolutely no indication  
21 that Dr. Rives didn't do everything that he thought was  
22 appropriate based on his medical judgment.

23           I disagree with counsel's representation that he  
24 didn't perform any diagnostic studies until 11 days  
25 afterwards. Dr. Rives saw the patient repeatedly. He was

1 constantly monitoring her. She was also being monitored by  
2 an infectious disease specialist. There was a second  
3 opinion by a surgical -- the surgeon that she was being  
4 monitored by hospitalists. The decision to return the  
5 patient was -- not return the patient to surgery was made  
6 considering her course. It had absolutely nothing to do  
7 with the facts of the Center case, Your Honor.

8           And, lastly, the request to plead punitive  
9 damages, there is no implied malice here, Your Honor.  
10 There's none. All we have is Dr. Rives making --  
11 exercising his medical judgment. I understand their  
12 experts say that his judgment was poor. Our experts say  
13 that his judgment was within the standard of care. That is  
14 absolutely no reason to allow plaintiffs to plead punitive  
15 damages.

16           And I profusely apologize to the Court about my  
17 mistakes during discovery. It's a learning experience for  
18 me. I understand that was my obligations. I've -- I'm  
19 here to fall on the sword and I rightfully should because  
20 it has nothing to do with Dr. Rives's intentional conduct.  
21 If anything, Dr. Rives is very, very forthcoming about what  
22 he thinks he did correct. And if he was asked these  
23 questions about this case, if he was aware that this --  
24 that it -- if he was aware that of this omission, I'm sure  
25 he would have corrected it, Your Honor.

1 THE COURT: But did he in his deposition? Did he  
2 mention the word *Center* during his deposition or did you  
3 need to jump in and mention *Center* before him?

4 MR. COUCHOT: I did. I did interject that, Your  
5 Honor.

6 THE COURT: Okay. So, did he, in response to any  
7 questions, mention *Center*?

8 MR. COUCHOT: No. He did not, Your Honor. And  
9 before -- not before I did.

10 THE COURT: How many litigations does he have?

11 MR. COUCHOT: I --

12 THE COURT: Any --

13 MR. COUCHOT: Seven is my best estimate without  
14 looking at it in front of me.

15 THE COURT: So, seven times as a defendant and  
16 he's presumably been deposed in all seven of those cases?

17 MR. COUCHOT: I don't know that. But I know he's  
18 been deposed more than seven times because there was a  
19 discussion about -- because the discussion about *Center* was  
20 preceded by discussions of other depositions.

21 THE COURT: And you are asking this Court to  
22 believe that he wouldn't think he'd have to name every case  
23 in a deposition?

24 MR. COUCHOT: I'm asking the Court to believe that  
25 in that circumstance, Dr. Rives did the best of his --

1 testified to the best of his recollection at that  
2 particular time of what depositions he had given. And when  
3 he --

4 THE COURT: Not just depositions, matters in which  
5 he was involved in. He didn't remember that there was a  
6 settlement conference in the *Center* case about a month  
7 beforehand?

8 MR. COUCHOT: No. Your Honor, that -- well,  
9 that's one of my points is he was not specifically asked  
10 that -- Plaintiffs' Opposition suggests that he was asked -  
11 --

12 THE COURT: Plaintiff's Motion.

13 MR. COUCHOT: I'm sorry. Yes. Plaintiff's Motion  
14 suggests that he was asked: Okay, are there any other  
15 cases where you're named as a defendant? He was not asked  
16 that question, Your Honor. He was asked --

17 THE COURT: Aren't you wordsmithing, counsel?

18 MR. COUCHOT: No. I'm --

19 THE COURT: I mean, go to their interrogatory. Go  
20 to Interrogatory Number 3. What does Interrogatory Number  
21 3 say? Have you -- that's the interrogatory that was being  
22 referenced in a deposition. Right, counsel?

23 MR. COUCHOT: Yes, Your Honor.

24 THE COURT: And, Interrogatory Number 3, which was  
25 the one being specifically referenced. Right? Was in



1 front of him. Right? And discussed.

2 MR. COUCHOT: No, Your Honor. I disagree with  
3 that.

4 THE COURT: It was not in front of him or it was  
5 not being discussed?

6 MR. COUCHOT: That it was not being discussed.  
7 That was the preceding -- the discussion that counsel has  
8 cited is about Interrogatory Number 4, not Interrogatory  
9 Number 3.

10 THE COURT: Number 4 is meeting or medical  
11 committee.

12 MR. COUCHOT: I'm sorry. I'm sorry. It's -- I --

13 THE COURT: Three and 5 are the two ones at issue.

14 MR. COUCHOT: I'm sorry. Yes. It was about 5 --  
15 it was about the question about depositions that where  
16 counsel is citing his -- which counsel is citing. The  
17 colloquy went like this, Your Honor. It was: Okay, you've  
18 named a bunch of different lawsuits in response to  
19 Interrogatory Number 3, tell me about this one, tell me  
20 about this one, tell me about this one. And, then, it went  
21 on to: Okay, you've -- in response to your responses to  
22 Interrogatory Number 5, you've given depositions in such  
23 and such a case, have you given any other depositions?

24 THE COURT: Okay. Since you guys gave me this in  
25 microscopic -- it's about six-point type, folks. Okay?

1 MR. COUCHOT: Your Honor, it's attached to my --  
2 in full form, to my declaration.

3 THE COURT: Parts -- okay. Not the entirety.  
4 Okay. We've got parts of it. So, only parts. Parts is  
5 parts. So, --

6 [Pause in proceedings]

7 THE COURT: The Court -- that is what the Court  
8 did. Will you please tell me if the Court's incorrect  
9 because obviously I wasn't there and I'm not a fly on the  
10 wall and this wasn't videotaped. So, what did the Court  
11 looked at page 11 of the deposition transcript of Dr.  
12 Rives. Right? Okay. Big type or small type. Okay. And  
13 I looked at lines -- because you highlighted it. Right?  
14 See on line 4? Okay. So, it says: Question. Okay? So,  
15 it starts on page 10. Right? The question starts on page  
16 10. It says -- line 25, page 10:

17 If I could direct you to response number 3?

18 Okay. And the question is: If you have ever been  
19 named as a defendant in a case arising from alleged  
20 malpractice or negligence? So, I am just going to go  
21 over these with you. We're on page 2.

22 Okay? So, that's why the Court thought, by  
23 reviewing -- looking at this, that he had the  
24 interrogatories in front of him is what it looked like.  
25 Because see where it says: We're on page 2? Okay. Then,

1 if you go to the interrogatories themself [sic], lo and  
2 behold, question number 3 is on page 2 of the  
3 interrogatories. So, like I said, I wasn't there so I  
4 don't know. But that's why this Court was -- it appeared  
5 that the interrogatories would have been there for Dr.  
6 Rives at his deposition. Like I said, you were there, I  
7 wasn't, so I don't know. I think you're probably the only  
8 one, probably, in the courtroom that may have been there.  
9 So, you would know better than I would.

10 MR. COUCHOT: I wasn't. And I don't know the  
11 answer to that question. I --

12 THE COURT: You weren't there? I thought you were  
13 there.

14 MR. COUCHOT: No. I was there.

15 THE COURT: Okay.

16 MR. COUCHOT: But I don't specifically have a  
17 recollection. I agree that that's a reasonable  
18 interpretation by the Court. But I can't factually  
19 represent that.

20 THE COURT: Yeah. That's why I asked you the  
21 question if he had them in front of him because that's what  
22 I was looking at. I saw you were on page 2. From a  
23 general deposition standpoint, if somebody's referencing a  
24 page and it matches the page of an interrogatory -- because  
25 then it says, you know -- then it says, there is a case,

1 Brown, blah, blah, is that case resolved or still ongoing,  
2 and, then it says pending. Okay.

3           So, it appeared --- and there's the referencing  
4 and the Interrogatory Number 3 says, have you ever been  
5 named -- there's a typo because it says E-E-R-E. It  
6 doesn't say every. There's a typo, there's the v missing.  
7 A lawsuit or practice state of the court in jurisdiction?  
8 And, then, that goes over those information. And, then, it  
9 gets to the question you're talking about in the deposition  
10 with the question on 5. And, then, it says: Looking at  
11 response number 5, there's notes and depositions you gave,  
12 are there other depositions? And, then, he doesn't answer.  
13 He doesn't bring up the Center case. Because his answer  
14 was, that's -- then the question is: That's it that you  
15 recall? Those are the two that I can recall at this time.  
16 And, then, you interject. It says: Sinner is not on  
17 there. So, his response before your interjection appeared  
18 to say that he was done with the answer, that he already  
19 gave the two that he thought. Now, once again, I'm not  
20 there and I can only read the words on the paper.

21           So, when you were saying he volunteered and he was  
22 being forthright, I was trying to reconcile your words with  
23 what was on this paper. Because he appears to have  
24 finished his answer and, then, you bring up Sinner, which  
25 is Center.

1           MR. COUCHOT: Yes, Your Honor. I acknowledge that  
2 he did not -- that he stated he didn't recall it at the  
3 time. I don't think that that means that he was  
4 intentionally concealing that and that's why. Well --

5           THE COURT: You understand, I don't have a  
6 declaration or affidavit or anything from him in these  
7 papers whatsoever? I only had your argument.

8           MR. COUCHOT: I understand that, Your Honor.

9           THE COURT: Okay.

10          MR. COUCHOT: And I am happy to provide a  
11 declaration to the Court regarding Dr. Rives's lack of  
12 intentional concealment.

13          THE COURT: Right. But you understand the Court  
14 has to look at what the Court has before it?

15          MR. COUCHOT: I understand that, Your Honor.

16          THE COURT: It's unusual in this type of  
17 circumstance with this type of motion pending before the  
18 Court. The Court doesn't take into account what it doesn't  
19 have. I can only take into account what I do have. And,  
20 so, I see argument and I have your declaration. I don't  
21 have anything independent from the very person that what he  
22 did and did not know so I can't take it into account.  
23 That's why I have to ask you questions. But that's just  
24 argument. I don't have his independent perception.

25          So, -- okay. I asked you a couple questions. Did

1 I give you a follow-up opportunity to say everything you  
2 wanted to say?

3 MR. COUCHOT: I did, Your Honor.

4 THE COURT: Okay. You have the final word,  
5 counsel.

6 MR. JONES: Yes, Your Honor. You mentioned you  
7 might have questions for me. I don't know if you do at  
8 this point or if you'd like me to just go forward and --

9 THE COURT: I was going to let you finish. And,  
10 then, if you didn't cover it, I was going to ask you just  
11 like I --

12 MR. JONES: Perfect.

13 Your Honor, they clearly had every opportunity to  
14 give the correct information. They failed to do so. They  
15 had every opportunity to fix that, over years of time, and  
16 they failed to do so. The idea that -- you know, as Your  
17 Honor is going to be giving the jury an instruction as to  
18 direct versus circumstantial evidence, the idea that you  
19 could answer written discovery, go into a deposition under  
20 oath, have that clearly reviewed in front of you, and not  
21 identify the case where you did almost the exact same thing  
22 four or five months before the incident in question, before  
23 the *Farris* case, and in which you were deposed. I think it  
24 was just three months or so prior to the deposition in this  
25 case. And, so he had just been through the *Farris* -- or,

1 the *Center* deposition a few months before where they talked  
2 in detail about the harm he had done and the processes he  
3 had gone through. And, then, he comes into this case.

4 And the idea that he was forthright is an absolute  
5 absurdity. When going through number 3, him failing to  
6 identify it, is seriously questionable. Then, when asked  
7 about cases in which he had been deposed, he said that's  
8 all he recalled. He had just been deposed in *Center*. And  
9 that's all he recalled and he didn't recall *Center* at that  
10 time.

11 Then, after *Center* is brought up and he is asked  
12 to give an explanation of the case, let's be clear, whether  
13 the facts that he gave are true or not. Right? Regardless  
14 of the truthfulness of them, what he said is that he had a  
15 hiatal hernia, which is true, and he said she developed  
16 pneumonia and became septic. Right?

17 Now, Your Honor, sepsis happens in many cases.  
18 But pneumonia was a thing that was very much in dispute in  
19 that case. But, more importantly, you left out the fact  
20 that she was septic for 11 days and that her feet had to be  
21 amputated because of it. Those are pretty significant  
22 facts. It's not just a simplistic: Oh, my patient got  
23 pneumonia following a hiatal hernia surgery. This is a  
24 very different case. And, so, to call that answer  
25 forthcoming, that is ridiculous. It absolutely was not

1 forthcoming. It may have been in a very tight hedge,  
2 technically something they could say he might have thought  
3 was true, but it certainly was not forthcoming.

4 And, even if he thought it was true, we provided  
5 Your Honor that they did a bronchotomy two days post-op  
6 that ruled out pneumonia as having any relationship. So,  
7 the fact that he gave that to us and didn't even mention  
8 that that was a contested point -- anyway. It certainly is  
9 not forthcoming.

10 Your Honor, they keep saying that it's  
11 inappropriate to bring up the *Center* information in this  
12 case in this trial. And it appears very clear, that is  
13 precisely the reason why they didn't do it. They were  
14 afraid of this information coming into this trial so they  
15 didn't provide it to the plaintiffs, they withheld it even  
16 though they had an obligation to give it to the plaintiffs,  
17 over and over again, because they thought they knew better  
18 than the Court in terms of what could be allowed and what  
19 could not be allowed. And, so, they shut down our ability  
20 to conduct discovery over an area that is clearly a major  
21 foreseeability issue in this case that is very relevant for  
22 my client, for the jury, for everybody involved.

23 And Dr. Rives's past is relevant in a medical  
24 malpractice case. It's about his practice, about whether  
25 his practice is, in this case, fell below the standard of



1 care. And about whether or not his actions in this case  
2 were negligent because they were foreseeable and likely to  
3 cause injury, which they did.

4 And, again, Your Honor, under NRCP 26, counsel has  
5 a duty to make sure everything is correct. The written  
6 discovery was back in 2017, the deposition was in 2018,  
7 and, after the close of discovery, when we discovered all  
8 that -- you know, we identified this information that we  
9 did identify on September 10<sup>th</sup>, ultimately, is when I had an  
10 opportunity to get some specific facts known about this  
11 case by reading his deposition. At that point, there had  
12 already been a decision made by the Court, we were going  
13 forward to trial, there was not going to be any extension  
14 of time. And we're in a position with nothing to do, the  
15 prejudice is done and the defendants have failed over years  
16 to provide this information, which was clearly relevant and  
17 clearly very important to our case.

18 And, at the end of the day, Dr. Rives chooses his  
19 counsel and he is responsible for his counsel's actions.  
20 And, in this case, if the counsel wants to fall on the  
21 sword and say, hey, it was my fault, well, maybe some  
22 things were, maybe he should have been more diligent in  
23 some respects. But Dr. Rives had an opportunity to fix  
24 those issues. And, certainly, the Court Reporter at the  
25 end asked him if he wanted to read and sign, regardless of

1 what he said, we don't know, but it was never fixed by  
2 counsel or by Dr. Rives. And, so, the prejudice is there.  
3 The idea that I fall on my sword and take responsibility,  
4 no, no, no, that's not responsibility, Your Honor, that's  
5 asking for a free pass when the damage has been done. The  
6 prejudice is there. It is real, it is significant, and it  
7 was a specific effort to shut plaintiffs down in their  
8 ability to establish foreseeability.

9           The arguments made about my client's history, that  
10 it was just to identify what her conditions were, nonsense.  
11 Absolutely nonsense. If you read those depositions, that  
12 is not what it's about. It's all about: Isn't it true  
13 that your patient sometimes didn't follow your  
14 recommendations the way that you would have liked her to.  
15 Right? So, we're talking bad acts. That's what they're  
16 trying to get to. And, then, they repeat that in literally  
17 every single deposition they take. They say: Hey, but you  
18 knew she was noncompliant with this doctor. Right? She  
19 did this thing that was noncompliant. The idea that they  
20 are, oh, Your Honor, this is just to identify whether they  
21 -- nonsense. They know that they're -- and, so, the idea  
22 that behavior is not something they were interested in.

23           But they didn't want us to know about Dr. Rives's  
24 behavior. They didn't want us to know what he knew, what  
25 his knowledge level was. They didn't want us to know that

1 he had gone through this exact same thing, had the same  
2 opportunity to make good decisions and protect this patient  
3 but failed to do so for a number of motive reasons. And,  
4 then, did not give that information to the plaintiffs. It  
5 happened, the prejudice is done, the damage is done, and  
6 the only appropriate action are sanctions that match the  
7 level of the harm attempted.

8 I have nothing further, Your Honor, unless you  
9 have any questions.

10 THE COURT: I do. What's your thoughts on whether  
11 or not I should be doing a *Johnny Ribeiro* evidentiary  
12 hearing for case terminating sanctions and give Dr. Rives  
13 an opportunity to testify? I don't have anything from him.  
14 I don't know what he did or did not know. I don't know  
15 what he did or did not do. And therein lies a challenge  
16 for this Court. While the rules don't require that I do an  
17 evidentiary hearing, but you're requesting case terminating  
18 sanctions. Counsel, I appreciate this was done on OST so  
19 I'll give defense counsel full -- you know, benefit of the  
20 doubt that they -- you know, they had an opportunity to get  
21 their own client to address, file something if they wish to  
22 do so. I -- Court's inclined. So, what's your thoughts on  
23 an evidentiary hearing? And I ask both sides that.

24 MR. JONES: Your Honor, I would say that our  
25 position would be first that they waived it by not bringing

1 it. I'm -- but, as Your Honor did mention, it's OST.

2 THE COURT: You mean, not requesting it anywhere  
3 in the pleadings. Yeah. Well --

4 MR. JONES: And, to the degree that Your Honor  
5 does not feel that it's waived, I -- we would welcome it.

6 THE COURT: Counsel for defense?

7 MR. COUCHOT: If the Court is entertaining  
8 terminating sanctions, I would absolutely request that and  
9 welcome that.

10 THE COURT: Why didn't you put interrogatory in  
11 your Opposition? You realize -- you know?

12 MR. COUCHOT: Because, Your Honor, from my  
13 perspective, -- because I did not --

14 THE COURT: You realize if it's not put in there  
15 it's usually waived. I mean ---

16 MR. COUCHOT: I understand that, Your Honor. But,  
17 from my perspective, the fault lies squarely with me.  
18 Okay. Dr. Rives -- I know Dr. Rives does not have any  
19 intent to deceive anyone. And, so, that --

20 THE COURT: Counsel --

21 MR. COUCHOT: -- thought didn't even cross my  
22 mind. But I have --

23 THE COURT: With six pending litigations? I'm a  
24 rosy-colored kind of person, you know what I mean? It's --  
25 I give people huge benefits of the doubts. I will give

1 evidentiary hearings to give people an opportunity to prove  
2 almost anything. But how in his deposition does he not  
3 mention a case that he just had a settlement conference on,  
4 had been deposed on recently, and was shortly supposed to  
5 be going to trial on? I mean, that's a -- you understand  
6 that's a challenge for any court to kind of say how that  
7 possibly couldn't be somewhat in a person's mind unless  
8 they have so many malpractice cases or didn't -- I mean,  
9 it's kind of a -- it's a hard challenge --

10 MR. COUCHOT: I can't get into Dr. Rives's head.  
11 I don't know.

12 MR. COUCHOT: I'm not asking for people's minds.  
13 I'm not asking you to do it. But you understand that's a  
14 hard challenge for a court to see? You jumped in and said  
15 that. He already finished his answer.

16 MR. COUCHOT: I understand that. I --

17 THE COURT: And that's a hard one for someone to  
18 be prepared, specifically when they're going over  
19 interrogatory answers and going over cases. So, it's not  
20 as if it's a out of the blue question to volunteer, it's a  
21 closure question. It's a: Do I have everything taken care  
22 of, question? It's a: Here's your last chance to provide  
23 the answer, type of question. And it wasn't his first  
24 deposition. It wasn't like it was late in the day type of  
25 question, it's towards the beginning of a deposition. You

1 know what I mean? I'm trying to give all benefits of the  
2 doubt type of thing. You know what I mean? It's not like  
3 it's the first question it's not like the end of the  
4 deposition, tired type of time frame issue. It's not it  
5 was going to one topic area and swinging back to a  
6 different topic area. You know, a scattered type of  
7 deposition question. It was clearly an on topic one  
8 discussing prior cases. That presents a challenge for the  
9 Court.

10           There's several other things present a challenge  
11 for the Court. This per se with multiple -- I'm only  
12 talking in isolation on this one. I'm not even going into  
13 all of the other per se violations of rules. I'm going  
14 just here. Rule 30 -- the whole purpose of these  
15 discovery, you know what I mean, is to get out the  
16 information, is to allow the whole discovery process to  
17 take place. To not have a verification and to not do the  
18 supplementation. And, then, to not do the supplementation  
19 and to clarify it afterwards. I mean, 33 is so clear in  
20 what experienced litigators who have multiple cases in the  
21 Eighth Judicial District, I mean, each -- 33:

22           Each interrogatory shall -- there's no discretion,  
23 shall be answered separately and fully in writing,  
24 under oath, unless it's objected to, in which the event  
25 the objecting party shall state the reasons.

1           Okay. The answers are to be signed by the person  
2           taking them and the objections signed by the attorney  
3           making them.

4           So, two separate signatures, under oath, by the  
5           party and by the attorney. And these were not jointly to  
6           the entity and the individual. I tried to give you the  
7           benefit of the doubt there. I looked to see if by chance  
8           maybe you had one verification and not the other one so it  
9           could have been an oops because it was sent dually to two  
10          people. But it wasn't. And these were specifically to  
11          him, individually. Tired to give the benefit of the doubt  
12          to -- you know?

13          And, then, there's the ongoing duty to supplement.  
14          As you know, the whole idea there is because 26 functions  
15          that the investigation leading to the answers are  
16          reasonable, diligent, and providing the facts known at the  
17          time of the answer. So, then, look to see maybe after the  
18          deposition that things got supplemented to include *Center*.  
19          It wasn't. It was clearly discussed. A reference to the  
20          interrogatories was actually in the deposition, still  
21          doesn't get it supplemented, still doesn't get a  
22          verification. That's clearly still within discovery,  
23          giving them an opportunity and a time period to do it.  
24          Further per se, I mean, even the ongoing -- so, if  
25          something found out in the in between time, but there is

1 another -- the deposition still doesn't have to happen.  
2 Counsel said it was a few months. Okay. It was April to  
3 October. So, a little bit more than a few months. But,  
4 still, you recently had some depositions on this case,  
5 doesn't bring it up. Still no supplementations, so still  
6 NRCP 26 and 33 violations, still no verification.

7           Then, after the deposition, he'd have a chance to  
8 have looked at his deposition, whether -- I don't know is  
9 whether he's given -- whether you physically gave it to him  
10 or not. But he's had his deposition enough to make sure  
11 that he's being quoted correctly and that he did or didn't  
12 look at it. If he did look at it, he didn't change it. If  
13 he didn't look at it or nobody else looks at it and it's  
14 still not supplemented. I mean, and there's sanctions  
15 components under 26 and 37 right then and there. It still  
16 doesn't get it until after the Motion. And, even after the  
17 Motion, it still doesn't get supplemented right away. And,  
18 then, I still don't have a verification. My rosy, rosy,  
19 rosy colored glasses doesn't -- and doesn't say this is  
20 just inadvertent mistake by counsel. Sophisticated  
21 counsel's got multiple cases in the Eighth Judicial  
22 District, has gone to trial in cases, the discovery  
23 specifically comes in for evidentiary purposes at trial.  
24 And, without the verification, the view that these could  
25 all be waived, any objections are all waived, would now



1 come in from a client standpoint is -- and a per se  
2 sanctions that can happen under this, under 37, under 7.60,  
3 Rule 11, they couldn't even been submitted.

4 I mean, it's very, very challenging for this Court  
5 to take this with the, you know, oops, it's a little minor  
6 mistake, over because of the way this came in. It's just -  
7 - it's -- but, then, on the flipside, plaintiff had plenty  
8 of time to find this and decide to not to find it until way  
9 past.

10 And your comment about trial. We've had the same  
11 trial date since January 7<sup>th</sup> and you came into the case in  
12 July. When you came into the case, trial had been there on  
13 January 7<sup>th</sup>. Since you all ordered the transcript, you know  
14 this Court offered multiple, multiple dates on a January 7<sup>th</sup>  
15 telephonic to try and accommodate people's schedules. That  
16 was the one that seemed to fit the best. Court was  
17 offering a lot of things. Court was going more for  
18 September because that was supposed to be a March date.  
19 Everyone -- so, -- okay. Court offered you all lots and  
20 lots of dates. That was the one you all picked, meaning  
21 you all on the conference call. So, I gave you what you  
22 wanted and that was after extension number, I think it was  
23 six by that time. Don't quote me. I think that was about  
24 number six. Okay?

25 It was when we finally -- and, remember, the Court

1 could not grant the impermissibly submitted in August,  
2 after your discovery cutoff. Please feel free to re-read  
3 2.35. Shall not. Right? The Court cannot, under the pure  
4 rule language, cannot sign something. Please don't ever  
5 submit something to the Court that per se the Court cannot  
6 sign. Please don't ask the Court to violate the rules.  
7 Okay? And my oath means everything to me. Okay? As does  
8 it for any other judge. So, you submit it impermissibly,  
9 you're asking the Court -- you should never have submitted  
10 it under Rule 11 in the first place. So, please don't keep  
11 saying dates didn't get moved. You submit something  
12 impermissibly under Rule 11, be glad you didn't get full  
13 sanctioned. You submit again impermissible under Rule 11  
14 and you still don't get sanctioned. Okay? Way past. And  
15 not only that but dates that: A, for one side, they know  
16 they'd already have another trial so they knew one of those  
17 dates didn't work. Don't submit it with, you know, past  
18 the dates agreed upon with three-year waivers.

19 I mean, come on, folks. Do you really want me to  
20 go through all the list of litanies and things? And, then,  
21 put in declarations that were inaccurate on personal  
22 knowledge when people weren't even present at hearings.  
23 We're not there yet. But I'm not even addressing any of  
24 those things for purposes of this Motion, honestly. I just  
25 -- since you happened to make a comment about found out in

1 September. We all know that was very incorrect. Everybody  
2 knew in January that trial date. It always remained. It  
3 was always that date. It couldn't be changed because no  
4 one ever submitted anything appropriately that this Court  
5 could ever take into consideration. If counsel choose not  
6 to submit something appropriately, that's really counsel's  
7 issue. You can't submit something to the Court and ask the  
8 Court to sign something that per se you know you shouldn't  
9 have submitted under Rule 11, that per se a court, by the  
10 rules, cannot sign.

11 If the Court gives -- calls your offices and keeps  
12 asking and reminding you all to please submit something  
13 legally and you choose to ignore it, then we remind you in  
14 open court, we remind you lots of other ways and you keep  
15 choosing not to do it, that's your own issue. So, that's -  
16 - seems like an after lunch issue. But, in any event,  
17 going back to this.

18 The Court's inclination is to do a full  
19 evidentiary hearing because I think -- this Court thinks,  
20 in fairness to Dr. Rives, I need to know whether it's  
21 counsel or Dr. Rives. You asked for case terminating  
22 sanctions. I think that's the fair thing to do. I don't  
23 think it impacts the trial because there's not anything  
24 that's new that's going to come out of this.

25 I will tell you right now, of the relief that

1 you've requested, the Court's inclination is not to add on  
2 punitive damages. And the reason why the Court's  
3 inclination is not is because your implied malice argument,  
4 I don't see under the applicable case law that even -- no  
5 matter what gets said in an evidentiary hearing, I don't  
6 see how that would get to -- well, let me put it this way.

7           Unless Dr. Rives were to say in an evidentiary  
8 hearing that he intended to do everything, which if that  
9 were to happen, maybe I should reserve ruling on that. But  
10 I don't think they're -- anybody anticipates that he would  
11 say that because I don't think that anybody would be  
12 requesting an evidentiary hearing if they thought their  
13 client was going to be saying that. But, absent that ---  
14 and I would revisit my ruling if he so testifies this. But  
15 -- clearly.

16           But, absent something like that, punitive damages  
17 for this type of conduct does not add in a claim for  
18 punitive damages. You would have to have the evidentiary  
19 support. I've not seen that you would even have the  
20 evidentiary support at this late juncture that would  
21 include that into a claim because that is an evidentiary  
22 basis, that's not a sanction component under 37, 7.60,  
23 etcetera. And that's why the Court would be inclined not  
24 to grant punitive damages because that's not a sanction  
25 that you give somebody, that is an evidentiary basis that I

1 don't see that you provided an evidentiary basis that would  
2 include punitive damages to your claim. So, if that's  
3 where your -- but the rest, the Court sees open for the  
4 Court to consider an evidentiary hearing.

5 Here's what I'm inclined to do, though. However,  
6 here's what I'm inclined to set this evidentiary hearing.  
7 Is her personally showing up to the settlement conference  
8 on October 2<sup>nd</sup> or not?

9 MR. COUCHOT: I believe so. Do you know?

10 THE COURT: Or is just your insurance showing up?

11 MS. CLARK NEWBERRY: It was my understanding that  
12 he was appearing. I --

13 THE COURT: I don't know. Sometimes they do,  
14 sometimes --

15 MS. CLARK NEWBERRY: It's my understanding. I  
16 haven't been part of those discussions. But I can confirm  
17 that for Your Honor within a moment.

18 THE COURT: The only reason I was trying to do is  
19 I was trying to do from a timing standpoint. Seems to me  
20 that you probably want this evidentiary hearing maybe the  
21 day after or something? So that you want to pursue other  
22 things first, rather than spending your cost and fees  
23 preparing for this, you'd rather spend your time and effort  
24 going towards potential resolution. Is that correct or an  
25 incorrect statement?

1 MR. COUCHOT: That's fair.

2 THE COURT: Since it's the next week.

3 MS. CLARK NEWBERRY: That's fair, Your Honor.

4 Thank you.

5 THE COURT: You tell me. I -- you know what I  
6 mean? I'm --

7 MR. LEAVITT: Do you want me to address anything?  
8 Your Honor, if I may address that?

9 THE COURT: Sure. You may, realizing that today  
10 is the day that today is and realizing that next Wednesday  
11 is next Wednesday --

12 MR. LEAVITT: I --

13 THE COURT: -- and that --

14 MR. LEAVITT: I do.

15 THE COURT: You do appreciate I've got about 700  
16 plus other cases on my docket and I don't know if the other  
17 one is coming back here or not before noon. Stay tuned, I  
18 guess. But, go ahead.

19 MR. LEAVITT: I couldn't answer that.

20 This is an issue that we have as the plaintiff.  
21 There's an --

22 THE COURT: Don't go into anything that's not  
23 before me today or anything that I cannot hear.

24 MR. LEAVITT: No, no, no.

25 THE COURT: Okay. Just to make --

1 MR. LEAVITT: This is directly on point.

2 THE COURT: No worries.

3 MR. LEAVITT: This is the issue that we have.

4 We're getting ready for an evidentiary hearing. Right?

5 Under *Berry*. However, how's this Court going to continue  
6 to protect the plaintiff? Now they know everything. He's  
7 fallen on the sword for him. Where's the protection for  
8 the evidentiary hearing? I want a candid --

9 THE COURT: What do you mean by protection? I  
10 mean, really, it's a simple --

11 MR. LEAVITT: Sure.

12 THE COURT: I mean, the reason why -- let's be  
13 clear. The reason why the Court is suggesting an  
14 evidentiary hearing is a couple of different reasons.  
15 Right? One, you're asking for case terminating sanctions.  
16 And while *Johnny Ribeiro* specifically states that the  
17 Court's not required to do so, the Court utilizes  
18 discretion. Right? But --

19 MR. LEAVITT: Right.

20 THE COURT: -- I look at this type of case.  
21 Right? And, in fairness, you all waited. Okay? And you  
22 waited --

23 MR. LEAVITT: That's fair.

24 THE COURT: -- the time period that you chose to  
25 wait and you chose to do it on OST. I tried to pick an OST

1 date that gave defense the most possible time frame, taking  
2 into account all the different factors so that defense  
3 would have most amount of time to be prepared for this.  
4 Right? But, at the same time, balancing, knowing some of  
5 your other dates. So, I tried to take those all into  
6 account.

7           At the same time, you do have the trial coming.  
8 And, really, the issue here is did they have enough time to  
9 allow their client to express his opinion? And that's  
10 really -- I don't see this as a long evidentiary hearing.  
11 It's really what their client -- if they choose. Let me be  
12 clear. He's not required to testify. Okay? It's up to  
13 you whether you want him to testify or not. I think the  
14 fair thing to do is because of the fact that this was done  
15 by plaintiffs when they chose to put on this OST. Right?  
16 Because this could have -- their information available was  
17 available --

18           MR. JONES: Sure --

19           THE COURT: -- in 2018, as of the time of the  
20 deposition. So, as October 2018, this Motion could have  
21 technically have been filed. It could have been filed at  
22 the end of discovery. A lot of different times. You chose  
23 when you chose to file. Okay? The Court heard it on OST.

24           MR. JONES: But, Your Honor, I was absolutely  
25 candid in why I put down --



1 THE COURT: When you chose to read the deposition,  
2 which is when you chose. There's other attorneys --

3 MR. JONES: Which is when I received it. But,  
4 yes, you're right, Your Honor.

5 THE COURT: But when you received it.

6 MR. JONES: Yes. Correct.

7 THE COURT: Your client has had counsel the entire  
8 time. And --

9 MR. JONES: He also didn't have the deposition. I  
10 know that. I got it from the -- from *Center's* deposition  
11 and I read it as soon as I got it.

12 THE COURT: But when that deposition was taken was  
13 April of 2018 --

14 MR. JONES: Certainly, Your Honor.

15 THE COURT: -- which is why I'm referencing  
16 October 2018 because that would be after your client's  
17 deposition.

18 MR. JONES: That's perfectly fair.

19 THE COURT: Anybody having a question about  
20 another deposition taking place in the Eighth Judicial  
21 District would have known it at some point around --

22 MR. JONES: That's right.

23 THE COURT: I'll give you mid-November. Maybe you  
24 didn't get a rough transcript until mid-November. I'll  
25 give you November. I can even give you December 2018, nine

1 months before you filed the Motion. So, somewhere in that  
2 nine-month period, plaintiff, through at least one of her  
3 numerous counsel. Right? In effect, --

4 MR. JONES: I'm sorry.

5 THE COURT: -- could have filed this Motion. You  
6 chose to file it when you did. Technically, this type of  
7 motion is not untimely because there's not a specific rule  
8 that governs the timing of it. Because, once again, they  
9 have a duty to supplement up to 30 days before.

10 MR. JONES: Right.

11 THE COURT: Okay. So, you filed it right around  
12 that 30-day period.

13 MR. JONES: Right.

14 THE COURT: So, you gave them the benefit of the  
15 doubt to really supplement up until right before the end of  
16 the supplementation period. So, you have a right to file  
17 that Motion. This was -- okay. So, I'm taking everybody's  
18 everything into consideration.

19 But, because of that, taking those issues and  
20 taking the fact it's on OST, not requiring Dr. Rives to  
21 testify but if counsel chooses that they wish their client  
22 to be able to provide his perspective -- and it's  
23 completely up to them and I don't want to know what they  
24 talk about their clients with. I don't want to, I can't,  
25 and I shall not ask. But if they wish to, then this Court

1 feels that they should be given some additional time to  
2 provide that opportunity, knowing the full seriousness of  
3 what's being asked. I don't know if they have or not  
4 already asked him. I don't know, I'm not asking, I'm not  
5 going to ask. But I'm going to provide that opportunity  
6 because I offer you all the opportunity, they said they'd  
7 like the opportunity, I'm offering it.

8 MR. JONES: No problem.

9 THE COURT: Because that is the fair way to give  
10 everyone the best possible chance to provide with  
11 additional information. I do not see this -- this is not  
12 reopening up new issues.

13 MR. JONES: Right. Okay.

14 THE COURT: It's clearly just on the distinct  
15 aspect of what was known and what was not known on these  
16 key points in time. Right? If people don't wish to  
17 present anything else, then the Court will evaluate it with  
18 what I currently have. If additional information wishes to  
19 be presented, I'm going to provide a time and date to do  
20 it. I don't see that plaintiff is precluded from anything  
21 or not protected by anything because this is the type of  
22 information that they would have a right to respond to your  
23 Motion. And to the extent that they may not have had a  
24 full time because of the OST nature of it, which, once  
25 again, OSTs are fully allowed as long as there's one

1 judicial day. And no -- they did not protest that they  
2 didn't. So, let me be clear. This is the Court finding  
3 that I'm just doing belts and suspenders, however you'd  
4 like to phrase it. I'm just trying to give additional due  
5 process, additional time for consideration, additional  
6 evaluation, however you'd like to phrase it. I'm making  
7 sure everyone has full time, however you'd like to phrase  
8 it, by offering evidentiary hearing. The parties wished  
9 it.

10 MR. LEAVITT: Thank you for the --

11 THE COURT: Parties wish it, do it, fine. If you  
12 all wish, after October 2<sup>nd</sup>, because you want to spend your  
13 time and resources preparing for a settlement conference,  
14 the Court's going to be fine with that, which means I have  
15 to find some time quickly the week right afterwards because  
16 not to impact with your trial. Right? So, --

17 MR. LEAVITT: That's the clarification.

18 THE COURT: Yeah.

19 MR. LEAVITT: Thank you, Your Honor.

20 THE COURT: Does that make sense?

21 MR. LEAVITT: It does. It does, Your Honor.

22 MR. JONES: The one --

23 THE COURT: Does that make sense? Okay. And you  
24 all are double teaming me on there. So, in fairness, you  
25 can double team me on this table as well, if you wish to.

1 Bu we're going to end in just a moment or so because while  
2 I fully want to give you all your full opportunity,  
3 remember, I also have --

4 MR. JONES: Of course.

5 THE COURT: -- state and federal law that I comply  
6 with 100 percent -- more than 100 percent. So, counsel --

7 MR. JONES: In the event --

8 THE COURT: Last minute.

9 MR. JONES: In the event that they have sent Dr.  
10 Rives the interrogatories at some point and they have done  
11 that through e-mail or some other form, that, of course, is  
12 normally protected by attorney-client privilege. Since  
13 they are trying to shield Dr. Rives's behavior, saying it  
14 was their own fault, we should be able to know whether or  
15 not those e-mails were actually sent or if these  
16 interrogatories actually sent to him. And, so, that should  
17 be produced perhaps at least the day before the evidentiary  
18 hearing.

19 THE COURT: Well, it seems to me that you all are  
20 now trying to add in some potential evidentiary -- that  
21 would be redundant, the word evidentiary until -- okay.  
22 This Court is not going to make anticipatory rulings on  
23 things that should or should not be produced prior to an  
24 evidentiary --

25 MR. JONES: Apparently.

1           THE COURT: -- hearing. To the extent you all can  
2 appreciate as experienced litigators that parties may be  
3 raising objections or raising issues at the evidentiary  
4 hearing, why this Court's making it abundantly clear,  
5 defense counsel, you understand that Dr. Rives has an  
6 opportunity to either testify or not testify? Right?

7           MR. COUCHOT: Of course.

8           THE COURT: And you have the understanding that  
9 you can decide that you don't want it and you don't want to  
10 have anyone. Right? And you can let me know that. Right?

11          MR. COUCHOT: Yes, Your Honor.

12          THE COURT: Okay. And you understand that if you  
13 choose to have certain people testify or not testify, that  
14 they may ask for certain things. Right?

15          MR. COUCHOT: Yes, Your Honor.

16          THE COURT: Plaintiffs' counsel, you understand  
17 that if you choose to do so --

18          MR. JONES: Absolutely, Your Honor.

19          THE COURT: -- that you're running that -- you  
20 have the --- they have that same options. Right?

21          MR. JONES: Absolutely, Your Honor.

22          MR. LEAVITT: Absolutely.

23          THE COURT: Okay. As experienced litigators, you  
24 knew that before I even said that. Right?

25          MR. COUCHOT: Sure.

1 THE COURT: Okay.

2 MR. JONES: Yes, Your Honor. And I appreciate it  
3 more now.

4 THE COURT: So -- okay. I don't mean to say  
5 something that sounds silly. But, yes, --

6 MR. JONES: No.

7 THE COURT: -- I assumed as experienced  
8 litigators, you all were evaluating that. That's why this  
9 Court was being abundantly clear. I am not ordering anyone  
10 to testify or provide anything. I am offering the  
11 opportunity of an evidentiary hearing if anyone would like  
12 to take this Court up on that opportunity. Of course, I'm  
13 going to ask you that if you change your mind that you let  
14 me know so I'm not sitting here in the courtroom empty,  
15 waiting for people. But, absent that, I am offering that  
16 opportunity. Okay? And, then, you can both say you'd  
17 rather the Court just rule on what I currently have. Okay?  
18 I've also provided you an inclination on one section of  
19 your potential motion so that when you're doing your  
20 evaluation, at least you know what potentially is and is  
21 not on the table. Okay? It'll be a euphemism for what I  
22 am considering at the various sections.

23 Okay. So, going through that, I will tell you  
24 that if you wish, Friday, October 4<sup>th</sup>, the Court has some  
25 time on Friday, October 4<sup>th</sup>. Okay?

1 MR. COUCHOT: May I look at my phone --

2 THE COURT: Of course, you may.

3 MR. COUCHOT: -- to look at my calendar?

4 THE COURT: Of course, you may. But we're going  
5 to have to make this very, very quick because I do need to  
6 let my team -- excuse me. I just misspoke. I will not be  
7 here on October 4<sup>th</sup>, neither will plaintiffs' counsel,  
8 actually. I will be at a seminar -- I'm sorry. I --

9 MR. LEAVITT: We were going to show up anyway.

10 THE COURT: No. I just misspoke. I apologize.  
11 Thank you. That's my one -- see how wonderful my JEA is?  
12 She protects me from myself. I offer times to try and help  
13 parties over and over. I have the morning of October 7<sup>th</sup>.  
14 Right? Because that letter says 1 to 5.

15 MR. LEAVITT: Okay.

16 THE COURT: Is that correct?

17 THE JUDICIAL EXECUTIVE ASSISTANT: Yes.

18 THE COURT: Thank you. I will just take back what  
19 I just said. My apologies. Thank you. My JEA -- see,  
20 when I see a little bit of time, I start giving it away  
21 until she reminds me that I cannot do so. I appear to have  
22 Monday, October 7<sup>th</sup>. How late is your settlement conference  
23 on the --

24 MR. JONES: It begins at 10 a.m., Your Honor.

25 THE COURT: Okay. I don't want to do that to you



1 all. There's -- I want you to have the full opportunity  
2 for the full day. So, I'm going to have to say the 7<sup>th</sup>.

3 MR. JONES: Okay.

4 THE COURT: I have part of the morning of the 7<sup>th</sup>  
5 because the other case has taken -- although, my wonderful  
6 Clerk and Court Recorder don't yet know this, we got a  
7 letter of late yesterday --

8 THE CLERK: That's fine.

9 THE COURT: -- that they -- that other case is  
10 taking the whole afternoon.

11 THE CLERK: Okay.

12 THE COURT: So, --

13 MR. JONES: We're available the whole day, Your  
14 Honor.

15 THE COURT: I only have the morning because  
16 another case has already booked me for the afternoon. So,  
17 on the other case that was there, the pretrial conference  
18 that I -- you -- I think you all were still there, may have  
19 taken my afternoon. So, I do have -- if you all wish to do  
20 this, do you think it will take more than an hour?

21 MR. COUCHOT: No.

22 MR. JONES: I hope not, Your Honor. I don't think  
23 so.

24 THE COURT: Okay. So, would you want it to be --  
25 I may have to put you in somebody else. Do you want it to

1 be 8:30 to 9:30 on the 7<sup>th</sup>? Is earlier better for you all  
2 in light of schedules --

3 MR. JONES: Sure.

4 THE COURT: -- and other things?

5 MR. JONES: That's great.

6 MR. LEAVITT: That's great. Its perfect.

7 THE COURT: Since people may have appearances  
8 elsewhere and things, is that better? Or do you want 9 to  
9 10?

10 MR. COUCHOT: Your Honor, it -- this is going to  
11 be on Mr. Doyle's calendar, which I don't have in front of  
12 me. We will make every effort to clear it to make this the  
13 absolute priority.

14 THE COURT: Well, I'm going to either give you a  
15 date today and you are going to -- this is not Burger King.  
16 Okay?

17 MR. COUCHOT: Got it. I understand that.

18 THE COURT: This is not you all get to pick and  
19 choose different dates. Okay? I will give you a date if  
20 you want an evidentiary hearing. You will -- if you want  
21 the evidentiary hearing, you will have an attorney here to  
22 be able to cover that evidentiary hearing. Okay?

23 MR. COUCHOT: Yes, Your Honor.

24 THE COURT: If you choose you don't want an  
25 evidentiary hearing, then the parties will need to let the

1 Court know. You need to let this Court know no later than  
2 -- I'm going to say noon on the 3<sup>rd</sup>. Someone can send a  
3 letter no matter where people are. Right? They can send a  
4 letter by the 3<sup>rd</sup> confirming 8:30 on the 7<sup>th</sup>.

5 MR. JONES: All right.

6 THE COURT: Either the parties do jointly want one  
7 or they don't. Someone can send --

8 MR. JONES: We will confirm right now in court,  
9 Your Honor, we will be here on the 7<sup>th</sup> at 8:30.

10 THE COURT: But if you all -- presumably, you'll  
11 know if you resolve it on the 2<sup>nd</sup>, you'll let me know on the  
12 3<sup>rd</sup>, potentially. Right?

13 MR. JONES: Yes, Your Honor. We certainly will.

14 THE COURT: We would -- the Court would appreciate  
15 that. Like I said, my team and I would not -- you know, as  
16 much as we enjoy each other's company, we would not like to  
17 be sitting here in an empty courtroom waiting for people.  
18 We would like to be doing -- handling our other matters.  
19 So, by noon on the 3<sup>rd</sup>, I need a confirmation letter from  
20 the parties that, yes, they would like the evidentiary  
21 hearing.

22 MR. COUCHOT: Noon on the 3<sup>rd</sup>.

23 THE COURT: Okay. Confirming that still would  
24 like it to go forward at 8:30 on the 7<sup>th</sup> or that it's no  
25 longer necessary. If one party wishes it to go forward and

1 the other party doesn't, then it's still going to go  
2 forward with 8:30. Okay?

3 MR. COUCHOT: Okay.

4 THE COURT: That's just the simple answer.

5 MR. JONES: Will do.

6 THE COURT: And, while I appreciate that people  
7 may have other things, I assume with multiple people in an  
8 office, someone can --

9 MR. COUCHOT: Absolutely.

10 THE COURT: Someone can appear if they think it's  
11 important enough. If you don't think it's important enough  
12 for your client, then talk to opposing counsel and you can  
13 both agree that you don't need it and I'll rule with what I  
14 got. Okay? This is only an opportunity -- an extra  
15 opportunity for your client if you want it. If you don't  
16 want it, you don't have to have it. It's -- okay?

17 MR. COUCHOT: Understood.

18 THE COURT: It's for your client's benefit if you  
19 think it's a benefit to your client. Don't think it's a  
20 benefit for your client, let me know by noon on the 3<sup>rd</sup> that  
21 you don't want it. Right?

22 MR. COUCHOT: Thank you.

23 THE COURT: Now, when I say both ways, meaning  
24 because it's for their opportunity --

25 MR. JONES: Right.

1           THE COURT:  -- to provide information, if they  
2 choose they don't want it and you still want it, I'm not  
3 going to force them to come.  You understand what I'm  
4 saying?

5           MR. JONES:  Of course.

6           MR. LEAVITT:  Okay.

7           MR. JONES:  Absolutely, Your Honor.

8           THE COURT:  I just meant --

9           MR. JONES:  That's understood.

10          THE COURT:  Okay.  So, --

11          MR. COUCHOT:  Thank you for the opportunity, Your  
12 Honor.  I appreciate it.

13          THE COURT:  So, if they want it, then can --

14          MR. JONES:  And that's circumstantial.  You'll  
15 just make your decision based on what happened today.

16          THE COURT:  Right.

17          MR. JONES:  Okay.

18          THE COURT:  It'll be based on the totality of the  
19 papers and the oral argument of the parties.  Okay?

20          MR. LEAVITT:  Okay.

21          MR. JONES:  Thank you, Your Honor.

22          THE COURT:  Does that make sense?  So, we were not  
23 able to address the other issues so I'm just going to have  
24 to continue that to the time of the calendar call with the  
25 rosy-colored viewpoint that I hope anything that comes to

1 this Court will be compliant and that by the time of the  
2 calendar call, you will have a balance of different things.

3 The Court is appreciative while I was sitting on  
4 the bench, a new OST in this case came to the Court.  
5 Obviously, since I've been talking with you all the entire  
6 time -- don't look at me like you don't know what it is.  
7 It's from your office.

8 MR. LEAVITT: Well, I didn't know --

9 MR. JONES: We actually don't -- I apologize, Your  
10 Honor. I'm not sure what that is.

11 THE COURT: It's from your office. Would you like  
12 to know what you submitted to the Court while I'm sitting  
13 on the bench?

14 MR. JONES: I would. I would love to, Your Honor.  
15 Yes.

16 THE COURT: Plaintiffs' Motion to Strike  
17 Defendants' Fourth and Fifth Supplement to NRCP 16.1  
18 Disclosure of Witnesses and Documents on Order Shortening  
19 Time. Plaintiffs, it says Kimball Jones and George Hand.  
20 I --

21 MR. JONES: Yes, Your Honor. Absolutely. And I  
22 am perfectly familiar with that and I did authorize that  
23 being filed.

24 THE COURT: Okay. So, the Court hasn't obviously  
25 had a chance to even look at because --

1 MR. JONES: Of course --

2 THE COURT: -- you know where I've been. I haven't  
3 moved. So, I will take a look at it. If it meets the OST  
4 appropriate standards, then the Court will set it. If it  
5 doesn't, I will not be able to do so. The Court takes no  
6 position because I haven't seen it, I'm just telling you I  
7 just came here and I don't know if you e-served it to  
8 opposing counsel while --

9 MR. JONES: We certainly did, Your Honor.

10 THE COURT: I don't know. So, we will take a look  
11 at it. I don't know if you all have provided anything to  
12 the Court because something did not walk in. If we got a  
13 similar OST from you, I'm sure my team would have --  
14 because Tracy would have walked it in here as well. Did  
15 you have anything that you all brought my way?

16 MS. CLARK NEWBERRY: We have not recently  
17 submitted anything to Your Honor.

18 THE COURT: Last thing I know, you all got a Memo  
19 back a couple weeks ago and we have not seen anything since  
20 that date.

21 MS. CLARK NEWBERRY: I have not -- our office --  
22 neither of the offices for defendant have filed anything  
23 since we received the Memorandum from Your Honor.

24 THE COURT: Okay. That's the last thing. I never  
25 got it back in an appropriate format. So, never -- okay.

1 So, that's where we're at. And have a great rest of your  
2 day. It's lunch.

3 MR. COUCHOT: Thank you, Your Honor.

4 MR. JONES: Thank you, Your Honor.

5 MR. LEAVITT: Thank you, Your Honor.

6 THE COURT: And you'll let us know by the 3<sup>rd</sup> and,  
7 then, you'll see something this OST once I have a chance to  
8 look at it.

9 MR. JONES: Thank you, Your Honor.

10 THE COURT: Thank you so very much.

11

12 PROCEEDING CONCLUDED AT 12:09 P.M.

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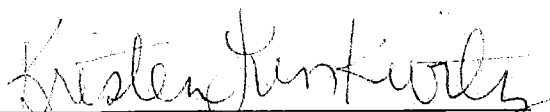


**CERTIFICATION**

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

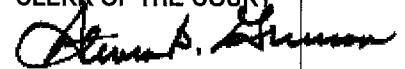
**AFFIRMATION**

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



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DISTRICT COURT

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CLARK COUNTY, NEVADA

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TITINA FARRIS and PATRICK  
FARRIS,

CASE#: A-16-739464-C

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Plaintiffs,

DEPT. XXXI

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vs.

11

BARRY RIVES, M.D.;  
LAPAROSCOPIC SURGERY OF  
NEVADA, LLC., ET AL.,

12

13

Defendants.

14

BEFORE THE HONORABLE JOANNA S. KISHNER  
DISTRICT COURT JUDGE  
MONDAY, OCTOBER 7, 2019

15

16

**RECORDER'S TRANSCRIPT OF PENDING MOTIONS**

17

18

APPEARANCES:

19

For the Plaintiffs:

KIMBALL JONES, ESQ.  
JACOB G. LEAVITT, ESQ.

20

21

For the Defendants:

THOMAS J. DOYLE, ESQ.  
CHAD C. COUCHOT, ESQ.

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23

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RECORDED BY: SANDRA HARRELL, COURT RECORDER

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INDEX OF EXHIBITSFOR THE PLAINTIFFMARKEDRECEIVED

None

FOR THE DEFENDANTMARKEDRECEIVED

None

1 Las Vegas, Nevada, Monday, October 7, 2019

2

3 [Case called at 8:34 a.m.]

4 THE COURT: Okay. Ferris v. Rives, 739464. Can I have  
5 appearance of counsel, please?

6 MR. JONES: Kimball Jones and Jacob Leavitt for the  
7 Plaintiffs, Your Honor.

8 MR. DOYLE: And Tom Doyle and Chad Couchot for the  
9 Defendants.

10 THE COURT: Okay. As you know, today is the day of the  
11 continuation. Got a couple of different matters on for today.

12 [Court and Clerk confer]

13 THE COURT: Okay. So today is a continuation of the  
14 Plaintiff -- it was Plaintiffs' motion for sanction under Rule 37 for  
15 Defendant's intentional concealment of Defendant Rives' history of  
16 negligence and litigation. And then -- and motion to file leave to amend  
17 complaint to add claim for punitive damages on order shortening time.  
18 Now, as you know, this was originally on hearing last week. During that  
19 hearing, the -- was a motion. There was -- the Court has signed the order  
20 shortening time.

21 Now, the Court did not get the appropriate courtesy copies,  
22 which was the Court's having to go through this pile again. Okay. So at  
23 the end of that hearing -- I'm restating part of this for the benefit of  
24 counsel that was not here at the last hearing. So with regards to the last  
25 hearing, the Court specifically stated and offered the opportunity only --

1 because although it was not in Defendant's opposition to motion for  
2 sanctions, there was no affidavit, no declaration, nothing with regards to  
3 Dr. Rives. So it gave the Court no basis as to have any understanding  
4 whatsoever about whether or not -- what his position was.

5 Okay. So in light of that, I obviously -- of course Supreme  
6 Court precedent, including *Young v. Ribeiro*, *Johnny Young v. Ribeiro* as  
7 well as *State Farm v. Hansen* this Court used to evaluate various factors  
8 and of course *Valley Health* as well as *v. Doe* in making certain  
9 determinations. And so in order to do, the Court offered the opportunity  
10 to do a hearing under *Johnny Ribeiro*, although as that case cites and  
11 cases subsequently have cited, the Court's not required to do so, but  
12 offered a hearing.

13 There was no objection. I believe Plaintiff's counsel  
14 specifically said that -- I don't want to misstate your words. It wasn't --  
15 they seem to have concurred. They definitely did not raise an objection,  
16 but they seemed to have concurred that it would be a good idea.  
17 Defense counsel was giving the opportunity, if they chose, if that felt  
18 after consultation with their client and obviously, they know their  
19 obligations under Nevada Supreme Court precedent, including  
20 specifically *State Farm v. Hansen* and hopefully -- I'm going to have to  
21 confirm that was fully complied with. Was that fully complied with?

22 MR. COUCHOT: I'm sorry, Your Honor?

23 THE COURT: Was Nevada law, *State Farm v. Hansen* fully  
24 complied with? I'm not asking about the content of any of your  
25 conversations with regards to your client, but because of the serious

1 nature of this hearing, including terminating sanctions, this Court just  
2 wants to ensure -- because I see just the two of you all here, and of  
3 course it's a public courtroom. Anyone's more than welcome to be here,  
4 but I'm going to -- individual in the last row, are you counsel or are you  
5 just an observer probably from the appropriate insurance company? I'm  
6 not asking who you are. You're more than welcome to be here, whoever  
7 you are, but I'm only asking if you're here in a private capacity as  
8 counsel for Dr. Rives. Are you?

9 UNIDENTIFIED SPEAKER: No.

10 THE COURT: That's all I was asking. Okay. In light of that,  
11 then of course, the Court always asks just to confirm that applicable state  
12 law has been complied with. So I'm just asking Defense counsel. I  
13 wanted to make sure. The reason -- one of the reasons why the Court set  
14 the hearing for today is to give Defense counsel full opportunity to speak  
15 with Dr. Rives directly, coordinate among yourselves and determine  
16 whether or not A, you wanted the evidentiary hearing, B, who you  
17 wanted to call for the evidentiary hearing, including Dr. Rives.

18 As the Court specifically stated at the last hearing, no one  
19 was requiring Dr. Rives to testify, provide an affidavit, provide a  
20 declaration or do anything. It was completely up to you. I just needed  
21 confirmation, A, you wanted the hearing and B, if you were -- if you did  
22 want the hearing, whether Dr. Rives would or would not be testifying, we  
23 could do scheduling, because you all specifically stated you only wanted  
24 an hour.

25 And the Court, in light of that, as I told you I would be doing,

1 because there was other cases that needed time, would be scheduling  
2 something specifically based on your requirements and the Court has  
3 done so. So I have another matter starting at 10:00, because you all said  
4 you needed an hour, which got the 8:30 to 9:30. In an abundance of  
5 caution, I scheduled the next one at 10:00, knowing that probably be a  
6 few minutes of preliminary time period and scheduling another one from  
7 1:00 to 5:00. So some of these other cases, I told you that needed this  
8 Court's time, so today was three different, special settings.

9           So in light of that, I wanted to give everyone enough time  
10 that they could speak with whomever they deemed that they needed to  
11 speak with to ensure that you had a full opportunity to be heard. So  
12 today is the continuation of that motion for sanctions, without going  
13 into -- it's the long version. I'm just going to call it motions for  
14 sanctions. In addition, as you all know, the Court had also set for the  
15 prior hearing date the Court's own order, because of the two separate  
16 issues.

17           One, both counsel, in providing documents to this Court,  
18 which on more than when occasion that were violative of multiple rules,  
19 even after the Court notifying the parties and/or their offices, as detailed  
20 in that Court's order, which you all know, because you had notice of, and  
21 it was set for last week and it was continued to today. You have the  
22 order of which I speak with regards to that. In the intervening time,  
23 unfortunately, there has been additional inappropriate, impermissible  
24 conduct by Defense counsel and continuing violations of the rules, some  
25 of which has prompted the Court to do an additional order, which was

1 set for today to be heard as well as even subsequent to that order --  
2 didn't think this one was possible.

3 Looks like there's even more conduct, which the Court has to  
4 address as well and see -- since that most recent conduct happened on  
5 Friday, and I don't even have a judicial day, I'm not sure -- well, the  
6 Court's going to decide whether it's -- how it's going to address that  
7 most recent issue, because that ties is not only to today's first prong, the  
8 evidentiary hearing, but the Court's continued concern, despite specific  
9 citation to case law rules, rules of professional conduct, NRCs, statutory  
10 authority, case authority, local rules, you name it.

11 In writing, in minute orders, in memos, there continues to be,  
12 it seems, a blatant disregard of many of the Court rules. Any being  
13 probably a little strong, since I guess some of them are followed. They  
14 actually do get filed electronically, but there has been numerous -- I  
15 would use the term numerous. I won't use the term many. I'll say  
16 numerous.

17 When I use Court rules, I'm not talking specific Department  
18 31. I'm talking Supreme Court. Lot of rules of civil procedure is also  
19 created by, obvious, the Supreme Court and a whole bunch of others  
20 that I've named and subsequently put forth in writing, stated in court,  
21 including blatant statements that are not accurate in declarations. So the  
22 Court has to address those as well.

23 Whether we will have time for all of that today in the slotted  
24 hour, stay tuned. We don't know. If not, looks like you may be coming  
25 back on Thursday or Friday this week, after you have your calendar call,



1 which of course, everything is due at the calendar call, depending on  
2 what the Court's ruling is today. If not, remember, everything's still due,  
3 depending on the Court's ruling today.

4 Okay. When I say depending on the ruling today, meaning  
5 unless the Court's rule is that it strikes everything, then you all knew, and  
6 you all knew when this date was set, and you all knew with everything  
7 that everything is still due. So I'm sure everyone's intending to comply.  
8 Nothing was alleviated with regards to everything that's due at the  
9 calendar call tomorrow.

10 Is that clear to everyone?

11 MR. DOYLE: Yes, Your Honor.

12 MR. JONES: Yes, Your Honor.

13 THE COURT: Okay. Just making sure. So and then also, we  
14 had the order shortening time on the striking of the supplemental  
15 witnesses, which I don't know if we're going to be able to get to that  
16 today or not, but we also have that, Plaintiffs on the supplemental  
17 witnesses, the 18 recorded witnesses that was asserted.

18 So going to the evidentiary hearing portion, since like I said,  
19 it's -- obviously, it's counsel's obligation, not the Court's obligation, but  
20 the Court always does want to make sure that everything is complied  
21 with and that you know, we don't have people that don't have law  
22 degrees getting on the stand and some things like that about things  
23 being fully noticed.

24 So in that regard, since today's evidentiary hearing was  
25 solely to provide Defense to the wish -- to the extent the Defense wish to

1 call any witnesses, even though they have not requested such in their  
2 opposition, to the extent that they wish to call any witnesses, because of  
3 the fact there was terminating sanctions being sought and also lesser  
4 sanctions as well being sought. Give them an opportunity, if they wish  
5 to call any witnesses in response to that, that was the sole thing that this  
6 Court allowed. And I believe this Court was abundantly clear. Does  
7 anyone think that this Court said anything else, other than evidentiary  
8 hearing today, in which witnesses could be called, if Defense chose to do  
9 so?

10 MR. JONES: I understand it was a Barry hearing, Your  
11 Honor, where the Defense was going to have the opportunity.

12 THE COURT: Was that your understanding as well?

13 MR. COUCHOT: I understand, yes, Your Honor.

14 THE COURT: Okay. The Court did not -- and the reason why  
15 the Court was asking that question is because we're now going to go  
16 into what happened on Friday. Contrary to this Court's express, multiple  
17 times stated and in fact, clearly stated so much that I even said does  
18 everyone understand the process was you can choose to have the  
19 hearing or not. You can choose whether you wanted somebody to  
20 testify or not and that you then needed to provide this Court written  
21 confirmation.

22 The only written paper this Court was supposed to get was a  
23 written confirmation of whether A, Defense wanted the hearing to take  
24 place and B, whether or not Dr. Rives was going to testify. And the  
25 reason why the Court needed that, as the Court clearly said, is because I

1 needed to know if there was going to be a hearing, so that everyone  
2 could be prepared and knew if they had a need to be here at 8:30 or not  
3 and I could schedule other matters. And two, in fairness to everyone,  
4 they needed to know who the witness or witnesses would be, so that  
5 people could prepare.

6 Okay. This Court did not implicitly, explicitly or in any  
7 manner whatsoever tell anyone they could do supplemental briefing.  
8 And I don't think anyone's going to say that this Court said anyone could  
9 do supplemental briefing. Counsel for Plaintiff, did this Court say  
10 anyone could do supplemental briefing?

11 MR. JONES: No, Your Honor --

12 MR. LEAVITT: No, Your Honor.

13 MR. JONES: -- you did not.

14 THE COURT: Counsel for Defense, you were here. Did the  
15 Court say you could do supplemental briefing?

16 MR. COUCHOT: No, Your Honor.

17 THE COURT: So contrary to the Court's express statements,  
18 express limited to try and allow, because Defense counsel did not even  
19 put it in their opposition, to allow that one aspect, if they wished to call a  
20 witness or witnesses, whoever they wished to call for an evidentiary  
21 hearing to take place this morning and they only stated one, so that's the  
22 only reason why the Court used the singular, is that there was, instead, it  
23 appears, Friday -- and I need to get on my system.

24 Friday there was a pleading filed, a rogue pleading filed, a  
25 pleading in direct violation of yet another Court's specific order that

1 occurred, which the Court has to address first. The Court's going to  
2 address it in two manners. The Court's going to address it first, just  
3 procedurally, for today's sanction hearing. Then the Court's going to  
4 have to address it second with regards to the Court's own orders on  
5 what sanctions need -- may be imposed, up to, including terminating  
6 sanctions, up to and including all sanctions, as the Court specifically put  
7 in is order.

8 Fully on notice under *Valley Health Systems v. Doe* and all  
9 the RPC aspects, all the Rule 37s, the whole panoply is all included in the  
10 Court's order. That's going to be have to be taken into account, because  
11 of the pattern of conduct. This is not the first, second, third or -- if I  
12 remember, it may be, but definitely not the first or second time this has  
13 happened. So when I say this, meaning the disregard of the Court's  
14 specific directive with regards to this case by Defense counsel, who was  
15 present in court, their law firm present in court.

16 So from a procedural standpoint, with regards to the hearing,  
17 the Court's question is this. Was there any express agreement by  
18 Plaintiff's counsel, albeit in contravention of the Court's specific directive,  
19 to allow under EDCR 7.50, some additional briefing by Defense?

20 MR. JONES: Not at all, Your Honor. No, we were very upset  
21 about it.

22 THE COURT: Okay. Do you waive or -- do you waive or wish  
23 the Court to consider the briefing filed by Defendants?

24 MR. JONES: We do, Your Honor. We agree that it's --

25 THE COURT: Excuse -- I said --

1 MR. JONES: Oh.

2 THE COURT: -- do you waive the fact that -- do you waive,  
3 and do you wish the Court to consider their briefing?

4 MR. JONES: No, not at all, Your Honor.

5 THE COURT: I just need --

6 MR. JONES: We don't --

7 THE COURT: -- to know if you're raising an objection or not.  
8 I just need to know your position, so --

9 MR. JONES: Your Honor, we object to the briefing. In fact,  
10 we pro -- I produced a motion to strike, but because I couldn't get it on  
11 OST, there was --

12 THE COURT: What do you mean --

13 MR. JONES: -- no way for me to --

14 THE COURT: -- you couldn't get on OST?

15 MR. JONES: -- to produce it, since it was filed on Friday, so  
16 no, we do not think it's appropriate to be considered, Your Honor.

17 THE COURT: Okay. So I'm going to address that portion  
18 first. Counsel for Defense?

19 MR. DOYLE: Your Honor, after consultation with appellate  
20 counsel, a decision was made to file the supplemental brief to --

21 THE COURT: Excuse me. Appellate counsel told you to  
22 disregard as -- what appellate counsel in the State of Nevada told you to  
23 specifically disregard a Court's directive, and why is that appellate  
24 counsel not here?

25 MR. DOYLE: The appellate counsel did not advise us to

1 disregard a Court's directive.

2 THE COURT: Did you tell the appellate counsel that there  
3 was a specific Court directive of the only thing that could occur, because  
4 of your failure to even include on behalf of your client anything about his  
5 own position in your opposition?

6 MR. DOYLE: Well, I --

7 THE COURT: I'm not asking about the content. I'm only  
8 asking did you advise --

9 MR. DOYLE: No.

10 THE COURT: Okay. So you did not advise them that the  
11 Court gave a specific directive of the only thing that could be taken into  
12 account additionally?

13 MR. DOYLE: Well, that -- I guess that's an overly narrow  
14 interpretation. That was not -- I read the transcript, and it was my  
15 impression that if -- erroneously so, that I thought it would be helpful to  
16 have the supplemental opposition --

17 THE COURT: Counsel -- my question. I'm interrupting you.  
18 It's very narrow, because you do have limited time, and I have another  
19 case at 10:00, okay, because of the specific request of your co-counsel,  
20 how much time he needed, okay? My specific request was who's the  
21 name of the counsel that you are saying told you to file this brief? If  
22 you're saying it's not you, then I'm going to have to consider that  
23 counsel for sanctions, too. So I want to know.

24 MR. DOYLE: His name is Robert Eisenberg. He did not tell  
25 us to --

1 THE COURT: Okay. Robert Eisenberg I'm very familiar with.  
2 I would be very surprised under this scenario, that Robert Eisenberg, if  
3 fully aware of all the facts -- did you provide him a copy of the transcript?

4 MR. DOYLE: No.

5 THE COURT: Okay.

6 MR. DOYLE: Oh, wait. I take that back. He did have a copy  
7 of the transcript. I'm sorry. I did provide it to him.

8 THE COURT: Your -- so, Mr. Eisenberg needs to be here for  
9 sanctions as well, because you are saying that on his advice and  
10 counsel, you chose to disregard this Court's specific directive?

11 MR. DOYLE: No, I -- it's not on his advice and counsel. We  
12 were talking about the issues raised in the motion, the issues raised in  
13 our --

14 THE COURT: I'm not asking about the content.

15 MR. DOYLE: I --

16 THE COURT: I'm just trying to get a specific -- you  
17 understand what the Court's specific question is. This Court is asking --  
18 okay -- Mr. Couchot was here. This Court was try -- because of the  
19 pattern of what you all have been filing, this Court set out a specific  
20 procedure, a specific procedure of do you want an evidentiary hearing.  
21 Mr. Couchot said that you, Mr. Doyle, would be handling it, not him.

22 To give you all benefits of the doubt, the best possible  
23 opportunity, so that everyone could speak about it and make a  
24 determination, people were not having to make a determination in court,  
25 to give you a full opportunity to speak with both your clients in a

1 tripartite relationship, okay? To make a full, well-reasoned  
2 determination. This Court wasn't requiring that anybody make the  
3 determination in court. The Court was offering, but then giving you time  
4 in which you could fully consult with whomever you wished to do, if you  
5 wished an evidentiary hearing.

6           *Johnny Ribeiro* says what -- *Young v. Johnny Ribeiro* says  
7 what it says in subsequent case law. The Court doesn't need to offer it.  
8 You didn't even request it. You didn't even request it during the hearing.  
9 And I say you, meaning your firm, didn't on behalf of Dr. Rives. The  
10 Court just offered it.

11           The Court offered it, but did not require anyone to have it.  
12 Okay. I had no objection. So full waiver issue on the Plaintiffs, so I had  
13 no issues there, so it was just an offer to Defense if they wished to have  
14 any witnesses of their choosing in the time period they chose for today's  
15 date at 8:30. Based on this statement it was going to be an hour.

16           So with that in mind, then the Court wanted a specific writing  
17 from Defense counsel CC'ed to all parties and to the Court by a time  
18 period that Mr. Couchot and Ms. Newberry, who are here, Ms. Clark  
19 Newberry, seemed to be in agreement with, that that was sufficient time.  
20 Nobody asked me for any more time to consult with whomever they  
21 needed to consult with, to find out A) if they wanted the hearing, and B)  
22 if Dr. Rives or anybody else was going to be testifying so it would be put  
23 in just purely for a scheduling statement. No substance.

24           There was no request in that letter. There was no request by  
25 motion. There is a proper procedure if somebody wishes to file a



1 motion, right? If you wish to file a motion, there is a procedure if you  
2 wish to file a supplemental brief in the State of Nevada and under our  
3 local rules. No such procedure was followed. There was not even an  
4 OST submitted to the Court to request a supplemental brief. There was  
5 no oral request in Court. There wasn't even an improper request in the  
6 letter for a supplemental brief. There was nothing.

7           Then it came on Friday, less than a judicial day before  
8 today's hearing. That is the reason why this Court has to ask under that  
9 factual scenario, since none of those rules were followed, and you said it  
10 was just filed, okay, and gave no chance whatsoever, because Mr.  
11 Couchot knew, and Ms. Aimee Clark Newberry knew, because they were  
12 here in court, that counsel for Plaintiffs even stated that they would be  
13 out of town on Friday, because they were all aware that my JA came into  
14 court.

15           Because inadvertently, I started to say I could do the hearing  
16 on Friday, and then my JA came into court, and I believe I made some  
17 statement like, oops, I have this tendency to try and schedule things  
18 because I'm so -- try to help the parties out and try and schedule things,  
19 when JA has to remind me that I, too, scheduled to be at that same  
20 conference for -- CLE conference, right? And that both counsel were  
21 willing not to attend that conference if the Court was specifically  
22 scheduling, because they said that they both were going to be out of  
23 town.

24           So counsel for Defense who were here, I'm paraphrasing, it  
25 may have been shorter than that, my JA came in, so that's why I said

1 Monday, so you can give more time to Defense. So we knew that  
2 Plaintiffs were out -- Plaintiffs' counsel were out of town, and the Court  
3 was out of town on Friday, and yet still filed something in Friday. I'm not  
4 saying that -- no one is sneaking in the door. Obviously, the Court had  
5 backup in the court. My team knows how much I was calling, texting,  
6 and on the phone, and everyone at the conference saw how much I was  
7 on the phone.

8           Anyway, so obviously, the Court was fully available and  
9 could handle anything if it came in the door, but nothing did come in the  
10 door, because the Court was more than checking on this and every one  
11 other of its cases to ensure that everyone was fully taken care of, albeit  
12 while I was out of the jurisdiction at a CLE conference with several of our  
13 justices, Court of Appeals, et cetera. So, you know, we all were fully  
14 available to take care of our work, as well as obviously get our required,  
15 continuing legal education.

16           So that being said, that's why the Court has to ask the  
17 question is you didn't follow any of the procedures. So if you're telling  
18 me you didn't follow any of those procedures or you didn't file an OST or  
19 request supplemental briefing in any manner whatsoever because  
20 Robert Eisenberg told you not to, then of course, in fairness, I'd give him  
21 due process and give him an opportunity to explain.

22           MR. DOYLE: Okay. I'm not sure what the question is, but the  
23 decision to file the supplemental brief was mine after speaking to Bob  
24 Eisenberg about various issues. He did not say we shouldn't file it, and  
25 the decision was mine.

1 THE COURT: Okay. And a decision not to file any request or  
2 permission to seek leave to file a supplemental brief from me, that  
3 determination, please?

4 MR. DOYLE: I made that determination, and I didn't feel it  
5 was necessary under the circumstances given the significant and serious  
6 nature of the sanctions being requested. The fact that it's on an order  
7 shortening time, that's not a lot of time to deal with this to try and corral  
8 all the information and figure out what happened, and to get all the,  
9 what I believe to be, the necessary information in front of the Court so  
10 that it could make an informed decision, I proceeded in that fashion.

11 THE COURT: But, counsel, you had a full opportunity to put  
12 all that same information in your opposition and you chose to do so; did  
13 you not?

14 MR. DOYLE: No. It was done on a --

15 THE COURT: You knew about --

16 MR. DOYLE: -- it was done on an order shortening time.

17 THE COURT: And was there any request --

18 MR. DOYLE: We had been --

19 THE COURT: -- with regards to the ordering shortening time  
20 to extend the hearing date? It was at the Court's own decision that we  
21 gave the evidentiary hearing. Anything in the opposition to request  
22 additional time, either for briefing, to continue the hearing to a different  
23 date, this Court received nothing from Defense counsel, nor the  
24 information that you sought, which has its own issues on hearsay which  
25 the Court hasn't even gotten to. But that information, you could have

1 easily picked up the phone, if you wanted to, and called Mr. Hand any  
2 day you chose to do so, correct?

3 MR. DOYLE: I did --

4 THE COURT: And that could've been before the opposition  
5 was filed, correct?

6 MR. DOYLE: I did call Mr. Hand and left him a message last  
7 week, and he did not return my call, because I wanted to discuss with  
8 him my conversation with Mr. Brenske, and Mr. Hand did not return my  
9 telephone call.

10 THE COURT: And you could have picked up the phone and  
11 called Mr. Brenske at any time whatsoever when they first filed their  
12 motion, right, way back? And they discussed it with you before they  
13 filed the motion. I believe it was back around September 12th or 13th,  
14 correct? Which is --

15 MR. DOYLE: And I did -- I did call Mr. Brenske and talked to  
16 him, and that was the basis for the statement that I put in my declaration.

17 THE COURT: Counsel, this Court's question is -- let's walk  
18 through dates, please. Okay. Plaintiffs' motion for sanctions was  
19 submitted to this Court on order shortening time by its date -- well, it's  
20 dated September 16th. It was submitted to the Court for signature. The  
21 Court dated it on the 18th, and it shows it was personally served on the  
22 19th of September, okay?

23 Now, the Court does not have available to it when it was  
24 electronically filed to Defendants. I don't know if it was filed before it  
25 was submitted to the Court on order shortening time, but in the affidavit

1 on that motion, it said that it had spoken -- prior to filing OST in  
2 accordance with the EDCR, they need to reach out to opposing counsel.

3 The affidavit sets forth that it did reach out to opposing  
4 counsel and that they spoke with opposing counsel so that there would  
5 have been -- even if the -- if the declaration is accurate and the pleading  
6 date is accurate, at the latest, based on what is presented here, at the  
7 latest, September 16th, Defense counsel would have been aware of the  
8 allegations contained in the motion. Based on the purported rogue  
9 document filed without the Court's permission, you did not contact Mr.  
10 Brenske until on or about October 2nd.

11 MR. DOYLE: That is correct.

12 THE COURT: That means between September 16th and  
13 October 2nd, you had the full opportunity to contact Mr. Brenske, put  
14 that information in your opposition to the original motion for order  
15 shortening time or B) request of this Court or first opposing counsel, or  
16 this Court, to have continued the original motion, requested additional  
17 time to have done opposition to the original motion for order shortening  
18 time, or like I said, to have continued the hearing in the first place, or to  
19 have even addressed the fact that you were in the process of trying to  
20 reach out to Mr. Brenske or some such information somewhere in your  
21 opposition, but instead, there was nothing about that whole topic area in  
22 your opposition.

23 And in fact, it wasn't until the Court even set -- offered you  
24 the opportunity to even have the evidentiary hearing, it's like you didn't  
25 seem to address that issue. So that's why the Court's asking you the

1 question. I'm not seeing how your statement that you can disregard the  
2 rules has any basis whatsoever when you would've had, at the latest, at  
3 least from September 16th to have a full opportunity to do this way  
4 before your opposition to the original motion, or you had several  
5 remedies that you could have taken place way back in September, but  
6 you chose not to do any of those, nor was there any request made at the  
7 hearing, in the letter after the hearing, or before the supplemental brief.  
8 That's why the Court is asking you that question.

9 MR. DOYLE: And I wish I had a crystal ball, or I could take a  
10 time machine and put myself back a couple of weeks and do things  
11 differently, but given the exigent circumstances and the significant relief  
12 being sought by Plaintiffs, we proceeded in what I believe to be an  
13 expeditious manner, trying to gather all the information necessary.  
14 Frankly, I didn't know we could request an extension of an order  
15 shortening time. I've never seen that happen. We just -- we assumed,  
16 given that we had the impending trial date and the terminating  
17 sanctions --

18 THE COURT: Well, counsel, therein lies part of the challenge  
19 that this Court is going to have to address with you, right? Please read  
20 the rules. Please stop violating all the rules. Please actually read the  
21 rules when the Court sends you memos that sets it forth, right, because  
22 they're there. They're there for you to read and to comply with, and you  
23 would have found it there, if you had read them.

24 And as an experienced litigator, you know you can't say you  
25 didn't know it existed, so you just were going to violate them and do

1 what you wanted to do. Plus, as you know, you even stated in your  
2 statement that your alleged conversation, which you know the Court  
3 can't take into account substantively because it's pure hearsay, even  
4 regardless of all the procedural issues is pure hearsay. Is Mr. Brenske  
5 here in court? No. Did you subpoena him? No. Did you have a full  
6 opportunity to do so if you chose to do so? Yes. You were not limited in  
7 the number of witnesses. Any witnesses you chose to could be here at  
8 8:30. There was no limitation. It's whoever you wanted. He's not here,  
9 the Court can't take it into account, as you know. It's hearsay.

10           You know it shouldn't have been in your declaration in the  
11 first place because you know it's not personal knowledge as an  
12 experienced litigator, so there would be no basis to have any exigent  
13 circumstances. There's nothing -- as you know, the Court can't, by law,  
14 take it into account, so there would be no reason to even file it in the first  
15 place. So there would be no basis to violate the rules because you know  
16 the underlying substances. You can't ask this Court to violate its oath of  
17 office by taking into account hearsay.

18           So at this juncture, this Court cannot take into account,  
19 procedurally or substantively, a "supplement" that was A) filed in direct --  
20 and these are all independent bases, so it's not the totality. The totality  
21 meets it. It independently meets it. The Court specifically -- you did not  
22 request it -- offered the additional -- the hearing was supposed to be over  
23 that day, but for the fact that the Court was concerned with the lack of  
24 what was in that opposition with the extent of the nature of the sanctions  
25 against one of your clients, okay, to ensure that both of your clients'

1 interests were represented so that -- okay, the Court offered the  
2 evidentiary hearing. Otherwise, that hearing would have been over that  
3 day.

4           So what you filed on Friday is a rogue document that the  
5 Court cannot consider procedurally because A) it was filed less than a  
6 judicial day, B) filed in direct contravention of this Court's specific --  
7 without any leave, which could have easily been sought, was not sought.  
8 There's no good cause for it not to be sought, even the very "looking at  
9 the document" so that you had the conversation on the 2nd, but you still  
10 chose to wait until a date of the 4th to even file the document, giving no  
11 time whatsoever, fully prejudice to Plaintiffs, who have specifically  
12 objected, any opportunity to respond, knowing even independently, if  
13 you forgot that they were out of town -- they did state in open court that  
14 they were out of town, but that's even a non-sequitur. Even if they were  
15 in town or out-of-town, they could've done work over the weekend, I  
16 guess. So I'm not taking into account they were out of town.

17           I just -- that is not a factor that the Court is legally stating, but  
18 it just presents an even different concern, but that's not something that  
19 the Court is taking into account legally, but you did know that. So  
20 procedurally, it's a per se violation of the rules in and of itself. It's even  
21 more so a violation of the rules because the Court specifically said what  
22 could be done. You had full opportunity to ask for relief while you were  
23 here in court last week, and no one did so. Not in your brief, did not ask  
24 in open court, did not ask in a follow-up letter the Court did, and did not  
25 ask in any other motion before the Court, but instead -- and then even on



1 the alleged conversation you did it on the 2nd, you then waited until  
2 Friday to even file it, giving no chance for Plaintiffs to have any  
3 opportunity to respond.

4 That all procedurally is detrimental to Plaintiffs, a violation of  
5 the rules, a violation of specific court directive procedurally, all cannot be  
6 done independently. The violation aspect is going to have to be  
7 addressed separately shortly, with regards to the substantive aspect,  
8 even if the Court somehow could overlook all of those procedural  
9 hurdles, which it cannot, but independently, I would, to give you the  
10 benefit of the doubt, the Court said is there any way, I can give you the  
11 benefit of the doubt and look at it from a substantive manner. But the  
12 Court even looking at it -- if it tried to even look at a substantive manner,  
13 the Court can't, because it's pure hearsay.

14 It's pure hearsay because it was based -- supposedly, based  
15 upon any purported conversation with another individual who is not  
16 present in court when you had a full opportunity today on the  
17 evidentiary hearing to have any witnesses you chose to bring. If you  
18 chose to have Mr. Brenske present here in court, you could have asked  
19 him to be here either by subpoena or by request. He is not here. It is  
20 now 9:10, and I need to get you all started with the actual other portion,  
21 so --

22 MR. DOYLE: And I guess the impetus for my phone call with  
23 Mr. Brenske was the fact that there was nothing, and still today, there's  
24 nothing from George Hand who was the only --

25 THE COURT: Counsel. Counsel. This is not a time -- the

1 Court's doing its ruling of why I'm not considering it, okay? So  
2 substantively, pure hearsay. Counsel who is an experienced litigator  
3 knew the procedural aspects fully available, and because -- it's more  
4 egregious in this case, because of the numerous times that this Court  
5 has, in open court, with three separate attorneys from your firm, or your  
6 associated firms, plus the memos you've gotten in writing and served  
7 onto you, plus the two orders the Court has, and in those orders where  
8 the Court has referenced all the other -- not all -- actually, let me be very  
9 clear. It wasn't all.

10 I only gave you EGs. I gave you examples of other occasions  
11 where you've been specifically reminded to read the rules and given  
12 specific examples of not following the rules, and the Court even -- you're  
13 pending dispositive striking for your failure to follow the rules and  
14 litigation tactics and then you do another one?

15 That presents a huge challenge, okay? And particularly,  
16 since this just -- this Court had just done another order where it had just  
17 outlined it. You were subject to having the Court evaluate Rules of  
18 Professional Conduct, a whole panoply to do this again. Can't do it on all  
19 of that. Substantively, it's hearsay. Pure and simple. Cannot be  
20 considered, will not be considered, should have never been filed, and the  
21 Court has to evaluate, in addition under Rule 11 if there's any good  
22 basis, in addition to all the other factors, that unfortunately -- but the  
23 Rule 11 factor is not to be taken into account for this dispositive hearing.  
24 That is for the Court's other hearing that the Court has already set up  
25 because of Defense counsel, and potentially their client's pattern of

1 conduct in this case.

2           So with that being said, the Friday document that was filed  
3 shall not be considered by this Court because it cannot be considered by  
4 this Court, either procedurally or substantively under any basis. And  
5 there was nothing even in the document that even -- in the document  
6 itself, even provided any support on how the Court could hear it. There  
7 was nothing in the pleading itself on another substantive alternative  
8 basis that even said why the Court could consider the supplement.  
9 There was nothing even procedurally that addressed the procedural  
10 nature of it being filed on Friday, or any basis for the Court to consider it.

11           So it can't be considered, it won't be considered. The law  
12 does not allow me to consider it, and I've gone through all the prejudicial  
13 nature. The impropriety of it being filed will be addressed in the Court's  
14 portion, which it has to do because of the conduct as stated in the two  
15 court orders.

16           So getting to the -- now, that takes care of that Friday  
17 pleading, so we are back to where we were, which is what the Court  
18 provided. You have the pending motion for dispositive, which was  
19 Plaintiffs' motion. Everyone had had a full opportunity to argue  
20 everything is what this Court had been told, other than -- and people  
21 who were ready for the Court to rule, and then the Court then offered the  
22 evidentiary hearing in regards to the witness testimony because the  
23 Court asked some questions of Defense counsel, simple questions like  
24 whether or not they provided things to their client, which Defense  
25 counsel couldn't answer, or stated he didn't know.

1           So at this juncture, to the extent that Defense wishes to call  
2 any witnesses, the Court will now provide that opportunity. Realize any  
3 witnesses you call, you have to ensure that you fully advise your client  
4 everything that you need to advise your client under Nevada law. I've  
5 already cited a couple of the cases. You know the case law. If he  
6 chooses -- if you're advising him to take the stand, even if there's no RPC  
7 issues or anything like that, no conflict issues, no -- I don't know if I said  
8 *State Farm v Hansen* issues.

9           So if you wish to call whatever witnesses you wish to call,  
10 Defense counsel, and remember, there's cross-examination by Plaintiffs'  
11 counsel, and the Court may have some questions if the parties don't  
12 address the issues that the Court had. And then the Court will make a  
13 ruling on Plaintiff's outstanding motion. So counsel for Defense, if  
14 there's any witnesses you'd like to call, feel free to all your first  
15 witness.

16           MR. DOYLE: I'd like to call Dr. Barry Rives and then when his  
17 testimony is finished, I'd like to make some closing remarks.

18           THE COURT: That was not part of it. It was just -- it was just  
19 to call any witnesses.

20           MR. DOYLE: So I'm not --

21           THE COURT: It was not requested by anybody last week.  
22 Your co-counsel -- neither of your co-counsel made that request. That  
23 was not the scope of this. Nobody requested that. You all requested the  
24 time period for the one hour just for the questioning, and the only  
25 person that was discussed was Dr. -- now if you brought somebody else,

1 of course, the Court didn't limit it to that. I said any witnesses because I  
2 wanted to get everyone a full chance for any counsel to discuss with  
3 anybody, any counsel that may not have been present in court that day.  
4 But no such request was made. There is --

5 [Court and Clerk confer]

6 THE COURT: I don't recall, I was going to go see if we have a  
7 copy. I don't recall if the letter said that request, but this Court is not  
8 aware of any said request for any closing response.

9 All oral argument was taken care of. It was only the witness  
10 testimony that -- that was what -- the only thing that --

11 MR. DOYLE: The witness testimony necessarily requires  
12 some comment by me --

13 THE COURT: No, it --

14 MR. DOYLE: -- when the witness is done testifying.

15 THE COURT: Well, then your --

16 MR. DOYLE: And --

17 THE COURT: -- counsel should have asked that last week.  
18 Nobody asked that -- the Court was not -- okay, at this juncture, you may  
19 call your first witness.

20 MR. DOYLE: All right. Dr. Rives.

21 THE COURT: Okay.

22 BARRY RIVES, DEFENDANT, SWORN

23 THE CLERK: Thank you, please be seated. Could you please  
24 state and spell your name for the record?

25 THE WITNESS: Barry James Rives, R-I-V-E-S.

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MR. DOYLE:

4 Q Good morning, Dr. Rives.

5 A Good morning.

6 Q Over the years, have you given a number of depositions?

7 A Yes, I have.

8 Q Have you testified at trial several times?

9 A Yes, I have.

10 Q Did you take an oath each time?

11 A Yes, I did.

12 Q And do you understand you took an oath this morning?

13 A Yes.

14 Q Do you understand you took an oath before -- or at the  
15 beginning of the Farris deposition?

16 A Yes.

17 Q And your understanding of the oath that you took at the time  
18 of the Farris deposition and today means what to you?

19 A To tell the truth, the whole truth, and nothing but the truth.  
20 So help me God.

21 Q And anything else?

22 A That's it.

23 Q Do you understand -- at the time you gave the Farris  
24 deposition, did you understand the penalties that you could face, if you  
25 did not carry out that oath?

1 A Yes.

2 Q Did you understand the penalties that you faced if you lied,  
3 or were deceitful at the Farris deposition?

4 A Of course.

5 Q And what did you understand those to be?

6 A I could be guilty of perjury.

7 Q And at the Farris deposition, did you -- in response to any of  
8 the questions at the time of the deposition, did you lie?

9 A No.

10 Q Were you deceitful?

11 A No.

12 Q Did you withhold information?

13 A Not at all.

14 Q I want to ask you some questions about the discovery  
15 responses, the request to produce documents and the interrogatories.  
16 There was a set of each to you individually and then as well as to your  
17 professional corporation, Laparoscopic Surgery of Nevada. Did we send  
18 those to you on April 12, 2017?

19 A I believe so, yes.

20 Q Did we send you a copy of the request to produce documents  
21 with draft responses we had prepared?

22 A Yes.

23 Q Did we send you the two sets of interrogatories with draft  
24 responses we had prepared?

25 A Yes.

1           Q     Had you talked to anyone in my office before you received  
2 those draft responses, either Mr. Couchot, myself, or anyone else, about  
3 the interrogatories or request to produce documents?

4           THE COURT: The Court's going to interject here, because the  
5 Court is being clear. The Court is not asking that anyone disclose any  
6 attorney-client communications. If your client is going to waive that, I  
7 need -- then (a) this Court needs to know that; and (b), this Court needs  
8 to have a clear understanding that he has been advised clearly of what  
9 that means, the impact of it, the full extent of what he's doing, because  
10 there's a distinction between how that can be handled.

11           And you, as his counsel, I just want to ensure that the Court  
12 is not asking any of that. The Court just needs to know if you're trying to  
13 elicit communications between Dr. Rives and your office, that he has (a)  
14 been advised of his rights, and the attorney-client privilege, and if he's  
15 waiving it, what that impact is. The Court just wants to make sure that  
16 he has been fully advised of such.

17           MR. DOYLE: And my client has been fully advised, and I  
18 think the answer to the question will show that there is no attorney-client  
19 privilege to violate.

20           THE COURT: No worries. The Court just --

21           MR. DOYLE: Thank you for that.

22           THE COURT: -- to ensure that everyone has a full  
23 opportunity, and there's nothing done inadvertently. Thank you, so  
24 much.

25           MR. DOYLE: Thank you.



1 BY MR. DOYLE:

2 Q Doctor, before you received on April 12th, 2017, the request  
3 to produce documents and the special interrogatories, was there a  
4 conversation between you and someone in my office about preparing  
5 the draft responses?

6 A No.

7 Q Was it your understanding my office had prepared those  
8 draft responses with no input from you?

9 A Correct.

10 Q Is it your understanding that we prepared those draft  
11 responses based on information that we had obtained over the years  
12 representing you in other cases?

13 A That is correct.

14 Q And --

15 THE COURT: Counsel, I've got to -- I'm hearing your  
16 questions, but by the very nature of your questions, this Court's not  
17 getting the nexus of how you said this is not eliciting attorney-client  
18 communication. How can a person have an understanding of your  
19 office's practices without having a communication with someone from  
20 your office, and know specifically about how your office did his  
21 interrogatories --

22 MR. DOYLE: Okay.

23 THE COURT: -- without having some conversation with  
24 someone in your office? That's why this Court was -- it's not the first  
25 hearing this Court has done, that's why this Court was very specific in

1 trying to give that step.

2 MR. DOYLE: I'm going to go on. Let me -- let me --

3 THE COURT: That's fine, counsel.

4 MR. DOYLE: Okay. Thank you, Your Honor.

5 THE COURT: The Court's concerned about waiver issues  
6 right now. The Court's just saying that. Okay.

7 BY MR. DOYLE:

8 Q Doctor, concerning the special interrogatories that were sent  
9 to you as an individual and the draft responses that we prepared, did you  
10 review those draft responses?

11 A No.

12 Q Why not?

13 A I believe when I looked at the email, I opened up the first  
14 PDF, which had to do with, I believe disclosure of materials, and it looked  
15 like a bunch of legalese, and I assumed everything else was the same.

16 Q Did you rely on my office to -- for the information contained  
17 in the responses to those interrogatories?

18 A Yes.

19 Q Before -- after you received the draft responses to the special  
20 interrogatories directed to you, did you and I have a conversation about  
21 those draft responses back in April or May of 2017, before they went out?

22 A No.

23 Q Did you have a conversation about them with anyone else in  
24 my office?

25 A No.

1           Q     The first time that you saw the responses to those  
2 interrogatories, was that recently?

3           A     Within the last week or two, yes.

4           Q     And did you sign and return to us a verification for the  
5 special interrogatories that were directed to you personally?

6           A     To me personally, no.

7           Q     Doctor, if you had reviewed the draft interrogatory answers,  
8 do you believe you would have noticed that they contained an old office  
9 address?

10          A     Yes.

11          Q     Do you believe you would have noticed that Center was not  
12 on the list of cases?

13          A     Yes.

14               MR. JONES: Your Honor, I'm just going to object. I don't  
15 know when the last time it was that the Doctor testified and wasn't just  
16 led into a question with a yes or no.

17               THE COURT: I'm sorry, so what's -- I'm not hearing your --

18               MR. JONES: Every question -- every question has been  
19 leading, Your Honor, and I would just request that he actually elicit --

20               THE COURT: Okay.

21               MR. JONES: -- testimony from the Doctor.

22               THE COURT: Sustained because this is your witness.

23               MR. DOYLE: Okay.

24 BY MR. DOYLE:

25          Q     Doctor, when you looked at the answers to interrogatories

1 recently, were supplemental responses prepared?

2 A Yes, I believe so.

3 Q And what was corrected based upon the information in the  
4 draft responses, that we had prepared, and you had not seen? What was  
5 changed, or amended?

6 A I noticed that the existing office address was incorrect. So  
7 that had to be amended. That the Center case wasn't in there, so that  
8 had to be amended. That there was a response to whether I'd been on  
9 any medical committees, regarding the hospital, that was left either  
10 blank, or that was -- didn't include my chief of surgery, and all of the  
11 other stuff that I had done for the hospitals. So I believe that had to be  
12 amended as well.

13 Q Okay. Now, when you sat for your deposition in Farris, what  
14 did you review to prepare for the deposition?

15 A My office notes and the medical notes.

16 Q When you prepared for the deposition in Farris, did you  
17 review any of the interrogatory responses, either by you, or by your  
18 professional corporation?

19 A No.

20 Q Did you review, to prepare for the deposition, the request to  
21 produce documents that had been prepared -- or the responses prepared  
22 on your behalf and your anticipated --

23 MR. JONES: Your Honor, I'm going to just object again. I  
24 would appreciate it if he'd elicit something from the Doctor, rather than  
25 telling the Doctor the answer, and asking for a yes or no.

1 THE COURT: Counsel, I need that in the form of a proper  
2 objection, if that's an objection.

3 MR. JONES: Your Honor -- leading, Your Honor.

4 THE COURT: Sustained.

5 BY MR. DOYLE:

6 Q Doctor, did you review any discovery responses to prepare  
7 for your deposition in Farris?

8 A No.

9 Q At the deposition, who was the attorney that was present for  
10 the Farris?

11 A George Hand, I believe.

12 Q Did George Hand mark as an exhibit for the deposition a  
13 copy of the interrogatory responses from you --

14 MR. JONES: Objection, Your Honor. Leading.

15 THE COURT: Sustained. That's going to leading. Counsel,  
16 three sustains on the same basis. Please stop it.

17 BY MR. DOYLE:

18 Q What did Mr. Hand mark and show you at the deposition  
19 concerning interrogatory answers?

20 THE COURT: Counsel --

21 MR. JONES: Objection, Your Honor. Foundation. Leading.

22 THE COURT: -- that's a leading question, please. You've  
23 already been admonished. I already just advised you on the very last  
24 question, please do not do it indirectly what the Court has just  
25 admonished you not to do directly. I am sustaining the objection and

1 you will be -- have sanctions against you if you do it a third time. Are we  
2 clear?

3 MR. DOYLE: Yes.

4 THE COURT: Thank you.

5 BY MR. DOYLE:

6 Q What did Mr. Hand show you?

7 A I believe at one point during the deposition he handed me a  
8 set of the interrogatories and my CV.

9 Q And what did he ask you to do when he handed you those  
10 documents?

11 A He asked me to review my CV and see if it was up to date.

12 Q What did you do in response to his question?

13 A I think there was some dates, like in the medical -- my  
14 medical license, the expiration date wasn't updated. There were some  
15 small little factors like that, that I said needed to be updated. And then  
16 he asked me to hand it back to him.

17 Q What do you mean by he asked you to hand it back to him?

18 A He asked the CV and the interrogatories be handed back to  
19 him.

20 Q What did you do when he asked you that?

21 A I handed it to him.

22 Q Do you recall at the deposition whether you were asked  
23 questions about interrogatory number 3?

24 A Yes, I was.

25 Q What do you recall about interrogatory number 3? What was

1 that about?

2 A I believe that's when he went through a list of my prior cases  
3 and asked me for information regarding those cases.

4 Q Did you answer his questions?

5 A Yes.

6 Q Can you tell us if your answers were accurate?

7 A Yes, they were.

8 Q When Mr. Hand got to the end of asking you about cases  
9 where you had been a Defendant, did he ask you about the Center case?

10 A No, he --

11 MR. JONES: Leading, Your Honor, again.

12 THE COURT: Counsel that is leading 101.

13 MR. DOYLE: Okay.

14 THE COURT: Sustained.

15 MR. DOYLE: Did --

16 THE COURT: And counsel, what did I say?

17 MR. DOYLE: Okay.

18 THE COURT: Counsel?

19 MR. DOYLE: I understand.

20 THE COURT: But you're not listening.

21 MR. DOYLE: I --

22 THE COURT: You're hearing me, but --

23 MR. DOYLE: I thought it was not a leading question, I  
24 apologize, Your Honor. I'm not doing this intentionally. Let me try  
25 again. I'm sorry.

1 BY MR. DOYLE:

2 Q Were you asked a question about the Center case?

3 A Regarding the interrogatories?

4 Q Yes.

5 A No.

6 Q Were you asked whether there were any other cases?

7 A I was asked if I had been deposed as an expert witness for  
8 either a patient or for a defendant doctor.

9 Q And how did you respond to that question?

10 A I gave him two examples that I could remember at that time,  
11 where I had been deposed or went to Court as an expert witness.

12 Q Did the Center case come up?

13 A The Center case did come up, yes.

14 Q How did it come up?

15 A Right at the end of that particular question, he asked me --  
16 he, being Mr. Hand, asked me regarding that question, were there any  
17 others that I could think of at that time. I could not recall any other time  
18 that I did an expert witness for either a patient or a defendant doctor, and  
19 Chad at that time mentioned Center's not on there. And I didn't really  
20 understand what he was referring to, because Center is a case where I  
21 was a Defendant, not an expert witness or something else to another  
22 matter. And I think from there, we then talked about the Center case.

23 Q Did you answer all of Mr. Hand's questions about the Center  
24 case?

25 A Yes.



1 Q Were your answers accurate?

2 A Yes, they were.

3 Q At that time, Doctor, did you have any reason to hide from  
4 Mr. Hand the Center case?

5 MR. JONES: Your Honor, leading, again.

6 THE COURT: Did you have any reason to hide the Center  
7 case?

8 MR. DOYLE: Did you --

9 THE COURT: Counsel, would you consider that a leading  
10 question?

11 MR. DOYLE: No, I don't, actually.

12 THE COURT: Doesn't it presuppose the answer to the  
13 question? Did you have any reason to hide the Center case? That is a  
14 leading question, counsel. You're an experienced litigator, you know  
15 that. That is sustained.

16 MR. DOYLE: Okay.

17 THE COURT: Please ensure that you ask open ended  
18 questions. This Court is very concerned about how you're asking these  
19 questions. They do not appear to be open ended to your client.

20 MR. DOYLE: Okay.

21 BY MR. DOYLE:

22 Q Doctor, at the time of the Farris deposition, what thoughts  
23 were going through your head about the Center case?

24 A None.

25 Q Why not?

1           A     A) to me, they weren't material to the issue at hand. I was  
2 focused on my care and my medical responsibilities to Mrs. Farris in my  
3 deposition -- or my answers to questions in that regard.

4           Q     The deposition transcript in Farris, did you -- tell us whether  
5 you received it.

6           A     I received a letter and transcript within the last week or two,  
7 regarding that.

8           Q     Did you receive the deposition transcript before then?

9           A     No, I did not.

10           MR. DOYLE: That's all I have then. Thank you.

11           THE COURT: Thank you. Any questions by Plaintiff's  
12 counsel?

13           MR. JONES: Yes, Your Honor.

14           THE COURT: And since there's two of you, only one will be  
15 asking questions, correct.

16           MR. LEAVITT: That is correct.

17           MR. JONES: That is correct, Your Honor.

18           THE COURT: I appreciate it. Thank you.

19           MR. JONES: Your Honor, I have some binders here that just  
20 have some exhibits that I know I'll reference a couple of them, but I may  
21 reference several.

22           THE COURT: Are they exhibits that have been introduced in  
23 this case and are already on your pretrial through your joint pretrial  
24 memorandum? What I'm trying to get clear is that they were exhibits  
25 that have been produced in this case, they were at your 2.67, you know

1 what I mean, exchanged as proposed exhibits, et cetera. Meaning  
2 they're not new exhibits coming in for the first time today.

3 MR. JONES: Yes, with the exception of a couple,  
4 Your Honor. So what we have is the answer and complaint, and then we  
5 have the Answers to Interrogatories by Dr. Rives for his corporation and  
6 for himself personally. There's three sets of those each. Right? So  
7 there's six.

8 THE COURT: Okay. So they're --

9 MR. JONES: Our 2.67 --

10 THE COURT: So they've been E-served. Okay. So what  
11 you're talking about --

12 MR. JONES: They have been E-served, Your Honor.

13 THE COURT: -- the pleadings that have been E-served. I just  
14 want to ensure that there's no surprises that come up from either side.  
15 Right? Fairness --

16 MR. JONES: Correct.

17 THE COURT: -- to both sides forward -- forward and fair to  
18 both sides in each and every case.

19 MR. JONES: That -- that is correct, Your Honor. And we  
20 have disclosed the deposition that the doctor gave in the *Center* case.  
21 That is also included here.

22 THE COURT: That was attached to the pleadings with your  
23 Exhibit 3, I think.

24 MR. JONES: That is correct, Your Honor.

25 THE COURT: Okay. So let's see, the Court's not taking any

1 position. We'll see what I hear from the other side --

2 MR. DOYLE: Yeah.

3 THE COURT: -- as you go through. So the Court's not taking  
4 a position until you do what you do. I just --

5 MR. JONES: And --

6 THE COURT: With that representation --

7 MR. JONES: -- Your Honor, may I approach to provide --

8 THE COURT: Of course.

9 MR. JONES: -- a copy to the Court?

10 THE COURT: Right.

11 MR. JONES: And also to the --

12 THE COURT: Like I said, the Court's not going to take any  
13 position until I hear what you're saying and what you're asking.

14 MR. JONES: Yeah. Thank you, Your Honor.

15 [Counsel confer]

16 CROSS-EXAMINATION

17 BY MR. JONES:

18 Q All right. Doctor, the binder that you have in front of you, I'd  
19 just like to go through it with you relatively quickly. If you can look --  
20 turn to Tab 1. This is the complaint of the Farrises against yourself in  
21 this case and against the Laparoscopic Surgery of Southern Nevada.  
22 Does that appear correct?

23 A It does.

24 Q Okay. Have you seen this document before?

25 A I believe I have, yes.

1 Q Okay. Let's go ahead and turn to Tab 2. This is your answer  
2 to the Plaintiff's complaint in this matter. Have you seen this document  
3 before?

4 A I believe so, yes.

5 Q All right. Turn to Tab 3, please. This is Defendant Barry  
6 Rives -- Dr. Barry Rives' response to Plaintiff Titina Farris' first set of  
7 interrogatories. And you can see up in the top right-hand corner it says,  
8 "Electronically served 4/17/2017 at 1:20 and 37 seconds, p.m."?

9 A Yes.

10 Q Okay. Have you seen this document before?

11 A A couple weeks ago, yes.

12 Q Okay. So you did not see this document prior to April 17th,  
13 2017; is that correct?

14 A That is correct.

15 Q Okay. If you turn to Tab 4, this document was electronically  
16 served on September 13th, 2019, and it's entitled, "Defendant Dr. Barry  
17 Rives' supplemental response to Plaintiff Titina Farris' first set of request  
18 for production of documents." Have you seen this document before?

19 A Yes, I have.

20 Q Okay. And when did you first see this document?

21 A Just about that time.

22 Q About the 13th of September?

23 A Sometime in that frame, yeah.

24 Q Okay. When you say, "that frame," what are the parameters  
25 of the frame that you would provide?

1 A Maybe within one or two weeks of it being filed.

2 Q Either --

3 THE COURT: Counsel, can you re-ask that question? I  
4 didn't --

5 MR. JONES: Yes. I'm trying to establish the time frame  
6 whereby the doctor identified it.

7 BY MR. JONES:

8 Q Doctor --

9 THE COURT: Which tab is that? I was trying -- I --

10 MR. JONES: Oh. Tab 4, Your Honor.

11 THE COURT: One or two weeks -- can you please re-ask the  
12 question? I was trying to --

13 MR. JONES: Certainly.

14 THE COURT: -- get the date --

15 MR. JONES: Yes.

16 THE COURT: -- that you got listed. Please. Thank you.

17 BY MR. JONES:

18 Q So I asked you when it was that you first observed this  
19 document, Doctor. And -- go ahead?

20 A "Defendant Dr. Rives' supplemental response to Plaintiff  
21 Titina Farris' first set of requests for production of documents." The  
22 supplemental response --

23 Q Yes.

24 A -- was sometime in September.

25 Q Okay. Do you have any -- anymore narrower parameters

1 than sometime in September to identify when it was that you saw this  
2 document for the first time?

3 A No, I don't.

4 Q Okay. All right. Did you ever see either of these documents,  
5 whether it be Exhibit 3 or Exhibit 4, prior to September 2019, Doctor?

6 A The supplemental response and -- hold on one second --  
7 Defendant response to first set -- no.

8 Q Okay.

9 A The first time I saw these was sometime in September of this  
10 year.

11 Q Okay. Thank you, Doctor.

12 THE COURT: So that question was Tabs 3 and 4? When  
13 you're doing it by tabs rather than titles, I'm trying to make sure I've got  
14 the correct --

15 MR. JONES: Thank you.

16 THE COURT: -- titles of what you're saying. So --

17 MR. JONES: I appreciate it, Doctor -- Your Honor.

18 THE COURT: Because the Court needs to be clear.

19 MR. JONES: Right.

20 BY MR. JONES:

21 Q And to be clear, Doctor, the tabs we were talking about were  
22 3 and 4, which would have been the initial responses and the  
23 supplemental responses, correct?

24 A The supplemental response to request for production of  
25 documents and the response to Plaintiff's first set of interrogatories,

1 correct.

2 Q Okay. And those were the documents that one -- the first  
3 was served 4/17/2017, and the second was served 9/13/2019, correct?

4 A Correct.

5 Q Okay. And those were -- you saw those for the first time both  
6 in September of 2019. Fair?

7 A That is correct.

8 Q All right. Turn to Tab 5. So this document is titled,  
9 "Defendant Dr. Barry Rives' first supplemental response to Plaintiff Titina  
10 Farris' first set of interrogatories." And this is dated 9/25/2019, correct?

11 A That is correct.

12 Q Have you ever seen this document before?

13 A I have.

14 Q Okay. And when did you first see this document?

15 A Sometime in September.

16 Q Okay. Did you see it before, after, or concurrently with the --  
17 the document that was served 9/13/2019, the supplemental response,  
18 versus the first supplemental response?

19 A I don't have an independent recollection of that.

20 Q You don't have an independent recollection of when you saw  
21 each?

22 A No. I got a number of emails in the last couple of weeks, all  
23 through September, with different interrogatories, different supplements  
24 asking me to review, and then verify, get it notarized, and resigned.

25 Q Okay.



1           A     So which one came in one email versus the other, I'd have to  
2 review my emails for that.

3           Q     Based on your recollection, did you see them all at one time  
4 or did you see them on multiple occasions?

5           A     I saw them on multiple vacation -- multiple occasions.

6           Q     Okay. And as we sit here today, you couldn't tell like me or  
7 the Court when it was that you saw one versus the other. Is that fair?

8           A     Exactly, no.

9           Q     Okay. All right. All of them in September 2019 for the first  
10 time?

11          A     I believe September or possibly even late August, but  
12 sometime in the last four to six weeks, yes.

13          Q     Okay. Let's go ahead and -- I want to be very brief with the  
14 next three. If you took at Tabs 6, Tabs 7, and Tabs 8, these are  
15 essentially the mirror responses or -- the responses are different, and the  
16 questions are different, but these were served at the exact same times as  
17 the aforementioned three that we went through. And these are with  
18 respect to Defendant Laparoscopic Surgery Center of Southern Nevada --  
19 Surgery of Nevada, LLC's responses.

20                 And so the first, which is Tab 6, was electronically served  
21 4/17/2017, the seventh tab is your supplemental responses, and the  
22 eighth tab is the first supplemental responses. Again, these are for your  
23 corporation. Correct?

24          A     Correct.

25          Q     All right. Tab Number 6, have you ever seen this before?

1 A Yes, I have.

2 Q When did you see this, Doctor?

3 A Within the last couple weeks.

4 Q Okay. The same timeline as the aforementioned three that  
5 we just went through?

6 A Correct.

7 Q Okay. Number 7?

8 A Same timeline.

9 Q Okay. Number 8?

10 A Same timeline.

11 Q Okay. Now, Doctor, are you sure that you have not seen  
12 these before, any of these six that we just went through, prior to  
13 September of 2019?

14 A Yes.

15 Q Okay. Why are you so sure of that, Doctor?

16 A Because when I had a chance to review them, there were  
17 errors on there that I needed to have them corrected.

18 Q And that's true both for the ones for your corporation as well  
19 as for your Answers to Interrogatories for yourself personally?

20 A I'd have to go through them again to verify that.

21 Q Please do so.

22 [Witness reviews document]

23 THE WITNESS: Yeah, I reviewed them in September of this  
24 year, because I needed to correct the address on my corporation's  
25 responses as well.

1 BY MR. JONES:

2 Q Okay. So because of that, you can say with certainty for the  
3 Court that this is the first time you saw them, was September 2019,  
4 correct?

5 A Or sometime in September, yes.

6 Q Right. Sometime in September 2019?

7 A Oh, 2019. Yes.

8 Q Okay. And that you've never seen either one before, correct?

9 A That is correct.

10 Q All right. Doctor, who is Teresa Duke?

11 A Teresa Duke is head of credentialing at St. Rose -- actually  
12 St. Rose, all campuses.

13 MR. JONES: Your Honor, I have another exhibit that I didn't  
14 think I was going to be needing to attach. We received this from Defense  
15 counsel within the last week or so, two weeks perhaps. One through  
16 paralegals. We reached out to them for a copy of the verification in this  
17 case. I'd like to distribute verifications signed by Dr. Rives that we've  
18 received within the last week.

19 THE COURT: Is that the one that came in the night before the  
20 last --

21 MR. JONES: No, Your Honor.

22 THE COURT: -- hearing?

23 MR. JONES: This is one that -- that we happened to receive  
24 by email within the last week or so.

25 THE COURT: All right. But what I'm asking is, I think at the

1 original hearing set on order shortening time in this case on 9/26 on the  
2 10 a.m., you all disclosed to me at the hearing on 9/26 that -- I believe  
3 you said the evening before, you received a verification. Is that the  
4 verification you're talking about that's in your hand, or is this a different  
5 verification? I'm just trying to get an understanding of --

6 MR. JONES: Absolutely.

7 THE COURT: -- what verification is this.

8 MR. JONES: Yes. And, Your Honor, I'll -- so after we got  
9 Defendant's opposition, we asked them if they had a verification, and  
10 their paralegal sent us this, which is a verification of Dr. Rives for his  
11 surgery center.

12 THE COURT: Okay. So --

13 MR. JONES: It appears to contradict what Dr. Rives just  
14 testified to, Your Honor.

15 THE COURT: Okay. Well, let's see it, and see what people's  
16 position is. So you're saying you got this from the paralegal of the Doyle  
17 firm? I'm just trying to get an understanding who you got it from, when  
18 you got, and where you got it, if you don't mind, please.

19 MR. JONES: Absolutely, Your Honor. When we saw  
20 Defendant's opposition, much of it said, well --

21 THE COURT: Okay.

22 MR. JONES: -- it's really not that bad because there wasn't a  
23 verification, I reached out to Mr. Hand and I said, is there a verification?  
24 And he said, oh, let me check. And his paralegal sent an email to the  
25 paralegal asking for verification from Mr. Doyle's office, and they sent

1 over this verification.

2 THE COURT: Okay.

3 MR. JONES: And so we received this in the last week or two,  
4 is my --

5 THE COURT: Okay.

6 MR. JONES: -- understanding, Your Honor.

7 THE COURT: So time frame -- just so the Court has an  
8 understanding here, just -- because you all are talking about a lot of  
9 different time frames. Defendant filed their opposition. Since I don't  
10 have the final stamped copy -- I'm looking at the date on page 22. Okay?  
11 It says September 24, 2019. Okay? So your understanding is you got  
12 this verification some point between September 24 and when the  
13 hearing took place on September 26, or you got it -- I'm just --

14 MR. JONES: No. That's --

15 THE COURT: I'm trying to chronology it.

16 MR. JONES: Right.

17 THE COURT: I'm trying to get the correct chronology here,  
18 please.

19 MR. JONES: My understanding is right around that time,  
20 Your Honor.

21 THE COURT: Okay.

22 MR. JONES: That's my understanding.

23 Now, to be clear, the -- at the hearing, I didn't mention this  
24 because it didn't seem directly on point at all, since this is only a  
25 verification of the company, not of his individual responses.

1 THE COURT: Okay. Okay.

2 BY MR. JONES:

3 Q Dr. Rives, what is this document that I've just handed you?

4 A It's a verification regarding Laparoscopic Surgery of  
5 Nevada's response to Plaintiff Titina Farris' first set of interrogatories.

6 Q All right. And can you read -- it says verification. And can  
7 you please read what it says below that?

8 A "I, the undersigned, declare I have read the foregoing  
9 document, and know the contents thereof. I am informed and believe  
10 that the matters stated therein are true. And on that ground, I allege that  
11 the matters stated therein are true. I declare under penalty of perjury  
12 that the foregoing is true and correct. Executed on the 27th of 2017 at  
13 Henderson, Nevada."

14 Q Is that your signature, Doctor?

15 A That is.

16 Q All right. And Teresa Duke is a notary at St. Rose?

17 A She's head of medical credentialing, but she's a notary, yes.

18 Q Okay. And she's notarized documents for you before?

19 A Yes, she has.

20 Q And you don't doubt -- you don't deny that you signed in  
21 document, that it was notarized?

22 A No, I don't.

23 Q Okay. All right. So, Doctor, what you testified to before, a  
24 moment ago, that you had never seen this document up until September  
25 of 2019, that's not true, is it?

1 A No. It is true.

2 Q So, Doctor, you had this verification notarized when?

3 A The 27th, 2000- -- April 27th, 2017.

4 Q Okay. And you did that without looking at the document that  
5 it attached to?

6 A The documents came as an email. The first PDF I pulled up  
7 was for something regarding discovery. I read it as a bunch of legalese.  
8 They asked me, can you approve these? So I printed out the last  
9 verification, had it signed and notarized.

10 Q Okay. So -- and you didn't go back to read what you were  
11 swearing under penalty of perjury was true?

12 A You mean the other documents?

13 Q Right.

14 A No.

15 Q Okay. What did you -- what did you believe this related to,  
16 Doctor, at the time that you swore under penalty of perjury that the  
17 answers were true?

18 A To the documents prepared by my legal counsel.

19 Q Okay. All right. And you did so. It says, "I have read the  
20 foregoing document and know the contents thereof." That was not true  
21 when you signed this?

22 A No.

23 Q Okay. And you have no idea whether or not the information  
24 stated therein was true or not, did you, because you hadn't reviewed any  
25 of it?

1           A     I did not review it. Having been with this counsel for many  
2 years and seeing these in the past, half the time I can't make sense of  
3 them, so I assume what their due diligence has been is true. Yes.

4           Q     Okay. All right. But you certainly did not verify that any of  
5 the statements therein were true, correct?

6           A     I did not review them sentence by sentence, no.

7           Q     And your understanding when you signed this was that you  
8 were affirming that everything they had sent to you was true, correct?

9                   MR. DOYLE: Objection. It mischaracterizes the evidence.

10                  MR. JONES: I don't think it does at all.

11                  THE COURT: Okay. I need an answer -- I need a further --  
12 since this is me and an evidentiary -- I don't have a jury -- I need a further  
13 explanation. I don't want --

14                  MR. DOYLE: This is --

15                  THE COURT: -- it in his presence though because I do not  
16 want to -- in light of the issues that were raised with these leading  
17 questions, I need this done in a manner that explains to the Court. So  
18 we have a couple of ways of doing that.

19                  MR. DOYLE: Can we approach?

20                  THE COURT: But I want to ensure that you are fine with your  
21 client, because we have those mixed interests because he is a client who  
22 is also entitled to hear things.

23                   So, counsel, what do you suggest? You're his counsel.

24                  MR. DOYLE: I'd like to just point out what's wrong with the  
25 question. And the suggestion in the question is inaccurate about this



1 document.

2 MR. JONES: Your Honor, I'm happy to rephrase the question  
3 and see if I can accomplish what I'm attempting to accomplish --

4 THE COURT: Okay.

5 MR. JONES: -- with something that is --

6 THE COURT: Since it's rephrased, the Court will --

7 BY MR. JONES:

8 Q Doctor, a moment ago you testified --

9 THE COURT: -- not address it.

10 Go ahead.

11 MR. JONES: Oh, sorry.

12 BY MR. JONES:

13 Q Doctor, a moment ago you testified that you got all of these  
14 documents from counsel, and that you knew that they wanted a  
15 verification signed, so you printed off the very last page of all of them  
16 and signed that, correct?

17 A That is correct.

18 Q Okay. And you did that believing that this was a verification  
19 saying that everything they had sent you was true. Is that fair?

20 MR. DOYLE: Objection. It mischaracterizes the evidence.

21 THE COURT: The Court's going to overrule the objection  
22 because he said, "Is that fair."

23 THE WITNESS: I'm sorry. You're going to have to -- I got  
24 lost in all this, quite honestly.

25 MR. JONES: You bet, Doctor.

1 BY MR. JONES:

2 Q You printed off this last page, and you signed it as a  
3 verification that you were saying that everything they had sent you was  
4 true --

5 A Correct.

6 Q -- is that -- all right, Doctor. Now, I want to go through --  
7 you've been deposed numerous times, and that dealt with previously,  
8 and you were under oath in each occasion; isn't that true?

9 A That is true.

10 Q And you've answered interrogatories in numerous cases, and  
11 you would know that you -- that those are under penalty of perjury as  
12 well, correct, when you answered those?

13 A My counsel has answered those interrogatories for me, yes.

14 Q But you knew -- but you signed verifications for those  
15 interrogatories, correct?

16 A I believe so, yes.

17 Q And the verifications to those interrogatories were sworn  
18 under penalty of perjury, were they not?

19 A I believe so, yes.

20 Q And you're the one swearing under penalty of perjury that  
21 they're true, aren't you?

22 A Yeah, I guess. Yeah.

23 Q Okay. All right. Now, Doctor, during your deposition, you  
24 stated that -- in this case, you stated that Mr. Hand provided you with  
25 some documents, including your CV and including interrogatory

1 responses; is that true?

2 A Rereading the deposition and the best of my recollection,  
3 yes.

4 Q Okay. When did you reread that deposition, Doctor?

5 A Sometime in the last week or two.

6 Q Okay. Any time before that since the time of your  
7 deposition?

8 A I do not -- I don't think I even had the deposition. No.

9 Q Okay. So you believe the first time you saw that deposition  
10 since the deposition was sometime last week or two?

11 A I believe so, yes.

12 Q We can agree that that deposition as taken October 24th,  
13 2018?

14 A I have no reason to quibble with that.

15 Q Okay. Let's just flip over to Exhibit 10.

16 MR. JONES: Your Honor, I have a few more questions still.  
17 Is there --

18 THE COURT: Here's what we're going to -- how much time  
19 do you estimate that you still need?

20 MR. JONES: Maybe ten minutes. Something like that.

21 THE COURT: Okay. And how much do you need for your  
22 final rebuttal or your final -- are you going to do redirect?

23 MR. DOYLE: So far, no.

24 THE COURT: Okay.

25 MR. DOYLE: But I haven't heard everything.

1 THE COURT: Okay. Then Tena says I'm fine for the other  
2 case that's waiting, estimate we're probably more likely to start closer to  
3 10:15 just to let you know, best estimate. Okay. So if you need to be  
4 doing something, we won't call -- you know what I mean? We won't  
5 start without you, let's put it that way. But more likely 10:15. Okay.  
6 Thank you.

7 Go ahead, counsel.

8 BY MR. JONES:

9 Q Now, Doctor, the -- when he handed those to you, did he give  
10 you the impression that you weren't really permitted to really look  
11 through those answers?

12 A Say that again?

13 Q Well, I'll say it the other way. Was it clear that he wanted you  
14 to review what he was handing you?

15 A He asked me to review the CV part, yes.

16 Q Okay. But he handed you both things?

17 A Yes.

18 Q Did he say, please review your CV, but don't review the  
19 interrogatories?

20 A He asked me only to review the CV.

21 Q Okay. All right. Did you, at any time, review the  
22 interrogatories at that time?

23 A No, I don't believe I did.

24 Q Did you even look at them as -- during the course of that  
25 deposition?

1           A     I don't believe I did.

2           Q     Okay. Do you have an actual recollection of either looking at  
3 them or not looking at them during that deposition?

4           A     To the best of my recollection is that I did not.

5           Q     Okay. So I just want to ask you again. Do you have an  
6 independent recollection of that? Do you actually recall answering his  
7 questions about interrogatories without them in front of you versus with  
8 them in front of you?

9           A     In -- you mean independent of all other information like  
10 rereading the deposition?

11          Q     I'm asking you right now, do you have a memory in your  
12 mind of the deposition that is so clear that you can tell the Court with  
13 certainty, based on your memory, whether or not you answered the  
14 questions with the deposition -- or interrogatories in front of you?

15          A     To the best --

16               MR. DOYLE: Objection. Argumentative.

17               THE COURT: Court's going to overrule that.

18               THE WITNESS: Am I allowed to answer?

19 BY MR. JONES:

20          Q     Yes.

21          A     To the best of my recollection, to the best memory I have as I  
22 sit here today is that I did not have those when he asked me about them.

23          Q     Okay. Do you have a recollection of answering those  
24 questions --

25               THE COURT: Bless you.

1 BY MR. JONES:

2 Q -- and that the interrogatories were not in front of you?

3 A Yeah, I believe I just stated that.

4 Q Okay. All right. Okay. If you can turn to page 10 of Exhibit  
5 10, down at the very bottom of that page, beginning line 25, there's a  
6 question. It says,

7 "If I could direct you to response number 3. And the question  
8 is if you had ever been named as a defendant in any case  
9 arising from alleged malpractice or negligence? So I'm just  
10 going to go over these with you. We are on page 2."

11 So are you saying that as he's saying that to you that you did not  
12 have that document in front of you?

13 A That's correct because he asked for it back on page 10,  
14 around question -- line 1 or 2 where he says, "Can I see those  
15 interrogatories again for a second. Thank you."

16 Q Okay. And so you're saying that when he did that there was  
17 only one set of interrogatories, and he was just talking to you only at that  
18 time?

19 A Correct.

20 Q Okay. So when he was asking -- when he was saying if he  
21 could direct you to response number 3, he was holding the only set of  
22 interrogatories himself and not directing you to anything?

23 A He was holding the interrogatories and going through the list  
24 that he was reading. I was listening to him as he was reading the list of  
25 cases.

1 Q Okay. Doctor, have you looked at any portion of the  
2 deposition of the *Center* case within the last month?

3 A Yes.

4 Q When was that?

5 A Within the last two weeks maybe.

6 Q Was that also in relation to this hearing?

7 A Yes, it was.

8 Q Okay. In the *Center* case, do you recall being asked about  
9 prior medical malpractice cases in which you had been involved?

10 A I believe so, yes.

11 Q And you'd agree that when you were under oath in the  
12 *Center* case, you also had taken an oath to tell the truth, and as you  
13 stated, the whole truth and nothing but the truth, correct?

14 A That is correct.

15 Q And that was true for today, at the deposition in the Farris  
16 case, and the deposition in the *Center* case, correct?

17 A That covers all aspects of my life, yes.

18 Q Okay. Let's go ahead and go to Exhibit 9. And you'd agree  
19 this is a copy of your deposition in the *Center* case, correct?

20 A It appears to be, yes.

21 Q Okay. Now, in the *Center* case, you also failed to mention  
22 the Farris case when you were asked about medical malpractice cases  
23 you'd been involved in, correct?

24 MR. DOYLE: Objection. Mischaracterizes the evidence.

25 THE COURT: The Court can't make a ruling on that because

1 you're referencing a hundred plus page document. So the Court's going  
2 to have reserve and hear what the answer is and then rule afterwards  
3 and let you each provide what you want to provide afterwards.

4 Go ahead.

5 BY MR. JONES:

6 Q Go ahead, Doctor. Answer.

7 A I'm sorry; you're going to have to remind me.

8 Q Yes, Doctor. You'd agree that you failed to name the Farris  
9 case when you were asked about medical malpractice cases in which  
10 you had been involved during your *Center* deposition?

11 A When I reviewed my deposition I realized that I had left off  
12 both pending cases, Brown and Farris.

13 Q Okay. So you failed to disclose that you had the Farris case,  
14 and you failed to disclose that you had the Brown case during your  
15 *Center* deposition?

16 A No, I misunderstood the question. I thought it was related to  
17 matters that had been settled. So I talked about the four cases that had  
18 been settled. I didn't realize that included the three pending cases, which  
19 would have been *Brown, Center, and Farris* at that time.

20 Q Okay. But you would agree in retrospect, having reviewed  
21 this in the last two weeks, that the question required you to be candid  
22 even about the Farris and the *Brown* case, correct?

23 A In retrospect, yes.

24 Q Okay. And so you're just saying at the time, you  
25 misunderstood it, correct?



1 A That is correct.

2 Q And because of that, you gave incomplete testimony,  
3 correct?

4 A That is correct.

5 Q Okay. Now, you'd agree that your attorney understood the  
6 call of the question in the Farris case to require you to mention the  
7 *Center* case when you were being deposed in the Farris case?

8 MR. DOYLE: Objection. Speculation.

9 THE WITNESS: I'd say you'd have to ask Chad.

10 THE COURT: Wait just a second. Hold on. Can you repeat  
11 that question? You understood --

12 BY MR. JONES:

13 Q During your deposition --

14 MR. JONES: I think it's a fair objection, Your Honor. I think it  
15 is speculative. I'm going to move on.

16 THE COURT: Okay. You're going to rephrase. Since it's  
17 been withdrawn, then the Court need not rule?

18 MR. JONES: Yes, I'll withdraw --

19 THE COURT: Okay.

20 MR. JONES: -- the question, Your Honor.

21 BY MR. JONES:

22 Q Now, do you recall if Mr. Brenske, after you failed to divulge  
23 the Farris case during the *Center* case, if Mr. Brenske, the attorney in the  
24 *Center* case, reminded you of the Farris case at some point?

25 MR. DOYLE: I'm going to object. It mischaracterizes his

1 testimony.

2 THE COURT: I'm going to overrule that objection because  
3 it's a do you recall if this happened, so it's not testimony.

4 THE WITNESS: You mean do you -- do I recall after having  
5 read the deposition?

6 BY MR. JONES:

7 Q I asked if you recalled.

8 A Well, does that include rereading my deposition? Because  
9 something jogs your memory or --

10 Q Answer it the way you see fit, Doctor.

11 A Rereading my deposition on *Center*, Mr. Brenske readdresses  
12 me towards the two pending cases. Yes.

13 Q Okay. So after he asked you and you hadn't mentioned  
14 those cases, he later brought those cases up to you?

15 A He did. Yes.

16 Q Okay. All right. And do you recall providing Mr. Brenske an  
17 explanation about what happened in the Farris case?

18 A I'd have to review that.

19 Q Doctor, can you give a short description about what  
20 happened in the Farris case?

21 A Right now?

22 Q Yeah.

23 A Oh, Ms. Farris came to me because she had a recurrent  
24 eventual hernia. I recommended surgery for that. Went through all the  
25 risks, benefits, alternatives regarding the surgery. We did a presumed to

1 be outpatient surgery. During that surgery, there were injuries to the  
2 transverse colon that are repaired at that time. Subsequently, she  
3 developed sepsis and had a prolonged hospital course.

4 Q Okay. Now, Doctor, when you were asked to provide a  
5 description from Mr. Brenske, you don't recall what it is that you stated?

6 A Not without reviewing the record, no.

7 Q All right. I'll refer you to page 18 of your deposition in this  
8 case. This is Exhibit 9, beginning at line 3, going through 12.

9 "Q With regard to the next case, Farris --

10 A Wait, I'm not there yet.

11 Q Oh, okay.

12 A Hold on.

13 Q My apologies, Doctor.

14 A Where are we at? Page 18 --

15 Q Page 18.

16 A Oh, there are four pages to a page. Okay.

17 Q Yes. Yeah. I apologize. That's the only version I have at this  
18 time.

19 A No worries.

20 Q Page 18, beginning at line 3. Tell me when you're ready.

21 A Go ahead.

22 "Q With regard to the next case, Farris v. Reeves, is that case  
23 still ongoing?

24 "A Yes.

25 "Q In ten words or less, can you -- you don't have to do it in ten

1 words or less, but can you just give us a brief description of what that --  
2 the allegations in that case?"

3 And then your answer is there. Doctor, can you read your answer?

4 "A The patient had a laparoscopic hernia repair and resulted in  
5 oculocutaneous fistula postoperatively that required subsequent  
6 surgery."

7 Q That's not accurate, is it, Doctor?

8 A It -- yeah, it is.

9 Q That is accurate?

10 A Yeah.

11 Q When was she diagnosed with oculocutaneous fistula by  
12 you?

13 A It was when she had her CT scan showing the extravasation,  
14 and she had to go -- be taken back to surgery. I don't recall the exact  
15 date of that.

16 Q And you're saying that you diagnosed her with that  
17 condition?

18 A I diagnosed her with that -- I don't know --

19 Q With oculocutaneous fistula?

20 A Well, it hadn't fistulized yet, but it was a leak, so it was going  
21 to be oculocutaneous fistula, effectively, yes.

22 Q Did she develop oculocutaneous fistula, Doctor?

23 A She went to surgery.

24 Q She did go to surgery.

25 A Right.

1 Q Did she develop oculocutaneous fistula, Doctor?

2 A No.

3 Q She did not?

4 A No.

5 Q Okay. Now, you testified under oath here on page 18 that it  
6 resulted in oculocutaneous fistula.

7 A Correct.

8 Q Isn't that what your testimony was?

9 A It was.

10 Q Okay. And in fact, you never diagnosed her with  
11 oculocutaneous fistula, did you?

12 A We diagnosed her with oculo -- we diagnosed her with a  
13 perforation to the colon. That's the development of oculocutaneous  
14 fistula. Whether you want to say it's matured and she's leaking stool out  
15 of her skin or whether you want to say she has a perforation and that's  
16 going to be the subsequent outcome of it, whichever part of that time  
17 frame you want to be definitive, depends upon your definition, I guess.

18 Q Okay. In any event, you would agree with me that she was  
19 never diagnosed with oculocutaneous fistula; isn't that true?

20 A She was not diagnosed with oculocutaneous fistula.

21 Q And she was not diagnosed by you or by anyone else, was  
22 she?

23 A She didn't develop oculocutaneous fistula because she went  
24 back to surgery --

25 Q Okay.

1 A -- on that day or the day after, I should say.

2 Q On -- you mean like 13 days after the original surgery?

3 A When Dr. Hamilton [phonetic] did the surgery.

4 Q Okay.

5 A Correct.

6 Q Got it. Is there any reason that you didn't tell Mr. Brenske  
7 that she developed bilateral foot drop?

8 A No.

9 Q Is there any reason that you didn't tell Mr. Brenske that she  
10 became septic post-op day one?

11 A No.

12 Q Is there any reason you didn't tell Mr. Brenske that she  
13 remained septic, and you didn't recommend surgery for more than 11  
14 days?

15 A No.

16 Q Okay. You knew that those were all issues, allegations made  
17 against you in the *Center* case, though, correct?

18 A Correct. He asked me to summarize, not allege what the  
19 allegations against me were.

20 Q Okay. And you agree that all of those are commonalities in  
21 this case, correct?

22 A No.

23 Q No?

24 A Not at all.

25 Q Those that I just mentioned are not?

1 A With the *Center* case?

2 Q That's correct, those three things.

3 A But Center never had foot drop.

4 Q Okay. Her feet were amputated instead, correct?

5 MR. DOYLE: Your Honor, relevance.

6 THE COURT: The Court's going to sustain for the purpose of  
7 today's evidentiary hearing.

8 MR. JONES: Okay.

9 THE COURT: I'll sustain his objection.

10 MR. JONES: All right.

11 BY MR. JONES:

12 Q Doctor, you agree that the documents that you received in  
13 April of 2017 failed to list the *Center* case, correct?

14 A That is correct.

15 Q Okay. And you agree that you signed a verification that you  
16 believed was attesting to the truthfulness of those documents, although  
17 you never reviewed them yourself?

18 A Basically, yes.

19 Q Okay. And you'd agree that during your deposition, you  
20 never provided information about the *Center* case until after your  
21 attorney stepped in and mentioned what has come into the transcript as  
22 *Center*, correct?

23 A Yeah. I was never asked about the *Center* case. No.

24 Q You ultimately were asked about the *Center* case, weren't  
25 you?

1           A     In the part that you were talking about, no. But later, yes.

2           Q     Okay. After your attorney mentioned the case, you were  
3 then asked about it?

4           A     That is correct.

5           Q     Okay. And when you were asked about the *Center* case, you  
6 didn't mention that she developed sepsis post-op day one, correct?

7           A     I don't recall what I said. I'd have to review it on the  
8 deposition.

9           Q     Okay. Let's go ahead to page 10.

10           MR. JONES: Your Honor?

11           THE COURT: A few more moments, Counsel.

12           MR. JONES: Okay.

13           THE COURT: You went into an area that was outside, so  
14 you --

15           MR. JONES: That's fair enough. I can shut it down, Your  
16 Honor, if you'd like me to.

17           THE COURT: We've got a moment or two, and then --

18           MR. JONES: Okay.

19           THE COURT: -- I'm going to see if counsel has an  
20 understanding of the case.

21           MR. JONES: I will be finished in one minute.

22           BY MR. JONES:

23           Q     Page 13, Doctor, of Exhibit 10.

24           A     Okay.

25           Q     Are you there?



1 A Yes, I am.

2 Q Let's see. Okay. It's actually on page 14. Sorry, beginning  
3 line 3 says, "Can you tell me what that case involved?" And your  
4 answer?

5 A "Patient had diaphragmatic tear laparoscopically. She  
6 aspirated and became septic."

7 Q Okay. And while those are things that you may have argued  
8 in your trial in that case, you'd agree with me that the allegations were  
9 that she became septic post-op day one?

10 A That was an allegation, yes.

11 Q Right. And you agreed that that was the case, in fact, did you  
12 not?

13 A Yeah.

14 Q And also, that there was an 11-day period in which she  
15 remained septic without surgical --

16 MR. DOYLE: Objection. Relevance. Relevance.

17 THE COURT: I'm going to sustain it as to that's a substantive  
18 question not for purposes of today's evidentiary hearing.

19 MR. JONES: Thank you, Your Honor. I'll move on.

20 BY MR. JONES:

21 Q Doctor, is it your practice to swear under oath without  
22 knowing or reviewing information you're swearing to?

23 A No.

24 Q It just happened in this case?

25 A That is correct.

1 MR. JONES: That's all, Your Honor.

2 THE COURT: Thank you. Counsel?

3 MR. DOYLE: I don't have any questions.

4 THE COURT: Okay. The Court has a few follow-up  
5 questions. I'm going to tell you what the Court's questions are and it's  
6 really going to be up to -- if either counsel does not wish the Court to ask  
7 any of these questions, then I won't. It's really as simple as that, okay?

8 So I'm going to tell you what the question is. Well actually,  
9 there's a few of them, okay? First question is the Court would like to  
10 have a better clarification of how Dr. Rives knew in April 2017 to get into  
11 the email to find the verification, to sign the verification.

12 MR. DOYLE: No objection.

13 MR. JONES: No objection, Your Honor.

14 THE WITNESS: I was sent an email from my attorneys with --

15 THE COURT: And the Court's not asking about the content of  
16 any communications, but the way you described it --

17 THE WITNESS: Okay.

18 THE COURT: -- I'm trying to just get an understanding of  
19 how you knew -- you said you opened up --

20 THE WITNESS: An email.

21 THE COURT: -- an email, the last page and to find the  
22 verification on the last document, in the last page of the last document.  
23 So I'm trying to have an understanding of how you knew which  
24 document --

25 THE WITNESS: There's --

1 THE COURT: -- to know, to find a verification.

2 THE WITNESS: So there's a list of pdf files, and there's a  
3 truncated title to each pdf file. It doesn't give the complete title. And I  
4 believe the last one says verification, so I clicked on that one to print it  
5 out, have it signed and notarized.

6 THE COURT: Okay. So the Court's follow up question is was  
7 there only -- I'm trying to get an understanding of what this email looked  
8 like to the extent without in any way invading the attorney client  
9 privilege. Was there only one truncated document that said verification?  
10 That's the next question. Anyone that doesn't want the Court to ask it,  
11 then the Court won't.

12 MR. DOYLE: No objection.

13 MR. JONES: No objection, Your Honor.

14 THE WITNESS: There were -- if I recall correctly, six pdf files.  
15 And as I scanned through them that was the one that came out of in my  
16 mind that said verification on them.

17 THE COURT: So the Court doesn't feel that that answered  
18 the Court's direct question of whether or not there was only one that said  
19 verification. As there were six, was there only one that said verification  
20 is really the question the Court was asking. I was trying to get an  
21 understanding if there was one or more than one that had the word  
22 verification on it.

23 THE WITNESS: I can't remember, Your Honor.

24 THE COURT: Okay. And I'll tell you the Court's next question  
25 would be is whether or not this witness has signed other interrogatories

1 in the past and understands what the verification is, without in any way  
2 asking from any communications with any counsel, but understands  
3 what a verification is from the past, so he's got an understanding of how  
4 he knew to look for the verification in this case from the email. Not  
5 getting into content or any communications, of course. Just trying to get  
6 a background.

7 MR. DOYLE: No objection.

8 MR. JONES: No objection.

9 THE WITNESS: In the email, it asked me if I approve, to sign  
10 the verification.

11 THE COURT: Okay. The Court's question was a little  
12 different about whether or not there had been any prior signing of --

13 THE WITNESS: Oh. My apologies.

14 THE COURT: -- interrogatories and verifications or was this  
15 the first time. Does anyone have any objection to that question being re-  
16 asked so that it clarifies?

17 MR. DOYLE: No, Your Honor.

18 MR. JONES: No objection.

19 THE WITNESS: My apologies, Your Honor. I misunderstood.  
20 I'm sure that in the past, I've been asked to verify these before.

21 THE COURT: Okay. Okay. Those were the Court's  
22 questions. So it is 10:16. Dr. Rives came on the stand, Madam Court  
23 Reporter, what time?

24 COURT REPORTER: 9:16.

25 THE COURT: 9:16. An hour. Just what you all asked for. So,

1 you all being provided the exact amount of time that you specifically  
2 requested on 9/26 to having today for the totality of today's hearing, the  
3 Court finds that it has provided you. And that hour was supposed to take  
4 into account also really the Court's ruling as well, so the Court's given  
5 you a full hour to give you an opportunity. It's offered direct  
6 examination, cross-examination, offered but did not wish any response.  
7 So the witness can feel free to go off the stand.

8               So the Court's position at this juncture is the Court did  
9 exactly what the parties asked for, after the Court offered the evidentiary  
10 hearing. In the intervening time, the Court did go and ask -- just let my  
11 Law Clerk leave to make sure -- I wanted to make sure I reread the letter  
12 of September 30th, 2019, just to see if there was any request for any  
13 additional argument, oral argument, because the Court knows it did not  
14 receive anything subsequent to that. There's no request in this letter. It  
15 just says, you know -- it just says whether he was intending to testify at  
16 the hearing scheduled at 8:30. Correspondence via the Court and  
17 counsel, Dr. Rives will testify.

18               So there's no request for any additional oral argument. The  
19 Court gave you all extensive oral argument to the extent everybody  
20 wished to do as much as you wanted to. In fact, the Court even, on 9/26,  
21 gave you a partial inclination to one portion of Plaintiff's motion and that  
22 was as to the punitive damages portion, to give you some indication so  
23 that to the extent that was of assistance, so that you could fully prepare  
24 for tomorrow's calendar call, but said that the other requested sanction  
25 aspects were still on the table for today's evidentiary hearing to really

1 allow you to narrow where you were going for today.

2           So while I heard Defense counsel mention that you'd like to  
3 do some kind of summation at the end, the Court doesn't see that that  
4 was requested previously by anyone. This was set up specific when I  
5 had counsel -- Plaintiff's table on 9/26, whoever you all chose to come at  
6 the hearing date, which was supposed to be the total final only hearing  
7 date. I had two counsel on Defense. Nobody asked on 9/26. Nobody  
8 asked in any of the intervening time, either in the letter -- I even double-  
9 checked the inappropriately -- which is now stricken, by the way.

10           The Court specifically ordered stricken the improperly rogue  
11 documents filed on 9/30, specifically contrary for all the reasons that the  
12 Court said previously, obviously, the quote supplemental and that  
13 declaration, post -- and for supplemental, because -- for all the reasons  
14 the Court stated. It's not even there, a request for oral argument, so I  
15 double-checked that just to see by chance, even if it was. So even giving  
16 the benefit of the doubt with regards to -- the Court even -- if by  
17 implication, somebody may have intended that somewhere, the Court  
18 can't take that into consideration, because that is -- for all the reasons,  
19 it's impermissible.

20           The Court's not reiterating everything it said for the first time  
21 period this morning at 8:30, so that can't be considered. Those we're  
22 striking, but in any event, there was nothing on the face of that  
23 document that requested specific additional oral argument, and I've  
24 given the other side an opportunity to do so. And the Court -- you all  
25 knew I was scheduling something right after you. In fact, you all thought

1 I was scheduling right after I gave some time.

2 So here's what the Court's going to do. The Court is going to  
3 say as follows. We didn't get to the motion to strike the affirmative  
4 defenses, did not get to the other motions that were also going to be  
5 taken care of, because I wanted to ensure -- we went longer on the  
6 testimonial portion, so I wanted to ensure everyone had a full  
7 opportunity to have that taken care of.

8 So the Court's going to do the following. The Court's going  
9 to give you its ruling on the 10th, but here's what we're going to do. I'm  
10 going to tell you the first part of the Court's ruling, okay? Because that's  
11 going to be important for tomorrow's purposes. For tomorrow's  
12 purposes, here's what you're going to hear. The first portion of the  
13 requested ruling was for terminating sanctions, okay? For terminating  
14 sanctions. And I will give you my longer analysis on Thursday.

15 But the short version of its for there to be terminating  
16 sanctions, those terminating sanctions would need to be due, as you  
17 know, to the conduct of Dr. Rives, okay? Under *Young v. Ribeiro*, well,  
18 I'm just going to short-version it. All analysis setting forth, citing *Young*  
19 *v. Ribeiro*, I will cite all the different provisions of the other applicable  
20 case law, NRCP 37 -- 7.60, all the different basis I -- actually, your  
21 motion's really on 37, but when listening, while there is egregious  
22 conduct, the one mitigating factor for reason why this Court doesn't find  
23 solely on this motion alone -- not taking into account everything else that  
24 the Court needs to address -- for counsel's conduct, for all the other  
25 issues that the Court still needs to address.

1 But for Plaintiff's motion alone, the Court doesn't find that  
2 terminating sanctions under the applicable case law and the rules, would  
3 be appropriate, because Dr. Rives' conduct in and of itself would not rise  
4 to the level for terminating sanctions, based on his testimonial evidence  
5 presented today, taking into account the following. The Court -- after I  
6 get through the whole analysis, what I'll give you further on Thursday,  
7 when you're coming back is the prejudice to Plaintiff issue.

8 By Plaintiff's own declaration in their motion, they  
9 acknowledge that they did not look at some of this information, until, I'm  
10 going to put it, summer of this year. Whereas, this deposition, or some  
11 of this information was clear, was October 2018. So the prejudice  
12 aspect, solely for this motion only, Plaintiff's motion only, I do have to  
13 look at prejudice. Prejudice under *Johnny Ribeiro* is that some of that  
14 prejudice, this Court finds, could have been mitigated, if it had been  
15 looked at earlier.

16 There could have been some additional things the Court  
17 would have had the ability potentially to have done. And that -- taking  
18 that into account, which was one of the factors the Court does  
19 specifically need to take into account. I'm not in any way minimizing the  
20 egregious conduct, which will be discussed later, by both counsel and  
21 client, okay, which the Court will be evaluating and going through. But  
22 the reason why the Court doesn't find it merits at this juncture purely on  
23 Plaintiff's motion only, which is the only thing I'm addressing right now,  
24 is because by Plaintiff's own declaration, this information was available.

25 I'm not in any way adopting the oppositions' position that



1 you needed to look at Odyssey. They had an -- sorry. Yeah. They had  
2 an affirmative -- Defense had an affirmative obligation to give you the  
3 correct information. I'm in no way adopted their position. However,  
4 some of this information was available to Plaintiffs in a manner that it  
5 could have been evaluated, because there was enough in that October  
6 deposition that a reasonable inquiry could have gotten you some  
7 information and gotten some relief requested from the Court in a more  
8 timely manner that could have alleviated some of the prejudice, which is  
9 a factor this Court does have to consider under *Johnny Ribeiro*, and  
10 that's why the Court doesn't find it to be appropriate to do terminating  
11 sanctions.

12 All other sanctions up to that are on the table and will be  
13 further discussed on Thursday. The reason why I needed -- important to  
14 tell you the terminating was not happening is because you have your  
15 calendar call tomorrow. So I want to make it clear, I would expect to see  
16 everything tomorrow, as you have been told all along, okay? Since  
17 January, not since September, as improperly stated in people's  
18 declarations. So we will be seeing you tomorrow at your calendar call.  
19 Thank you so very much.

20 MR. DOYLE: Your Honor, if I may --

21 THE COURT: That's -- this hearing is now over. We'll be  
22 seeing you tomorrow at your calendar call. I need to get to my next case  
23 that's patiently -- you're already taking 25 of their minutes.

24 MR. DOYLE: A quick question. I was going to be traveling  
25 on Thursday. The Court hasn't set a time for the hearing on Thursday,

1 but could I do that by telephone, rather than physically being present?

2 THE COURT: How important you think this --

3 MR. DOYLE: I'll be here personal --

4 THE COURT: -- is for you, that's up to you.

5 MR. DOYLE: I'll be here personally on Thursday.

6 THE COURT: That's up to you.

7 MR. DOYLE: All right.

8 THE COURT: The Court's not requiring, because there's no  
9 evidentiary basis. Thursday is we're going to go over that. We're going  
10 to go over all the other sanction components against you and your firm,  
11 so it's however important you feel it is. If you want a telephonic request,  
12 you can have a telephonic.

13 MR. DOYLE: Okay.

14 THE COURT: It's up to you. The Court's not requiring people  
15 to be here in person. I was going to suggest 1:30 on Thursday the 10th.  
16 See you all. But I was going to discuss that further tomorrow? Okay.  
17 But anticipated time is going to be Thursday the 10th at 1:30. If you want  
18 to be here telephonically, telephonically is fine. Plaintiff's counsel, if one  
19 of you want to be here telephonically, once again, it's your choice.

20 MR. JONES: We will be here, Your Honor.

21 THE COURT: That's up to you.

22 MR. LEAVITT: We'll be present.

23 THE COURT: The Court's not requiring somebody to be here  
24 in present [sic]. The Court's going to go over all those issues. It's how  
25 you wish to be here.

1 MR. JONES: Your Honor, would you like to retain a copy of  
2 the binder that I dropped --

3 THE COURT: I am going to just for purposes that you -- easy  
4 way, instead of me having to click on the system, I've got mine. I'll keep  
5 it until Thursday. But I'll see you tomorrow, okay?

6 MR. JONES: Okay.

7 THE COURT: Thank you so much.

8 MR. JONES: Absolutely, Your Honor.

9 [Proceedings concluded at 10:26 A.M.]

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio-visual recording of the proceeding in the above entitled case to the  
best of my ability.

23 

24 Maukele Transcribers, LLC

25 Jessica B. Cahill, Transcriber, CER/CET-708

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10/14/2019 9:08 AM  
Steven D. Grierson  
CLERK OF THE COURT



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DISTRICT COURT

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CLARK COUNTY, NEVADA

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TITINA FARRIS and PATRICK  
FARRIS,

CASE#: A-16-739464-C

9

Plaintiffs,

DEPT. XXXI

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vs.

11

BARRY RIVES, M.D.;  
LAPAROSCOPIC SURGERY OF  
NEVADA, LLC., ET AL.,

12

13

Defendants.

14

BEFORE THE HONORABLE JOANNA S. KISHNER  
DISTRICT COURT JUDGE  
TUESDAY, OCTOBER 8, 2019

15

16

**RECORDER'S TRANSCRIPT OF CALENDAR CALL**

17

18

**APPEARANCES:**

19

For the Plaintiffs:

KIMBALL JONES, ESQ.  
JACOB G. LEAVITT, ESQ.  
GEORGE F. HAND, ESQ.

20

21

For the Defendants:

THOMAS J. DOYLE, ESQ.  
AIMEE LEA CLARK NEWBERRY, ESQ.

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RECORDED BY: SANDRA HARRELL, COURT RECORDER

1 Las Vegas, Nevada, October 8, 2019

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3 [Case called at 9:15 a.m.]

4 THE COURT: Okay. Counsel, can I have your appearance,  
5 please?

6 MR. HAND: Plaintiff, George Hand, bar number 8483.

7 MR. JONES: Jacob Leavitt and Kimball Jones on behalf of  
8 Plaintiff, as well.

9 MS. CLARK NEWBERRY: Good morning, Your Honor.  
10 Aimee Clark Newberry for Defendant, Dr. Rives and Laparoscopic  
11 Surgery of Nevada.

12 MR. DOYLE: And Tom Doyle, as well.

13 THE COURT: Okay, thank you.

14 Marshall, can I have the most recent -- the little orange  
15 sheet? Thank you so much.

16 Okay. So today is the day for your calendar call.

17 [Pause]

18 Okay. So as you know, today is the day for the calendar call.  
19 As you know, all the requirements pursuant to EDCR 2.67 through 2.69,  
20 and we have nicely summarized those for you in the handout procedures  
21 for civil jury trials, Department 31. You all -- it's available online. In  
22 court, it's always there on counsel table for you, as well.

23 Okay. So what we have is we have two, three trial  
24 memoranda, and we have -- okay, so first, let's walk through. You all  
25 conducted your EDCR 2.67 conference on what date, please?

1 MR. JONES: September 11th, Your Honor.

2 THE COURT: Okay. On September 11th, did you all  
3 exchange all exhibits and otherwise comply with everything as required  
4 under EDCR 2.67?

5 MR. JONES: Yes, Your Honor. We agreed to the exhibits.  
6 They're voluminous, and so we didn't print them all out, but we did have  
7 the list and had them available to us during that meeting.

8 THE COURT: Okay. So with regards to that, you have  
9 provided -- with you today, do I see boxes? So exhibits, now, I need a  
10 brief explanation on exhibits. Okay. I need to know, are the exhibits are  
11 stipulated to for all purposes? Are they in different binders? And I am  
12 sure that you are not giving exhibits that one side, calling like a Plaintiff,  
13 is going to be duplicated in some manner by Defendants, right? So that  
14 one side doesn't have a medical record that the other side is calling  
15 something different, right? They are -- so what are the exhibits --

16 MR. JONES: I'm happy to explain --

17 THE COURT: -- you're offering, please? Thank you.

18 MR. JONES: -- Your Honor. Yeah. So we have not  
19 stipulated to the exhibits that each side has, with the exception of  
20 Plaintiff's Exhibit Number 1.

21 THE COURT: Okay. so can we reference because -- when I  
22 was reading your respective -- it should be consistent with your pretrial  
23 memoranda. But since you have different pretrial memoranda, I was --  
24 let me go back to them. It was confusing, honestly, of how you were  
25 doing this, so that's why -- because the Plaintiffs are Bate stamped

1 numbered. Defendants don't have any Bates stamp number whatsoever.

2 And so --

3 MR. JONES: Well --

4 THE COURT: -- I don't --

5 MR. JONES: -- Your Honor --

6 THE COURT: -- have any reference.

7 MR. JONES: -- the exhibits that we actually both have today  
8 have been appropriately stamped according to the Court's direction.  
9 That's my understanding from the Defense. That's how ours are, as well.  
10 So they've -- so our Bates stamps are exactly as has been identified.

11 THE COURT: In Plaintiffs' --

12 MR. JONES: It is true --

13 THE COURT: -- pretrial memoranda, or not?

14 MR. JONES: No, not in Plaintiffs' pretrial memorandum. It  
15 was not.

16 THE COURT: Okay.

17 MR. JONES: In the actual exhibits that we have here for the  
18 Court today, it is.

19 THE COURT: Okay. Hold on a second. So in neither  
20 Plaintiffs' pretrial memoranda or Defendants' pretrial memoranda is not  
21 going to match the exhibit list? Is that what I'm being told?

22 MR. JONES: That's true, Your Honor. Yes. There are no  
23 additional exhibits, but there are less exhibits, yes.

24 THE COURT: Okay. Does the -- is there -- I mean let's see if --  
25 okay. So Madam Clerk, you cannot use anything that we thought we

1 were going to be able to use. Okay. Let's find out. Go ahead.

2 MR. JONES: So Your Honor, on the Plaintiffs side, we've  
3 consolidated several of the exhibits and just one of the exhibits was like  
4 8,600 pages long, and we didn't need it, and we consolidated it down to  
5 about 600 pages.

6 THE COURT: Okay. So for Madam Clerk's sake --

7 MR. JONES: Yes, Your Honor.

8 THE COURT: -- is there an exhibit index that takes into  
9 account all of the exhibits, and are they done numerically sequentially,  
10 or how are they done?

11 MR. JONES: That is correct, Your Honor. And I --

12 THE COURT: Do they comply or make -- do they follow the  
13 exhibit index example as specifically required?

14 MR. JONES: Yes, Your Honor.

15 MS. CLARK NEWBERRY: Yes, Your Honor.

16 THE COURT: So they don't match up to the pretrial  
17 memoranda, but they are in a -- there is an exhibit list. Do you have the  
18 exhibit list separately so that --

19 MR. JONES: I can pull it up.

20 MS. CLARK NEWBERRY: Yes, Your Honor. We have a  
21 separately produced exhibit list, and then we have the exhibit list that  
22 are lined on the inside of the binders of Defendants' exhibits.

23 THE COURT: Wait a second. Okay. Let's step back a second.  
24 Do Plaintiffs' exhibits flow into Defendants' exhibits numerically, or are  
25 they the same set? What are they?



1 MS. CLARK NEWBERRY: I do not believe that we have  
2 overlapped documents. Correct me if I'm wrong. I do not -- I believe  
3 that we each have a separate set of documents. There is one group of  
4 documents that we have agreed on, which is the 2015 admission to St.  
5 Rose.

6 THE COURT: Okay. Okay. I've got to stop you for a second.

7 MS. CLARK NEWBERRY: I'm sorry, Your Honor.

8 THE COURT: Let's do it numerically. For example, does  
9 Plaintiff maybe have numbers 1 through X?

10 MR. JONES: 1 through 18, Your Honor. We do.

11 THE COURT: You have 1 through 18. And the Defendants  
12 start with 19?

13 MS. CLARK NEWBERRY: No, we have letters, Your Honor. It  
14 was my understanding from the --

15 THE COURT: Okay. You did letters. Okay. That's fine. But  
16 what I want to make sure is 1 through 18, Plaintiff is not going to be  
17 referring to number 17, and it happens to be Defendants number B or  
18 something like that?

19 MS. CLARK NEWBERRY: I do not believe that there is --

20 THE COURT: I do not believe. No, I want no. They cannot.  
21 You cannot go through a trial and have a jury think that this is what was  
22 all supposed to be done at the 2.67 before it came here.

23 MR. JONES: Your Honor, there is no --

24 THE COURT: There cannot be an overlap.

25 MR. JONES: -- I have gone through both exhibit binders --

1 THE COURT: Okay.

2 MR. JONES: -- and I am confident to say there is no overlap.

3 THE COURT: Okay. Because the jury has to be able -- 1  
4 through 18, every page in 1 through 18 has to be distinct from whatever  
5 is in A through --

6 MR. JONES: And Your Honor, there's always a possibility for  
7 human error, but I personally --

8 THE COURT: Well --

9 MR. JONES: -- went through every page.

10 THE COURT: -- okay.

11 MR. JONES: So --

12 THE COURT: For example, Dr. Blank may have overlapping  
13 medical records with -- Dr. A may have medical records in two different  
14 doctors' sets of complete medical records, subject to a COR. The Court  
15 is not saying that. What I'm saying is you're not going to be putting on a  
16 screen that Plaintiff is going to refer to a particular page as Exhibit,  
17 hypothetically, 1, and Defendant is going to call it Exhibit B, for example.

18 MS. CLARK NEWBERRY: Yes, Your Honor.

19 THE COURT: That's what this Court is saying.

20 MS. CLARK NEWBERRY: We will not be doing that at trial.

21 THE COURT: Yes. I mean, to the extent that you have a  
22 medical record that is contained within the same, you know -- you have a  
23 hospital record that has contained doctor's records within that hospital  
24 record and that same doctor's record is also specifically in that doctor's  
25 record, and you have that through a COR, as long as you're not referring

1 to the same record through two different exhibits --

2 MS. CLARK NEWBERRY: Yes.

3 THE COURT: -- that's fine. That's what the Court's saying  
4 because you --

5 MS. CLARK NEWBERRY: We understand the Court's  
6 concern.

7 THE COURT: -- the poor jury can't deal with that. You can't  
8 call the same thing two different things. That's what the Court is saying.  
9 That was all supposed to be cleaned up. That was the whole purpose of  
10 a 2.67 is that --

11 MR. JONES: Right.

12 THE COURT: -- you know what I mean? You can't do a  
13 thousand pages of a hospital record that one side is calling it one thing  
14 and the other side is calling it something else.

15 MR. JONES: Right.

16 THE COURT: Is that --

17 MR. JONES: That's understood, Your Honor.

18 THE COURT: Is that what --

19 MS. CLARK NEWBERRY: Yes, that's --

20 THE COURT: Okay.

21 MS. CLARK NEWBERRY: -- understood, Your Honor.

22 THE COURT: Okay. So you've got one through 18. You've  
23 got A through?

24 MS. CLARK NEWBERRY: GGG, Your Honor.

25 THE COURT: Okay. Now, you have --

1 MR. JONES: Yes.

2 THE COURT: -- okay. 1 through 18, and it's got an exhibit  
3 list, correct?

4 MR. JONES: It does, Your Honor, yes.

5 MS. CLARK NEWBERRY: The only wrinkle to Defendants'  
6 exhibits, Your Honor, we had a supplemental meeting yesterday and  
7 then a supplemental meeting this morning, and there appears to have  
8 been some misunderstanding about the number of pages from the 2015  
9 St. Rose admission. They had whittled it down from the original 8,000,  
10 and we may have some additional documents that we may add as HHH  
11 to our list, if they're not contained in what's been whittled down because  
12 those are essential records. And to the extent that happens, we'll  
13 provide the Court with additional indexes and the additional pages to go  
14 into the binder.

15 THE COURT: So wait a second. Are you going to be  
16 referring to the jury St. Rose in two different ways, like in Plaintiffs  
17 whatever numerically, and then it's going to be Defendants' HHH?

18 MR. JONES: We're happy to add them onto ours, if that's  
19 preferential, Your Honor. And so we'll just keep them as part of our  
20 Exhibit 1. There appears to have been a genuine misunderstanding  
21 between the parties with respect to that exhibit.

22 MS. CLARK NEWBERRY: So if there are any additional  
23 pages, we'll identify them to Plaintiff to add to their Exhibit 1, and they'll  
24 add them onto the back of their Bates and provide a supplemental  
25 exhibit list for the Court.

1 MR. JONES: Sure.

2 UNIDENTIFIED SPEAKER: That's fine.

3 THE COURT: I've got a question. Okay. How -- and these  
4 are stipulated in what regard?

5 MR. JONES: In all regards --

6 THE COURT: Admitted --

7 MR. JONES: -- Your Honor.

8 THE COURT: No regards at all?

9 MR. JONES: In all regards.

10 THE COURT: Oh.

11 MR. JONES: With respect to Exhibit 1, we have agreed that  
12 they are admissible, and they can be provided as exhibits to the jury.

13 MS. CLARK NEWBERRY: Our only --

14 THE COURT: Admitted for all purposes?

15 MS. CLARK NEWBERRY: Exhibit 1.

16 THE COURT: Capital, all caps, all purposes?

17 MS. CLARK NEWBERRY: Exhibit 1. Subject to the additional  
18 pages that we may require to add.

19 THE COURT: Okay. Okay. And they have been appropriately  
20 redacted and all insurance information, all private information, including  
21 Social Security numbers, all that kind of good stuff? Everything has  
22 been taken care of?

23 MR. JONES: The 600 pages that are part of this --

24 THE COURT: I'm talking about all of the exhibits. I'm not just  
25 talking about Exhibit 1 here.

1 MS. CLARK NEWBERRY: Yes, Your Honor.

2 MR. JONES: Yes.

3 MS. CLARK NEWBERRY: We've redacted all of the  
4 Defendants' exhibits.

5 MR. JONES: We have some issues with some of the  
6 Defendants' exhibits that we think need additional redaction, but --

7 THE COURT: Okay. What I'm hearing -- when I hear have  
8 issues and additional, that's sounding like they are not in the required  
9 presentation to be presented to the Clerk right now, right? I guess when  
10 I'm hearing additional, right, isn't all this stuff taken care of before right  
11 now, because all these redactions and all these changes? Doesn't it  
12 seem like they were supposed to be handed over clean and a hundred  
13 percent ready to Madam Clerk right now?

14 MS. CLARK NEWBERRY: That's my understanding of what  
15 we were doing this morning, Your Honor. I was just made aware that  
16 there was a change in the St. Rose. There was a disagreement in  
17 changing the St. Rose documents.

18 MR. DOYLE: But the additional redactions, I'm not sure what  
19 those --

20 MS. CLARK NEWBERRY: I --

21 MR. DOYLE: -- are referring to.

22 MR. JONES: Insurance related, Your Honor.

23 MR. HAND: We went through Defendants yesterday and  
24 found several --

25 THE COURT: Okay.

1 MR. HAND: -- insurance --

2 MS. CLARK NEWBERRY: Well, we had a meeting --

3 THE COURT: Now, let me be abundantly clear, okay. I am  
4 going -- if I say the words, I am going to recall you in a few moments,  
5 you understand you cannot leave the courthouse, right, and that this  
6 hearing is not over, correct?

7 MR. JONES: Understood, Your Honor.

8 MS. CLARK NEWBERRY: Yes, Your Honor.

9 MR. JONES: Absolutely.

10 THE COURT: I'm sorry. I just dealt with it at 8:30 this  
11 morning that someone didn't understand that, so I'm trying to make  
12 sure. I thought the word recall was clear, but -- so because you can  
13 appreciate the whole courtroom full of everybody else, we called the  
14 calendar call first because I tried to give -- it was just supposed to really  
15 be handing over documents. It was not supposed to be but, but, but. So  
16 enjoy the ante room. The Marshall will be very glad to open it for you,  
17 okay, because --

18 MS. CLARK NEWBERRY: Yes, Your Honor.

19 MR. JONES: Absolutely, Your Honor.

20 THE COURT: -- you can appreciate in fairness to everybody  
21 else who's waiting, it looks like this was going to take a lot longer than  
22 initially planned, so why don't we let everybody else get their matters  
23 taken care of, and we'll recall you, okay?

24 MR. JONES: All right.

25 THE COURT: If anybody needs to leave the courthouse,

1 please let us know before you leave because your calendar call is not  
2 completed, okay? Thank you. Okay. We will move to a different matter  
3 because presumably, the rest of you all would like to be taken care of  
4 rather than sitting and waiting in the gallery. So okay. We will move on.  
5 Thank you so much. Okay.

6 Page one on our --

7 MS. CLARK NEWBERRY: May I leave my deposition --

8 THE COURT: You can leave whatever you need here.

9 MS. CLARK NEWBERRY: Thank you.

10 THE COURT: I'm sure anybody to be taken care of is glad to  
11 work around what's sitting on the counsel tables --

12 MS. CLARK NEWBERRY: A box of depositions.

13 THE COURT: -- right?

14 MS. CLARK NEWBERRY: Thank you.

15 THE COURT: So leave what you need to leave, or just what  
16 you don't need. Okay.

17 MS. CLARK NEWBERRY: Thank you, Your Honor.

18 THE COURT: No worries. I assume that's correct, right? You  
19 all would like to just be -- okay. Okay. Let's get you taken care of.

20 [Recess at 9:29 a.m., recommencing at 10:15 a.m.]

21 THE COURT: Back to pages 1 and 2 of Calendar Call. Farris  
22 v. Rives, 739464 with my apologies, Madam Court Reporter, they  
23 switched on you again. So counsel, since I called some intervening  
24 matters, would you mind restating your appearances, please.

25 MR. JONES: Kimball Jones, for the Plaintiffs, Your Honor.



1 MR. JONES: Jacob Leavitt for the Plaintiffs, as well.

2 MR. HAND: George Hand for the Plaintiffs.

3 MS. CLARK-NEWBERRY: Amy Clark Newberry for the  
4 Defendants.

5 MR. DOYLE: And Tom Doyle for the Defendants.

6 THE COURT: Okay. Thank you, counsel. When we last saw  
7 you a little bit ago, you were finishing off and finalizing some exhibits.  
8 Have you been able to take care of that?

9 MS. CLARK NEWBERRY: Yes, Your Honor.

10 MR. JONES: We have, Your Honor. Resolved.

11 THE COURT: Great. Then can you please let us know what  
12 your final answer is. Kind of a quick summary form on the exhibits, what  
13 you need to do.

14 MR. JONES: Your Honor, so we have -- we have exchanged  
15 binders with each other. We have binders for Your Honor, as well as a  
16 thumb drive that has some video and films on it that are listed within our  
17 exhibits.

18 THE COURT: Thumb drive with videos and film. Then I'm  
19 going to segue on that for two seconds.

20 MR. JONES: Absolutely.

21 THE COURT: And then remember we're going to have two  
22 concerns with that. One is during the course of the trial, you're going to  
23 need to make sure that you have the appropriate media to do what you  
24 need to do, and it's agreed upon by the parties, so that nobody has any  
25 concerns about edited, and all that kind of good stuff, okay. So that's

1 your first thing that y'all need to do. So before anything gets played,  
2 that you're copasetic with how people are handling that. And those are  
3 Exhibits number blank and blank. Just so we're clear on which one  
4 those are going to be addressing.

5 MR. JONES: These are Exhibits -- it's going to be Exhibit 9 --

6 THE COURT: Uh-huh.

7 MR. JONES: Exhibit 10, Exhibit 11.

8 THE COURT: Okay.

9 MR. JONES: Oh, and Exhibit 8, excuse me.

10 THE COURT: 8 -- 8.

11 MR. JONES: So 8 through 11, Your Honor.

12 THE COURT: 8 through 11, okay. And there is no  
13 agreements on these at all; is that correct?

14 MR. DOYLE: No.

15 MS. CLARK NEWBERRY: That's correct, we have not  
16 stipulated to those.

17 MR. JONES: That is correct.

18 THE COURT: Okay.

19 MR. DOYLE: No, we have not.

20 THE COURT: We're going to have to put a little asterisk, stay  
21 tuned on that.

22 MR. JONES: Absolutely.

23 THE COURT: For the second portion, depending on what  
24 those are, we're going to have to circle back anyway, for purposes of  
25 trial with Madam Clerk, and how those have got to be presented. The

1 second one, in no way saying that they will be admitted, but stay tuned if  
2 they are. This is just a head's up with any kind of video stuff that's  
3 mentioned, for your courtesy. And the Court's trial procedures is,  
4 remember back in the jury room, the only thing that's back there, I think  
5 there's still a VHS player. I'm not even sure the VHS player is in there,  
6 back there, but you get what I'm saying. Anybody who has any kind of  
7 media type device, anything other than what's coming on a standard  
8 piece of paper, has to provide the appropriate media device for it to be  
9 played, okay. In a complete clean format. So please don't hand over a  
10 laptop and say, can we just bring our laptop and show it -- give it to the  
11 jury, because it would have to be a 100 percent clean laptop.  
12 Sometimes people, they have kids, have the little DVD players, and the  
13 bring -- you know what I mean.

14 MR. DOYLE: Uh-huh.

15 MR. JONES: Absolutely, Your Honor.

16 THE COURT: So that's just your head's up, couple weeks in  
17 advance. If you all are purchasing something, have something at home.  
18 But that's -- not saying anything's going to be admitted. That's just the  
19 general head's up. We'll circle back to 8 through 11. But let me let you  
20 finish, but --okay, go ahead.

21 MR. JONES: And we have not stipulated to any of the other  
22 exhibits, besides Plaintiffs' Exhibit 1.

23 THE COURT: And Plaintiffs' Exhibit 1, did you fix your issue  
24 on the missing pages, or is that a stay tuned?

25 MR. DOYLE: May I?

1 THE COURT: Whoever. This was going to be HHH --

2 MR. DOYLE: We also --

3 THE COURT: -- which is now going to be combined into  
4 Exhibit 1, correct?

5 MR. JONES: Correct.

6 THE COURT: But that's a fully stipulated --

7 MR. JONES: That's correct.

8 THE COURT: -- admitted, so it's not an issue, or what?

9 MS. CLARK NEWBERRY: Pending the --

10 MR. JONES: That's correct, Your Honor.

11 MS. CLARK NEWBERRY: Pending the additional records.

12 MR. DOYLE: Yes, we also agreed to the St. Rose imaging  
13 studies, both of us, but I want to make sure you didn't forget that.

14 THE COURT: Is that going to be -- bless you. Is that in 1,  
15 though? I want to focus on -- you know whether imaging studies is a  
16 different exhibit number. Is that Exhibit 1, or is that a different exhibit  
17 number?

18 MR. JONES: It's Exhibit 8, Your Honor. And it's on our flash  
19 drive. So I was under the impression we had, but I didn't remember.

20 THE COURT: Okay.

21 MR. DOYLE: We have to work that -- yeah, we have an  
22 agreement that they're -- that they can be used.

23 THE COURT: Okay.

24 MR. DOYLE: We have to figure out the logistics.

25 THE COURT: Let's -- thank you, but let's circle back to --

1 because remember Madam Clerk's got to take this all down. So Exhibit 1  
2 is the only stipulated admitted exhibit for all purposes. Is that correct or  
3 incorrect?

4 MR. JONES: That is correct, Your Honor.

5 MS. CLARK NEWBERRY: Yes, Your Honor.

6 THE COURT: Of any of the Plaintiffs or Defendants, okay.  
7 And Exhibit 1 has a caveat in that there is pages that have not yet been  
8 Bates stamp numbered, which will be at the end of what is being  
9 provided today by agreement of the parties, will be added to the end of  
10 it. And that is approximately how many pages? Do you have a ballpark?

11 MR. JONES: Yes, the current --

12 THE COURT: I mean are we talking two or three -- or are we  
13 talking hundreds?

14 MR. JONES: There's currently 613 pages, Your Honor.

15 THE COURT: Exhibit --

16 MR. JONES: And there -- we don't know how many  
17 additional there will be, but --

18 MR. DOYLE: My best guess is maybe 20, 25.

19 THE COURT: Okay.

20 MR. DOYLE: I mean it's not hundreds, certainly.

21 THE COURT: Okay, so -- and they'll be put at the end in the  
22 Bates stamp numerical. Is that correct?

23 MS. CLARK NEWBERRY: In the end of --

24 MR. JONES: Yes, Your Honor.

25 MS. CLARK NEWBERRY: -- Exhibit 1.

1 THE COURT: Okay. So let me -- can I move on? Are we  
2 okay? So Exhibits 2 through 8 -- 2 through 7 are --

3 MR. JONES: They've not been stipulated to at all.

4 THE COURT: Okay. Not even foundation? Not even  
5 authenticity? Zip, zilch, zero? I mean are there CORs?

6 MR. DOYLE: Oh, authenticity isn't an issue.

7 MR. JONES: Okay.

8 THE COURT: Okay. That's why -- that's why the Court has to  
9 ask. You know what I mean when --

10 MR. DOYLE: It would be hearsay or foundation.

11 THE COURT: Is the objection?

12 MS. CLARK NEWBERRY: Are the objections to those  
13 exhibits, Your Honor.

14 THE COURT: Are those objections --

15 MS. CLARK NEWBERRY: Yes.

16 THE COURT: -- in? Because remember since your pretrial  
17 memo don't match your exhibits, right?

18 MR. JONES: Right.

19 THE COURT: How is this -- the reason -- if I were to look and  
20 try and find in the pretrial memo, would I find somewhere in the pretrial  
21 memo that there is a preserved objection to any exhibits, or you all are  
22 just acknowledging it, so the Court doesn't have to worry about it?

23 MR. JONES: There were preserved objections, I think, on  
24 both sides, Your Honor, but --

25 THE COURT: Okay.

1 MR. JONES: -- they're --

2 THE COURT: So everything that you all are stating verbally  
3 in Court are non-issues for the Court to deal with at trial, because even if  
4 you had not sufficiently put it in your pretrial memos, you acknowledge  
5 that they exist, and so the Court need not deal with it during the course  
6 of trial; is that correct, as far as exhibits goes, and preserving objections  
7 as to exhibits? Is this correct or incorrect? It's a question. I don't know,  
8 because --

9 MR. JONES: That is correct, Your Honor.

10 MR. DOYLE: Yes, Your Honor.

11 THE COURT: Okay. Okay. Go ahead and note no exhibit  
12 issues. On this, trying to see what these -- okay, so 2 through 7. Are any  
13 of those photos? Are they all pieces of paper? Because remember  
14 photos have to be one per page. I'm just trying to go through --

15 MR. JONES: All paper, Your Honor.

16 THE COURT: All paper. 2 through 7 are paper. Where the  
17 objections are either going to be foundation or hearsay; is that correct?

18 MR. DOYLE: Correct.

19 MS. CLARK NEWBERRY: Yes, Your Honor.

20 THE COURT: Okay. so we've got that. 8 is imaging studies  
21 only?

22 MR. JONES: That is correct, Your Honor.

23 THE COURT: Stipulated admitted, but you have to find an  
24 appropriate method to -- for presentation and for how it's going to get to  
25 the jury; is that correct?

1 MR. JONES: Do we even want to admit them, or do we want  
2 to just use them?

3 MR. DOYLE: Well, it's always a quandary whether you send  
4 imaging studies back to the jury, because they're --

5 THE COURT: It's -- yes, okay.

6 MR. DOYLE: We've agreed to use them. I think if we could  
7 defer how -- whether we would send them to the jury or not, if that's  
8 appropriate for later.

9 THE COURT: Then we're going to need something in writing,  
10 okay.

11 MR. JONES: Perfect.

12 THE COURT: So that we just don't have an issue down the  
13 road on that one, okay.

14 MS. CLARK NEWBERRY: Yes, Your Honor.

15 MR. JONES: We'll create a stipulation on that and submit it  
16 for the Court today, Your Honor.

17 THE COURT: It would really be nice if at the end of today I  
18 kind of get a summary of what you said. You know what I mean, Court --  
19 by agreement of the parties --

20 MR. JONES: Yeah.

21 THE COURT: -- really help my Clerk, because --

22 MS. CLARK NEWBERRY: Yes, Your Honor.

23 THE COURT: -- if you don't mind. Okay. 9, 10 and 11 are  
24 jump drive with the -- with --

25 MR. JONES: Photographs and videos.



1 THE COURT: -- issues -- photographs. So the reason we  
2 don't have photographs on a hard copy format? They're photographs.

3 MR. JONES: I believe there were -- there were several and I  
4 -- we did print some off actually, but they're black and white. And I'm  
5 not sure why, Your Honor. I don't have a good explanation.

6 THE COURT: Photographs generally come in, you know, in  
7 photographic format because they're flat. They're not 3-D, and they're  
8 not, you know, in a movable format. I'm assuming you're talking a  
9 standard photograph, right? A standard .jpg?

10 MR. LEAVITT: Yes.

11 MR. JONES: Yes, Your Honor.

12 THE COURT: You're not talking a 3-D image photograph?

13 MR. LEAVITT: No, Your Honor.

14 THE COURT: Okay.

15 MR. JONES: And we do -- we did actually attach -- so Exhibit  
16 9 is -- most of the photographs are there. We do have some additional  
17 ones on the drive.

18 THE COURT: Well, be careful. We can't have any --

19 MR. JONES: Absolutely.

20 THE COURT: -- you know what I mean? Whichever is going  
21 to be your official. We need to know what's the official. I can't have  
22 jump drive is different than hard copy, because once you turn it over,  
23 that's your set in stone. Which carefully in other trials listening very  
24 carefully, because they're listening to this getting educated for their own  
25 calendar call, right. Because you can appreciate, right, when there's that

1 confusion --

2 MR. JONES: Correct.

3 THE COURT: -- because that usually leads to lots of  
4 arguments, which, of course, you all never disagree on anything, but  
5 hypothetically, it might lead in other cases, right, to disagreements. But  
6 we need to know what's the final answer on the exhibits, right?

7 MR. JONES: Absolutely.

8 THE COURT: And so if you have hypothetically -- bless you --  
9 20 on a jump drive, and only 5 in which you submit in a binder, the Clerk  
10 considers what you submit in the binder your exhibit, right, because we  
11 wouldn't know what's hypothetically on that jump drive. So if you have  
12 a distinction between a jump drive and a binder, we need to know --

13 MR. JONES: This is what -- if --

14 THE COURT: Okay.

15 MR. JONES: -- if it pleases the Court, what we will do is we'll  
16 speak with Defense counsel afterwards, and I will make sure that we get  
17 any photograph printed and added to the back of Exhibit 9 in a flat  
18 format, so that -- so any photographs on the jump drive will be  
19 irrelevant, and only the video for the jump drive and the imaging.

20 THE COURT: All right. End of day, is that going to work out  
21 okay, because I think you're going to have the same issue on your side?  
22 Are you going to mutually agree to this by end of the day? As long as I  
23 get it by the end of day?

24 MS. CLARK NEWBERRY: Yes, we can agree to it by end of  
25 the day, Your Honor.

1 THE COURT: Okay. Does that work for you all?

2 MR. LEAVITT: Yes, Your Honor.

3 THE COURT: Without waiving --

4 MR. JONES: So we'll have --

5 THE COURT: -- without waiving that -- is there an  
6 assumption that these photographs have otherwise been produced  
7 during the course of trial -- I mean during the course of the case?

8 MR. JONES: Yes, Your Honor.

9 MR. LEAVITT: Yes.

10 THE COURT: Have otherwise been produced during  
11 discovery? Subject to any objections, I'm meaning -- Okay. Okay. so 9  
12 has a caveat on it, right? Got the caveat on 9? Okay. So have a caveat  
13 on number 1, 8 and 9. You got this. Okay. 10 and 11 are videos on a  
14 jump drive, correct?

15 MR. LEAVITT: Correct.

16 MR. JONES: They are, Your Honor.

17 THE COURT: 12 through 18. What's 12 through 18?

18 MR. JONES: 12 is the marriage certificate, Your Honor.

19 THE COURT: Okay, I -- just -- are they paper?

20 MR. JONES: They are.

21 THE COURT: 12 through 18 are paper, so similar to 2  
22 through 7?

23 MR. JONES: Yes, they're all paper, Your Honor.

24 THE COURT: 2 through 7, okay.

25 MR. JONES: Yes.

1 THE COURT: And no caveats on 12 through 18?

2 MR. JONES: No, Your Honor.

3 MR. LEAVITT: No.

4 THE COURT: Okay. So we've got A through GGG; is that  
5 correct, on Defendant's side?

6 MS. CLARK NEWBERRY: Yes, Your Honor.

7 THE COURT: Okay. Walk me through. Is there anything  
8 unique, or is it all paper?

9 MS. CLARK NEWBERRY: With the exception of Exhibits E, F,  
10 G, H, I, J through Z, Your Honor.

11 THE COURT: J through Z.

12 MS. CLARK NEWBERRY: Yes.

13 THE COURT: Like JZ?

14 MS. CLARK NEWBERRY: Yes, thank you, Your Honor.

15 THE COURT: Gotcha. Okay.

16 MS. CLARK NEWBERRY: Those are imaging studies from St.  
17 Rose. I believe that they're the same imaging studies that are on the  
18 thumb drive, Exhibit --

19 THE COURT: 8.

20 MS. CLARK NEWBERRY: -- 8 for Plaintiff.

21 THE COURT: So --

22 MS. CLARK NEWBERRY: Everything else is flat paper, Your  
23 Honor.

24 THE COURT: Okay. So are you all going to agree whether  
25 you're going to use 8 versus E, F, G, H, I, J through Z?

1 MS. CLARK NEWBERRY: We will agree to that, Your Honor.

2 THE COURT: One or the other? Okay.

3 MS. CLARK NEWBERRY: Yes, Your Honor.

4 THE COURT: So we just need that -- did you get that Claire?

5 THE CLERK: I'm following.

6 THE COURT: I appreciate it. Okay. So that's 8 equals this.

7 Okay. Any photos?

8 MS. CLARK NEWBERRY: No, Your Honor, we do not have  
9 photos that we are seeking to admit as exhibits.

10 THE COURT: Any videos?

11 MS. CLARK NEWBERRY: We do have demonstrative.

12 THE COURT: Okay. You're --

13 MS. CLARK NEWBERRY: But --

14 THE COURT: No, I appreciate it, thanks. So any videos?

15 MS. CLARK NEWBERRY: No, Your Honor.

16 THE COURT: Okay. Is the same true from Plaintiffs side  
17 with regards to Defendants, other than E, F, G, H, I, J through Z, which is  
18 parallel to your 8, which -- presumably. Does that have that same  
19 agreement on the admissibility, because that's the imaging study? Is the  
20 rest of theirs agreed to authenticity, but otherwise you're preserving  
21 objections?

22 MR. JONES: Your Honor, with the -- with the exception of A,  
23 we also do not stipulate to authenticity on A.

24 THE COURT: Do not stipulate to authenticity on A.

25 MR. JONES: No.

1 THE COURT: But B --

2 MR. JONES: But as to the rest we do.

3 THE COURT: You do, okay. Okay. Do we have -- and this is  
4 going to be in your --

5 MR. JONES: Summary.

6 THE COURT: -- summary, which your attached index --  
7 exhibit list, which you are also going to provide to the Court, with the  
8 appropriate boxes checked, right?

9 MR. JONES: Absolutely, Your Honor.

10 THE COURT: Actually the only box you really need -- never  
11 mind. It's not going to make any -- it's not going to give you any help on  
12 the boxes checked, because the only thing they're admitting is 1, right?

13 THE CLERK: Right.

14 THE COURT: So never mind. Just the letter. Don't need to  
15 do the --

16 MR. JONES: Okay.

17 THE COURT: You're just going to set forth, right, what they  
18 marked? Okay. But you can really use your exhibit list and just put  
19 beside it, right, what they are? Okay. And provide that to us, and what  
20 your agreement is.

21 Okay. So that takes care of exhibits, right?

22 MR. DOYLE: Yes.

23 MR. JONES: That is correct.

24 MS. CLARK NEWBERRY: Yes, Your Honor.

25 THE COURT: Demonstrative exhibits. Is there an agreement

1 for y'all to exchange demonstrative exhibits 24-48 hours before trial, or  
2 anything like that?

3 MS. CLARK NEWBERRY: We have exchanged our  
4 demonstrative -- the hard versions of our demonstrative exhibits,  
5 including files, both PowerPoint, PDF, and the flat versions in color, with  
6 counsel, this morning.

7 THE COURT: So you're good?

8 MR. JONES: Yeah.

9 THE COURT: Okay, do I need to -- I'm going to move on,  
10 right? There's nothing you need to do?

11 MR. JONES: Yes, Your Honor, we haven't really had an  
12 opportunity to fully go through everything on the demonstratives.

13 THE COURT: Okay.

14 MR. JONES: But as far as we're concerned, yes, we're able  
15 to move on.

16 THE COURT: Okay. Let's go to depositions. Depositions.  
17 What depositions do you have to lodge? And do you have a -- by chance  
18 a listing of the depositions you're lodging, or are you going to verbally  
19 say them in Court? Or are you going to provide me by end of day a  
20 hardcopy listing of everything that you provided, because it looks like  
21 you've got boxes.

22 MR. JONES: We'll do that.

23 MS. CLARK NEWBERRY: Does the Court have a preference,  
24 saying in open court us providing a list? I have --

25 THE COURT: I will tell you the parties sitting in the gallery

1 have a preference.

2 MS. CLARK NEWBERRY: It's not -- I'm happy to provide a  
3 written list, though it's a small number of depositions, Your Honor.

4 THE COURT: How many do you have on each side?

5 MR. JONES: We have 2, 3, 4, and this one 5, 6 ---

6 MR. LEAVITT: Seven, Your Honor.

7 MR. JONES: -- 7. We have 7, Your Honor.

8 THE COURT: Oh, just start with -- okay. I thought you had  
9 like 10 or 15. How many do you --

10 MS. CLARK NEWBERRY: I believe I have 13, Your Honor.

11 THE COURT: That's 20 deps. Just quickly give the names.

12 MS. CLARK NEWBERRY: Yes, Your Honor. The deposition  
13 of Dr. Naomi Chaney, the deposition of --

14 THE COURT: Just give me the names. You don't have to say  
15 deposition.

16 MS. CLARK NEWBERRY: Oh, I'm sorry.

17 THE COURT: Just say name.

18 MS. CLARK-NEWBERRY: Lowell Pender, Sky Prince, Ms.  
19 Farris, Titina Farris, Patrick Farris, Addison Durham, Justin Willer, M.D.,  
20 Alan Stein, M.D., Dawn Cook, Alex Barchuk, M.D., and Terrence  
21 Clauretie.

22 THE COURT: Okay. Thanks. Marshall will take all of those.  
23 Okay, start saying your seven names, guys.

24 MR. DOYLE: Should we put them back in the box? Is that  
25 convenient --



1 THE COURT: Sure.

2 MR. DOYLE: -- for the Court?

3 THE COURT: That would be great.

4 MR. DOYLE: Okay.

5 MR. JONES: Yes, Your Honor, Steven -- Kim Steven Erlich,  
6 M.D., Bruce Adornato, M.D., Eric Volk, Bart Carter, M.D., Lance Stone,  
7 D.O., Barry Rives, M.D., and --

8 THE COURT: Uh-oh, that's an opened one. That's an opened  
9 one.

10 MR. JONES: Yeah, Brian Juell, I was going to bring this up  
11 to the Court. Brian Juell, this is how it came. It came to -- we took the  
12 depo. For some reason, the company sent it to Defense counsel's office.  
13 Go figure.

14 MS. CLARK NEWBERRY: Opened, Your Honor.

15 MR. JONES: Opened, yeah.

16 THE COURT: Okay. Is it agreed to by the parties, it's  
17 opened?

18 MR. JONES: Yes.

19 MS. CLARK NEWBERRY: Yes.

20 MR. DOYLE: Yes, Your Honor.

21 THE COURT: Okay. You're fine as is?

22 MR. DOYLE: Yes.

23 MR. JONES: Yes. And, Your Honor --

24 [Counsel confer]

25 THE COURT: Okay. Okay. So those are the 20 depo's --

1 MR. JONES: We're good.

2 THE COURT: -- that you're lodging, correct?

3 MR. JONES: That is correct, Your Honor.

4 THE COURT: Okay. And everybody is okay with the one that  
5 was opened, but all the rest are in their closed format? Okay.

6 MR. JONES: Yes, Your Honor.

7 THE COURT: Thank you. And there's no partial depositions, right?  
8 No video depositions, correct?

9 MR. JONES: We do have a number of video depositions,  
10 Your Honor, but we don't intend to -- we don't intend to admit them as  
11 evidence to the jury.

12 THE COURT: What I'm saying is there's no video depositions  
13 in lieu of live testimony?

14 MR. JONES: No there are not, Your Honor.

15 MR. LEAVITT: Oh, no.

16 THE COURT: There's no deposition excerpts in lieu of live  
17 testimony, correct?

18 MS. CLARK NEWBERRY: No, Your Honor.

19 MR. JONES: No.

20 THE COURT: Okay.

21 MS. CLARK NEWBERRY: Not that I'm aware of.

22 THE COURT: We didn't receive any, two days before the  
23 calendar call, so we were hoping the answer was no.

24 MR. JONES: No.

25 MS. CLARK NEWBERRY: No.

1 THE COURT: Okay. Proposed voir dire. Both sides have  
2 their proposed voir dire?

3 MR. LEAVITT: We do.

4 MR. JONES: We do, Your Honor.

5 MS. CLARK NEWBERRY: Yes, Your Honor.

6 THE COURT: Okay, just -- okay, both sides, proposed jury  
7 instructions?

8 MS. CLARK NEWBERRY: Yes, Your Honor. Yesterday we  
9 submitted a joint proposed jury instructions that we were able to come  
10 to an agreement on, as well as our individual Defendants.

11 THE COURT: Okay.

12 MS. CLARK NEWBERRY: We file served them as well as  
13 providing them to your JEA in the Word format.

14 THE COURT: Oh, in Word format. But you have hard copies  
15 with you today, okay.

16 MS. CLARK NEWBERRY: Hard copies and a jump, if --

17 THE COURT: Perfect. Okay. Good.

18 MS. CLARK NEWBERRY: -- it pleases the Court.

19 THE COURT: Okay, so you've got jury instructions.  
20 Proposed verdict forms?

21 MS. CLARK NEWBERRY: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. JONES: Verdict forms.

24 THE COURT: The Marshall will take each those. Okay. And  
25 then that makes us set, doesn't it? Any audio-visual equipment request

1 remember you got to check with -- what you see is what you get.

2 MS. CLARK NEWBERRY: I'm sorry.

3 THE COURT: If you need anything else, you've got to check  
4 it. And remember if you want to tech check, arrange it either the  
5 Thursday or Friday before your trial. So if you want to get that taken  
6 care, right. And coordinate with the Court Recorder for that. Okay. And  
7 you've got no AV request that we're aware of.

8 MR. JONES: No, Your Honor.

9 THE COURT: No audio-visual witness is what I'm saying?

10 MR. JONES: No.

11 THE COURT: All live, right?

12 MS. CLARK NEWBERRY: Yes, Your Honor.

13 MR. JONES: Yes.

14 THE COURT: Okay. So what else do you need for your  
15 calendar call?

16 MR. DOYLE: If I can just ask a quick question on voir dire. If  
17 you could remind me, how many people in a row, and which is seat  
18 number one.

19 THE COURT: May it maybe make sense, since you all are  
20 coming back here Thursday that I do that at the end of Thursday's  
21 hearing, since I've got people, and Thursday --

22 MR. DOYLE: Okay.

23 THE COURT: -- we've got more time, because you're the  
24 only one in the afternoon. Does that work for you?

25 MR. DOYLE: That works fine, thank you, Your Honor.

1 MS. CLARK NEWBERRY: Yes, Your Honor. Your Honor, your  
2 goldenrod gives the alternative for providing demonstratives in paper  
3 format or on an electronic format. Do you have a preference?

4 THE COURT: Oh, you mean how you do it to the jury or to  
5 me -- a copy to me?

6 MS. CLARK NEWBERRY: To you, Your Honor.

7 THE COURT: Oh, I don't care. Anyway is fine. The only  
8 reason I need them is -- oh, that's fine. Marshall, take that. Is just if  
9 there's going to be any issues, I just need something so that if we're  
10 resolving anything, I have a copy, so I have an idea of what I'm  
11 resolving.

12 MS. CLARK NEWBERRY: And, Your Honor, while we're  
13 providing the Court with a paper copy, we have provided the paper copy  
14 to Plaintiff, as well as a PDF copy, and a PowerPoint copy, to provide all  
15 options that we might use each format of illustration.

16 THE COURT: Okay. We'll decide -- we'll take it up a little bit  
17 later. But I need -- I'm going to get the PowerPoint. We'll take care of  
18 that later. Okay. So you got jury instructions. She's got all that. She's  
19 got your things -- I didn't -- you got time for your briefs if you have any  
20 7.27 briefs, unless you have any with you, that I need before -- is that --

21 MS. CLARK NEWBERRY: We do have a number of trial  
22 briefs, Your Honor.

23 THE COURT: You can provide them today, or provide them  
24 first day of trial, it's up to you.

25 MR. DOYLE: First day of trial.

1 THE COURT: If you want them, and you've already filed  
2 them --

3 MR. JONES: First day of trial.

4 THE COURT: -- we can take them now.

5 MS. CLARK NEWBERRY: We'll provide them to you first day  
6 of trial, Your Honor.

7 THE COURT: That's fine. Okay. My challenge is, I've got  
8 people waiting that I've got to get taken care of. But you all are here  
9 anyway Thursday, which I was going to go over your last minute  
10 questions on jury selection. We were planning on getting you 60 jurors.  
11 Do you think you need more? Do you want 70?

12 MS. CLARK NEWBERRY: Well, it's Nevada Day, people could  
13 possibly have vacation.

14 MR. JONES: I think 70.

15 THE COURT: Okay. We'll get 70 then.

16 MR. DOYLE: Seventy.

17 THE COURT: Okay. We'll get 70. We'll walk through all of  
18 that at the end of the day Thursday afternoon. Okay.

19 MR. DOYLE: Thank you.

20 THE COURT: With a couple of other jury selection, voir dire  
21 aspects. Marshall will take your --

22 MR. JONES: The exhibit lists.

23 THE COURT: -- exhibits. Yeah, we'll get that taken care of.

24 MR. JONES: Did you want -- so we print out the  
25 demonstratives as well? Do you want those?

1 THE COURT: That's perfect, yeah.

2 MR. JONES: Perfect.

3 THE COURT: We'll take all that. Or you can leave it on the  
4 second table. We'll get the other people taken care of, and we'll get that  
5 cleared up for you. Okay.

6 MR. DOYLE: Thank you.

7 THE COURT: Thank you. So outstanding the short answer  
8 is, unless you want something different than other two alternates, then  
9 we sit them like that, left to right. We'll get -- Marshall, do we have the  
10 long forms? Do we have the 14 x 16 on how we seat the jury? Do you  
11 have a couple of those? Oh, no, we don't. We don't have any printouts.  
12 No printouts right now, do we?

13 THE CLERK: No.

14 THE COURT: Okay. So we set it left to right, usually two  
15 alternates. You all are going to decide whether you want to do your  
16 striking regardless of an alternate. Five is regardless, or you're doing  
17 four plus one under the rules. And you wait to do your peremptory  
18 challenges until the end. Unless somebody is being so obstreperous,  
19 okay. And since it's a two party case, it's five on each side. Either four  
20 plus one, or five, depending on which way you want to do it. Okay.

21 MR. JONES: Okay.

22 THE COURT: And as you know, the Court's got standard  
23 questions, 11 standard questions, which you've seen and -- Marshall, do  
24 we have handy copies of our standard 11 questions? The Marshall can  
25 give you each one of you a copy as I start to get another one of my cases

1 coming forward. And if you don't want any of those questions, just tell  
2 me on Thursday. It's the standard 11 questions we ask the jurors.  
3 Otherwise you ask the voir dire questions subject to any objections that  
4 you all ask me to address before you start asking voir dire questions.  
5 Okay.

6 MS. CLARK NEWBERRY: And Your Honor has requested that  
7 we provide a stipulation as to the agreements that we made in open  
8 court today; is that correct, Your Honor?

9 THE COURT: Right, yeah, just --

10 MS. CLARK NEWBERRY: Would you like that brought down  
11 to Chambers, or would you like us to just file it?

12 THE COURT: You can file -- the stipulation with regards to  
13 the exhibits?

14 MS. CLARK NEWBERRY: Yes, Your Honor.

15 MR. JONES: And the summary.

16 THE COURT: Okay, whichever is easier. I mean it's a  
17 stipulation to as to -- stipulation as to the agreements, that's going to  
18 have to be brought to me, because I'm going to have to sign it --

19 MR. JONES: Okay.

20 THE COURT: -- and then it's going to have to be filed. So  
21 that's going to have to come -- if you want to do the summary attached  
22 thereto, that's going to be perfectly fine.

23 MR. JONES: Perfect.

24 THE COURT: Whichever is the easiest way, just do it on fell  
25 swoop in the document. Normally -- the exhibit summary would



1 normally come -- bless you -- by a faxed letter, but if you want to put it  
2 all together in one document, that's fine. If you're bringing the  
3 stipulation, and you want to attach a letter to it, that's fine. The  
4 stipulation, I do have to sign, and it has to be filed because that's a  
5 stipulation so that we don't have an issue down the road, because that's  
6 an order.

7 MS. CLARK NEWBERRY: Thank you.

8 THE COURT: Okay.

9 MR. JONES: All right.

10 THE COURT: I do appreciate it. Thanks, so much.

11 MR. DOYLE: Thank you, Your Honor.

12 [Proceedings concluded at 10:39 a.m.]

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio-visual recording of the proceeding in the above entitled case to the  
best of my ability.

23 

24 Maukele Transcribers, LLC

25 Jessica B. Cahill, Transcriber, CER/CET-708