

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

CAPRIATI CONSTRUCTION CORP.,	)	Supreme Court No: 80107
INC., a Nevada Corporation	)	District Court Case No: A718689
Appellant,	)	Electronically Filed
	)	Aug 12 2020 01:36 p.m.
v.	)	Elizabeth A. Brown
	)	Clerk of Supreme Court
	)	
BAHRAM YAHYAVI, an individual,	)	
Respondent.	)	
	)	
-----	)	
CAPRIATI CONSTRUCTION CORP.,	)	Supreme Court No: 80821
INC., a Nevada Corporation	)	
Appellant,	)	
	)	
v.	)	
	)	
BAHRAM YAHYAVI, an individual,	)	
Respondent.	)	
-----	)	

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**APPENDIX TO  
APPELLANT'S OPENING BRIEF  
VOLUME 3 of 12**

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Appeal from the Eighth Judicial District Court  
Case No. A718689

HUTCHISON & STEFFEN, PLLC

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this date the **APPENDIX TO APPELLANT’S OPENING BRIEF VOLUME 3 of 12** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Dennis M. Prince, Esq.  
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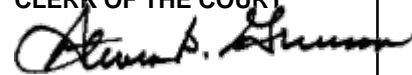
*Attorney for Respondent Bahram Yahyavi*

DATED this 12<sup>th</sup> day of August, 2020.

*/s/ Kaylee Conradi*

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An employee of Hutchison & Steffen, PLLC



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13 *Bahram Yahyavi*

8 **DISTRICT COURT**  
9  
10 **CLARK COUNTY, NEVADA**

11 BAHRAM YAHYAVI, an Individual,  
12 Plaintiff,  
13 vs.  
14 CAPRIATI CONSTRUCTION CORP., INC., a  
15 Nevada Corporation,  
16 Defendant

CASE NO.: A-15-718689-C  
DEPT. NO.: XXVIII

**PLAINTIFF'S MOTION FOR  
ATTORNEY'S FEES, COSTS, AND  
INTEREST**

**HEARING REQUESTED**

17 Plaintiff BAHRAM YAHYAVI, by and through his attorneys of record, Dennis M. Prince and  
18 Kevin T. Strong of PRINCE LAW GROUP, hereby moves this Court for an award of attorney's fees,  
19 costs, and interest pursuant to former NRCPC 68(f)(2). This Motion for Attorney's Fees, Costs, and  
20 Interest is brought following a 15-day jury trial. Ultimately, the jury returned a verdict in favor of  
21 Plaintiff in the amount of \$5,870,283.24. See 9/27/19 Verdict, attached as **Exhibit "1."**

22 ...  
23 ...  
24 ...  
25 ...  
26 ...  
27 ...



1 This Motion is based upon all of the pleadings and papers on file in this action, the  
2 Memorandum of Points and Authorities set forth herein, the exhibits attached hereto, and any  
3 argument the court may entertain at the time of the hearing.

4 DATED this 22<sup>nd</sup> day of October, 2019.

5 Respectfully Submitted,

6 **PRINCE LAW GROUP**

7 

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15 *Bahram Yahyavi*

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I.**

18 **INTRODUCTION**

19 On January 18, 2019, Plaintiff Bahram Yahyavi (“Plaintiff”) served Defendant Capriati  
20 Construction Corp., Inc. (“Defendant”) with his Offer of Judgment for \$4,000,000.00), inclusive of  
21 costs of suit, attorney’s fees, and pre-judgment interest. See 1/18/19 Offer of Judgment, attached as  
22 **Exhibit “2.”** Defendant rejected this offer upon the expiration of the 10-day period articulated in the  
23 previous version of NRCP 68.<sup>1</sup> As a result, this matter proceeded to trial for 15 days and the jury  
24 awarded Plaintiff \$5,870,283.24, which is \$1,870,283.24 above and beyond the sum Plaintiff sought  
25 in his Offer of Judgment. Throughout the entirety of this litigation, Defendant maintained several  
26 affirmative defenses that had no basis in the evidence. On this basis, Plaintiff is entitled to an award  
27 of attorney’s fees, costs, and interest pursuant to NRCP 68, NRS 18.010, and NRS 7.085.

28 . . .

<sup>1</sup> The currently amended Nevada Rules of Civil Procedure went into effect on March 1, 2019, over one month after Plaintiff served his January 18, 2019 Offer of Judgment. For purposes of this Motion, the former NRCP 68 governs.

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**II.**

**FACTUAL BACKGROUND**

This matter arises from a motor vehicle collision that occurred on June 19, 2013. Plaintiff was driving a company-owned vehicle for Las Vegas Chapman Dodge, his employer, eastbound on Sahara Avenue. As Plaintiff attempted to turn onto Glenn Avenue, suddenly and without warning, a forklift with its forks raised and sticking outward struck his vehicle and brought it to an immediate stop. Defendant's employee, Joshua Arbuckle ("Arbuckle"), negligently operated the forklift at the time of the collision.

At trial, Defendant's corporate representative, Clifford Goodrich ("Goodrich"), admitted that Arbuckle caused the subject collision. *See* Trial Transcript Excerpts – Day 5, at 43:23 – 44:4, attached as **Exhibit "3."** Arbuckle testified that prior to the subject collision, he was instructed not to use a forklift. *See* Trial Transcript Excerpts – Day 6, at 153:13-16, attached as **Exhibit "4."** Arbuckle admitted that he caused the subject collision. *Id.* at 169:20-22.

**A. Plaintiff's Injuries and Medical Treatment**

Immediately following the subject collision, Plaintiff was transported to UMC Trauma Center as he presented to the paramedics with an altered state of consciousness. During the weeks and months that followed the subject collision, Plaintiff complained of persistent and consistent chronic cervical spine pain and left arm symptoms. Plaintiff underwent all forms of conservative care for his neck pain, such as chiropractic care, physical therapy, cervical spine injections, and acupuncture therapy. In total, Plaintiff underwent 17 X-Rays and MRIs, 32 chiropractic visits, 137 physical therapy visits, 2 acupuncture treatments, and 26 spine injections. On January 30, 2018, Plaintiff underwent a cervical laminectomy and fusion at C3-4, C4-5, C5-6, C6-7, and C7-T1. Unfortunately, Plaintiff suffered a C5 neuropraxic injury that resulted from a known risk of the cervical spine surgery.

Plaintiff's cervical spine pain currently radiates into his left shoulder, left arm, and left hand. He has been recommended to undergo a surgical implantation of a permanent spinal cord stimulator in his cervical spine to manage his pain and symptoms. Plaintiff's retained physical medicine and rehabilitation expert, David J. Oliveri, M.D., testified at trial that Plaintiff is totally disabled from working due to the injuries he sustained from the subject collision. Dr. Oliveri further testified that all of Plaintiff's medical treatment is causally related to the June 19, 2013 motor vehicle collision.

1 Notably, the worker's compensation insurer has also accepted that Plaintiff suffered a permanent  
2 injury to his cervical spine as a result of the subject collision.

3 Defendant's lone retained medical expert, Howard Tung, M.D., testified that Plaintiff only  
4 suffered soft tissue injuries to his cervical spine from the subject collision. He further testified that  
5 Plaintiff's radicular symptoms only began years following the subject collision. However, the  
6 evidence established that Plaintiff complained of consistent radicular left arm symptoms at the  
7 inception of his care and treatment. Dr. Tung also testified that Plaintiff's need for ongoing treatment  
8 was the result of ongoing degenerative changes even though Plaintiff did not undergo any significant  
9 or extensive medical treatment for neck pain in the years before the subject collision.

10 **B. The Jury Returned a Verdict in Excess of Plaintiff's Offer of Judgment**

11 On January 18, 2019, Plaintiff served his Offer of Judgment to Defendant in the amount of  
12 \$4,000,000.00, inclusive of costs of suit, attorney's fees, and pre-judgment interest. *See Exhibit "2."*  
13 Defendant rejected Plaintiff's Offer of Judgment as a matter of law by failing to accept it within the  
14 10-day timeframe prescribed by the previous version of NRCP 68. On September 9, 2019, trial  
15 commenced in this action. Following a 15-day trial, the jury found for Plaintiff, and against  
16 Defendant, in the amount of \$5,870,283.24. *See Exhibit "1."* On October 22, 2019, the Judgment  
17 Upon the Jury Verdict was entered in the amount of \$6,276,948.24. On October 22, 2019, Plaintiff  
18 filed his verified Memorandum of Costs and Disbursements, which included: (1) the declaration of  
19 Plaintiff's counsel verifying that the costs were necessarily incurred and paid in relation to the  
20 prosecution of this action; and (2) all invoices and other documentation in support of these costs.  
21 Plaintiff's incurred costs total \$198,169.36. As the prevailing party who obtained a judgment from  
22 the jury in excess of the amount of his Offer of Judgment, Plaintiff is entitled to an award of attorney's  
23 fees, costs, and interest pursuant to NRCP 68, NRS 18.010, and NRS 7.085.

24 **III.**

25 **LEGAL ARGUMENT**

26 NRCP 68 outlines the penalties for a party's failure to accept the opposing party's offer of  
27 judgment served during litigation. The prior version of NRCP 68, which governs this action, states,  
28 in relevant part:

29 ...  
30 ...

1 (f) **Penalties for Rejection of Offer.** If the offeree rejects an offer and fails to  
2 obtain a more favorable judgment,

3 ...

4 (2) the offeree shall pay the offeror's post-offer costs, applicable interest on  
5 the judgment from the time of the offer to the time of entry of the judgment  
6 and reasonable attorney's fees, if any be allowed, actually incurred by the  
offeror from the time of the offer. If the offeror's attorney is collecting a  
contingent fee, the amount of any attorney's fees awarded to the party for  
whom the offer is made must deducted from that contingent fee.

7 NRCP 68 is designed to "encourage settlement of lawsuits before trial." *Allianz Ins. Co. v.*  
8 *Gagnon*, 109 Nev. 990, 995 (1993) (citing *Beattie v. Thomas*, 99 Nev. 579, 588 (1983)). "The purpose  
9 of an offer of judgment under former NRS 17.115 and NRCP 68 is to facilitate and encourage a  
10 settlement by placing a risk of loss on the offeree who fails to accept the offer, with no risk to the  
11 offeror, thus encouraging both offers and acceptance of offers." *Mendenhall v. Tassinari*, 133 Nev.  
12 \_\_\_\_, 403 P.3d 364, 374 (2017). "Placing the risk of loss of eligibility for fees and costs on an offeror  
13 . . . would have the opposite result and would discourage plaintiffs from making offers to settle."  
14 *Matthews v. Collman*, 110 Nev. 940, 950 (1971). NRCP 68 "imposes a mandatory penalty against a  
15 party who rejected a more favorable offer of judgment." *Albios v. Horizon Cmtys., Inc.*, 122 Nev.  
16 409, 419 (2006).

17 **A. Plaintiff is Entitled to an Award of Attorney's Fees Under Nevada Law**

18 The determination of any award of fees and costs pursuant to NRCP 68 is governed by the  
19 district court's discretion. *Beattie v. Thomas*, 99 Nev. 579, 588 (1983). The district court must  
20 evaluate various factors when determining any award of attorney's fees and costs:

21 (1) whether the plaintiff's claim was brought in good faith; (2)  
22 whether the offeror's offer of judgment was brought in good faith;  
(3) whether the offeree's decision to reject the offer and proceed to  
trial was grossly unreasonable or in bad faith; and (4) whether fees  
sought by the offeror are reasonable and justified in amount.

23 *Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev. 318, 323 (1995) (citing *Beattie*, 99 Nev. at 588-89)).

24 "Unless the trial court's exercise of discretion [in evaluating the *Beattie* factors] is arbitrary or  
25 capricious, [the Nevada Supreme Court] will not disturb the lower court's ruling on appeal." *Yamaha*  
26 *Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252 (1998) (quoting *Schouweiler v. Yancey Co.*, 101  
27 Nev. 827, 833 (1985)).

28 ...

1           **1. Defendant's affirmative defenses were not brought in good faith**

2           In *Yamaha Motor Co.*, the Nevada Supreme Court considered the *Beattie* factors when a  
3 plaintiff served a defendant with an offer of judgment and beat that offer of judgment amount at trial.  
4 114 Nev. at 251-52. The *Yamaha Motor Co.* Court determined that when a plaintiff served an offer  
5 of judgment and later became the prevailing party, the first factor should be used to determine whether  
6 the defendant's defenses were brought in good faith. *Id.* at 252. "If the good faith of either party in  
7 litigating liability and/or damage issues is not taken into account, offers would have the effect of  
8 unfairly forcing litigants to forego legitimate claims." *Id.*

9           The first *Beattie* factor justifies an award of attorney's fees because Defendant maintained  
10 affirmative defenses for which there was no evidence to support them. One of those defenses was  
11 that Plaintiff's comparative negligence caused the subject collision. *See* Defendant's Answer, at p. 2,  
12 attached as **Exhibit "5."** Defendant also maintained a defense that a third-party over whom it had no  
13 control over caused or contributed to the subject collision. These affirmative defenses were even read  
14 to the jury at the insistence of Defendant's counsel. Shortly thereafter, however, Defendant's own  
15 witnesses confirmed these affirmative defenses were not meritorious.

16           For example, Goodrich, Defendant's corporate representative, testified that Arbuckle,  
17 Defendant's employee, caused the subject collision:

18           Q. Josh Arbuckle caused this collision, didn't he? Don't you agree with that?

19           MR. KAHN: Objection. Calls for legal conclusion.

20           MR. PRINCE: It's based on his investigation.

21           THE COURT: As far as his investigation.

22           THE WITNESS: *It appears that way, yes.*

23           *See* **Exhibit "3,"** at 43:23 – 44:4 (emphasis added).

24           Arbuckle also provided similar testimony regarding the cause of the subject collision.  
25 Specifically, Arbuckle confirmed that senior management instructed him not to use a forklift prior to  
26 the subject collision. *See* **Exhibit "4,"** at 153:13-16. He admitted that a parked semi-truck obstructed  
27 his view for the entire time leading up to the subject collision. *Id.* at 163:13-19. He also admitted  
28 that he caused the subject collision:

          Q. Okay. And I mean, with all due respect to you, you caused this collision, didn't  
          you?



1 A. Yes, sir.

2 Q. Okay. And you caused it while you were driving a forklift owned by Capriati,  
3 correct?

4 A. Correct.

5 *See Exhibit "4,"* at 169:20-25.

6 The trial testimony from Goodrich alternatively established that Defendant possessed no  
7 evidence to support the affirmative defenses presented to the jury. Goodrich was designated by  
8 Defendant as the person most knowledgeable regarding information relating to or supporting  
9 Defendant's affirmative defenses. *See Exhibit "3,"* at 40:24 -- 41:10. Goodrich acknowledged the  
10 lack of evidence to support Defendant's affirmative defenses that sought to absolve Defendant of  
11 liability for causing the subject collision:

12 Q. I'm going to rephrase the question, so you have it firmly in your mind. Okay.  
13 I'm just going to tell you first why I'm asking it. The Court read earlier today  
14 Capriati Construction, Incorporation's answer to the complaint. And that says --  
15 one of the defenses is that the liability must be reduced by the percentage or  
16 negligence or fault of the Plaintiff. Now, I'm asking, you have no information or  
17 facts that Mr. Yahyavi engaged in any improper driving that day, correct, you  
18 personally?

19 A. Not that I witnessed.

20 Q. All right. And you have no documents, photographs, or other information that  
21 you collected showing that he did anything improper driving that day, correct?

22 A. No.

23 ...

24 Q. In the sixth affirmative defense raised by your company, it says that, all the  
25 injuries and damages were caused by the acts or admissions of a third-party, over  
26 whom Capriati had no control or right to control. What third-party are you talking  
27 about here?

28 A. I don't know. I would assume --

Q. All right.

A. -- maybe they're -- that was referencing Josh Arbuckle. I don't know.

Q. Well, he's --

A. I understand. I don't know.

Q. There's only two people involved in this collision, right? Mr. Yahyavi and Josh  
--





1 A. That is correct.

2 Q. -- Arbuckle?

3 A. That is correct.

4 ...

5 Q. And there's no third-party --

6 A. *Not that I'm aware of.*

7 Q. -- that caused it? That you're aware of?

8 A. *No, not that I'm aware of.*

9 Q. Even six years later, you're not aware of one, right?

10 A. *No, sir.*

11 *See Exhibit "3," at 40:12-23; 43:8-22; 44:6-11 (emphasis added).*

12 Defendant clearly never possessed any evidence to even suggest that Plaintiff's actions caused  
13 or contributed to the subject collision from the moment that the Complaint was filed. Yet, Defendant  
14 refused to accept responsibility for the negligent actions of its employee, Arbuckle. Instead,  
15 Defendant continued to dispute liability throughout the course of litigation and even at the beginning  
16 of trial until Mr. Goodrich finally admitted Defendant's responsibility for causing the subject  
17 collision:

18 Q. Okay. So, let me see if I get this right. Capriati Construction, today, September  
19 13th, 2019, accepts the responsibility for the actions of Josh Arbuckle causing this  
20 collision; am I correct in that?

21 A. *Yes, we accept all employees' actions.*

22 Q. Before today, isn't it true, Capriati Construction has never accepted  
23 responsibility for causing this collision, before today?

24 A. I'm not arguing about justification of cause. I'm just saying we accept his  
25 actions.

26 Q. Right. They were negligent, right? He was unsafe that day. And you're  
27 accepting the responsibility for those unsafe actions that day, correct?

28 A. *Correct.*

*See Exhibit "3," at 51:9-20 (emphasis added).*

There was nothing that prevented Defendant from accepting responsibility for causing the  
subject collision at the time the Complaint was filed. Defendant conducted its own investigation of



1 the subject collision and knew precisely what happened before the Complaint was even filed.  
2 Throughout the course of discovery, Defendant never gathered any evidence or information to support  
3 its affirmative defenses that Plaintiff or another third-party caused or contributed to the subject  
4 collision. Nevertheless, Defendant decided to perpetuate the viability of these liability affirmative  
5 defenses by having them read to the jury before any evidence was presented. This was clearly done  
6 to mislead and/or confuse the jury. All of this directly establishes that Defendant's liability  
7 affirmative defenses were not brought or maintained in good faith. As a result, the jury determined  
8 Defendant caused the subject collision and Plaintiff's injuries and awarded Plaintiff an additional  
9 \$1,870,283.24 beyond the amount of Plaintiff's January 18, 2019 Offer of Judgment. Notably, the  
10 jury's verdict is more than 50 times the amount Defendant offered through its own \$101,000.00  
11 pretrial Offer of Judgment. *See* 6/12/17 Offer of Judgment, attached as **Exhibit "6."** Considering the  
12 circumstances outlined above, Defendant failed to maintain its affirmative defenses as to liability in  
13 good faith.<sup>2</sup>

14 ***2. Plaintiff's offer of judgment was brought in good faith***

15 Given the evidence presented to the jury and the verdict rendered, Plaintiff's \$4,000,000.00  
16 Offer of Judgment was brought in good faith. At the time Plaintiff made his Offer of Judgment, his  
17 past medical expenses exceeded \$400,000.00 and his future medical expenses exceeded \$87,000.00.  
18 His claimed future loss of earning capacity at that time exceeded \$2,000,000.00. Given the amount  
19 of these damages, Plaintiff's \$4,000,000.00 Offer of Judgment was certainly reasonable. Defendant  
20 possessed all the evidence supporting these claimed damages and the facts surrounding the subject  
21 collision necessary to meaningfully evaluate the offer of judgment. Plaintiff even served his Offer of  
22 Judgment less than nine (9) months before trial commenced and after discovery was closed to ensure  
23 that Defendant was well-positioned to consider the offer.

24 Notably, Plaintiff served an earlier offer of judgment to Defendant for \$990,000.00 on January  
25 19, 2017. This further establishes the reasonableness of Plaintiff's efforts to resolve his case.  
26 Defendant had multiple opportunities to accept reasonable settlement offers throughout the course of

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27 <sup>2</sup> Based on Defendant's presentation of affirmative defenses that had no basis in the evidence, Plaintiff is also legally  
28 entitled to recover attorney's fees pursuant to NRS 18.010(2)(b) (Court may allow recovery of fees when the opposing  
party's defense was brought or maintained without reasonable grounds); and NRS 7.085(1)(a) (An attorney who maintains  
a defense that is not well-grounded in fact is personally responsible to pay attorney's fees incurred).

1 litigation and failed to do so. Accordingly, Plaintiff served both his January 19, 2017 and January 18,  
2 2019 Offers of Judgment in good faith.

3 **3. Defendant's decision to reject Plaintiff's offer of judgment and proceed to trial was**  
4 **grossly unreasonable**

5 The third *Beattie* factor asks this Court to evaluate Defendant's conduct in its rejection of the  
6 offer of judgment. Based on Plaintiff's analysis above, it is difficult to comprehend why Defendant  
7 refused to accept responsibility for causing the subject collision. As articulated by Goodrich and  
8 Arbuckle, Defendant never gathered any evidence to dispute its liability in this case. Yet, Defendant  
9 seemingly relied on an illegitimate liability dispute to reject Plaintiff's reasonable offer of judgment.

10 While Defendant will likely argue that it's decision to proceed to trial was reasonable based  
11 on issues of medical causation, this argument is similarly not persuasive. Defendant's singular basis  
12 to dispute medical causation in this case was *one* lone prior medical record from October 25, 2011 in  
13 which Plaintiff allegedly complained of neck pain for several years. Defendant's counsel  
14 acknowledged during the parties' EDCR 2.67 conference that these medical records "*are my case.*"  
15 See EDCR 2.67 transcript excerpt, at 4:2-8; 6:9 – 7:3, attached as **Exhibit "7"** (emphasis added).  
16 Notably, Defendant, and its retained medical expert, Howard Tung, M.D., directly overlooked the  
17 substantial lack of medical and clinical insignificance of this lone record. Specifically, both  
18 Defendant and Dr. Tung disregarded the nature and extent of Plaintiff's treatment for his neck pain  
19 that he underwent following the subject collision in comparison to the lack of treatment he received  
20 prior to the subject collision. By way of example, Plaintiff never underwent any chiropractic care or  
21 physical therapy for his supposed neck pain prior to the subject collision. In fact, Plaintiff was never  
22 even referred to undergo any medical treatment to his neck at any time before the subject collision.  
23 Plaintiff's permanent cervical spine injury as a result of the subject collision was even accepted by  
24 the worker's compensation insurer. Yet, Defendant maintained that Plaintiff's need for most of his  
25 treatment was causally related to degenerative changes in his cervical spine as opposed to the subject  
26 collision. The simple fact that Plaintiff's cervical spine pain was asymptomatic for nearly *two years*  
27 prior to the subject collision nullified Defendant's factual position regarding medical causation at the  
28 time Plaintiff served his Offer of Judgment *and* at trial. Defendant simply refused to accept  
responsibility for causing Plaintiff's injuries even though the wealth of relevant and admissible  
medical evidence proved otherwise.



1           Simply put, Plaintiff's Offer of Judgment to settle his claims before trial was reasonable.  
2 Defendant rejected the offer despite the catastrophic and life-altering injuries Plaintiff suffered as a  
3 result of the subject collision. Defendant's liability dispute utterly lacked all credibility given the  
4 nature of the subject collision and the circumstances surrounding its own investigation of the matter.  
5 Defendant was unable to point to any evidence to dispute liability at trial and even acknowledged, for  
6 the first time at trial, that it was responsible for causing the subject collision. The medical significance  
7 of Plaintiff's alleged prior neck pain was also inexplicably inflated by Defendant and Dr. Tung  
8 without any basis. Defendant uniquely understood the risks associated with trying this case as to both  
9 liability and damages, but affirmatively chose to reject Plaintiff's Offer of Judgment. The  
10 reasonableness of Plaintiff's Offer of Judgment certainly cannot be questioned at this juncture because  
11 the verdict rendered by the jury was nearly \$2,000,000.00 above the offer. Therefore, the first three  
12 (3) *Beattie* factors all support an award of attorney's fees in this matter.

13           **B. A Contingency Fee Award for Plaintiff's Attorney's Fees Incurred is Reasonable and**  
14           **Justified Under Nevada Law**

15           The fourth *Beattie* factor addresses whether the fees sought by Plaintiff are reasonable and  
16 justified in amount. *Beattie*, 99 Nev. at 588-89. The amount of attorney's fees to be awarded, and  
17 whether such fees are reasonable, is left to the sound discretion of the district court. *Laforge v. State*  
18 *ex. rel. Univ. & Cmty. College Sys.*, 116 Nev. 415, 424 (2000); *Uniroyal Goodrich Tire Co.*, 111 Nev.  
19 at 323. When determining the reasonableness of the amount of attorney's fees to be awarded under  
20 the fourth *Beattie* factor, the district court is required to consider the factors set forth in *Brunzell v.*  
21 *Golden Gate Nat'l Bank*, 85 Nev. 345, 349-50 (1969). *O'Connell v. Wynn Las Vegas, LLC*, 429 P.3d  
22 664, 670 (Nev. Ct. App. 2018). The *Brunzell* factors to determine that the requested attorney's fees  
23 are reasonable and justified in their amount are:

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

*Brunzell*, 85 Nev. at 349.



1           When determining the amount of fees to award, “the court is not limited to one specific  
2 approach; its analysis may begin with any method rationally designed to calculate a reasonable  
3 amount, including those based on . . . a contingency fee.” *Shuette v. Beazer Homes Holdings Corp.*,  
4 121 Nev. 837, 864 (2005). However, the method of calculation considered by the court is still  
5 governed by the *Brunzell* factors to determine the reasonableness of the amount of those fees. *Id.* at  
6 865.

7           Critically, a trial court “*can award attorney fees to the prevailing party who was represented*  
8 *under a contingency fee agreement, even if there are no hourly billing records to support the*  
9 *request.*” *O’Connell*, 429 P.3d at 671 (emphasis added). Rather than review hourly billing records,  
10 a trial court can “consider the type of case, the length of the trial, the difficulty of the case, the numbers  
11 and types of witnesses, as well as other relevant factors.” *Id.* at 671 (quoting *McNeel v. Farm Bureau*  
12 *General Insurance Co.*, 795 N.W.2d 205, 220 (Mich. Ct. App. 2010)). Other considerations outside  
of considering billing records include:

13                     time taken away from other work, case-imposed deadlines, how  
14                     long the attorney worked with the client, the usual fee and awards in  
15                     similar cases, if the fee was contingent or hourly, the amount of  
                          money at stake, and how desirable the case was to the attorneys  
                          involved

16 *O’Connell*, 429 P.3d at 672 (citing *Hsu v. County of Clark*, 123 Nev. 625, 637 (2007)).

17           Plaintiff entered into a contingency fee agreement, allowing for an attorney fee of 40% of the  
18 recovery obtained in this case after suit is filed. Based on the factors outlined above, this Court can  
19 award Plaintiff a 40% contingency fee on the judgment without the need to review hourly bills.

20           The complexities of this case cannot reasonably be questioned. The evidence established that  
21 Plaintiff sustained a severe injury to his cervical spine as a result of the subject collision. He  
22 underwent medical treatment from numerous medical providers as part of the worker’s compensation  
23 system. The worker’s compensation element added a further layer of complexity to Plaintiff’s medical  
24 treatment because the system controlled what doctors Plaintiff could treat with and the approval of  
25 such treatment. It was necessary for Plaintiff’s counsel to explain the function of worker’s  
26 compensation in this context because the jury was instructed to not reduce Plaintiff’s award by any  
27 amount paid by the worker’s compensation insurer or the administrator as a matter of Nevada law.  
28 *See Nev. Rev. Stat. 616C.215(10)*. The extent of Plaintiff’s medical treatment was also vast as he



1 received chiropractic care, physical therapy, pain management injections, acupuncture, and  
2 ultimately, a cervical spine surgery. The state of Plaintiff's medical condition was further complicated  
3 by the C5 neuropraxic injury he sustained as a result of his cervical fusion surgery. Given the extent  
4 of Plaintiff's injuries and medical treatment, Plaintiff's counsel called three medical doctors from  
5 three distinct medical specialties to provide testimony to the jury regarding their treatment of Plaintiff  
6 and his injuries. The medical portion of this case certainly contributed to the total 15 day length of  
7 trial in this matter.

8       Aside from the medical aspects of this case, the extent of Plaintiff's economic damages  
9 extended the length of trial. Plaintiff's counsel presented the appropriate medical expert witness and  
10 vocational rehabilitation expert to explain why Plaintiff is permanently disabled from working and  
11 how that impacted his work life capacity. Plaintiff's counsel also called an expert witness in  
12 economics to testify about the present value of Plaintiff's past wage loss and loss of future earning  
13 capacity.

14       In total, eight (8) witnesses were called to testify, including Goodrich and Arbuckle, regarding  
15 issues of liability. Plaintiff's counsel spent the better part of five weeks preparing for trial and  
16 expended hundreds of hours both in court and outside of court to prepare for witness examinations,  
17 and the cross-examination of Defendant's retained medical expert, Howard Tung, M.D. See  
18 Declaration of Dennis M. Prince, attached as **Exhibit "8."** Given the size of Plaintiff's counsel's  
19 firm, nearly all his firm's resources were devoted to the trial to ensure Plaintiff received the best  
20 chance for a successful outcome. The amount of time and resources devoted to this trial was certainly  
21 reasonable, particularly because the amount of damages at stake in this case were high. Plaintiff's past  
22 medical expenses incurred, and future medical expenses alone totaled nearly \$1,000,000.00.

23       Plaintiff's counsel also expended numerous hours after the offer of judgment expired  
24 preparing responsive briefing to Defendant's pretrial motions in limine and briefing in support of his  
25 pretrial motions in limine. Plaintiff's counsel drafted numerous trial briefs during the course of trial,  
26 including a motion for sanctions that stemmed from defense counsel's egregious misconduct at the  
27 conclusion of trial. All these facts provide ample support to justify a contingency fee attorney award  
28 from this Court in the absence of hourly bills.

      The inherent risk associated with accepting cases on a contingent fee further justifies an award  
of attorney's fees in this action. "In entering into contingent fee agreements, attorneys risk their time

1 and resources in endeavors that may ultimately be fruitless.” *King v. Fox*, 851 N.E.2d 1184, 1191-92  
2 (N.Y. 2006). There is also a greater risk of nonpayment for attorneys who accept a contingent fee  
3 case because, by contrast, attorneys who are paid hourly “normally obtain assurances they will receive  
4 payment.” *O’Connell*, 429 P.3d at 671. Given the unique circumstances facing attorneys who accept  
5 cases on contingent fees, these attorneys should receive a contingent fee award when they are  
6 successful in trial. Such an outcome will ultimately lead to more attorneys accepting contingent fee  
7 cases, which, in turn, will ensure that people with less than modest means have access to the civil  
8 justice system. *Id.* (citing *King*, 851 N.E.2d at 1191).

9 Defendant was given more than one opportunity to accept reasonable offers of judgment from  
10 Plaintiff. Defendant rejected each of those offers at its own peril even though they were clearly  
11 reasonable based on the outcome of trial. Under these circumstances, Plaintiff should at least be made  
12 whole given that he will be paying attorney’s fees equivalent to 40% of all money he receives. At a  
13 contingency rate of 40%, the contingency fee on the Judgment of \$6,276,948.24 equals \$2,510,779.30.  
14 Therefore, Plaintiff respectfully requests this Court to award the entire 40% contingency fee because  
15 the *Brunzell* factors support the reasonableness of this amount.

16 ***1. The qualities of Plaintiff’s counsel establish the reasonableness of the requested  
17 contingency fee award***

18 The level of experience and skills of Plaintiff’s counsel, Dennis M. Prince, justify the amount  
19 of the requested contingency fee award. Mr. Prince is a Martindale-Hubbell “AV” rated attorney who  
20 has an excellent reputation both in Nevada and nationwide as a plaintiff’s trial attorney. Mr. Prince  
21 was named 2016 Trial Lawyer of the Year for the State of Nevada by the Nevada Justice Association.  
22 Mr. Prince has tried more than 100 cases to jury verdict over the course of his 26-year legal career.  
23 He has been recognized by various organizations including the American Board of Trial Advocates,  
24 the National Academy of Jurisprudence, and the Multi-Million Dollar Advocates Forum. Mr. Prince  
25 has also been honored as one of the top 100 trial lawyers in the nation by the National Trial Lawyers  
26 Association. Mr. Prince’s experience is not limited to jury trials as he has also successfully handled  
27 and argued more than 50 cases to the Nevada Supreme Court and Ninth Circuit Court of Appeals.  
28 Given Mr. Prince’s level of experience and success, a 40% contingency fee request is appropriate  
given the length of trial, the complex nature of Plaintiff’s injuries, and that 40% is the standard  
contingency fee rate for cases that go to trial.



1           **2. The character of the work performed by Plaintiff's counsel establishes the**  
2           **reasonableness of the requested contingency fee award**

3           As detailed in Subsection B, *supra*, Plaintiff's counsel devoted substantial time, effort, and  
4 skills to adequately and properly prepare the absolute very best case for trial. Plaintiff's counsel  
5 prepared and examined three medical expert witnesses. These medical witnesses were able to clearly  
6 articulate the extent of Plaintiff's injuries suffered from the subject collision, the reasonableness of  
7 the medical treatment he underwent for those injuries, and his need for future medical care. Plaintiff's  
8 counsel also contributed substantial time and effort outside of the courtroom to create visual aids  
9 necessary for the jury to understand the dynamics of the motor vehicle collision. These visual aids  
10 helped to clarify the testimony of Goodrich and Arbuckle to explain precisely how Defendant's  
11 negligence caused the subject collision. Plaintiff's counsel was also tasked with cross-examining  
12 Defendant's medical expert to undermine the reliability of his medical causation opinions as well as  
13 the lone prior neck pain complaint. Therefore, this factor weighs in favor of awarding the full 40%  
14 contingency fee.

15           **3. The work actually performed by Plaintiff's counsel establishes the reasonableness of the**  
16           **requested contingency fee award**

17           Based on the explanation of the work performed by Plaintiff's counsel both in preparation for  
18 and during the trial of this matter in Subsection B, *supra*, this factor weighs in favor of awarding the  
19 full 40% contingency fee.

20           **4. The result obtained by Plaintiff's counsel establishes the reasonableness of the**  
21           **requested contingency fee award**

22           The jury's verdict indisputably proves that counsel achieved a successful outcome for  
23 Plaintiff. The jury's verdict in the amount of \$5,870,283.24 is nearly \$2,000,000.00 more than the  
24 \$4,000,000.00 offer of judgment Defendant rejected in January 2019. The positive outcome of trial  
25 is a direct result of the extensive trial experience Plaintiff's counsel possesses, and the substantial time  
26 and effort he devoted to this trial, both inside and outside of the courtroom. Plaintiff's counsel  
27 effectively conveyed to the jury that Defendant's negligence not only caused the subject collision, but  
28 also caused Plaintiff's extensive injuries and disability. This Court witnessed firsthand the ability of  
Plaintiff's counsel to present evidence in a manner necessary to prove his case and to persuasively  
advocate on Plaintiff's behalf. As a result, the *Brunzell* factors should lead this Court to reach but one





1 conclusion, namely that the contingent fee of \$2,510,779.30 (40% of \$6,276,948.24) in this case is  
2 reasonable and should be awarded.

3 **C. Plaintiff is Entitled to the Costs Incurred After Defendant Rejected His Offer of**  
4 **Judgment as a Matter of Right**

5 NRS 18.020(3) specifically requires prevailing parties to recover costs following entry of a  
6 judgment against the adverse party: “In an action for the recovery of money or damages, where the  
7 plaintiff seeks to recover more than \$2,500.” On October 18, 2019, Plaintiff filed his Memorandum  
8 of Costs, which requests costs in the amount of \$198,169.36 as a prevailing party pursuant to NRS  
9 18.020(3). Plaintiff’s Memorandum of Costs includes all costs incurred in the prosecution of this  
10 action, including those costs incurred after the January 18, 2019 Offer of Judgment was served.

11 However, former NRCP 68(f)(2) separately requires any offeree who rejects an offer and fails  
12 to obtain a more favorable judgment to pay all post-offer costs incurred by the offeror. These post-  
13 offer costs include fees incurred for expert witnesses whose services were reasonable and necessary  
14 to prepare for and conduct trial. Unlike former NRCP 68(f)(2), there is no time limitation to the  
15 amount of costs recoverable under NRS 18.020(3). Thus, the only logical conclusion is that NRCP  
16 68(f)(2) requires the offeree to pay the post-offer costs incurred by the offeror *twice* as a penalty for  
17 the offeree’s rejection of the offer of judgment and failure to beat that offer at trial.<sup>3</sup> Otherwise, the  
18 mandatory penalty language imposed by the former and current version of NRCP 68(f) is effectively  
19 meaningless. “Statutes should be read as a whole, so as not to render superfluous words or phrases  
20 or make provisions nugatory.” *Clark County v. S. Nev. Health Dis.*, 128 Nev. 651, 656 (2012).<sup>4</sup>

21 On January 18, 2019, Plaintiff served his Offer of Judgment to Defendant. Defendant failed  
22 to accept the offer of judgment by the February 7, 2019 deadline. Based on the express language of  
23 NRCP 68, Plaintiff is entitled to recover the costs incurred from January 18, 2019 through the end of  
24 trial, which total \$105,716.82. *See Nev. R. Civ. P. 68(f)(2)* (“The offeree shall pay the offeror’s post-  
25 offer costs . . . from the time of the offer to the time of entry of the judgment . . .”); *see also*, Plaintiff’s  
26 Memorandum of Fees and Costs.

27 . . .

28 <sup>3</sup> Notably, the current version of NRCP 68 does not otherwise alter or change the language to justify this result.

<sup>4</sup> The rules of statutory construction apply when construing the Nevada Rules of Civil Procedure. *Moon v. McDonald, Carano & Wilson, LLP*, 126 Nev. 510, 516 (2010).

1 **D. Defendant Must Pay Applicable Interest in the Amount of \$312,968.45**

2 Former NRCPC 68(f)(2) states, in relevant part, that the [defendant] offeree who rejects an offer  
3 and fails to obtain a more favorable judgment shall pay the [plaintiff] offeror's "applicable interest on  
4 the judgment from the time of the offer to the time of entry of the judgment . . . ." The express  
5 language of the rule authorizes interest on the judgment and does not distinguish between past and  
6 future damages, unlike NRS 17.130(2), which specifically precludes the recovery of interest on future  
7 damages. *Uniroyal Goodrich Tire Co.*, 111 Nev. at 324. As such, the recoverable interest under  
8 former NRCPC 68(f)(2) is distinct from the prejudgment interest recoverable under NRS 17.130(2).  
9 *See Lee v. Ball*, 121 Nev. 391, 395-96 (2005). This result is consistent with the express purpose of  
10 NRCPC 68, namely, to encourage settlement and to penalize those parties who fail to accept a  
11 reasonable settlement offer. The recovery of penalty interest ensures the risk of loss for the failure to  
12 accept a reasonable offer of judgment remains with the offeree. *Matthews*, 110 Nev. at 950.

13 Plaintiff is entitled to recover applicable penalty interest on the entire judgment of  
14 \$6,276,948.24. Based on the prior version of NRCPC 68(f), the applicable period of penalty interest  
15 ran from January 18, 2019 (the date of the offer of judgment) through October 18, 2019 (the date of  
16 entry of the judgment on the verdict). Pursuant to *Lee*, 121 Nev. at 395-96, the applicable interest  
17 rate at the time of the offer was 6.50% per annum.

18 **January 18, 2019 through October 21, 2019 = 277 days**

19 **274 days x \$1,129.85 (daily interest amount) = \$312,968.45 (total recoverable penalty**  
20 **interest)**

21 Thus, Plaintiff is entitled to an award of penalty interest in the amount of **\$312,968.45**.

22 **IV.**

23 **CONCLUSION**

24 Based on the foregoing facts, law, and analysis, Plaintiff respectfully requests that this Court  
25 **GRANT** his Motion for Attorney's Fees, Costs, and Interest as follows:

26 1. Plaintiff's attorney's fees in the amount of **\$2,510,779.30** (40% contingency fee on the  
27 Judgment amount of \$6,276,948.24);  
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2. Taxable penalty costs, separate and apart from the costs accounted for in Plaintiff's Memorandum of Costs, incurred from January 18, 2019 to October 18, 2019 in the amount of **\$105,716.82**; and

3. Applicable penalty interest in the amount of **\$312,968.45**.

DATED this 22<sup>nd</sup> day of October, 2019.

Respectfully Submitted,

**PRINCE LAW GROUP**



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Nevada Bar No. 5092  
KEVIN T. STRONG  
Nevada Bar No. 12107  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
Attorneys for Plaintiff  
*Bahram Yahyavi*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCPC 5(b), I certify that I am an employee of **PRINCE LAW GROUP**, and that  
3 on the 22 day of October, 2019, I caused the foregoing document entitled **PLAINTIFF'S**  
4 **MOTION FOR ATTORNEY'S FEES, COSTS, AND INTEREST** to be served upon those persons  
5 designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth  
6 Judicial District Court E-Filing System in accordance with the mandatory electronic service  
7 requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

8 David S. Kahn, Esq.  
9 Mark Severino, Esq.  
10 **WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP**  
11 300 S. Fourth Street, 11th Floor  
12 Las Vegas, Nevada 89101

13 Mark J. Brown, Esq.  
14 **LAW OFFICES OF ERIC R. LARSEN**  
15 750 E. Warm Springs Road, Suite 320, Box 19  
16 Attorneys for Defendant  
17 *Capriati Construction Corp., Inc.*

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An Employee of PRINCE LAW GROUP

# EXHIBIT 1

•

SEP 27 2019 7:45 pm

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BY: E. Vargas  
E. VARGAS, DEPUTY

BAHRAM YAHYAVI, an individual,

Case No. A-15-718689-C

Plaintiff,

Dept. No. XXVIII

vs.

CAPRIATI CONSTRUCTION CORP., INC. a

Nevada Corporation,

Defendant.

VERDICT

We the jury in the above-entitled action, find for the Plaintiff and against the Defendant and assess the total amount of the Plaintiff's damages as follows:

Past medical and related expenses	\$ <u>491,023.24</u>
Future medical and related expenses	\$ <u>529,260.00</u>
Past loss of wages and earning capacity	\$ <u>300,000.00</u>
Future loss of wages and earning capacity	\$ <u>1,550,000.00</u>
Past pain, suffering, disability and loss of enjoyment of life	\$ <u>500,000.00</u>
Future pain, suffering, disability and loss of enjoyment of life	\$ <u>2,500,000.00</u>

DATED this 27 day of September, 2019.

Bryan R. [Signature]  
FOREPERSON

A-15-718689-C  
VER  
Verdict  
4806143



# EXHIBIT 2

**EGLET PRINCE**

1 **OOJ**  
2 **DENNIS M. PRINCE, ESQ.**  
3 Nevada Bar No. 5092  
4 **TRACY A. EGLET, ESQ.**  
5 Nevada Bar No. 6419  
6 **EGLET PRINCE**  
7 400 South 7<sup>th</sup> Street, #400  
8 Las Vegas, Nevada 89101  
9 Tel.: 702-450-5400  
10 Fax: 702-450-5451  
11 [eservice@egletlaw.com](mailto:eservice@egletlaw.com)

12 **IN THE EIGHTH JUDICIAL DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 **BAHRAM YAHYAVI, an individual,**  
15 **Plaintiff,**  
16 **vs.**  
17 **CAPRIATI CONSTRUCTION CORP, INC. a**  
18 **Nevada Corporation,**  
19 **Defendants.**

Case No.: A-15-718689-C  
Dept. No.: XXVII

**PLAINTIFF'S OFFER OF JUDGMENT  
TO DEFENDANT CAPRIATI  
CONSTRUCTION CORP., INC.**




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TO: CAPRIATI CONSTRUCTION CORP., INC., *Defendants*;  
TO: David S. Kahn, Esq., Wilson, Elser, Moskowitz, Edelman & Dicker, LLP., Mark J. Brown, Esq., Law Offices of Eric R. Larsen., *Attorneys for Defendants*;

Pursuant to NRCP 68, Plaintiff BAHRAM YAHYAVI, hereby offers to accept judgment in the above-entitled matter against Defendants CAPRIATI CONSTRUCTION CORP., INC., in the sum of FOUR MILLION DOLLARS and 99/100 (\$4,000,000.00), inclusive of costs of suit, attorneys' fees, and pre-judgment interest.

DATED this 17 day of January 2019.

Respectfully submitted:

**EGLET PRINCE**  
  
**DENNIS M. PRINCE, ESQ.**  
Nevada Bar No. 5092  
**TRACY A. EGLET, ESQ.**  
Nevada Bar No. 6419  
400 South 7th Street, 4th Floor  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiff*


CERTIFICATE OF SERVICE

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Pursuant to NRCP 5(b), I certify that I am an employee of EGLET PRINCE, and that on January 19, 2019, I caused the foregoing document entitled **PLAINTIFF'S OFFER OF JUDGMENT TO DEFENDANT CAPRIATI CONSTRUCTION CORP., INC.** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

Mark J. Brown, Esq.  
**LAW OFFICES OF ERIC R. LARSEN**  
750 E. Warm Springs Road, Suite 320, Box 19  
Las Vegas, Nevada 89119

David S. Kahn, Esq.  
**WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP**  
300 South Fourth Street, 11<sup>th</sup> Floor  
Las Vegas, Nevada 89101

  
An Employee of EGLET PRINCE

# EXHIBIT 3

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RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

BAHRAM YAHYAVI,  
Plaintiff,

vs.

CAPRIATI CONSTRUCTION CORP  
INC.  
Defendant.

CASE#: A-15-718689-C  
DEPT. XXVIII

BEFORE THE HONORABLE RONALD J. ISRAEL  
DISTRICT COURT JUDGE  
FRIDAY, SEPTEMBER 13, 2019

**RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL - DAY 5**  
**TESTIMONY OF CLIFFORD GOODRICH**

APPEARANCES:

For the Plaintiff: DENNIS M. PRINCE, ESQ.  
KEVIN T. STRONG, ESQ.

For the Defendant: MARK JAMES BROWN, ESQ.  
DAVID S. KAHN, ESQ.

RECORDED BY: JUDY CHAPPELL, COURT RECORDER

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FOR THE PLAINTIFF

MARKED

RECEIVED

None

FOR THE DEFENDANT

MARKED

RECEIVED

None

1 well, they asked, and so he certainly would have to -- since he appeared  
2 as the 30(b)(6) witness, knowledgeable on those areas.

3 MR. BROWN: He can only testify on the information that he  
4 has. He cannot testify --

5 THE COURT: Well, sure. If he says I don't know, that's fine.  
6 But the -- you're objecting on allowing him to answer. If the answer is I  
7 don't know, that's fine.

8 [Sidebar ends at 2:06 p.m.]

9 THE COURT: The objection is overruled.

10 MR. PRINCE: Okay. Thank you.

11 BY MR. PRINCE:

12 Q I'm going to rephrase the question, so you have it firmly in  
13 your mind. Okay. I'm just going to first tell you why I'm asking it. The  
14 Court read earlier today Capriati Construction, Incorporation's answer to  
15 the complaint. And that says -- one of the defenses is that the liability  
16 must be reduced by the percentage of negligence or fault of the Plaintiff.  
17 Now, I'm asking, you have no information or facts that Mr. Yahyavi  
18 engaged in any improper driving that day, correct, you personally?

19 A Not that I witnessed.

20 Q All right. And you have no documents, photographs, or  
21 other information that you collected showing that he did anything  
22 improper driving that day, correct?

23 A No.

24 Q And you recall when we were at your deposition, one of the  
25 things -- one of the areas that you're required to discuss on behalf of the

1 corporation was any and all information relating to or supporting the  
2 Defendant's affirmative defenses? Do you remember that was one of  
3 your topics?

4 A No.

5 Q Well, you have the -- I know you had the notice with you  
6 earlier. You have the notice of your topics, right?

7 A Yes.

8 Q Right. So you -- that was one of the topics -- if it's one of the  
9 topics in there, that's what it is, right?

10 A Sure.

11 Q Right. Okay. One of the other defenses that is raised is that  
12 this -- let me read it to you first, okay?

13 A Okay.

14 Q This is raised by the Capriati Construction. It says this  
15 answering Defendant, meaning Capriati, alleges that the occurrence  
16 referred to in the complaint, and all injuries and damages, if any,  
17 resulting therefrom, are caused by the acts or omissions of a third-party  
18 over whom this answering Defendant has no control, nor the right, duty,  
19 or obligation to control. What third-party are you talking about?

20 MR. KAHN: Your Honor, I think that's one of the withdrawn  
21 ones from the pretrial.

22 MR. PRINCE: No. We read it today.

23 MR. KAHN: But we read all of them.

24 MR. PRINCE: We read it to this jury today.

25 THE COURT: Counsel, approach.

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[Sidebar ends at 2:09 p.m.]

THE COURT: Overruled.

MR. PRINCE: Okay.

BY MR. PRINCE:

Q So I'm going to state the question, so you have it firmly in your mind, okay?

A Okay.

Q In the sixth affirmative defense raised by your company, it says that, all the injuries and damages were caused by the acts or admissions of a third-party, over whom Capriati had no control or right to control. What third-party are you talking about here?

A I don't know. I would assume --

Q All right.

A -- maybe they're -- that was referencing Josh Arbuckle. I don't know.

Q Well, he's --

A I understand. I don't know.

Q There's only two people involved in this collision, right? Mr. Yahyavi and Josh --

A That is correct.

Q -- Arbuckle?

A That is correct.

Q Josh Arbuckle caused this collision, didn't he? Don't you agree with that?

MR. KAHN: Objection. Calls for legal conclusion.



1 MR. PRINCE: It's based on his investigation.

2 THE COURT: As far as his investigation.

3 THE WITNESS: It appears that way, yes.

4 MR. PRINCE: All right.

5 BY MR. PRINCE:

6 Q And there's no third-party --

7 A Not that I'm aware of.

8 Q -- that caused it? That you're aware of?

9 A No, not that I'm aware of.

10 Q Even six years later, you're not aware of one, right?

11 A No, sir.

12 Q All right.

13 MR. PRINCE: Your Honor, thank you. I don't have any  
14 additional questions. Well, hang on.

15 BY MR. PRINCE:

16 Q You understand, I mean, as a company --

17 MR. PRINCE: -- strike that.

18 BY MR. PRINCE:

19 Q You understand, as a safety manager for a construction  
20 company that the corporation is responsible or legally responsible for all  
21 of the actions of its employees, right?

22 A That is correct.

23 Q Okay. So that's something you know, and you guys accept  
24 that risk?

25 A Yes, we do accept that risk.

1 microphone.

2 MR. KAHN: I'm sorry. I wandered away from the  
3 microphone. No further questions.

4 THE COURT: All right.

5 [Pause]

6 MR. PRINCE: Court's indulgence. I'm just trying to find a --

7 REDIRECT EXAMINATION

8 BY MR. PRINCE:

9 Q Okay. So let me see if I get this right. Capriati Construction,  
10 today, September 13th, 2019, accepts the responsibility for the actions of  
11 Josh Arbuckle causing this collision; am I correct in that?

12 A Yes, we accept all employees actions.

13 Q Before today, isn't it true, Capriati Construction has never  
14 accepted responsibility for causing this collision, before today?

15 A I'm not arguing about justification of cause. I'm just saying  
16 we accept his actions.

17 Q Right. They were negligent, right? He was unsafe that day.  
18 And you're accepting the responsibility for those unsafe actions that day,  
19 correct?

20 A Correct.

21 Q Right. But I'm asking, before today, when did Capriati make  
22 that decision to do that, that they're accepting the responsibility for his  
23 actions? Because I've never heard it before today, so I'm surprised.  
24 That's why I'm --

25 A I don't recall you asking that question to me before.

1 right?

2 A No.

3 Q You don't think it's more typical to have a daytime flagger  
4 than a --

5 A It's more typical, but yes, it --

6 Q Okay.

7 A -- does happen at night.

8 Q Okay. You would have somebody -- okay. Nevertheless,  
9 whether it be -- there was a flagger whenever this inspector inspected?

10 A For a portion of that work, yes, it looks like it.

11 Q Okay. And so when Josh was operating this, there's -- we  
12 don't know if you had a flagger on site or didn't have a flagger on site?

13 A There wasn't one when I got there.

14 Q Okay. Good enough.

15 MR. PRINCE: Thank you.

16 THE COURT: Follow-up from the Defendant?

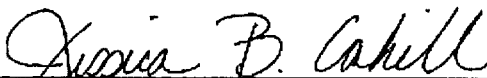
17 MR. KAHN: No, Your Honor. Again, I'll reserve. I would ask  
18 the witness be excused.

19 THE COURT: Okay. You are excused.

20 THE WITNESS: Thank you, Your Honor.

21 [End of designated testimony at 2:33 p.m.]

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

24 

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

# EXHIBIT 4

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RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

BAHRAM YAHYAVI,  
Plaintiff,

vs.

CAPRIATI CONSTRUCTION CORP  
INC.  
Defendant.

CASE#: A-15-718689-C  
DEPT. XXVIII

BEFORE THE HONORABLE RONALD J. ISRAEL  
DISTRICT COURT JUDGE  
MONDAY, SEPTEMBER 16, 2019

**RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 6**

APPEARANCES:

For the Plaintiff: DENNIS M. PRINCE, ESQ.  
KEVIN T. STRONG, ESQ.  
For the Defendant: MARK JAMES BROWN, ESQ.  
DAVID S. KAHN, ESQ.

RECORDED BY: JUDY CHAPPELL, COURT RECORDER

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FOR THE PLAINTIFF

MARKED

RECEIVED

None

FOR THE DEFENDANT

MARKED

RECEIVED

None

1 sites, correct?

2 A Correct.

3 Q So you were a finisher and they have a title of employees  
4 who operate equipment called operators?

5 A Right.

6 Q Right. Now, prior to June 2013 you never received any sort  
7 of certification for a forklift operation, correct?

8 A Correct.

9 Q You had driven and/or operated forklifts to move material on  
10 job sites for unloading and loading trucks, pallets, those types of things,  
11 right?

12 A Right.

13 Q Right. But prior to June 2013, you had been instructed by  
14 senior management not to use a forklift; they had told you that before  
15 that day right?

16 A I've been told before. Yes, sir.

17 Q Okay. Now, in June 2013 you were doing work near Boulder  
18 Highway and --

19 A Glen.

20 Q -- Sahara Avenue, right?

21 A Uh-huh.

22 Q I'm sorry, is that a yes?

23 A Yes, sir.

24 Q Yeah. I know what you're saying, but the court reporter  
25 needs to make sure that we have everybody -- go to --

1 THE COURT: The jury can decide. They've heard the  
2 testimony.

3 MR. PRINCE: Right.

4 BY MR. PRINCE:

5 Q In looking at Exhibit 64 -- excuse me -- yeah, Exhibit 64, Bates  
6 Number 136, you agree that the fork to that forklift went out into the  
7 roadway and collided with that truck, correct -- I mean, with Mr.  
8 Yahyavi's car?

9 A Correct.

10 Q Right. As you started to move, you started to elevate the  
11 forks, correct?

12 A Correct.

13 Q And while you're driving you thought that Mr. Yahyavi was  
14 going to go straight, and you never saw him obviously clear before you  
15 entered the roadway, correct?

16 A Correct.

17 Q And that truck was obstructing your view the entire time,  
18 correct -- up until the moment of this collision, correct?

19 A Correct.

20 Q Right. And in fact, at no point, before this collision were you  
21 even aware that the forks went out into the travel lane, correct?

22 A Correct.

23 Q So as you're driving and you're moving forward, you're  
24 lifting the forks up, right -- at the same time?

25 A Right.



1 Q Those are your words; frantic. Tell us what -- tell the jury  
2 what he was doing in the car.

3 A From what I remember, all Mr. Yahyavi kept saying was  
4 something hit me. And I -- and I was just trying to talk to him and see if  
5 he was okay and keep him talking because I didn't -- I didn't know if he  
6 had any type of head injury. And the way he was acting, I just wanted to  
7 make sure that he wouldn't go unconscious. So I kept talking to him and  
8 making sure he was fine.

9 Q He didn't appear to be fine, did he?

10 A He was shaken up.

11 Q Right. He didn't appear to be fine, did he?

12 A I -- there was nothing visible that looked bad. But the way he  
13 was acting didn't seem normal.

14 Q Right. I mean, it looked like somebody who had went  
15 through a traumatic experience of some kind, right?

16 A Yes, sir.

17 Q Right. And you're there, obviously, to try to assist until  
18 emergency medical personnel get there. You're just helping out, right?

19 A Correct.

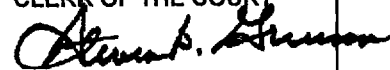
20 Q Okay. And I mean, with all due respect to you, you caused  
21 this collision, didn't you?

22 A Yes, sir.

23 Q Okay. And you caused it while you were driving a forklift  
24 owned by Capriati, correct?

25 A Correct.

# EXHIBIT 5



1 **ANS**  
Law Offices of ERIC R. LARSEN  
2 Mark J. Brown, Esq.  
Nevada Bar No.: 003687  
3 750 E. Warm Springs Road  
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4 Las Vegas, Nevada 89119  
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5 Facsimile: (877) 369-5819  
Mark.Brown@thehartford.com  
6 Attorney for Defendant,  
CAPRIATI CONSTRUCTION CORP., INC.  
7

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 **BAHRAM YAHYAVI, an individual,**  
11 **Plaintiffs,**

Case No.: A-15-718689-C  
Dept. No.: XXVIII

12 —vs—

**DEFENDANT'S ANSWER TO  
PLAINTIFF'S COMPLAINT**

13 **CAPRIATI CONSTRUCTION CORP., INC., a**  
Nevada Corporation,  
14 **Defendants.**  
15

16 Defendant CAPRIATI CONSTRUCTION CORP., INC., by and through its attorney,  
17 Mark J. Brown, Esq. of Law Offices of ERIC R. LARSEN, as and for its Answer to Plaintiff's  
18 Complaint, admits, denies and alleges as follows:

19 1. Answering Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18,  
20 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 of Plaintiff's Complaint, Defendant is without  
21 sufficient knowledge or information upon which to base a belief as to the truth of the allegations  
22 contained therein and, upon that ground, denies each and every allegation contained therein.

23 2. Answering Paragraphs 31 and 32 of Plaintiff's Complaint, Defendant denies  
24 each and every allegation contained therein.

25 **AFFIRMATIVE DEFENSES**

26 **FIRST AFFIRMATIVE DEFENSE**

27 This answering Defendant states that the allegations contained in the Complaint fail to  
28 state a cause of action against this Defendant upon which relief can be granted.

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**SECOND AFFIRMATIVE DEFENSE**

The liability, if any, of this answering Defendant must be reduced by the percentage of fault of others, including Plaintiff herein.

**THIRD AFFIRMATIVE DEFENSE**

It has been necessary for this answering Defendant to retain counsel to defend this action, and it is, therefore, entitled to an award of reasonable attorneys' fees.

**FOURTH AFFIRMATIVE DEFENSE**

The Plaintiff has failed to mitigate its damages, if any, in fact exists or were incurred, the existence of which is expressly denied.

**FIFTH AFFIRMATIVE DEFENSE**

Some of the foregoing Affirmative Defenses have been plead for purposes of non-waiver. This answering Defendant has not concluded discovery in this matter and specifically reserves the right to amend this Answer to include additional Affirmative Defenses if discovery warrants.

**SIXTH AFFIRMATIVE DEFENSE**

This answering Defendant alleges that the occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third party over whom this answering Defendant had no control, nor the right, duty or obligation to control.

**SEVENTH AFFIRMATIVE DEFENSE**

This answering Defendant is not legally liable for Plaintiff's alleged injuries and/or damages, if any, because no act and/or omission on the part of this Defendant proximately and/or legally caused Plaintiff's claimed injuries and damages, as causation for the incident sued upon was that of an intervening and/or superseding nature.

**EIGHTH AFFIRMATIVE DEFENSE**

Pursuant to N.R.C.P.11, all possible Affirmative Defenses may not have been raised herein as sufficient facts were not available after reasonable inquiry upon the filing of this Answer. Therefore, this answering Defendant reserves the right to amend its Answer or allege

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1 additional Affirmative Defenses if subsequent investigation so warrants.

2 **NINTH AFFIRMATIVE DEFENSE**

3 This matter is subject to Nevada's mandatory Arbitration Program.

4 **TENTH AFFIRMATIVE DEFENSE**

5 Plaintiff has failed to name a necessary party for full and adequate relief essential to this  
6 action.

7 **ELEVENTH AFFIRMATIVE DEFENSE**

8 Plaintiff has failed to properly and timely effectuate service and this Complaint therefore  
9 must be dismissed.

10 **TWELFTH AFFIRMATIVE DEFENSE**

11 Plaintiff's actions against this answering Defendant are moot because Plaintiff's actions  
12 are barred by the applicable Statute of Limitations.

13 WHEREFORE, Defendant prays for judgment as follows:

- 14 1. That Plaintiff takes nothing by way of this action as to this answering Defendant;  
15 2. That this answering Defendant be reimbursed for attorneys' fees and costs  
16 necessarily incurred as a result of defending this action; and  
17 3. Such other and further relief as this Court may deem just and proper.

18 DATED this 25<sup>th</sup> day of April, 2018.

19 Law Offices of ERIC R. LARSEN

20 /s/ Mark J. Brown

21 Mark J. Brown, Esq.

22 Nevada Bar No.: 003687

23 750 E. Warm Springs Road, Suite 320

24 Las Vegas, Nevada 89119

25 Telephone: (702) 387-8070

26 Attorney for Defendant,

27 CAPRIATI CONSTRUCTION CORP., INC.  
28

Law Offices of  
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Facsimile: (877) 369-5819

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Law Offices of ERIC R. LARSEN and that service of a true and correct copy of the above and foregoing was submitted on the 25 day of April, 2018, to the following addressed parties by:

- First Class Mail, postage prepaid from Las Vegas, NV pursuant to N.R.C.P. 5(b)
- Facsimile, pursuant to EDCR 7.26 (as amended)
- Electronic Mail / Electronic Transmission
- Hand Delivered to the addressee(s) indicated
- Receipt of Copy of the foregoing on this \_\_\_\_\_ day of \_\_\_\_\_, 2018, acknowledged by, \_\_\_\_\_.

Mailk W Ahmad, Esq.  
 LAW OFFICE OF MALIK W. AHMAD  
 8072 W. Sahara Ave., Ste A  
 Las Vegas, NV 89117  
 Telephone: (702) 270-9100  
 Facsimile: (702) 233-9103  
 Attorney for Plaintiff  
 BAHRAM YAHYAVI

Dennis M. Prince, Esq.  
 EGLET PRINCE  
 400 S. 7<sup>th</sup> St.,  
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 Las Vegas, NV 89101  
 Telephone: (702) 450-5400  
 Facsimile: (702) 450-5451  
 Attorney for Plaintiff  
 BAHRAM YAHYAVI

/s/ Joshua A. Montoya  
 An employee of Law Offices of  
 ERIC R. LARSEN

Law Offices of  
 ERIC R. LARSEN  
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# EXHIBIT 6

1 **OOJ**  
2 Law Offices of ERIC R. LARSEN  
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7 Las Vegas, Nevada 89119  
8 Telephone: (702) 387-8070  
9 Facsimile: (877)369-5819  
10 Mark.Brown@thehartford.com  
11 Attorney for Defendant  
12 CAPRIATI CONSTRUCTION CORP., INC.

8 **DISTRICT COURT**  
9  
10 **CLARK COUNTY, NEVADA**

11 BAHRAM YAHYAVI, an individual  
12  
13 **Plaintiff,**  
14  
15 **—vs—**  
16 CAPRIATI CONSTRUCTION CORP., INC., a  
Nevada Corporation  
  
Defendants.

Case No.: A-15-718689-C  
Dept. No.: XXVIII

**DEFENDANT'S OFFER OF  
JUDGMENT TO PLAINTIFF**

17 TO: BAHRAM YAHYAVI; Plaintiff, and

18 TO: MAILK W AHMAD, ESQ.; Plaintiff's Attorney.

19 Defendant, CAPRIATI CONSTRUCTION CORP., INC., pursuant to NRCP 68, hereby  
20 offers to allow Plaintiff to take judgment against said Defendant in the amount of ONE  
21 HUNDRED ONE THOUSAND AND 00/100 DOLLARS (\$101,000.00) which sum includes all  
22 fees and costs incurred to date. It is intended that this offer of judgment be in the maximum  
23 amount of \$101,000.00. See, Fleisher v. August, 103 Nev. 242, 737 P.2d 518 (1987).

24 ///

25 ///

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27 ///

28 ///

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# EXHIBIT 7

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DISTRICT COURT

CLARK COUNTY, NEVADA

BAHRAM YAHYAVI, an )  
individual, )  
 )  
Plaintiff, ) Case No.: A-15-718689-C  
 ) Dept. No.: XXVII  
vs. )  
 )  
CAPRIATI CONSTRUCTION )  
CORP., INC., a Nevada )  
Corporation, )  
 )  
Defendant. )  
 )

REPORTER'S TRANSCRIPT OF 2.67 CONFERENCE  
LAS VEGAS, NEVADA  
FRIDAY, AUGUST 30, 2019

Reported by: Monice K. Campbell, NV CCR No. 312  
Job No.: 3482

1           REPORTER'S TRANSCRIPT OF 2.67 CONFERENCE ,  
2 held at the Prince Law Group, located at 8816 Spanish  
3 Ridge Drive, Las Vegas, Nevada, on Friday, August 30,  
4 2019, at 2:00 p.m., before Monice K. Campbell,  
5 Certified Court Reporter, in and for the State of  
6 Nevada.

7 APPEARANCES:

8 For the Plaintiff:

9           PRINCE LAW GROUP  
10           BY: DENNIS M. PRINCE, ESQ.  
11           BY: KEVIN T. STRONG, ESQ.  
12           BY: BRANDON VERDE, ESQ.  
13           8816 Spanish Ridge Avenue  
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18           bverde@thedplg.com

19 For the Defendant Capriati Construction Corp., Inc.:

20           WILSON, ELSER, MOSKOWITZ,  
21           EDELMAN & DICKER, LLP  
22           BY: DAVID S. KAHN, ESQ.  
23           BY: MARC C. SEVERINO, ESQ.  
24           300 South Fourth Street, 11th Floor  
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26           702.727.1400  
27           david.kahn@wilsonelser.com  
28           marc.severino@wilsonelser.com

29 (Telephonic Presence)

30           LAW OFFICES OF ERIC R. LARSEN  
31           BY: MARK J. BROWN, ESQ.  
32           750 East Warm Springs Road, Suite 320  
33           Las Vegas, Nevada 89119

34 Also Present: AMANDA HILL

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LAS VEGAS, NEVADA; FRIDAY, AUGUST 30, 2019

2:00 P.M.

MR. PRINCE: All right. Go on the record. Today's the date and the time for the 2.67 conference in this case. Dennis Prince, Kevin Strong and Brandon Verde appearing on behalf of the plaintiff, Bahram Yahyavi.

MR. KAHN: David Kahn, Marc Severino and paralegal Amanda Hill are here for defendant.

MR. PRINCE: Today we have with us our proposed exhibits. We've also provided copies to you of our exhibit list, our proposed jury preinstructions, our proposed instructions or at least preliminary for final instruction of the jury, plus a few demonstratives we may be using during the course of trial.

I'm not done speaking, and I think you always have an issue with that. I want to make sure we're clear, I'm not done yet.

MR. KAHN: Go ahead. Sorry.

MR. PRINCE: My goal today is to work through the plaintiff's proposed exhibits and then you can stipulate or agree to whatever you can and

1 we'll work through the defense.

2 Preliminarily, it's my understanding from  
3 our discussions, that unless I agree on behalf of  
4 my client to stipulate to the October 2011  
5 Southwest Medical Associates records in evidence,  
6 then, therefore, you won't stipulate to not only  
7 the admissibility but authenticity of any record or  
8 any bill in the case;` is that right?

9 MR. KAHN: Not exactly but close. As far  
10 as authenticity, anything with a custodian of  
11 records affidavit, I will stipulate to. As far as  
12 foundation, that is correct, I won't stipulate to  
13 anything coming in without laying the foundation.

14 MR. PRINCE: Okay.

15 MR. KAHN: And, again, just because you  
16 put it on the record, just to be clear, you are  
17 correct. My request in exchange for all of --  
18 stipulating to all of your bills and records, is  
19 the one day of treatment from Southwest Medical,  
20 three pages.

21 MR. PRINCE: Right. It's not that I have  
22 any objection -- I'm lodging an objection to the  
23 medical relevance of that, so we're filing a trial  
24 brief which should be done today or tomorrow,  
25 seeking to exclude that. If the judge makes the

1 MR. KAHN: I think I am entitled to act  
2 any question where I have a good faith basis,  
3 factually, to propound the question to any witness  
4 at the trial. So that's the position. If you  
5 won't stipulate and the judge won't admit them  
6 during your case in chief, then as soon as we get  
7 to the defense case, I will subpoena people from  
8 Southwest Medical.

9 MR. PRINCE: No, no, no. I guess you're  
10 misunderstanding. If the judge determines that  
11 that is a relevant area of your inquiry and that  
12 evidence is relevant, you can have the exhibits  
13 during my case in chief. I'm not saying you can't.  
14 I'm saying if he makes the ruling at the beginning  
15 of the case that I think there -- you can establish  
16 their relevance, I don't think under the applicable  
17 Nevada case law that they're medically or  
18 clinically relevant. So, therefore, that's my  
19 objection.

20 If the judge determines otherwise, you  
21 don't have to bring anybody. You can use them  
22 during the case in chief. I will stipulate to  
23 their admission, and I'll agree to their admission  
24 because that's what the judge has ordered. So it's  
25 not like you need to do anything. He can make a



1 ruling early in the case.

2 MR. KAHN: Yes, but I'm not going to  
3 leave this up to -- those three pages are my case,  
4 so I'm not going to leave that up to the judge  
5 preliminarily during your case in chief and if he  
6 makes some ruling, you know, he could always  
7 reconsider it and I need to have a record.

8 MR. PRINCE: So as we go through --

9 MR. KAHN: I'm sorry to be a pain, but I  
10 think it's pretty clear I want one day, three  
11 pages, in exchange for three binders of stuff.

12 And I should also say we have four boxes  
13 of materials for you. We have -- I have jury  
14 instructions, a verdict form, preinstruction, jury  
15 questionnaire.

16 MR. PRINCE: Well, we didn't use a jury  
17 questionnaire, so I guess it became irrelevant.

18 Let's talk about our exhibits, then, if  
19 we can go to the first binder.

20 So Exhibit Number 1 is the traffic  
21 accident report redacted for the narrative,  
22 citation, any insurance related information.

23 MR. KAHN: Yes. Let me take a quick  
24 look.

25 MR. PRINCE: And your stipulation would



# EXHIBIT 8

1 **DECLARATION OF DENNIS M. PRINCE IN SUPPORT OF PLAINTIFF'S MOTION FOR**  
2 **ATTORNEY'S FEES, COSTS, AND INTEREST**

3 STATE OF NEVADA            )  
4 COUNTY OF CLARK         ) ss.:

5 DENNIS M. PRINCE declares under penalty of perjury under the laws of the State of Nevada  
6 that the foregoing is true and correct.

7 1. I am an attorney duly licensed to practice law in the State of Nevada and I am a partner  
8 with the law firm, PRINCE LAW GROUP.

9 2. I served as lead trial counsel for Plaintiff BAHRAM YAHYAVI during the trial of  
10 *Bahram Yahyavi v. Capriati Construction Corp., Inc.*, Case No. A-15-718689-C. The trial  
11 commenced on September 9, 2019 and concluded on September 27, 2019.

12 3. Mr. Yahyavi suffered persistent and consistent chronic cervical spine pain and left arm  
13 symptoms as a result of the subject June 19, 2013 motor vehicle collision giving rise to this action.  
14 Mr. Yahyavi was ultimately diagnosed with extensive cervical disc injuries as a result of the subject  
15 collision. He underwent significant past medical treatment for those injuries, including a cervical  
16 laminectomy and fusion at C3-4, C4-5, C5-6, C6-7, and C7-T1. Mr. Yahyavi also suffered a C5  
17 neuropraxic injury that resulted from a known risk of his surgery. The extent of Mr. Yahyavi's  
18 injuries, past medical treatment, and future medical treatment took a great deal of time and effort to  
19 properly explain to a lay jury. Mr. Yahyavi's treatment as part of the worker's compensation system,  
20 including his disability rating, further complicated the medical treatment and issues in this case. This  
21 further underscored the necessity for me to devote substantial time to educate the jury medically.

22 4. The presentation of Plaintiff's extensive injuries and medical treatment required the  
23 use of various medical experts, with whom I personally consulted and prepared for trial. I also  
24 personally consulted and prepared retained experts in vocational rehabilitation and economics to  
25 clearly explain Plaintiff's permanent disability from working and his past and future loss of wages  
26 and earning capacity. The presentation of Plaintiff's claims required the use of medical animations,  
27 illustrations, and visual aids, which I also helped to develop.

28 5. At all times, Defendant denied liability in this case and therefore, I was required to  
prepare for and present evidence to prove each element of Plaintiff's negligence claim. Specifically,

1 I was required to call Clifford Goodrich, Defendant's corporate representative, and Joshua Arbuckle,  
2 Defendant's former employee who negligently operated the subject forklift when it struck Mr.  
3 Yahyavi's vehicle, to establish Defendant's liability for the subject motor vehicle collision.

4 6. Defendant did not accept Plaintiff's \$990,000.00 Offer of Judgment served on January  
5 19, 2017. Defendant did not accept Plaintiff's January 18, 2019 Offer of Judgment for \$4,000,000.00  
6 served on January 18, 2019, thus requiring this matter to proceed to a three-week trial and ultimately,  
7 a jury verdict.

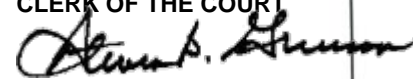
8 7. To properly and effectively try this case and to obtain a successful jury verdict that  
9 totaled \$1,870,283.24 in excess of Plaintiff's January 18, 2019 Offer of Judgment, I spent hundreds  
10 of hours working on this case through the jury verdict, including the weekends. Based upon  
11 Defendant's refusal to settle, I worked and devoted significant time and resources to this case to the  
12 exclusion of other matters. My law practice is primarily a contingent fee practice. This presents  
13 significant risks of loss to my law firm, but is the only method a severely injured victim can obtain  
14 legal representation.

15 8. My work in this case involved overseeing the trial team, specifically the work  
16 performed by Kevin T. Strong, an associate attorney at Prince Law Group; developing case strategy;  
17 preparing and consulting with medical witnesses; preparing and consulting with a vocational  
18 rehabilitation expert and economist; developing direct examinations of those witnesses; handling  
19 extensive pretrial motion practice, preparing trial briefs, and other legal arguments covering a  
20 multitude of legal and evidentiary issues; developing the opening statement and closing argument  
21 presentations; conducting voir dire; attending 15 days of trial; preparing for the cross-examination of  
22 Defendant's retained medical expert, Howard Tung, M.D.; and performing the direct and cross-  
23 examinations of every witness presented at trial.

24 9. I am a Martindale-Hubbell "AV" rated attorney with an excellent reputation both in  
25 Nevada and nationwide as a plaintiff's trial attorney. I was recently named the 2016 Trial Lawyer of  
26 the Year for the State of Nevada by the Nevada Justice Association and I also recently served as the  
27 2016 President for the American Board of Trial Advocates. I have been recognized by various  
28 organizations including the American Board of Trial Advocates, the National Academy of  
Jurisprudence, and the Multi-Million Dollars Advocates Forum. I have also been honored as one of  
the top 100 trial lawyers in the nation by the National Trial Lawyers Association.







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12 Attorneys for Plaintiff  
13 *Bahram Yahyavi*

9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA

11 BAHRAM YAHYAVI, an Individual,  
12 Plaintiff,

13 vs.

14 CAPRIATI CONSTRUCTION CORP., INC., a  
15 Nevada Corporation,  
16 Defendant


CASE NO.: A-15-718689-C  
DEPT. NO.: XXVIII

**NOTICE OF ENTRY OF DECISION  
AND ORDER**

17  
18 PLEASE TAKE NOTICE that a Decision and Order was entered on the 5<sup>th</sup> day of November,  
19 2019, a copy of which is attached hereto.

20 DATED this 5<sup>th</sup> day of November, 2019.

21 **PRINCE LAW GROUP**

22   
23 DENNIS M. PRINCE, ESQ.  
24 Nevada Bar No. 5092  
25 KEVIN T. STRONG  
26 Nevada Bar No. 12107  
27 8816 Spanish Ridge Avenue  
28 Las Vegas, NV 89148  
Attorneys for Plaintiff  
*Bahram Yahyavi*



1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am employee of **PRINCE LAW GROUP**, and that on  
3 the 5 day of November, 2019, I caused the foregoing document entitled **NOTICE OF ENTRY**  
4 **OF DECISION AND ORDER** to be served upon those persons designated by the parties in the E-  
5 Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling  
6 System in accordance with the mandatory electronic service requirements of Administrative Order  
7 14-2 and the Nevada Electronic Filing and Conversion Rules, as follows:

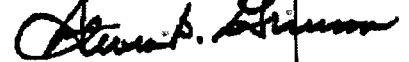
8 David S. Kahn, Esq.  
9 WILSON,ELSER, MOSKOWITZ, EDELMAN  
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15 *Attorneys for Defendant*  
16 *Capriati Construction Corp., Inc.*

17  
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19   
20 An Employee of Prince Law Group  
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1 **JUDGE RONALD J. ISRAEL**  
2 **EIGHTH JUDICIAL DISTRICT COURT**  
3 **DEPARTMENT 28**  
4 Regional Justice Center  
200 Lewis Avenue, 15<sup>th</sup> Floor  
Las Vegas, Nevada 89155

5  
6 **DISTRICT COURT**  
7 **CLARK COUNTY, NEVADA**

8 Bahram Yahyavi,  
9 Plaintiff,

Case No.: A-15-718689-C

Dept.: XXVIII

10 v.

11 Capriati Construction Corp., Inc.,  
12 Defendant.

13  
14  
15 **DECISION AND ORDER**

16  
17 On September 9, 2019 through September 27, 2019, this Court conducted a jury trial  
18 in the case of Bahram Yahyavi v. Capriati Construction Corp., Inc. Plaintiff Bahram Yahyavi  
19 was represented by Dennis M. Prince and Kevin T. Strong and Defendant Capriati  
20 Construction was represented by David S. Kahn and Mark James Brown. On September 26,  
21 2019, this Court conducted a hearing to address sanctions for Defense counsel's misconduct  
22 during the jury trial.

23 The factual history of this case is as follows: On June 19, 2013, Defendant's  
24 employee was driving a fork lift truck with the forks sticking out and collided with Plaintiff  
25 who was driving a company-owned vehicle on city streets. Plaintiff filed the complaint on  
26 May 20, 2015 and trial commenced on September 9, 2019. On September 25, 2019, during  
27 his case in chief, Defense counsel asked Defendant's corporate representative Cliff Goodrich,  
28 "Between the date of the accident and today, did anything major happen to your company?"

1 The witness responded, “Yes, we filed for a reorganization in 2015” and Plaintiff’s counsel  
2 immediately objected. This Court has concluded that Defense counsel intentionally solicited  
3 testimony from the witness concerning Defendant’s bankruptcy.

4 In the third week of trial, after the same witness who was Defendant’s corporate  
5 representative testified at length in Plaintiff’s case in chief, Mr. Goodrich was called as a  
6 witness in Defendant’s case. The very first question was “Between the date of the accident  
7 and today, did anything major happen to your company?” At that point, Mr. Goodrich’s  
8 immediate answer was “Yes, we filed for reorganization in 2015.” This Court attached as a  
9 court’s exhibit the JAVS video which clearly shows that the question and answer were  
10 prepared in advance.

11 After Plaintiff’s counsel objected, the jury was excused and Defense counsel  
12 proffered that he thought bankruptcy was a legitimate issue since the file for the employee  
13 who drove the forklift that caused the accident was missing possibly due to the bankruptcy.<sup>1</sup>  
14 This explanation is simply not credible. This is one of the most severe abuses by counsel that  
15 this Court has seen.

16 **A. Defense Counsel’s Misconduct Warrants a Curative Instruction to the Jury.**

17 The Nevada Supreme Court has held that when an attorney commits misconduct and  
18 the opposing party objects, the district court should admonish the jury and counsel about the  
19 impropriety of counsel’s misconduct and should reprimand counsel for their misconduct.  
20 *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 75, 319 P.3d 606, 611–12 (2014). Here,  
21 Defense counsel committed misconduct when he intentionally solicited testimony about  
22 Defendant’s bankruptcy. On February 6, 2018, Defendant filed a motion for final decree in  
23 bankruptcy court to close its Chapter 11 case because it “was able to turn itself profitable”  
24 and paid all outstanding fees to its debtors. The bankruptcy court granted Defendant’s motion  
25 in its entirety on March 26, 2018. Now, eighteen months later, Defense counsel chose to  
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28 <sup>1</sup> Although not addressed, it stretches credulity to believe that a bankruptcy would result in the loss of computer records to an ongoing business.

1 bring up the bankruptcy, leading the jury to consider the Defendant's financial position  
2 despite its irrelevance and the closing of the bankruptcy.

3 Given Defense counsel's misconduct, this Court found it necessary to admonish the  
4 jury about the impropriety of such misconduct and to reprimand Defense counsel.

5 Accordingly, this Court admonished the jury on September 26, 2019:

6 You were instructed to disregard the question and answer, which is hereby  
7 stricken from these proceedings. Defendant is no longer in bankruptcy and is  
8 now profitable. You are further instructed not to consider whether the  
9 Defendant filed for bankruptcy for any reason, and it should have no effect on  
10 your verdict. You should not even discuss that when you go back to  
11 deliberate. Further by seeking to introduce such irrelevant evidence, counsel  
12 for the Defendant, Mr. Kahn, committed willful misconduct. Mr. Kahn is  
13 hereby reprimanded for his misconduct and admonished not to engage in any  
14 further misconduct.

15 **B. The *Young v. Ribiero* Factors Weigh Heavily in Favor of Sanctions for**  
16 **Defense Counsel's Misconduct.**

17 The Nevada Supreme Court has stated: "Courts by their nature have 'inherent  
18 equitable powers to dismiss actions or enter default judgments...for abusive litigation  
19 practices.'" *Young v. Johnny Ribeiro Building*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).  
20 When a court does not impose ultimate discovery sanctions such as dismissal, it may hold a  
21 hearing to consider matters that are important to the imposition of sanctions. *Bahena v.*  
22 *Goodyear Tire & Rubber Co.*, 126 Nev. 243, 256, 235 P.3d 592, 600-01 (2010). The district  
23 court should exercise its discretion to ensure that there is sufficient information to support  
24 these sanctions. *Id.* Further, the district should make its conclusions based on the factors set  
25 forth in *Young. Id.*

26 The court in *Young* states which factors are relevant to determine whether to strike an  
27 answer. The factors a court might consider include, but are not limited to: 1) the degree of  
28 willfulness of the offending party, 2) the extent to which the non-offending party would be  
prejudiced by a lesser sanction, 3) the severity of the sanction of dismissal relative to the  
severity of the discovery abuse, 4) whether any evidence has been irreparably lost, 5) the  
feasibility and fairness alternative, less severe sanctions, 6) the policy favoring adjudication

1 on the merits, 7) whether sanctions unfairly operate to penalize a party for misconduct of his  
2 or her attorney, 8) the need to deter both the parties and future litigants from similar abuses.  
3 *Young*, 106 Nev. at 93, 787 P.2d at 780.

4 **1. The degree of willfulness of the offending party**

5 Defense counsel's intentional misconduct in soliciting testimony concerning  
6 Defendant's bankruptcy is one of the most serious abuses this Court has seen. Defense  
7 counsel's question was phrased in a way to elicit testimony from Mr. Goodrich that the  
8 Defendant filed for bankruptcy. This case was already two weeks into trial when Defense  
9 counsel alerted the jury about Defendant's financial state by soliciting testimony regarding  
10 the bankruptcy. Defense counsel's actions lead the Court to believe that Defense counsel  
11 wanted to force a mistrial or wanted to influence the jury by way of sympathy for the  
12 Defendant.

13 At the hearing for sanctions, Defense counsel stated that the purpose of the question  
14 was related to the reduction of workforce to respond to information during Plaintiff's case in  
15 chief that the Defendant willfully destroyed documents. The Court does not find this  
16 testimony credible. There was no time between the question and the answer for this Court to  
17 conclude anything else other than that Defense counsel solicited the testimony about the  
18 bankruptcy. Further, Defense counsel is a senior partner at a national firm and should have  
19 known that he could not solicit testimony about irrelevant evidence that would prejudice the  
20 Plaintiff. It is important to note that liability was never an issue because the forklift driver  
21 admitted that he was not authorized to drive the forklift and testified that the accident was his  
22 fault. Thus, Defense counsel's actions were willful.

23 **2. The extent to which the non-offending party would be prejudiced by a lesser**  
24 **sanction**

25 To sanction Defense counsel's conduct, this Court is striking the answer as to  
26 liability, striking witness Mr. Goodrich's testimony about the bankruptcy, and striking  
27 Defendant's remaining witnesses. Since liability was not an issue, striking the answer as to  
28 liability was no sanction at all, and therefore the additional sanction of excluding Defendant's

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rebuttal witness was a reasonable and minimal sanction. Further, since the Plaintiff argued it would suffer substantial harm if a mistrial was declared, Plaintiff requested a curative jury instruction that if any damages were awarded there was insurance to cover the verdict. Insurance coverage should generally be excluded and this Court gave the standard jury instruction that jurors are not to consider whether Plaintiff or Defendant have insurance. Nonetheless, this Court felt that the only way to cure the issue was to give the added instruction.

This Court is not imposing the ultimate sanction of striking the Defendant's Answer and proceeding to a prove-up hearing. Nonetheless, Plaintiff has been prejudiced because the jury became aware of the Defendant's bankruptcy and Plaintiff cannot make the jurors forget that information. This is a case about damages against a company. The fact that the company underwent bankruptcy is extremely prejudicial to the Plaintiff because it directly impacts the juror's decision regarding the amount of damages to award. Any lesser sanction than what this Court has imposed would further prejudice the Plaintiff and thus the sanctions here are appropriate.

**3. The severity of the sanction relative to the abuse**

This Court is striking the defense of liability and allowing the parties to try the case on damages. The severity of the sanction is equal to Defense counsel's intentional misconduct when soliciting testimony about Defendant's bankruptcy. Further, Defense counsel concedes that this Court's sanctions against the Defendant are appropriate: "I believe what Mr. Prince has proposed as curative is sufficient, striking the answer. And even if the answer is stricken, I still think Capriati Construction should have the ability to argue damages with these curative instructions." Therefore, Defense counsel's intentional misconduct warrants the severity of the sanctions imposed.

**4. Whether any evidence had been irreparably lost**

So far as this Court is aware, there is no evidence that has been lost.

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**5. The feasibility and fairness of less severe sanctions**

This Court is imposing a lesser sanction than striking the answer completely and proceeding to a prove-up hearing. This Court's decision to strike the answer as to liability, to strike the witness who testified about the bankruptcy, and to strike Defendant's remaining witnesses is fair in light of Defense counsel's misconduct.

**6. The policy favoring adjudication on the merits**

The Supreme Court favors adjudication on the merits but abusive litigation practices must face sanctions. Under these facts of this case any lesser sanctions would encourage further abuse. Defense counsel's misconduct was willful and thus warrants sanctions.

**7. Whether sanctions unfairly operate to penalize a party for misconduct of his or her attorney**

In this case, the sanctions for Defense counsel's misconduct do not unfairly penalize Defendant Capriati Construction because Defendant faces no monetary loss whatsoever. This matter is the subject of an order from the bankruptcy court to lift the stay in order to proceed against the insurance policies. Capriati Construction is only a figurehead in this case and does not face any monetary loss. The fact that the bankruptcy stay has been lifted does not allow the Plaintiff to proceed for money against Capriati Construction. Accordingly, this Court's decision to impose sanctions for Defense counsel's misconduct does not operate to unfairly penalize Defendant.

**8. The need to deter both parties and future litigants from similar abuses**

Defense counsel's misconduct was intentional and serious; therefore, there must be serious and far reaching sanctions in order to deter Defense counsel from even considering repeating their actions again. Information about the Defendant's financial condition distracts the jury from reaching an impartial decision regarding the amount of damages, if any, to award the Plaintiff in a personal injury trial. A jury must fairly evaluate the evidence presented to them without regard to the financial position of the parties. A party's attempt to secure a verdict not based on the evidence will have major consequences. This Court finds


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that deterrence is necessary to prevent future abuse and thus the sanctions imposed are necessary and appropriate.

IT IS HEREBY ORDERED that Defendant's Answer and Affirmative Defenses on Liability are STRICKEN. The Jury Trial on damages will proceed as scheduled.

IT IS FURTHER ORDERED that witness Cliff Goodrich's testimony is STRICKEN and that Defendant's remaining witnesses are STRICKEN.

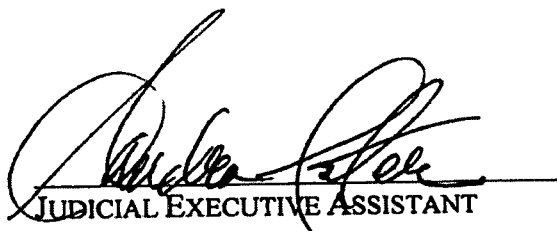
DATED November 5 ~~October~~ 2019.

  
\_\_\_\_\_  
DISTRICT COURT JUDGE  
RONALD J. ISRAEL  
A-15-718689-C

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 5<sup>th</sup> day of November, 2019, a copy of this **DECISION AND ORDER** was electronically served to all registered parties in the Eighth Judicial District Court Electronic Filing Program per the attached Service Contacts List:

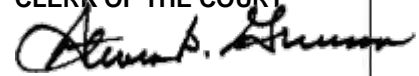


JUDICIAL EXECUTIVE ASSISTANT  
SANDRA JETER  
A-15-718689-C



**File Into Existing Case**

Case Number	Name	Location	Description	Email	Case Type
A-15-718689-C		Department 20	Bahram Yahyavi, Plaintiff...		Negligence v Auto
	▼ Party: Bahram Yahyavi - Plaintiff				
	Malik W Ahmad			malik@lasvegaslawgroup.com	
	E Service			eservice@egletlaw.com	
	▼ Party: Capriati Construction Corp Inc - Defendant				
	Amanda Hill			amanda.hill@wilsonelser.com	
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	1	10	Items per page		1 - 3 of 3 Items



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23 *Capriati Construction Corp., Inc.*

24 **DISTRICT COURT**

25 **CLARK COUNTY, NEVADA**

26 **BAHRAM YAHYAVI,**  
27  
28 Plaintiff,

v.

29 **CAPRIATI CONSTRUCTION CORP., INC.,**  
30 a Nevada corporation,  
31 Defendant.

CASE NO.: A-15-718689-C  
DEPT.: XXVIII

**DEFENDANT CAPRIATI  
CONSTRUCTION CORP., INC.'S  
MOTION TO CORRECT OR  
RECONSIDER DECISION AND ORDER,  
ENTERED ON NOVEMBER 5, 2018**

**NO HEARING REQUESTED**

32  
33 Defendant Capriati Construction Corp., Inc. (hereinafter referred to as "Defendant"), by and  
34 through its counsel of record, DAVID S. KAHN, ESQ., of the law firm of WILSON, ELSER,  
35 MOSKOWITZ, EDELMAN & DICKER LLP, and ERIC R. LARSEN, ESQ., of THE LAW  
36 OFFICES OF ERIC R. LARSON, hereby moves this Court to Correct or Reconsider its Decision  
37 and Order entered herein on November 5, 2019. This motion is made and based upon the pleadings  
38 and papers on file herein, the attached Memorandum of Points and Authorities, and any argument

1 that may be adduced at the hearing of this matter.

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I.**

4 **FACTUAL AND PROCEDURAL BACKGROUND**

5 This Motion seeks correction or reconsideration of an Order for sanctions, as the Order at  
6 issue does not accurately reflect what occurred at trial, prior to the signing and entry of the Order.  
7 The Order at issue is the Decision and Order signed by the Court on November 5, 2019<sup>1</sup>, and filed  
8 on November 5, 2019, at 1:41 p.m. (the “Order”). The Notice of Entry of that Order was filed on  
9 November 5, 2019, at 4:24 p.m. (the “Notice of Entry”). Judicial Notice is requested of the Order  
10 and the Notice of Entry. NRS 47.130 et seq..

11 The sanctions included striking of Defendant’s Answer and Affirmative Defenses; striking  
12 of the balance of the testimony during the defense case of Defendant corporate representative  
13 witness Cliff Goodrich, who had testified at length in Plaintiff’s case in chief; striking of the  
14 Defendant’s economic damages expert Kevin Kirkendall, CPA, and striking of Defendant’s accident  
15 reconstruction<sup>2</sup> expert John Baker, Ph.D.. Defendant asserts that as to experts Kirkendall and Baker  
16 the Order eliminated the damages portion of Defendant’s jury trial, instead limiting Defendant to  
17 closing argument only.

18 Defendant contends that the Order, generated and entered long after the conclusion of the  
19 jury trial, does not accurately state or reflect what actually occurred during the trial, as Defendant’s  
20 damages case was not permitted as stated in the Order. In fact, expert Kirkendall who was excluded  
21 and stricken was only a damages expert. Moreover, the opinions of Defendant’s accident

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22 <sup>1</sup> Defendant objects to the characterization in the Order, which it assumes Plaintiff’s counsel prepared, that defense  
23 counsel somehow agreed with the Court’s actions in sanctioning Defendant. Order, page 5, at lines 19-23. Defense  
24 counsel urged that this Court simply admonish the jury as to any statement made by witness Goodrich, which  
25 Defendant contended would have been a sufficient remedy. The statement set forth in the Order was in the context of  
26 Plaintiff’s argument that the Court should determine all damages itself without any ability of Defendant to even argue  
27 to the jury. In other words, defense counsel was commenting in this isolated statement in the Order about which of the  
28 various disagreed with remedies would be preferable, and not agreeing that any of the Court’s sanctions ultimately  
applied were valid, as is implied by the language of the current Order.

<sup>2</sup> This Court had previously excluded and limited this same expert in regard to any biomechanical testimony or opinions,  
which were prohibited. Defendant does not concede that issue, but here only addresses the issue of Dr. Baker’s limited  
role as an accident reconstruction expert related to vehicle speeds, impact analyses, forces imparted, and delta-V, or  
change in vehicle velocity, all of which go squarely to the issues of damages and causation and which Defendants  
contends the jury should have been able to hear under the language of the current Order at issue.

1 reconstruction expert John Baker, Ph.D., who was excluded, would also have provided the jury with  
2 information useful in evaluating the damages and causation of damages issues before them for  
3 deliberation. For these reasons, the Order at issue must be corrected, reconsidered, or modified, to  
4 reflect what actually occurred.

5 While Defendant was permitted to conduct a closing argument, that is all that Defendant  
6 was permitted to do following the sanctions hearing. No further witnesses, evidence, or expert  
7 opinions were allowed. Thus the statement in the Order that the parties were allowed to try the case  
8 on damages is demonstrably inaccurate, and must be corrected, reconsidered, or modified, to reflect  
9 what actually transpired at trial.

## 10 II.

### 11 LEGAL ARGUMENT

#### 12 A.

#### 13 LEGAL STANDARD FOR MOTION FOR RECONSIDERATION AND CORRECTION

14 This Court has the inherent authority to reconsider its prior orders. *Trail v. Faretto*, 91 Nev.  
15 401, 536 P.2d 1026 (1975) (“[A] court may, for sufficient cause shown, amend, correct, resettle,  
16 modify or vacate, as the case may be, an order previously made and entered on the motion in the  
17 progress of the cause or proceeding”); *see also, Barry v Lindner*, 119 Nev. 661, 670, 81 P.3d 537,  
18 543 (2003). This authority is provided under EDCR 2.24. Re-hearings are appropriate where  
19 substantially different evidence is subsequently introduced, or instances in which new issues of fact  
20 or law are raised supporting a ruling contrary to the ruling already reached. *See, Masonry & Tile*  
21 *Contractors Ass’n of S. Nev. V. Jolley, Uga & Wirth, Ltd.*, 113 Nev. 737, 941 P.2d 486 (1997); *see*  
22 *also, Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). The trial judge has  
23 great discretion on the question of rehearing. *Harvey's Wagon Wheel, Inc. v. MacSween*, 96 Nev.  
24 215, 606 P.2d 1095 (1980).

25 A motion for reconsideration must be filed within 10 days after service of written notice of  
26 entry of the order following the original hearing. *See* EDCR 2.24. EDCR 2.24 reads as follows.

27 ///

28 ///

1                   **Rule 2.24. Rehearing of motions.**

2                   (a) No motions once heard and disposed of may be renewed in the  
3 same cause, nor may the same matters therein embraced be reheard,  
4 unless by leave of the court granted upon motion therefor, after notice  
5 of such motion to the adverse parties.

6                   (b) A party seeking reconsideration of a ruling of the court, other  
7 than any order which may be addressed by motion pursuant to N.R.C.P.  
8 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days  
9 after service of written notice of the order or judgment unless the time  
10 is shortened or enlarged by order. A motion for rehearing or  
11 reconsideration must be served, noticed, filed and heard as is any other  
12 motion. A motion for reconsideration does not toll the 30-day period for  
13 filing a notice of appeal from a final order or judgment.

14                   (c) If a motion for rehearing is granted, the court may make a final  
15 disposition of the cause without reargument or may reset it for  
16 reargument or resubmission or may make such other orders as are  
17 deemed appropriate under the circumstances of the particular case.

18 This Motion is timely.

19                   The Supreme Court has stated that “[o]nly in very rare instances in which new issues of fact  
20 or law are raised supporting a ruling contrary to the ruling already made should a motion for  
21 rehearing be granted.” *Moore v. City of Las Vegas*, 92 Nev. 402, 405 (1976). Here, the Order at  
22 issue does not accurately reflect what occurred at trial, prior to the signing and entry of the Order.

23                   Eighth Judicial District Court Rule 2.24(a) provides that a party may move for  
24 reconsideration of a motion “once heard and disposed of . . . by leave of the court granted upon  
25 motion therefor, after notice of such motion to the adverse parties.” EDCR 2.24(a).  
26 “Reconsideration of motions is proper if the district judge to whom the first motion was made  
27 consents to a rehearing.” *Harvey’s Wagon Wheel v. MacSween*, 96 Nev. 215, 217, 606 P.2d 1095,  
28 1097 (1980). The primary purpose of a petition for reconsideration is to inform the Court that it has  
overlooked an important argument or fact, or misread or misunderstood a case or fact in the  
record. *See Moore vs. City of Las Vegas*, 92 Nev. 402, 551 P.2d 244 (1976). Here, the record is at  
odds with the terms of the written Order recently signed, filed, and noticed, long after the conclusion  
of the trial. However, courts have consented to rehearing even where “the facts and the law were  
unchanged.” *See Id.* These standards have been followed by our courts for some time.

1 A district court "may reconsider a previously decided issue if substantially different evidence  
2 is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors Ass'n.*  
3 *of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).  
4 Thus, if the district court properly determines the earlier decision was clearly erroneous, the trial  
5 judge does not err in reconsidering the motion. *Id. Hansen v. Aguilar*, 2016 Nev. App. LEXIS 240,  
6 \*2 (Nev. Ct. App. 2016).

7 Orders may also be corrected or modified pursuant to NRC 60. That Rule reads as follows:

8 **Rule 60. Relief From a Judgment or Order**

9 (a) **Corrections Based on Clerical Mistakes; Oversights and**  
10 **Omissions.** The court may correct a clerical mistake or a mistake  
11 arising from oversight or omission whenever one is found in a judgment,  
12 order, or other part of the record. The court may do so on motion or on  
13 its own, with or without notice. But after an appeal has been docketed  
14 in the appellate court and while it is pending, such a mistake may be  
15 corrected only with the appellate court's leave.

16 (b) **Grounds for Relief From a Final Judgment, Order, or**  
17 **Proceeding.** On motion and just terms, the court may relieve a party  
18 or its legal representative from a final judgment, order, or proceeding  
19 for the following reasons:

- 20 (1) mistake, inadvertence, surprise, or excusable neglect;
- 21 (2) newly discovered evidence that, with reasonable diligence,  
22 could not have been discovered in time to move for a new trial under  
23 Rule 59(b);
- 24 (3) fraud (whether previously called intrinsic or extrinsic),  
25 misrepresentation, or misconduct by an opposing party;
- 26 (4) the judgment is void;
- 27 (5) the judgment has been satisfied, released, or discharged; it  
28 is based on an earlier judgment that has been reversed or vacated; or  
applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

(c) **Timing and Effect of the Motion.**

(1) **Timing.** A motion under Rule 60(b) must be made within  
a reasonable time — and for reasons (1), (2), and (3) no more than 6  
months after the date of the proceeding or the date of service of written  
notice of entry of the judgment or order, whichever date is later. The  
time for filing the motion cannot be extended under Rule 6(b).

(2) **Effect on Finality.** The motion does not affect the  
judgment's finality or suspend its operation.

(d) **Other Powers to Grant Relief.** This rule does not limit a  
court's power to:

- (1) entertain an independent action to relieve a party from a  
judgment, order, or proceeding;

1 (2) upon motion filed within 6 months after written notice of  
2 entry of a default judgment is served, set aside the default judgment  
3 against a defendant who was not personally served with a summons and  
4 complaint and who has not appeared in the action, admitted service,  
5 signed a waiver of service, or otherwise waived service; or

6 (3) set aside a judgment for fraud upon the court.

7 (e) **Bills and Writs Abolished.** The following are abolished: bills  
8 of review, bills in the nature of bills of review, and writs of coram nobis,  
9 coram vobis, and audita querela.

10 [Amended; effective March 1, 2019.]

11 No strict time limit is set forth, other than in reference to after an appeal has been filed, and this  
12 Motion is timely. Defendant's request is that the Order at issue be modified, amended, or  
13 reconsidered such that it reflects what transpired at the trial, which events occurred before the  
14 written Order was signed or entered.

15 **B.**

16 **APPLICATION OF THE LEGAL STANDARD TO THE FACTS BEFORE THIS COURT**

17 Here, the Order entered as to the sanctions does not accurately reflect the proceedings during  
18 trial, or how that Order was implemented at trial. The effect of the order greatly limited Defendant's  
19 damages case, even if that was not the intent. Therefore, the Order itself should be reconsidered, or  
20 modified to reflect what occurred. Defendant was in fact not permitted to try its case on damages  
21 issues, including causation of damages, as the Order now states. Defendant was not permitted to  
22 try the case as to damages, as indicated in the Order (at page 5, lines 17-18; "This Court is striking  
23 the defense of liability **and allowing the parties to try the case on damages.**") (emphasis added).  
24 Instead, other than as to defense witnesses called out of order prior to the sanctions ruling, Defendant  
25 was only permitted to argue before the jury in closing argument. After seven (7) words from its  
26 corporate representative, Defendant was not permitted any other witness, regardless of the fact that  
27 several of the proposed handful of witnesses were meant to address damages and causation of  
28 damages issues either solely (Kirkendall) or primarily (Baker). Defendant submits the limitations  
did not allow it to try its case as to damages, as the Order states.

Since expert Kevin Kirkendall was only designated as an expert as to damages, and had no  
role whatsoever as to liability, the striking of this witness was a limitation of Defendant's damages

1 case. Kirkendall is a CPA whose opinion was identified to counter Plaintiff's economist expert.  
2 Defendant was permitted to argue to the jury, that is true, however no witnesses were permitted  
3 Defendant during its defense case. So, in effect, the Defendant was limited to argument without  
4 underlying evidentiary support. Expert Kirkendall was only involved and designated to present  
5 economic damages testimony, meant to oppose or counter testimony presented by Plaintiff's expert  
6 Dr. Clauretje. But since expert Kirkendall was stricken and excluded from any testimony as a result  
7 of this Court's Orders during trial, Defendant was deprived of his damages-only testimony before  
8 the jury. The Order as currently written is inaccurate and states otherwise.

9 Similarly, expert Dr. Baker was designated to opine and testify as to accident reconstruction  
10 issues. In part, he had conducted an expensive crash test by special Order of this Court after the  
11 close of discovery, which was done in response to a crash test conducted by Plaintiff after the close  
12 of discovery<sup>3</sup>. This remained at issue as trial commenced (Plaintiff withdrew his accident  
13 reconstruction expert during trial), and Plaintiff repeatedly sought to disqualify Dr. Baker for a  
14 myriad of reasons. While certain aspects of Dr. Baker's opinions went to liability issues, other much  
15 more significant portions of his opinions were squarely related to causation and damages.

16 For example, Dr. Baker intended to render opinions concerning the force of the impact, the  
17 speeds of the vehicles, and the amount of force imparted to Plaintiff's vehicle (the Delta-V or change  
18 in velocity). Specifically, his opinion would have been that based on science and the crash testing  
19 evidence Plaintiff was only going about 5 mph at the time of the accident, which stands in stark  
20 contrast to the 30 mph testified to by Plaintiff. From this evidence, the jury easily could have, and  
21 perhaps would have, questioned the extent and medical causation of Plaintiff's injuries from such a  
22 low-speed accident. This is especially true given the available admitted evidence that Plaintiff had  
23 complained to his physician of "neck pain for years" some twenty one (21) months before this  
24 accident when he had obtained cervical X-rays to investigate his complaints of neck pain. The  
25 elimination of Dr. Baker was again an elimination of Defendant's damages case as it resulted in the

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26  
27 <sup>3</sup> The Plaintiff's post-close-of-discovery crash test was challenged by defense motion, in part based on its timing, and  
28 in part based on its lack of similarity to the collision at issue. That motion was denied, but Defendant was permitted  
to conduct its own post-close-of-discovery crash test in response. The results of that testing indicated Plaintiff's car  
was going approximately 5 mph at the time of impact, and not the 30 mph which was Plaintiff's testimony to the jury.



1 Defendant having no evidence to counter Plaintiff's claims as to the severity of the impact, which  
2 directly went to damages and causation.

3 The disparity in speeds as between the expert's scientific opinions and determinations based  
4 on crash testing with the same types of vehicles, as opposed to the Plaintiff's testimony, was also  
5 relevant to Plaintiff's overall damages claims. Plaintiff here claims serious cervical problems, and  
6 also that he had no preexisting cervical issues or pain. But as stated above, he testified to not  
7 recalling a medical visit long before this accident in which he had documented complaints of years  
8 of neck pain. Plaintiff's credibility was central to the defense of this case, and it was central to the  
9 defense of the damages and causation of damages aspects of Defendant's case. Depriving  
10 Defendant of Dr. Baker's testimony allowed Plaintiff's speed testimony to go unchecked, which  
11 eliminated a critical credibility argument which Defendant had going into this trial. Impeachment  
12 of Plaintiff as to damages, causation of damages, and his contention of no preexisting neck injuries  
13 or pain despite medical records to the contrary was thus impaired by the current Order.

14 While Defendant was permitted to argue to the jury, a closing argument does not equate to  
15 trying the case as to damages, which Defendant contends must include the ability to present damages  
16 evidence before the jury. The Order says otherwise, allowing argument in isolation without the  
17 necessary ability to adduce evidence before the jury, and the Order must at this point be harmonized  
18 in some fashion with what truly occurred at trial.

19 **C.**

20 **THIS COURT WENT BEYOND WHAT WAS PERMITTED IN *BAHENA***

21 By striking damages experts and witnesses Kirkendall and Baker, this Court went beyond  
22 what was approved of by the Nevada Supreme Court in the *Bahena* case. "The district court  
23 permitted Goodyear to fully argue and contest the amount of damages, if any, that Bahena could  
24 prove to a jury." *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 256, 235 P.3d 592, 600  
25 (2010). Here, Defendant Capriati was not permitted to prove its damages position to the jury<sup>4</sup>, due

26  
27 <sup>4</sup> "We must 'assume that the jury believed all [of] the evidence favorable to the prevailing party and drew all  
28 reasonable inferences in [that party's] favor.'" *Id.* at 739, 192 P.3d at 252 (alteration in original) (quoting *Bongiovi v. Sullivan*, 122 Nev. 556, 581, 138 P.3d 433, 451 (2006))." *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 258, 235 P.3d 592, 602 (2010). Here, the damages evidence of Defendant was not permitted to go before the jury,

1 to the striking of two (2) of its experts (other than as to expert witnesses who had testified out of  
2 order during the Plaintiff's case in chief, earlier in the trial). The jury did not hear from these two  
3 experts. As to Dr. Baker, since the Answer was being stricken and liability determined by this  
4 Court in any event, having him testify at trial would therefore only have been considered by the  
5 jury in the context of damages. As a result, Defendant argues that this Court exceeded what was  
6 permitted in the *Bahena* case, and has therefore gone beyond what jurisprudence allows as to its  
7 sanction here. The middle ground this Court has created here between case concluding sanctions  
8 and liability only concluding sanctions is one not identified in any case authority that Defendant  
9 could locate.

### 10 III.

### 11 CONCLUSION

12 For the foregoing reasons this Motion should be granted. The current Order should be  
13 corrected, reconsidered, or, at a minimum, its language should be modified to reflect that Defendant  
14 was permitted a closing argument only, and no further witnesses or experts were allowed after the  
15 findings of this Court as to sanctions. The Order should set forth which witnesses had been proposed  
16 at the time of the sanctions in regard to damages (Kirkendall and Baker). The order acted upon  
17 during the trial itself severely truncated Defendant's damages defense. But the Order as currently

18 

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other than as to witnesses taken out of order earlier in the trial. A portion of the dissent of Justice Pickering in the  
19 *Bahena* case is also of note here, as follows.

20 "While the majority distinguishes this case from *Nevada Power* by characterizing the sanctions as 'non-case  
21 concluding,' the reality is that striking Goodyear's answer did effectively conclude this case. The sanction  
22 resulted in a default liability judgment against Goodyear and left Goodyear with the ability to defend on the  
23 amount of damages only. Liability was seriously in dispute in this case, but damages, once liability was  
24 established, were not, given the catastrophic injuries involved. Thus, striking Goodyear's answer was akin to  
25 a case concluding sanction, placing this case on the same footing as *Nevada Power*.

26 Surprisingly, the majority relies on *Young v. Johnny Ribeiro Building*. What it misses in *Young* is that we  
27 affirmed the claim-concluding sanctions there only because the district 'court treated *Young* fairly, *giving*  
28 *him a full evidentiary hearing.*' 106 Nev. at 93, 787 P.2d at 780 (emphasis added). This case thus is not like  
*Young* but rather like *Nevada Power*, in that the district court erred as a matter of law in not holding an  
evidentiary hearing."

29 *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 259, 235 P.3d 592, 602-03 (2010) (footnotes omitted).  
Clearly Defendant Capriati did not get a full hearing of its position, as its remaining witnesses and experts, including  
damages experts, were prevented from giving testimony following the sanctions.

1 written does not accurately reflect that damages-only expert Kirkendall was stricken and his  
2 testimony barred, since he is not mentioned in the Order. The same goes for Dr. Baker's testimony,  
3 which would have gone towards damages and causation of damages, as the speed of the vehicles  
4 and the forces imparted to Plaintiff's vehicle are items which the jury could have considered as to  
5 damages. Dr. Baker's testimony would also have gone towards impeachment and credibility of  
6 Plaintiff, since the disparity in speeds based on scientific evidence is something the jury could have  
7 taken into consideration for all aspects of the case, though Dr. Baker's testimony would also have  
8 gone towards the impact actually suffered by Plaintiff, which opinion was greatly at odds with  
9 Plaintiff's testimony as to the collision speed. For these reasons, the Order should be corrected,  
10 reconsidered, or modified as requested by Defendant.

11 DATED this 14<sup>th</sup> day of November, 2019.

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1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of Wilson Elser Moskowitz Edelman  
3 & Dicker LLP, and that on this 14th day of November, 2019, I served a true and correct copy of  
4 the foregoing **DEFENDANT CAPRIATI CONSTRUCTION CORP., INC.'S MOTION TO**  
5 **CORRECT OR RECONSIDER DECISION AND ORDER, ENTERED ON NOVEMBER 5,**  
6 **2018** as follows:

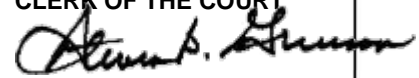
- 7  by placing same to be deposited for mailing in the United States Mail, in a sealed  
8 envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- 9  via electronic means by operation of the Court's electronic filing system, upon each  
10 party in this case who is registered as an electronic case filing user with the Clerk;  
11 and/or
- 12  via hand-delivery to the addressees listed below.

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14 **CLARK COUNTY, NEVADA**

15 **BAHRAM YAHYAVI,**

16 Plaintiff,

17 v.

18 **CAPRIATI CONSTRUCTION CORP., INC.,**

19 a Nevada corporation,

20 Defendant.

CASE NO.: A-15-718689-C

DEPT.: XXVIII

**DEFENDANT CAPRIATI  
CONSTRUCTION CORP., INC.'S  
MOTION FOR NEW TRIAL**

**Hearing Requested**

21 Defendant, CAPRIATI CONSTRUCTION CORP., INC. ("Capriati"), by and through its  
22 attorneys of record, DAVID S. KAHN, ESQ. and MARK SEVERINO, ESQ. of the law firm of  
23 WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, and Mark J. Brown, Esq. of the  
24 Law Offices of ERIC R. LARSEN, submit its MOTION FOR NEW TRIAL.  
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I.

**INTRODUCTION AND FACTUAL BACKGROUND**

Defendant contends, *inter alia*, that its damages case was taken away from it improperly by this Court, and that the trial results are therefore invalid and should result in a new trial. In part, this relates to the striking and exclusion of expert witnesses Kirkendall (economic damages) and Baker (accident reconstruction). Additional issues arise from the striking of the answer based on the Court's position that there is a *per se* prohibition against a witness mentioning a reorganization, and the striking of the balance of that witness's testimony, despite that same witness having testified during Plaintiff's case in chief. Other expert limitation rulings are also challenged here by Defendant, as may certain other pretrial and trial rulings be challenged herein. Finally, the use of a curative jury instruction provided by Plaintiff and read to the jury by the Court that specifically told the jury that there was unlimited insurance is challenged here, as it violated Nevada's collateral source rule and may have resulted in a windfall for Plaintiff. These issues rise to a constitutional dimension.

Defendant was at the inception of its defense case, when its corporate representative gave half of his initial response to a direct question, at which point the trial was stopped, the answer was stricken, and all further defense witnesses, including experts, were excluded. The reason was that the witness said the word "reorganization." While the Court stated that it was not taking away the Defendant's right to address damages before the jury, it is Defendant's position that this is exactly what occurred, regardless of any issues related to liability. Defendant does not yet have transcripts from the entire trial, and any facts referenced below are argued in that context, other than where daily transcript portions or motion hearing transcripts are available to Defendant.

It must also be recalled that the context of the sanctions ruling by this Court was that Plaintiff's counsel was asking that Defendant have no ability to argue damages whatsoever. Plaintiff's counsel suggested the Court should decide liability and then determine damages, all with no input from Defendant. While this Court's decision did not go so far, Defendant contends that the sanctions ruling did prevent Defendant from presenting evidence of its damages case, thus

1 eliminating any full trial on damages. It is true that defense counsel was permitted to argue to the  
2 jury at the end of the case, but without certain evidence, such as the low collision speed opinion of  
3 defense expert Baker, even that procedure was restricted and artificial.

4 **II.**

5 **LEGAL ARGUMENT**

6 **A.**

7 **LEGAL STANDARD**

8 "Decisions concerning motions for judgment notwithstanding the verdict ('JNOV') or for a  
9 new trial rest within the district court's sound discretion and will not be disturbed absent abuse of  
10 that discretion." *Grosjean v. Imperial Palace*, 125 Nev. 349, 362, 212 P.3d 1068, 1077 (2009).  
11 Pursuant to NRCPP 59(a)(1) a new trial may be granted in several different circumstances.  
12 Specifically, NRCPP 59(a)(1) states:

13 The court may, on motion, grant a new trial on all or some of the issues  
14 — and to any party — for any of the following causes or grounds  
materially affecting the substantial rights of the moving party:

- 15 (A) irregularity in the proceedings of the court, jury, master, or adverse  
16 party or in any order of the court or master, or any abuse of discretion  
17 by which either party was prevented from having a fair trial;  
18 (B) misconduct of the jury or prevailing party;  
19 (C) accident or surprise that ordinary prudence could not have guarded  
20 against;  
21 (D) newly discovered evidence material for the party making the  
22 motion that the party could not, with reasonable diligence, have  
23 discovered and produced at the trial;  
24 (E) manifest disregard by the jury of the instructions of the court;  
25 (F) excessive damages appearing to have been given under the  
26 influence of passion or prejudice; or  
27 (G) error in law occurring at the trial and objected to by the party  
28 making the motion.

24 The arguments advanced by Defendant herein go mainly to subsections (A) and (G) above.  
25 To a degree, however, the damages awarded may also fall under subsection (F) above, and  
26 Defendant does not restrict the use of any subsection in the relief requested in this Motion.

27 A motion for new trial is favored before a party intends to seek appellate consideration of a  
28 disputed issue.

1 A postverdict motion is necessary because “[d]etermination of whether  
2 a new trial should be granted or a judgment entered under Rule 50(b)  
3 calls for the judgment in the first instance of the judge who saw and  
4 heard the witnesses and has the feel of the case which no appellate  
5 printed transcript can impart.” *Cone, supra*, at 216, 67 S.Ct. 752.  
Moreover, the “requirement of a timely application for judgment after  
6 verdict is not an idle motion” because it “is ... an essential part of the  
7 rule, firmly grounded in principles of fairness.” *Johnson, supra*, at 53,  
8 73 S.Ct. 125.

6 *Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394, 400–01, 126 S. Ct. 980, 985–86, 163  
7 L. Ed. 2d 974 (2006). Defendant Capriati files this Motion for New Trial in part as a predicate to  
8 any appeal and in order to preserve all of its appellate rights.

9 **B.**

10 **DEFENDANT’S DAMAGES CASE WAS IMPROPERLY ELIMINATED**

11 During this Court’s sanctions considerations, the Court emphasized that Defendant’s  
12 damages case was not being eliminated. A recent Order, which is the subject of a separate motion  
13 by Defendant, so stated. However, by striking and excluding two (2) expert witnesses, that is exactly  
14 what occurred.

15 Defense economic damages expert Kevin Kirkendall was a witness whose only role related  
16 to damages. He was a counter to Plaintiff’s economist expert Dr. (Ph.D.) Clauretie. Issues in dispute  
17 from this expert included criticisms of the proper damages numbers and methodology used by Dr.  
18 Clauretie. The elimination by the Court of this damages-only expert was an abuse of discretion and  
19 it was error mandating a new trial.

20 Defense expert John Baker, Ph.D., prepared reports as a biomechanical expert. While he was,  
21 during trial, limited to the role of an accident reconstruction expert only (addressed in a separate  
22 argument below), he was to be allowed, prior to the sanctions issue, to testify at trial as to accident  
23 reconstruction issues. Since his opinion involved a speed of Plaintiff’s vehicle of approximately 5  
24 mph, which was much lower than the 30 mph speed testified to by Plaintiff himself (and which was  
25 far less than the 15 mph Plaintiff’s withdrawn expert<sup>1</sup> had opined before trial), his opinion went to  
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27 <sup>1</sup> Because Plaintiff’s expert Leggett lives in Canada and only has a US office in Phoenix, Defendant had no ability to  
28 subpoena or to attempt to subpoena the witness at trial, as he has no in-state presence in Nevada. Once Plaintiff  
withdrew the witness, his opinion of a speed of Plaintiff’s vehicle of 15 mph was thus removed from consideration by



1 the strength of the collision and thus to damages. For the jury to appreciate Defendant's damages  
2 position, including causation of any claimed damages, the speed of the collision was a necessary  
3 factual component. This Court's decision, however, took that expert's testimony away from the  
4 jury. Having the jury hear only a one-sided version of the speed of Plaintiff's vehicle at the time of  
5 the collision was, Defendant asserts, an abuse of discretion requiring a new trial.

6 Defendant contends that simply leaving the defense with a closing argument, using cross-  
7 examination and testimony of experts who happened to have been called out of order in Plaintiff's  
8 case-in-chief, was not a substitute for the requirement that the jury, and not the Court, decide the  
9 case on its merits. This jury did not hear key components of the defense as to damages, based on  
10 the ruling of this Court. As a result, a new trial should be granted.

11 By striking damages experts and witnesses Kirkendall (economic damages; CPA) and Baker  
12 (accident reconstruction; Ph.D.), this Court went beyond what was approved of by the Nevada  
13 Supreme Court in the *Bahena* case. "The district court permitted Goodyear to fully argue and  
14 contest the amount of damages, if any, that Bahena could prove to a jury." *Bahena v. Goodyear*  
15 *Tire & Rubber Co.*, 126 Nev. 243, 256, 235 P.3d 592, 600 (2010). Here, Defendant Capriati was  
16 not permitted to prove its damages position to the jury<sup>2</sup>, due to the striking of two (2) of its experts

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18 the jury and this Court. Nevertheless, the opinions of defense expert Dr. (Ph.D.) Baker were available at trial, though  
they were excluded.

19 <sup>2</sup> "We must 'assume that the jury believed all [of] the evidence favorable to the prevailing party and drew all  
20 reasonable inferences in [that party's] favor.'" *Id.* at 739, 192 P.3d at 252 (alteration in original) (quoting *Bongiovi v.*  
21 *Sullivan*, 122 Nev. 556, 581, 138 P.3d 433, 451 (2006))." *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 258,  
235 P.3d 592, 602 (2010). Here, the damages evidence of Defendant was not permitted to go before the jury, other than  
as to witnesses taken out of order earlier in the trial. A portion of the dissent of Justice Pickering in the *Bahena* case is  
also of note here, as follows.

22 "While the majority distinguishes this case from *Nevada Power* by characterizing the sanctions as 'non-case  
23 concluding,' the reality is that striking Goodyear's answer did effectively conclude this case. The sanction  
24 resulted in a default liability judgment against Goodyear and left Goodyear with the ability to defend on the  
25 amount of damages only. Liability was seriously in dispute in this case, but damages, once liability was  
established, were not, given the catastrophic injuries involved. Thus, striking Goodyear's answer was akin to a  
case concluding sanction, placing this case on the same footing as *Nevada Power*.

26 Surprisingly, the majority relies on *Young v. Johnny Ribeiro Building*. What it misses in *Young* is that we  
27 affirmed the claim-concluding sanctions there only because the district 'court treated Young fairly, giving him  
28 a full evidentiary hearing.' 106 Nev. at 93, 787 P.2d at 780 (emphasis added). This case thus is not like *Young*  
but rather like *Nevada Power*, in that the district court erred as a matter of law in not holding an evidentiary  
hearing."

1 (other than as to expert witnesses who had testified out of order during the Plaintiff's case in chief,  
2 earlier in the trial). The jury did not hear from these two experts. As to Dr. Baker, since the Answer  
3 was being stricken and liability determined by this Court in any event, having him testify at trial  
4 would therefore only have been considered by the jury in the context of damages. As a result,  
5 Defendant argues that this Court exceeded what was permitted in the *Bahena* case, and has therefore  
6 gone beyond what jurisprudence allows as to its sanction here. The middle ground this Court has  
7 created here, between case concluding sanctions and liability only concluding sanctions, is one not  
8 identified in any case authority that Defendant could locate.

9 The ruling or rulings at issue constituted an irregularity in the proceeding, an abuse of  
10 discretion, as well as an error or errors in law which were objected to by the defense. Thus the  
11 request for a new trial here is supported by NRCP 59(a)(1). This decision thus also deprived  
12 Defendant of its constitutional right to a jury trial. Nev. Const., Art. I, Section 3 (...“The right of  
13 trial by Jury shall be secured to all and remain inviolate forever...”); U.S. Const., Am. 7 (“In suits  
14 at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury  
15 shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the  
16 United States, than according to the rules of the common law.”). It was additionally a denial of  
17 Defendant’s constitutional right to due process. Nev. Const., Art. I, Section 8 (“No person shall be  
18 deprived of life, liberty, or property, without due process of law.”); U.S. Const., Am. 5 (“...nor be  
19 deprived of life, liberty, or property, without due process of law...”)). For these reasons a new trial  
20 should be ordered, in which Defendant is allowed to present its full damages evidence, including  
21 testimony and opinions from experts Baker (to the extent his testimony goes to damages) and  
22 Kirkendall.

23 At the time of the sanctions dispute, this Court challenged Defendant to find case law stating  
24 that the use of bankruptcy evidence could ever be proper in a personal injury trial. The Court’s  
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26 *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 259, 235 P.3d 592, 602–03 (2010) (footnotes omitted). Clearly  
27 Defendant Capriati did not get a full hearing of its position, as its remaining witnesses and experts, including damages  
28 experts, were prevented from giving testimony following the sanctions.

1 determination to proceed with a hearing came at or after 5 pm, with a sanctions hearing set for the  
2 next morning at approximately 9 am. Defendant was given only the intervening 16 hours or so,  
3 outside of business hours, in which to locate any such authority, while also preparing a brief on the  
4 issue for filing with the Court, preparing for any further trial proceedings (the nature and schedule  
5 of which were uncertain at that point), as well as awaiting whatever Plaintiff's brief would be  
6 (Plaintiff's brief was received electronically only a few minutes before defense counsel left the  
7 office to attend the hearing in the morning).

8 In at least one personal injury case in Utah, bankruptcy evidence was determined to be  
9 harmless where it addressed an issue in dispute. "Based on the evidence at trial, we conclude that  
10 any error in the admission of the bankruptcy and gambling evidence at Plaintiff's trial was  
11 harmless." *Ereren v. Snowbird Corp.*, 2002 UT App 274.

12 At least one court has held it error not to admit bankruptcy evidence where such evidence  
13 was probative as to damages claimed in a civil case, though it was not an injury case. "We are of  
14 the opinion that evidence of Jefcoat's bankruptcy was highly probative on the issue of his  
15 profitability as a farmer and that a different verdict might have been reached had the jury been aware  
16 of his past losses. We, therefore, conclude that refusal to admit Exhibit ID-C constitutes reversible  
17 error." *Kaiser Investments, Inc. v. Linn Agriprises, Inc.*, 538 So. 2d 409, 417 (Miss. 1989).

18 Defendant contends that whether the evidenced at issue was admissible or proper is and  
19 should have been similar to any other analysis of admissibility. Plaintiff having placed the issue of  
20 Defendant's recordkeeping in issue before the jury at the trial of this case, the facts and  
21 circumstances surrounding that recordkeeping were probative evidence. "Through her own  
22 testimony, and that of other witnesses, the plaintiff had injected into the case the issue as to her  
23 earning capacity in support of and in enhancement of her claim for damages. When she did so the  
24 subject was opened to full inquiry and made relevant and competent any evidence to the contrary  
25 which would dispute or cast doubt on her claims." *Bullock v. Ungricht*, 538 P.2d 190, 192 (Utah  
26 1975). "We are of the opinion that evidence of Jefcoat's bankruptcy was highly probative on the  
27 issue of his profitability as a farmer and that a different verdict might have been reached had the  
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1 jury been aware of his past losses. We, therefore, conclude that refusal to admit Exhibit ID-C  
2 constitutes reversible error.” *Kaiser Investments, Inc. v. Linn Agriprises, Inc.*, 538 So. 2d 409, 417  
3 (Miss. 1989). Other courts have addressed these issues in the context of whether the evidence was  
4 admissible, and then handled the issue in that context.

5 In another case, bankruptcy evidence was admitted in a personal injury action. “At trial,  
6 Kalell presented evidence about his marriages, bankruptcy, failure to pay child support, and filing  
7 of late tax returns—the matters which had been the subject of the motion in limine.” *Kalell v.*  
8 *Petersen*, 498 N.W.2d 413, 415 (Iowa Ct. App. 1993). Admission of the bankruptcy evidence in  
9 that case was held not to be error. “In summary, we conclude the trial court did not err in overruling  
10 plaintiff’s motion in limine or allowing the introduction of evidence covered by said motion.” *Kalell*  
11 *v. Petersen*, 498 N.W.2d 413, 417 (Iowa Ct. App. 1993).

12 While the case law in the area of the use of bankruptcy evidence in a civil trial appears to be  
13 thin, Defendant continues to argue that there is no *per se* bar to such evidence in a personal injury  
14 (or any other) type of civil trial, but rather the use of such evidence depends on whether it is  
15 admissible and relevant and probative as to issues in the case. The paucity of case law involving  
16 the use of bankruptcy evidence in personal injury cases does not stand for the proposition that it is  
17 *per se* inadmissible, which is the position taken by this Court and by Plaintiff.

18 Here, while the topic ultimately sought from the witness was reduction in job force, the  
19 evidence resulting in the sanctions (striking of answer; striking of defense corporate witness;  
20 striking of economic damages expert Kirkendall; striking of accident reconstruction expert Baker)  
21 was not *per se* inadmissible. Without it being inadmissible, and with no prior order in place  
22 precluding such evidence, an admonition to the jury would have sufficed to cure this issue *if* it were  
23 determined to be a problem. While Defendant continues to argue that evidence of job force  
24 reduction and any surrounding evidence or testimony was proper and admissible, in any event it  
25 was insufficient to result in the wholesale gutting of Defendant’s liability and damages evidence  
26 and arguments at trial, which was the end result.

1 Defendant found no law on point in Nevada jurisprudence. One unpublished Nevada  
2 Supreme Court decision did consider bankruptcy issues for purposes of summary judgment<sup>3</sup>,  
3 however that case did not involve the use or admissibility of such evidence during a trial.

4 Defendant incorporate the authorities it cited in its brief as to sanctions. All such authorities  
5 are incorporate by this reference as if set forth fully herein. The decision not to utilize those same  
6 authorities is to allow this Court to review new and different legal cases not previously cited or  
7 addressed. But Defendant contends that any testimony by Mr. Goodrich, and issues related to job  
8 force reduction and the effect on recordkeeping, was fair evidence to seek to elicit in light of the  
9 evidence presented at trial by Plaintiff in regard to its implication that Defendant willfully destroyed  
10 relevant records. Defendant also contends that even if the jury could have drawn an improper  
11 inference from the testimony of Mr. Goodrich, any potential prejudice was curable by admonition  
12 and/or a proper curative instruction. It was not necessary to eliminate Defendant's damages experts,  
13 to strike Defendant's Answer, or to advise the jury there was unlimited insurance.

14 Here, no order on any motion in limine was violated, and the allegedly offending testimony  
15 was not part of any ongoing or earlier disputed or similar testimony. Defendant further asserts that  
16 the standard used in assessing the various sanctions was a discovery-based analysis, using case law  
17 involving discovery issues, some of which involved violation of orders in place in those cited cases.  
18 This was testimony which occurred live during trial, and for which no order was in place beforehand  
19 which prevented Defendant from addressing evidence developed by Plaintiff earlier in the trial. In  
20 that context, and with a single question and a 7-word response, or partial response, it could have  
21 been cured by an admonition to the jury at that point in the trial.

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25 <sup>3</sup> "Here, viewing all evidence in the light most favorable to the nonmoving party, genuine issues of material fact exist  
26 regarding whether Powell's non-disclosure of the underlying personal injury matter in her bankruptcy proceedings was  
27 intentional. At the time of summary judgment, the evidence submitted showed that Powell did not list her personal  
28 injury claim as part of her bankruptcy schedules, and then Powell amended her schedules to include her claim following  
Whole Foods' motion for summary judgment. Whole Foods argues that this court can infer deliberate intent to obtain  
an unfair advantage from Powell's actions; however, Powell argues no evidence of such intent exists. These are genuine  
issues of material fact." *Powell v. WFM-WO, Inc.*, No. 58674, 2013 WL 441746, at \*2 (Nev. Feb. 4, 2013).

1 In essence, Defendant was allowed to argue to the jury in closing argument, which was in the  
2 nature of a prove-up hearing. This Court failed to conduct the necessary hearing and to make the  
3 necessary analysis to eliminate Defendant's damages case. As a result, a new trial should be  
4 ordered.

5 C.

6 **DEFENDANT'S LIABILITY CASE WAS IMPROPERLY ELIMINATED**

7 The rationale for this Court's sanctions was a partial response by the first defense witness at  
8 the commencement of Defendant's case (other than two experts who had testified earlier due to  
9 scheduling issues). After half of the first sentence of the first defense witness, in which the word  
10 "reorganization" was stated by the witness (and not the word "bankruptcy"), the trial was stopped,  
11 a hearing was held, and, after Plaintiff rejected the Court's offer of a mistrial and a half million  
12 dollars in sanctions, all other experts and witnesses were then excluded and prohibited by Court  
13 Order.

14 Defense counsel argued that the evidence was in response to evidence adduced by Plaintiff  
15 using this same witness in Plaintiff's case-in-chief, in which Plaintiff's counsel implied that  
16 Defendant had willfully destroyed certain unspecified documents, which in reality did not occur.  
17 The Court considered that there is a *per se* ban on any use of evidence of bankruptcy at trial, which  
18 Defendant asserts is not correct. Defendant contends that this ruling again constituted an irregularity  
19 in the proceeding, an abuse of discretion, as well as an error or errors in law which were objected  
20 to, under NRCPC 59(a)(1), and that Defendant's constitutional rights to a jury trial and to due process  
21 were eliminated, as per the same authorities cited earlier in this brief.

22 In essence, the Court imposed a *per se* limitation against any mention of a bankruptcy  
23 proceeding. Defendant submits this is not the state of the law. In fact, Defendant argued at trial  
24 that information as to the reduction in the work force at Capriati was sought as testimony in order  
25 to counter testimony elicited from Plaintiff during his case in chief. Defendant also argued that an  
26 admonition to the jury would be sufficient to cure any perceived harm.

1 Plaintiff had implied early in the trial that Capriati had willfully or intentionally destroyed  
2 relevant evidence, using this same witness from Capriati, Cliff Goodrich<sup>4</sup>. That is of course not the  
3 case, but the recordkeeping at Capriati was affected by a significant reduction in its work force. It  
4 was this reduction in work force which Defendant intended to focus on during the testimony of Mr.  
5 Goodrich, in order to counter the impression left with the jury by Plaintiff's counsel that the records  
6 relating to this motor vehicle accident were the victim of some nefarious conspiracy by Defendant  
7 corporation.

8 The work force reduction was something that defense trial counsel learned of only minutes  
9 before coming to court prior to the commencement of its defense case. Thus this was new  
10 information and not something that counsel had any appreciable time to prepare to address.

11 Furthermore, this Court mentioned another unrelated case during this process, stating that in  
12 the other case a different judge had declared a mistrial on the first day of that trial. The name of  
13 that case, and whether there was an order in place prohibiting such testimony, was never revealed  
14 by this Court. Defendant requests that the other un-named trial matter, which was apparently relied  
15 upon by this Court in rendering its ruling here, be identified and set forth in a manner that would  
16 allow Defendant to investigate its applicability to the facts of this case.

17 Here, however, there was no pretrial order in place to prevent such information from being  
18 used by Defendant in response to evidence adduced by Plaintiff. Here there was no pretrial order  
19 precluding the use of any evidence of work force reduction, bankruptcy, or reorganization.

20 Defendant violated no order, *in limine* order, or standing order in this case. As the issue had  
21 not arisen during the trial, Defendant also was not in violation of any verbal or other Order of this  
22 Court at the time this very brief testimony occurred. Defendant contends that the seven (7) words  
23 spoken by the witness resulting in the sanctions imposed could have instead been cured by an  
24 admonition to the jury, if in fact there was a problem with it.

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26 <sup>4</sup> Defendant notes that despite this Court stating on the record that Mr. Goodrich's testimony was stricken in its  
27 "entirety," when Defendant objected to Plaintiff's use of a portion of that testimony during closing argument, the Court  
28 altered its ruling, now stating that the earlier testimony obtained during Plaintiff's case in chief would remain and was  
not stricken. The alteration of the earlier verbal order is also objected to here by Defendant, and provides further support  
for its request for a new trial.

1 The witness said the word “reorganization,” and he did not utter the word “bankruptcy.” He  
2 never reached the testimony as to the work force reduction given the objection of Plaintiff’s counsel  
3 and the fact that the balance of witness Goodrich’s testimony was stricken.

4 The argument advanced by Plaintiff was that the use of bankruptcy testimony would prejudice  
5 the jury as to wealth or impoverishment of the Defendant, Capriati. But Capriati never went out of  
6 business, and remains in business to this day. No testimony about its financial well-being that would  
7 affect any judgment or collection efforts was testified to.

8 In context, Plaintiff and his counsel used tactics at trial which call into question the fairness  
9 of the sanctions imposed against Defendant. Plaintiff testified that he had to loot his 401(k)  
10 retirement savings to survive. Plaintiff also advanced the argument that he had to rely on his son  
11 for support. And the jury was urged in closing argument to put itself in the position of Plaintiff and  
12 to consider how they the jury would feel if they had to rely on the largesse of their children to exist.

13 The statement of Mr. Goodrich, or the half statement since he never got to finish his  
14 statement and related testimony, was in response to specific testimony elicited by Plaintiff.  
15 Plaintiff’s counsel placed into the mind of the jury the notion that Defendant Capriati was somehow  
16 destroying or hiding available evidence, which was an improper attempt at arousing passion and  
17 prejudice against the Defendant as there was absolutely no evidence to support that argument. The  
18 truth is that if there were records relating to this incident or the forklift driver, they were not properly  
19 maintained or they were destroyed in the ordinary course of business, where they had not been  
20 demanded in discovery, and where the business practices of the company as required by applicable  
21 law mandated holding onto certain records for only a three (3) year period. Given that the time  
22 frame between the accident and the trial was roughly six and a half (6 ½) years, in part due to the  
23 bankruptcy stay, there was nothing willful, nefarious, or intentional about any loss of records. But  
24 with Plaintiff having put that before the jury, Defendant was attempting to respond. Instead, the  
25 entire remaining defense case was eliminated by judicial fiat, which was improper in context.

26 This Court also casually mentioned that it would have favorably considered a motion for  
27 spoliation based on the testimony adduced during Plaintiff’s case-in-chief. This threat remained  
28



1 when the testimony of Mr. Goodrich was given in Defendant's case-in-chief, and further supports  
2 the need for Defendant to obtain testimony regarding work force reduction and its effect on any  
3 records no longer available.

4 What resulted was a witness who was the main representative for Defendant Capriati that  
5 was permitted to testify on direct examination for Plaintiff, but was then was not permitted to  
6 respond to points raised by Plaintiff during the defense case. Plaintiff's one-sided use of the  
7 Defendant's own corporate representative was itself improper, where Defendant was never  
8 permitted to have its own witness testify, other than as to the seven (7) words causing the sanctions.

9 **D.**

10 **OTHER EXPERT RULINGS WERE INCORRECT, AND SOME REVERSED EARLIER**  
11 **RULINGS OF THIS COURT WITHOUT ANY NEW OR DIFFERENT BASIS TO DO SO**

12 Certain earlier rulings were altered during trial without any new or different information. As  
13 a result, Defendant went into trial with certain evidentiary rulings in place, which then morphed and  
14 were in effect reversed with defense witnesses on the stand while they were giving live testimony.  
15 These involved in part the two (2) defense experts who were permitted to testify, as they were called  
16 out of order due to scheduling issues.

17 One example of this is with defense neurosurgeon expert Dr. Tung. He had reviewed some  
18 critical preexisting records from Southwest Medical Associates, in which Plaintiff had stated to his  
19 doctors some twenty one (21) months before this accident that he had neck pain for years. During  
20 trial, Plaintiff testified that he forgot about this medical visit or the X-ray of his cervical spine taken  
21 at the same time. These records were reference in Dr. Tung's report or reports<sup>5</sup>, which were timely  
22 disclosed. Plaintiff attacked Dr. Tung's ability to use this information in a motion *in limine*, and  
23 also in a trial brief. Defendant opposed the trial brief as an untimely motion for reconsideration. In  
24 response to both, this Court ruled that Dr. Tung could testify about the Southwest Medical  
25 Associates records as they were within the expert's report, timely disclosed, and supported the  
26 expert's statement that his review of these records did not change his earlier opinions that Plaintiff's  
27 problems were caused mainly by preexisting cervical spinal degeneration.

28 <sup>5</sup> It is believed that Dr. Tung's reports were marked as Court Exhibits at trial.

1 But while Dr. Tung was on the witness stand, the position of the Court suddenly changed  
2 based on Plaintiff's same argument as advanced previously that the records had no specific  
3 comments and were not in the conclusions, and then at that point Dr. Tung was prohibited in being  
4 asked about these records and the related information during his direct examination. Again, in  
5 context Plaintiff's three (3) medical witnesses did not reference the preexisting cervical problems  
6 or records in their reports or medical records, but each was permitted to testify about them during  
7 direct examination by Plaintiff's counsel and over objection from Defendant. The disparity between  
8 the defense medical expert being precluded from discussing the preexisting records and information  
9 despite having placed them into his report or reports, while Plaintiff's experts were allowed to  
10 expound on them despite not having them in any reports or treatment records, could not have been  
11 more stark.

12 Plaintiff urged the Court to restrict this expert's testimony in a fashion the Court had already  
13 ruled on, and the Court did a full reverse of its earlier positions. The jury was thus unable to hear  
14 the critical trial testimony during the witness's direct examination, such that any reference to it  
15 seemed in context like an afterthought, despite this being the central thrust of the expert's opinions  
16 here.

17 A similar experience was encountered with Defendant's vocational expert, Mr. Edward L.  
18 Bennett. He had placed into one of his timely disclosed reports<sup>6</sup> a listing of roughly eleven (11) job  
19 titles suitable for Plaintiff. But because he did not reference those specific job titles again in his  
20 conclusions, he was not allowed to state that those were possible jobs for Plaintiff. To be clear, the  
21 report in its listing of the various job titles indicated some of the job titles were suitable by  
22 educational background and others by vocational background, and in the conclusion there was a  
23 reference to other jobs suitable by vocational or educational background. But the Plaintiff's  
24 argument that the conclusion had to restate the job titles stated earlier in the timely disclosed expert  
25 report was sufficient to prevent the necessary testimony before the jury.

26 ///

27  
28 <sup>6</sup> It is believed that Mr. Bennett's reports were marked as Court Exhibits at trial.

1 E.

2 **THE USE OF A JURY INSTRUCTION ADVISING THE JURY OF**  
3 **UNLIMITED INSURANCE MANDATES A NEW TRIAL**

4 Plaintiff submitted and this Court read to the jury the following jury instruction, which was  
5 Jury Instruction Number 32 (emphasis added):

6 Plaintiff has the legal right to proceed with his claims against  
7 Defendant Capriati Construction Corp., Inc. in this case and recover  
8 damages as determined by you in accordance with these instructions.

9 Further, **Defendant has liability insurance to satisfy, in whole**  
10 **or part, any verdict you may reach in this case.**

11  
12 Defendant contends that the use of this jury instruction was again irregular, improper, error, and an  
13 abuse of discretion, along with a denial of Defendant's due process and constitutional rights, as  
14 supported by authorities cited earlier in this brief. It also misstates the availability of insurance,  
15 given the amount disclosed and Plaintiff's request in closing argument for some \$14.4 million.

16 Furthermore, this jury instruction clearly violated Nevada's collateral source rule. NRS  
17 48.135, reads as follows.

18 NRS 48.135 Liability insurance.

19 1. Evidence that a person was or was not insured against liability  
20 is not admissible upon the issue whether the person acted negligently or  
21 otherwise wrongfully.

22 2. This section does not require the exclusion of evidence of  
23 insurance against liability when it is relevant for another purpose, such  
24 as proof of agency, ownership or control, or bias or prejudice of a  
25 witness.

26 (Added to NRS by 1971, 782)

27 But Nevada case law recognizes a *per se* rule barring the admission of collateral source  
28 information for any purpose. "We now adopt a *per se* rule barring the admission of a collateral  
source of payment for an injury into evidence for any purpose." *Proctor v. Castelletti*, 112 Nev. 88,  
90, 911 P.2d 853, 854 (1996). "While it is true that this rule eviscerates the trial court's discretion  
regarding this type of evidence, we nevertheless believe that there is no circumstance in which a

1 district court can properly exercise its discretion in determining that collateral source evidence  
2 outweighs its prejudicial effect.” *Proctor v. Castelletti*, 112 Nev. 88, 91, 911 P.2d 853, 854 (1996).  
3 Here, that is exactly the type of analysis this Court engaged in to allow and then read the jury  
4 instruction at issue to the jury. In the *Proctor* case, a new trial was required due to the use of  
5 collateral source evidence. “In *Proctor*, we held that the appellant was entitled to a new trial because  
6 the district court’s admission of collateral source evidence affected her ‘right to a fair trial and ... to  
7 be fairly compensated for her injuries.’” *Bass-Davis v. Davis*, 122 Nev. 442, 454, 134 P.3d 103,  
8 110 (2006). Defendant here similarly argues that a new trial is required due to the use of collateral  
9 source information and evidence, which came in the form of a jury instruction.

10 In addition to violating the letter, the intent, and the spirit of the collateral source rule,  
11 Defendant asserts that the jury instruction at issue urged the jury to award a higher amount than it  
12 otherwise might have awarded. It gave the jury the impression that it could award whatever it liked,  
13 since it would have no effect on Defendant. This is exactly why the collateral source rule is in place  
14 – to prevent this type of thought process by the jury one way or the other. Defendant contends that  
15 the jury instruction pushed a mindset upon the jury that may well have resulted in a higher damages  
16 award, or windfall, to Plaintiff.<sup>7</sup>

17 Thus, regardless of the arguments urged by Plaintiff during trial, the inclusion of language in  
18 a jury instruction which advised the jury of unlimited insurance for any award they might issue was  
19 error, irregular, and in violation of Nevada law. It deprived Defendant of its constitutional rights to  
20 due process and a jury trial, per the authorities cited elsewhere in this brief.

---

21  
22 <sup>7</sup> See, e.g., this dissent language by Justice Pickering as to awarding a plaintiff more than just compensation, though the  
23 decision was later vacated and superseded: “[T]he law of torts attempts primarily to put an injured person in a position  
24 as nearly as possible equivalent to his position prior to the tort.’ Restatement (Second) of Torts § 901 cmt. a (1979); see  
25 also *id.* § 903 cmt. a (‘[C]ompensatory damages are designed to place [the plaintiff] in a position substantially equivalent  
26 in a pecuniary way to that which he would have occupied had no tort been committed.’). ‘The primary object of an  
27 award of damages in a civil action, and the fundamental principle on which it is based, are just compensation or  
28 indemnity for the loss or injury sustained by the complainant, and no more.’ *Mozzetti v. City of Brisbane*, 136 Cal.Rptr.  
751, 757 (Ct.App.1977). ‘A plaintiff in a tort action is not, in being awarded damages, to be placed in a better position  
than he would have been had the wrong not been done.’ *Valdez v. Taylor Automobile Company*, 278 P.2d 91, 98  
(Cal.Ct.App.1954).” *Tri-Cty. Equip. & Leasing, LLC v. Klinke*, No. 55121, 2011 WL 1620634, at \*5 (Nev. Apr. 27,  
2011), *vacated* (Sept. 12, 2011), *superseded sub nom. Tri-Cty. Equip. & Leasing v. Klinke*, 128 Nev. 352, 286 P.3d 593  
(2012).

1 Plaintiff argued that the strictures of NRS 48.135 could be bypassed here because of bias  
2 issues. On this basis, this Court proceeded. Defendant contends that decision was error and resulted  
3 in a significant irregularity in the proceedings.

4 In its Motion upon which this Court relied for its decision to utilize the jury instruction at  
5 issue, Plaintiff did not cite to any other case, let alone a Nevada case, where a jury was informed of  
6 unlimited insurance available to satisfy any verdict. Here, that is exactly what happened. **The**  
7 **language of the jury instruction at issue advised the jury that Defendant had unlimited**  
8 **insurance available to satisfy any verdict or award, no matter how high the dollar amount.**

9 This is the opposite of standard jurisprudence related to the collateral source rule, and regardless of  
10 the testimony by the defense witness such a jury instruction goes well beyond what is permitted in  
11 Nevada law.

12 Nevada law requires that reference to insurance result in a limiting instruction. *Stultz v.*  
13 *Bellagio, LLC*, 373 P.3d 965 (Nev. 2011) [“*See Foster v. Bd. of Trustees of Butler Cty. Com. Col.*,  
14 771 F.Supp. 1122, 1128 (D.Kan.1991) (‘[T]he mere mention of the word “insurance” ‘does not  
15 result in unfair prejudice and can be cured by a limiting instruction) [sic – see footnote<sup>8</sup>]; *Safeway*  
16 *Stores, Inc. v. Buckmon*, 652 A.2d 597, 605 (D.C.1994) (‘[T]he mere mention of insurance does not  
17 always require a mistrial if the jury is properly instructed.’)]. Yet here, the instruction itself is the  
18 one that mentioned insurance. The jury certainly took it as the gospel that there was unlimited  
19 insurance, since the other jury instructions and the instructions of the Court generally were that the  
20 jury was required to follow the law, including as set forth in the jury instructions.

21 The use of Jury Instruction 32, and its language assuring the jurors that unlimited insurance  
22 was available for any award they might make, was improper and violated Nevada’s collateral source  
23 rules. The intentional violation of the collateral source rule was both prejudicial and harmful to  
24 Defendant here. The rule against collateral source information is a *per se* bar based on authority

25  
26 <sup>8</sup> The quote from the *Stultz* case in Nevada may be incorrect in its language and form. The case cited reveals the  
27 following full quote. “Any prejudicial effect of this insurance evidence (and the court does not believe that the mere  
28 mention of the word ‘insurance’ results in unfair prejudice) easily could have been cured by a limiting instruction.”  
*Foster v. Bd. of Trustees of Butler Cty. Cmty. Coll.*, 771 F. Supp. 1122, 1128 (D. Kan. 1991).

1 from the Nevada Supreme Court. The use of the insurance information in this fashion in this case  
2 was error, irregular, and improper, regardless of the basis or rationale used for doing so. It set the  
3 stage for a jury verdict that was potentially higher than it otherwise would have been, in violation  
4 of Defendant's due process and jury trial rights. As a result, a new trial must be ordered.

5 **III.**

6 **CONCLUSION**

7 For the foregoing reasons, this Motion should be granted. A new trial should be ordered.

8  
9 DATED this 18<sup>th</sup> day of November, 2019.

10 **WILSON, ELSER, MOSKOWITZ, EDELMAN &  
11 DICKER LLP**

12 

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24 Capriati Construction Corp., Inc.*

**CERTIFICATE OF SERVICE**

Pursuant to NRCPC 5(b), I certify that I am an employee of Wilson Elser Moskowitz Edelman & Dicker LLP, and that on this 18<sup>th</sup> day of November, 2019, I served a true and correct copy of the foregoing **DEFENDANT CAPRIATI CONSTRUCTION CORP., INC.'S MOTION FOR NEW TRIAL** as follows:

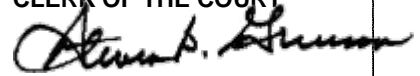
- by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk; and/or
- via hand-delivery to the addressees listed below.

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Nov 26 2019 03:41 p.m.  
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16 *Attorneys for Defendant, Capriati Construction Corp. Inc.*

17  
18 **DISTRICT COURT**  
19 **CLARK COUNTY, NEVADA**

20 BAHRAM YAHYAVI, )  
Plaintiff, )  
21 )  
22 v. )  
23 CAPRIATI CONSTRUCTION CORP., INC., )  
a Nevada Corporation, )  
24 Defendant. )  
25 )

CASE NO. A-15-718689-C  
DEPT NO. XXVIII

**NOTICE OF APPEAL**

26 Notice is given that Capriati Construction Corp., Inc., Defendant in the above-captioned  
27 matter, appeals to the Supreme Court of Nevada from the following Orders:

- 28 1. The District Court's Order of Judgment Upon the Jury Verdict entered in this



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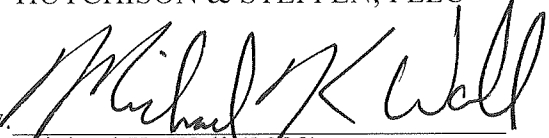
action on October 22, 2019;

2. The District Court's post-judgment Decision and Order (for sanctions), entered in this action on November 5, 2019; and

3. Any and all orders and judgments rendered appealable by any of the foregoing.

DATED this 19 day of November, 2019.

HUTCHISON & STEFFEN, PLLC

By: 

Michael K. Wall (2098)  
Peccole Professional Park  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145

*Appellate counsel for Defendant*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 19<sup>th</sup> day of November, 2019, I caused the above and foregoing document entitled **NOTICE OF APPEAL** to be served as follows:

- by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- to be sent **via facsimile**; and/or
- sent electronically via the Court's electronic service system; the date and time of this electronic service is in place of the date and in place of deposit in the mail.
- to be hand-delivered;

to the attorney(s) listed below at the address and/or facsimile number indicated below:

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Fax: (702) 233-9103

*Attorney for Plaintiff Bahram Yahyavi*



An employee of Hutchison & Steffen, PLLC



1 **2. Judge issuing the decision, judgment or order appealed from.**

2 The Honorable District Judge Ronald J. Israel, Eighth Judicial District Court, Clark  
3 County, Department XXVIII, District Court Case No. A-15-718689-C.

4 **3. Parties to the proceedings in the district court.**

5 Bahram Yahyavi Plaintiff  
6 Capriati Construction Corp., Inc. Defendant

7 **4. Parties involved in this appeal.**

8 Capriati Construction Corp., Inc. Appellant  
9 Bahram Yahyavi Respondent

10 **5. The name, law firms, addresses and telephone numbers of all counsel on appeal,  
11 and the party or parties they represent.**

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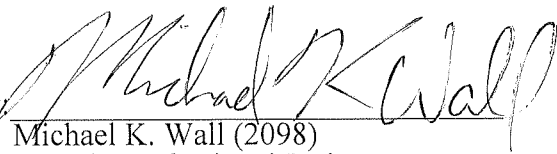
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**13. Whether the appeal involves the possibility of settlement.**

It is counsel's belief there is a possibility of settlement.

DATED this 19 day of November, 2019.

HUTCHISON & STEFFEN, PLLC

By: 

Michael K. Wall (2098)  
Peccole Professional Park  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145

*Appellate counsel for Defendant*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 19<sup>th</sup> day of November, 2019, I caused the above and foregoing document entitled **DEFENDANT'S CASE APPEAL STATEMENT** to be served as follows:

- by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- to be sent **via facsimile**; and/or
- sent electronically via the Court's electronic service system; the date and time of this electronic service is in place of the date and in place of deposit in the mail.
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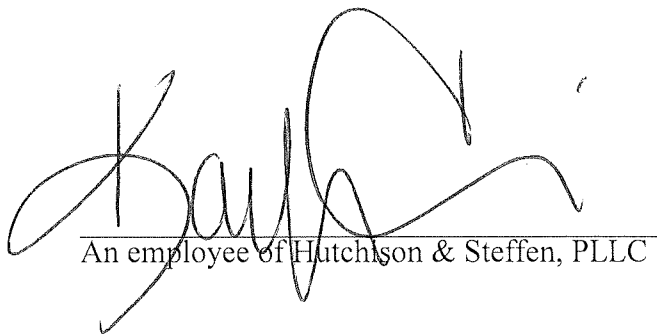
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*Attorney for Plaintiff Bahram Yahyavi*



\_\_\_\_\_  
An employee of Hutchison & Steffen, PLLC

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

**Bahram Yahyavi, Plaintiff(s)**  
**vs.**  
**Capriati Construction Corp Inc, Defendant(s)**

§  
§  
§  
§  
§

Location: **Department 28**  
 Judicial Officer: **Israel, Ronald J.**  
 Filed on: **05/20/2015**  
 Cross-Reference Case Number: **A718689**

**CASE INFORMATION**

**Statistical Closures**  
 10/01/2019 Verdict Reached

Case Type: **Negligence - Auto**

Case Status: **10/01/2019 Closed**

**DATE**

**CASE ASSIGNMENT**

**Current Case Assignment**

Case Number: A-15-718689-C  
 Court: Department 28  
 Date Assigned: 05/20/2015  
 Judicial Officer: Israel, Ronald J.

**PARTY INFORMATION**

**Plaintiff**

**Yahyavi, Bahram**

*Lead Attorneys*

**Prince, Dennis M**  
*Retained*  
 702-534-7600(W)

**Defendant**

**Capriati Construction Corp Inc**






**Brown, Mark James**  
*Retained*  
 702-387-8070(W)

**DATE**

**EVENTS & ORDERS OF THE COURT**

**INDEX**















**EVENTS**

- 05/20/2015  **Complaint**  
 Filed By: Plaintiff Yahyavi, Bahram  
*Complaint for Auto Negligence and Personal Injury*
- 05/20/2015 Case Opened
- 08/26/2015  **Affidavit of Service**  
 Filed By: Plaintiff Yahyavi, Bahram  
*Affidavit of Service*
- 10/07/2015  **Initial Appearance Fee Disclosure**  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Initial Appearance Fee Disclosure*
- 10/07/2015  **Demand for Jury Trial**  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Demand for Jury Trial*
- 10/07/2015  **Answer**  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Answer to Plaintiff's Complaint*



**CASE SUMMARY**

**CASE NO. A-15-718689-C**

- 10/20/2015  Notice of Change of Firm Name  
 Filed By: Defendant Capriati Construction Corp Inc  
*Notice of Change of Firm Name*
- 10/27/2015  Motion  
 Filed By: Plaintiff Yahyavi, Bahram  
*Motion to Exempt from Arbitration*
- 12/11/2015  Commissioners Decision on Request for Exemption - Granted  
*Commissioner's Decision on Request for Exemption*
- 03/04/2016  Joint Case Conference Report  
 Filed By: Plaintiff Yahyavi, Bahram  
*Joint Case Conference Report*
- 03/24/2016  Scheduling Order  
*Scheduling Order*
- 04/04/2016  Order Setting Civil Jury Trial  
*Order Setting Civil Jury Trial*
- 01/13/2017  Notice  
*Notice of Scheduling Settlement Conference*
- 01/18/2017  Association of Counsel  
 Filed By: Plaintiff Yahyavi, Bahram  
*Notice of Association of Counsel*
- 01/30/2017  Order Setting Civil Jury Trial  
*Order Re-Setting Civil Jury Trial*
- 06/15/2017  Pre-Trial Disclosure  
 Party: Defendant Capriati Construction Corp Inc  
*Defendant's Pre-Trial Disclosures*
- 06/15/2017  Motion in Limine  
*(Withdrawn 01/04/2019) Defendant's Motion in Limine No. 1 - To Preclude Plaintiff From Presenting Expert Testimony*
- 06/15/2017  Motion in Limine  
*Defendant's Motion in Limine No. 2 - To Preclude Plaintiff from Introducing Any Documents or Medical Testimony or Reference Any Treatment Allegedly Related to the Accident after April 2015*
- 06/15/2017  Motion in Limine  
*Defendant's Motion in Limine No. 3 - To Preclude Plaintiff or Plaintiff's Attorney From Claiming Disability, Loss of Earning Capacity, Future Medical Care, Loss of Household Services, or Right Knee Injury From Accident*
- 06/15/2017  Motion in Limine  
*Defendant's Motion in Limine No. 4 - To Limit Specials to Amounts Paid in Worker's Compensation Benefits Related to Accident and Preclude Introduction of Amounts Billed by Providers*


**CASE SUMMARY**

**CASE NO. A-15-718689-C**

- 06/19/2017  Pre-Trial Disclosure  
Party: Plaintiff Yahyavi, Bahram  
*PLAINTIFF'S N.R.C.P. 16.1(A)(3)(A) PRETRIAL DISCLOSURES*
- 06/27/2017  Pre-Trial Disclosure  
Party: Plaintiff Yahyavi, Bahram  
*Plaintiff's Amended D N.R.C.P. 16.1(A)(3)(A) Pretrial Disclosures*
- 06/29/2017  Opposition to Motion in Limine  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Omnibus Oppositions To Defendant's Motions In Limine And Countermotion To Initiate/Reopen Discovery In This Matter*
- 07/07/2017  Reply to Opposition  
*Defendant s Reply to Plaintiff s Opposition to Motion in Limine No. 1 to Preclude Plaintiff from Presenting Expert Testimony and Opposition to Counter-Motion*
- 07/07/2017  Reply to Opposition  
*Defendant s Reply to Plaintiff s Opposition to Motion In Limine No. 2 to Preclude Plaintiff from Introducing Any Documents or Medical Testimony or Referencing Any Treatment Allegedly Related to the Accident after April 2015*
- 07/07/2017  Reply to Opposition  
*Defendant s Reply to Plaintiff s Opposition to Motion in Limine No. 3 to Preclude Plaintiff or Plaintiff s Attorney from Claiming Disability, Loss of Earning Capacity, Future Medical Care, Loss of Household Services, or Right Knee Injury from Accident*
- 07/07/2017  Reply to Opposition  
*Defendant s Reply to Plaintiff s Opposition to Motion in Limine No. 4 to Limit Specials to Amounts Paid in Worker s Compensation Benefits Related to Accident and Preclude Introduction of Amounts Billed by Providers*
- 07/11/2017  Objection  
Filed By: Defendant Capriati Construction Corp Inc  
*Defendant Capriati Construction Corp., Inc.'s Notice of Objections to Plaintiff's Exhibits Pursuant to NRCP 16.1(a)(3)*
- 07/11/2017  Reply to Opposition  
Filed by: Plaintiff Yahyavi, Bahram  
*Plaintiff's Reply to Defendant's Opposition to Motion to Initiate/Reopen Discovery*
- 07/14/2017  Joint Pre-Trial Memorandum  
*Joint Pre-Trial Memo*
- 09/14/2017  Supplement  
Filed by: Plaintiff Yahyavi, Bahram  
*Supplement to Plaintiff's Omnibus Oppositions to Defendant's Motions in Limine and Countermotion to Initiate/Reopen Discovery in this Matter*
- 10/04/2017  Notice  
*Notice Of Rescheduling Of Hearing*
- 11/03/2017  Order Setting Civil Jury Trial  
*Order Re-Setting Civil Jury Trial*

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

- 01/19/2018  Motion to Withdraw As Counsel  
Filed By: Plaintiff Yahyavi, Bahram  
*Motion to Withdraw as Counsel*
- 02/21/2018  Notice of Appearance  
Party: Plaintiff Yahyavi, Bahram  
*Notice of Appearance*
- 02/27/2018  Order Granting Motion  
*Order Granting Motion to Withdraw as Counsel*
- 03/22/2018  Stipulation and Order  
Filed by: Plaintiff Yahyavi, Bahram  
*Stipulation and Order to Extend Discovery Deadlines and Continue Trial (First Request)*
- 03/23/2018  Notice of Entry of Stipulation and Order  
Filed By: Plaintiff Yahyavi, Bahram  
*Notice of Entry of Stipulation and Order to Extend Discovery Deadlines and Continue Trial (First Request)*
- 03/23/2018  Recorders Transcript of Hearing  
*Recorder's Transcript of Hearing Status Check Re: Status of Case Bankruptcy Court Decision of Stay Resetting Jury Trial and MILs 10/19/17*
- 04/25/2018  Notice  
*Notice of Refiling Answer Pursuant to Court Minutes of October 19, 2017*
- 04/25/2018  Answer to Complaint  
*Defendant's Answer to Plaintiff's Complaint*
- 06/06/2018  Notice of Association of Counsel  
Filed By: Defendant Capriati Construction Corp Inc  
*Notice of Association of Counsel*
- 08/06/2018  Stipulation and Order  
Filed by: Plaintiff Yahyavi, Bahram  
*Stipulation and Order to Extend Discovery Deadlines (Second Request)*
- 08/08/2018  Notice of Entry  
Filed By: Plaintiff Yahyavi, Bahram  
*Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (Second Request)*
- 08/28/2018  Stipulation and Order  
Filed by: Plaintiff Yahyavi, Bahram  
*Stipulation and Order to Extend Discovery Deadlines (Third Request)*
- 09/07/2018  Order Setting Civil Jury Trial  
*Order Re-Setting Civil Jury Trial To The Next Available Civil Stack Due To The Assignment Of A Criminal Caseload*
- 09/10/2018  Notice of Entry of Order  
Filed By: Plaintiff Yahyavi, Bahram  
*Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (Third Request)*

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

- 10/08/2018  Motion  
 Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Motion To Extend Discovery Deadlines For The Limited Purpose Of Taking Depositions On An Order Shortening Time (Fourth Request)*
- 10/29/2018  Opposition to Motion  
 Defendant's Opposition to Plaintiff's Motion to Extend Discovery Deadlines for the Limited Purposes of Taking Depositions on an Order Shortening Time (Fourth Request)
- 11/02/2018  Reply in Support  
 Filed By: Plaintiff Yahyavi, Bahram  
*Reply in Suppoert of the Motion to Extend Discovery Deadlines for the Limited Purpose of Taking Depositions on an Order Shortening Time (Fourth Request)*
- 12/20/2018  Discovery Commissioners Report and Recommendations  
 Filed By: Plaintiff Yahyavi, Bahram  
*Discovery Commissioner's report And Recommendations*
- 12/28/2018  Supplemental  
 Filed by: Defendant Capriati Construction Corp Inc  
*Defendant's Capriati Construction Corp., Inc.'s Supplement to Motion in Limine No. 4 to Limit Specials to Amounts Paid in Worker's Compensation Benefits Related to Accident and Preclude Introduction of Amounts Billed by Providers*
- 12/28/2018  Declaration  
 Filed By: Plaintiff Yahyavi, Bahram  
*Declaration of Thomas N. Beckom, Esq. in Compliance with EDCR 2.47*
- 12/28/2018  Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Motion in Limine No. 5 to Exclude Evidence of Traffic Citation*
- 12/28/2018  Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Motion in Limine No. 6 to Exclude Evidence Any Expert Opinion Testimony by Lay Witnesses*
- 12/28/2018  Motion in Limine to Exclude Expert Witness  
 Filed by: Defendant Capriati Construction Corp Inc  
*Defendant's Motion in Limine No. 7 to Exclude Rebuttal Expert Leggett or Alternatively to Require that His Testimony be in Plaintiff's Rebuttal Case*
- 12/28/2018  Re-Notice  
 Filed by: Defendant Capriati Construction Corp Inc  
*Notice of Withdrawal of Defendant Capriati Construction Corp.'s Motion in Limine No. 3 - to Preclude Plaintiff or Plaintiff's Attorney from Claiming Subarguments (1) Claiming Disability, (2) Loss of Earning Capacity, (3) Future Medical Care and (4) Loss of Household Services and Maintain and to Supplement and Re-Notice Subargument (5) to Preclude Right Knee Injury from Accident*
- 12/28/2018  Motion in Limine  
 Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Motion In Limine No. 1: To Limit Defendants Experts Testimony To The Opinions And Bases Set Forth In Their Expert Reports*

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

12/28/2018



Motion in Limine

Filed By: Plaintiff Yahyavi, Bahram

*Plaintiff's Motion In Limine No. 2: To Exclude Argument That This Case Is Attorney Driven Or A Medical Buildup Case Because There Is No Evidence To Support Such Argument*

12/28/2018



Motion in Limine

Filed By: Defendant Capriati Construction Corp Inc

*Defendant's Motion in Limine No. 8 to Exclude Plaintiff's Claims and Computations for Any Future Medical Treatment Not Previously Disclosed in Medical Records or Expert Opinions Within the Close of Discovery*

12/28/2018



Motion in Limine

Filed By: Defendant Capriati Construction Corp Inc

*Defendant's Motion in Limine No. 9 to Exclude and Prevent Argument or Questions That Defendant is Avoiding Liability or Refusing to Accept Liability*

12/28/2018



Motion in Limine

Filed By: Plaintiff Yahyavi, Bahram

*Plaintiff's Motion In Limine No. 3: To Exclude Closing Argument That Plaintiff Is Requesting More Money Than He Expects To Receive*

12/28/2018



Motion in Limine

Filed By: Plaintiff Yahyavi, Bahram

*Plaintiff's Motion In Limine No. 5: To Exclude Evidence Of When The Parties Contacted And Retained Counsel*

12/28/2018



Motion in Limine

Filed By: Defendant Capriati Construction Corp Inc

*2/25/19 Withdrawn -(Capriati Construction) Defendant's Motion in Limine No. 10 to Exclude Lack of Pre-Accident Medical Records as Proof That No Relevant Prior or Pre-Existing Treatment Occurred*

12/28/2018



Motion in Limine

Filed By: Plaintiff Yahyavi, Bahram

*Plaintiff's Motion In Limine No. 4: To Allow Voir Dire Questioning About Employment With Or Financial Interest In Any Insurance Company*

12/28/2018



Motion in Limine

Filed By: Plaintiff Yahyavi, Bahram

*Plaintiff's Motion In Limine No. 7: To Exclude Reference To Plaintiff's Counsel Working With Plaintiff's Treating Physicians On Unrelated Cases*

12/28/2018



Motion in Limine

Filed By: Plaintiff Yahyavi, Bahram

*Plaintiff's Motion In Limine No. 8: To Exclude Reference To Any Absence Of Medical Records Before The Subject Collision*

12/28/2018



Motion in Limine

Filed By: Plaintiff Yahyavi, Bahram

*Plaintiff's Motion In Limine No. 9: To Permit Treating Physicians To Testify As To Causation, Diagnosis, Prognosis, Future Treatment, And Extent Of Disability Without A Formal Expert Report*

12/28/2018



Motion in Limine

Filed By: Plaintiff Yahyavi, Bahram

*Plaintiff's Motion In Limine No. 10 To Exclude Any Argument That The Plaintiff Has Any*

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

*Symptomatic Conditions Prior To The Collision*

- 12/28/2018  Motion in Limine  
 Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Motion In Limine No. 11 To Exclude Testimony And Opinions Of Defendants Retained Expert, Kevin Kirkendall, CPA*
- 12/28/2018  Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*(2/25/19 Withdrawn) - (Capriati Construction) Defendant's Motion in Limine No. 12 to Exclude Expert Testimony Not Based on Evidence Adduced at Trial*
- 12/28/2018  Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Motion in Limine No. 13 to Exclude Shocking Evidence Such as Needles*
- 12/28/2018  Motion in Limine  
 Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Motion In Limine No. 12 To Exclude Reference To Plaintiff Being A Malingerer, Magnifying Symptoms, Or Manifesting Secondary Gain Motives*
- 12/28/2018  Motion in Limine  
 Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Motion In Limine No. 14: To Preclude Argument Or Suggestion That Plaintiff's Treating Physicians Have A Conflict That Precludes Them From Offering Medical Causation Opinions*
- 12/28/2018  Motion in Limine  
 Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Motion In Limine No. 16: To Exclude Plaintiff's Prior Unrelated Accidents, Injuries, And Medical Conditions*
- 12/28/2018  Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*(2/25/19 Withdrawn) (Capriati Construction) Defendant's Motion in Limine No. 16 to Exclude Opinions or Testimony of Treating Physicians Beyond Their Roles as Non-Retained Experts*
- 12/28/2018  Motion in Limine  
 Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Motion In Limine No. 17: To Exclude Any Testimony That Bahram Yahyavi Was Hotrodding*
- 12/28/2018  Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Motion in Limine No.15 to to Exclude Reference and Evidence of Investigating Officer's Narrative, Finding of "At Fault" and Any Other Opinions or Conclusions, Including Those in the Traffic Accident Report or Testified to at Deposition*
- 12/28/2018  Motion in Limine  
 Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Motion In Limine No. 18: To Exclude Any Evidence Of Worker s Compensation Payments To Bahram Yahyavi*
- 12/28/2018  Motion in Limine  
 Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Motion In Limine No. 6: To Exclude Reference To And Evidence Of Medical Liens*

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

- 12/28/2018  Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Motion in Limine No. 11 to Preclude Evidence of Litigation Induced Stress or Damages Therefrom*
- 12/28/2018  Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Motion in Limine No. 14 to Pre-Admit Certain Medical Records*
- 01/04/2019  Notice  
 Filed By: Defendant Capriati Construction Corp Inc  
*Notice of Withdrawal of Defendant Capriati Construction Corp.'s Motion in Limine No. 1 - to Preclude Expert Testimony*
- 01/04/2019  Notice  
 Filed By: Defendant Capriati Construction Corp Inc  
*Notice of Withdrawal of Defendant Capriati Construction Corp.'s Motion in Limine No. 2 - to Preclude Plaintiff from Introducing Any Documents or Medical Testimony or Referencing Any Treatment Allegedly Related to the Accident After 2015*
- 01/09/2019  Notice of Hearing  
 Filed By: Defendant Capriati Construction Corp Inc  
*Notice of Hearing on Defendant's Motion in Limine No. 15 to to Exclude Reference and Evidence of Investigating Officer's Narrative, Finding of At Fault and Any Other Opinions or Conclusions. Including Those in the Traffic Accident Report or Testified to at Deposition*
- 01/16/2019  Notice of Hearing  
 Filed By: Defendant Capriati Construction Corp Inc  
*Notice of Heaing on Defendant Capriati Construction Corp., Inc.'s Motion in Limine No. 4 to Limit Specials to Amounts Paid in Worker's Compensation Benefits Related to Accident and Preclude Introduction of Amounts Billed by Providers*
- 01/18/2019  Affidavit  
 Filed By: Plaintiff Yahyavi, Bahram  
*Declaration Of Thomas N. Beckom, Esq. In Compliance With EDCR 2.47*
- 01/18/2019  Motion  
 Filed By: Plaintiff Yahyavi, Bahram  
*Motion For Order Shortening Time To Hear Plaintiff's Motion In Limine No. 19: To Exclude Prejudicial Information Concerning Mr. Yahyavi*
- 01/18/2019  Motion in Limine  
 Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Motion In Limine No. 19: To Exclude Prejudicial Information Concerning Mr. Yahyavi*
- 01/22/2019  Opposition to Motion in Limine  
*Defendant's Opposition to Plaintiff's Motion in Limine No. 4 to Allow Voir Dire Questioning About Employment With or Financial Interest in Any Insurance Company*
- 01/22/2019  Opposition to Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Opposition to Plaintiff's Motion in Limine No. 5 to Exclude Evidence of When the Parties Contacted and Retained Counsel*

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

- 01/22/2019  Opposition to Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Opposition to Plaintiff's Motion in Limine No. 9 to Permit Treating Physicians to Testify as to Causation, Diagnosis, Prognosis, Future Treatment, and Extent of Disability Without a Formal Expert Report*
- 01/22/2019  Opposition to Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Opposition to Plaintiff's Motion in Limine No. 6 to Exclude Reference to and Evidence of Medical Liens*
- 01/22/2019  Notice of Hearing  
 Filed By: Defendant Capriati Construction Corp Inc  
*Notice of Heaing on Defendant Capriati Construction Corp., Inc.'s Motion in Limine No. 4 to Limit Specials to Amounts Paid in Worder's Compensation Benefits Related to Accident and Preclude Introduction of Amounts Billed by Providers*
- 01/22/2019  Order  
 Filed By: Plaintiff Yahyavi, Bahram  
*Order Granting Motion For An Order Shortening Time To Hear Plaintiff's Motion In Limine No. 19: To Exclude Prejudicial Information Concerning Mr. Yahyavi*
- 01/24/2019  Opposition to Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Opposition to Plaintiff's Motion in Limine No. 1 to Limit Defendant's Testimony to the Opinions and Bases Set forth in Their Expert Reports*
- 01/24/2019  Opposition to Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Opposition to Plaintiff's Motion in Limine No. 2 to Exclude Argument that This Case is Attorney Driven of a Medical Buildup Case Because There is No Evidence to Support Such Argument*
- 01/24/2019  Opposition to Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Opposition to Plaintiff's Motion in Limine No. 8 to Exclude Reference to Any Absence of Medical Records Before the Subject Collision*
- 01/24/2019  Opposition to Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Opposition to Plaintiff's Motion in Limine No. 10 to Exclude Any Argument That Plaintiff Has Any Symptomatic Conditions Prior to the Collission*
- 01/25/2019  Notice of Entry  
 Filed By: Plaintiff Yahyavi, Bahram  
*Notice Of Entry Of Order Granting Motion For An Order Shortening Time To Hear Plaintiff's Motion In Limine No. 19: To Exclude Prejudicial Information Concerning Mr. Yahyavi*
- 01/25/2019  Pre-trial Memorandum  
 Filed by: Defendant Capriati Construction Corp Inc  
*Defendant Capriati Construction Corp., Inc.'s Individual Pretrial Memorandum*
- 01/25/2019  Opposition to Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Opposition to Plaintiff's Motion in Limine No. 3 to Exclude Closing Argument Plaintiff is Requiring More Money Than He Expects to Receive*



**CASE SUMMARY**

**CASE NO. A-15-718689-C**

- 01/25/2019  Opposition to Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Opposition to Plaintiff's Motion in Limine No. 12 to Exclude Reference to Plaintiff Being a Malingerer, Magnifying Symptoms, or Manifesting Secondary Gain Motives*
- 01/25/2019  Opposition to Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Opposition to Plaintiff's Motion in Limine No. 14 to Preclude Argument or Suggestion that Plaintiff's Treating Physicians Have a Conflict that Precludes Them from Offering Medical Causation Opinions*
- 01/28/2019  Opposition to Motion in Limine  
*Defendant's Opposition to Plaintiff's Motion in Limine No. 7 to Exclude Reference to Plaintiff's Counsel Working with Plaintiff's Treating Physicians on Unrelated Cases*
- 01/28/2019  Pre-trial Memorandum  
 Filed by: Plaintiff Yahyavi, Bahram  
*Supplement to Plaintiff's Pre-Trial Memorandum*
- 01/28/2019  Pre-Trial Disclosure  
 Party: Plaintiff Yahyavi, Bahram  
*Supplement to Plaintiff's Amended N.R.C.P. 16.1(A)(3)(A) Pretrial Disclosure*
- 01/28/2019  Opposition to Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Opposition to Plaintiff's Motion in Limine No. 11 to Exclude Testimony and Opinions of Defendants' Retained Expert, Kevin Kirkindall, CPA*
- 01/28/2019  Opposition to Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Opposition to Plaintiff's Motion in Limine No. 16 to Exclude Plaintiff's Prior Unrelated Accidents, Injuries, and Medical Conditions*
- 01/28/2019  Opposition to Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Opposition to Plaintiff's Motion in Limine No. 18 to Exclude Any Evidence of Worker's Compensation Payment to Bahram Yahyavi*
- 01/28/2019  Opposition to Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Opposition to Plaintiff's Motion in Limine No. 19 to Exclude Prejudicial Information Concerning Yahyavi*
- 01/28/2019  Opposition to Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Opposition to Plaintiff's Motion in Limine No. 17 to Exclude Any Testimony that Bahram Yahyavi Was Hotrodding*
- 01/28/2019  Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Motion in Limine No. 17 to Exclude Untimely and Supplemental Crash Testing Opinions, or Testimony of Plaintiff's Rebuttal Only Expert Timothy S. Leggett from 1/15/19 Disclosure*
- 01/30/2019

CASE SUMMARY

CASE NO. A-15-718689-C

-  Stipulation and Order  
*Stipulation And Order To Extend Time To Oppose All Motions In Limine*
- 02/08/2019  Notice of Entry  
Filed By: Plaintiff Yahyavi, Bahram  
*Notice of Entry of Stipulation and Order to Extend Time to Oppose All Motions in Limine*
- 02/12/2019  Stipulation and Order  
Filed by: Plaintiff Yahyavi, Bahram  
*Stipulation And Order To Extend Time To Oppose All Motions in Limine (Second Request)*
- 02/20/2019  Notice of Entry  
*Notice of Entry of Stipulation and Order to Extend Time to Oppose Al Motions in Limine (Second Request)*
- 02/25/2019  Opposition  
Filed By: Plaintiff Yahyavi, Bahram  
*Limited Opposition To Defendant Motion In Limine No. 5 To Exclude Evidence Of Traffic Citation*
- 02/25/2019  Opposition  
Filed By: Plaintiff Yahyavi, Bahram  
*Opposition To Defendant s Motion In Limine No. 7 To Exclude Rebuttal Expert Leggett Or Alternatively To Require That His Testimony Be In Plaintiff s Rebuttal Case*
- 02/25/2019  Opposition  
Filed By: Plaintiff Yahyavi, Bahram  
*Opposition To Defendant s Motion In Limine No. 17 To Exclude Untimely And Supplemental Crash Testing Opinions Or Testimony Of Plaintiff s Rebuttal Only Expert Timothy Leggett From 1/15/19*
- 02/25/2019  Opposition  
Filed By: Plaintiff Yahyavi, Bahram  
*Opposition To Defendant s Motion In Limine No. 6 To Exclude Any Expert Opinion Testimony By Lay Witness Mackey*
- 02/25/2019  Opposition  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff s Opposition Defendant Capriati Construction Corp., Inc s Supplement To Motion In Limine No. 4 To Limit Specials To Amounts Paid In Worker s Compensation Benefits*
- 02/25/2019  Opposition  
Filed By: Plaintiff Yahyavi, Bahram  
*Opposition To Defendant s Motion In Limine No. 14 To Pre-Admit Certain Medical Records And Countermotion To Exclude Said Medical Records*
- 02/25/2019  Opposition  
Filed By: Plaintiff Yahyavi, Bahram  
*Opposition To Defendant s Motion In Limine No. 10 To Exclude Lack Of Pre-Accident Medical Records As Proof That No Relevant Prior Or Pre-Existing Treatment Occurred*
- 02/25/2019  Opposition  
Filed By: Plaintiff Yahyavi, Bahram  
*Opposition To Defendant s Motion In Limine No. 8 To Exclude Plaintiff s Claims And Computations For Any Future Medical Treatment Not Previously Disclosed In Medical Records Or Expert Opinions With The Close Of Discovery*

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

02/25/2019



Opposition

Filed By: Plaintiff Yahyavi, Bahram  
*Opposition To Defendant s Motion In Limine No. 9 To Exclude And Prevent Argument Or Questions That Defendant Is Avoiding Liability Or Refusing To Accept Liability*

02/25/2019



Opposition

Filed By: Plaintiff Yahyavi, Bahram  
*Opposition To Defendant s Motion In Limine No. 13 To Exclude Shocking Evidence Such As Needles*

02/25/2019



Opposition

Filed By: Plaintiff Yahyavi, Bahram  
*Opposition To Defendant s Motion In Limine No. 16 To Exclude Opinions Or Testimony Of Treating Physicians Beyond Their Roles As Non-Retained Experts*

02/25/2019



Opposition

Filed By: Plaintiff Yahyavi, Bahram  
*Opposition To Defendant s Motion In Limine No. 12 To Exclude Expert Testimony Not Based On Evidence Adduced At Trial*

02/25/2019



Opposition

Filed By: Plaintiff Yahyavi, Bahram  
*Limited Opposition To Defendant s Motion In Limine No. 15 To Exclude Reference And Evidence Of Investigating Officer s Narrative, Finding Of At Fault , And Any Other Opinions Or Conclusions, Including Those In The Traffic Accident Report Or Testified To At A Deposition*

02/25/2019



Opposition

Filed By: Plaintiff Yahyavi, Bahram  
*Notice Of Nonopposition To Defendant Capriati Construction Corp., Inc s Motion In Limine No. 11 To Preclude Evidence Of Litigation Induced Stress Or Damages Therefrom*

02/25/2019



Notice of Withdrawal of Motion

Filed By: Defendant Capriati Construction Corp Inc  
*Notice of Withdrawal of Defendant Capriati Construction Corp. Inc's Motion in Limine 10 - to Exclude Lack of Pre-Accident Medical Records as Proof That No Relevant Prior or Pre-Existing Treatment Occurred*

02/25/2019



Notice of Withdrawal of Motion

Filed By: Defendant Capriati Construction Corp Inc  
*Notice of Withdrawal of Defendant Capriati Construction Corp. Inc's Motion in Limine 12 - to Exclude Expert Testimony Not Based on Evidence Adduced at Trial*

02/25/2019



Notice of Withdrawal of Motion

Filed By: Defendant Capriati Construction Corp Inc  
*Notice of Withdrawal of Defendant Capriati Construction Corp. Inc.'s Motion in Limine No. 16 - to Exclude Opinions or Testimony of Treating Physicians Beyond Their Roles as Non-Retained Experts*

02/26/2019



Opposition

Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Opposition to Defendants' Motion in Limine No. 3 to Exclude Testimony that Plaintiff's Right Knee Injury was Caused by the Subject Accident*

02/28/2019



Reply to Opposition

CASE SUMMARY

CASE NO. A-15-718689-C

Filed by: Defendant Capriati Construction Corp Inc  
*Defendant Capriati Construction Corp. Inc. s Reply to Plaintiff s Limited Opposition to Defendant s Motion in Limine No. 3 to Exclude Testimony that Plaintiff s Right Injury Knee was Caused by the Subject Accident*

02/28/2019



Reply to Opposition

Filed by: Defendant Capriati Construction Corp Inc  
*Defendant Capriati Construction Corp. Inc.'s Reply to Plaintiff s Limited Opposition to Defendant s Motion in Limine No. 5 to Exclude Evidence of Traffic Citation*

03/01/2019



Reply to Opposition

Filed by: Defendant Capriati Construction Corp Inc  
*Reply to Plaintiff s Limited Opposition to Defendant s Motion in Limine No. 4 to Limit Specials to Amounts Paid in Workers Compensation Benefits*

03/01/2019



Reply to Opposition

Filed by: Defendant Capriati Construction Corp Inc  
*Defendant Capriati Construction Corp. Inc.'s Reply to Plaintiff s Opposition to Defendant s Motion in Limine No. 6 to Exclude any Expert Opinion Testimony by Lay Witness Mackey*

03/01/2019



Reply to Opposition

Filed by: Defendant Capriati Construction Corp Inc  
*Reply to Plaintiff s Opposition to Defendant s Motion in Limine No. 7 to Exclude Rebuttal Expert Leggett or Alternatively to Require That His Testimony be in Plaintiff's Rebuttal Case*

03/04/2019



Reply to Opposition

Filed by: Defendant Capriati Construction Corp Inc  
*Defendant Capriati Construction Corp. Inc. s Reply To Plaintiff s Opposition To Defendant s Motion In Limine No. 8 To Exclude Plaintiff s Claims And Computations For Any Future Medical Treatment Not Previously Disclosed In Medical Records Or Expert Opinions With The Close Of Discovery*

03/04/2019



Reply to Opposition

Filed by: Defendant Capriati Construction Corp Inc  
*Defendant Capriati Construction Corp. Inc. s Reply To Plaintiff s Opposition To Defendant s Motion In Limine No. 9 To Exclude And Prevent Argument Or Questions That Defendant Is Avoiding Liability Or Refusing To Accept Liability*

03/04/2019



Reply to Opposition

Filed by: Defendant Capriati Construction Corp Inc  
*Defendant Capriati Construction Corp. Inc. s Reply To Plaintiff s Opposition To Defendant s Motion In Limine No. 13 To Exclude Shocking Evidence Such As Needles*

03/04/2019



Reply to Opposition

Filed by: Defendant Capriati Construction Corp Inc  
*Defendant Capriati Construction Corp. Inc. s Reply To Plaintiff s Opposition To Defendant s Motion In Limine No. 15 To Exclude Reference And Evidence Of Investigating Officer s Narrative, Finding Of At Fault, And Other Opinions Or Conclusions, Including Those In The Traffic Accident Report Or Testified To At A Deposition*

03/06/2019



Stipulation and Order

*Stipulation And order To Extend Time Ti Oppose All Motions In Limine (Third Request)*

03/06/2019



Notice of Entry

Filed By: Plaintiff Yahyavi, Bahram  
*Stipulation And Order To Extend Time To Oppose All Motions n Limine (Third Request)*

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

03/07/2019



Reply to Opposition

Filed by: Defendant Capriati Construction Corp Inc  
*Reply to Plaintiff's Opposition to Defendant's Motion in Limine No. 14 to Pre-Admit Certain Medical Records and Countermotion to Exclude Said Medical Records and Opposition to Countermotion*

03/08/2019



Reply to Opposition

Filed by: Defendant Capriati Construction Corp Inc  
*Reply to Plaintiff's Opposition to Defendant's Motion in Limine No. 17 to Exclude Untimely and Supplemental Crash Testing Opinions or Testimony of Plaintiff's Rebuttal Only Expert Timothy Leggett from 1/15/19*

03/12/2019



Reply in Support

Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Reply In Support Of Motion In Limine No. 1: To Limit Defendants' Experts' Testimony To The Opinions And Bases Set forth In Their Expert Reports*

03/12/2019



Reply in Support

Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Reply In Support Of Motion In Limine No. 2: To Exclude Argument That This Case Is "Attorney Driven" Or A "Medical Buildup" Case Because There Is No Evidence To Support Such Argument*

03/12/2019



Reply in Support

Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Reply In Support Of Motion In Limine No. To Exclude Closing Argument That Plaintiff Is Requesting More Money Than He Expects To Receive*

03/12/2019



Reply in Support

Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Reply In Support Of Motion In Limine No. 5: To Exclude Evidence Of When The Parties Contacted And Retained Counsel*

03/12/2019



Reply in Support

Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Reply In Support Of Motion In Limine No. 6: To Exclude Reference To And Evidence Of Medical Liens*

03/12/2019



Reply in Support

Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Reply In Support Of Motion In Limine No. 7: To Exclude Reference To Plaintiff's Counsel Working With Plaintiff's Treating Physicians On Unrelated Cases*

03/12/2019



Reply in Support

Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Reply In Support Of Motion In Limine No. To Exclude Reference To Any Absence Of Medical Records Before The Subject Collision*

03/12/2019



Reply in Support

Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Reply In Support Of Motion In Limine No. To Exclude Any Argument That The Plaintiff Has Any Symptomatic Conditions Prior To The Collision*

03/12/2019



Reply in Support

Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Reply In Support Of Motion In Limine No. To Exclude Testimony And Opinions Of*

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

*Defendant's Retained Expert, Kevin Kirkendall, CPA*

- 03/12/2019  Reply in Support  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Reply In Support Of Motion In Limine No. 12: To Exclude Reference To Plaintiff Being A Malingerer, Magnifying Symptoms, Or Manifesting Secondary Gain Motives*
- 03/12/2019  Reply in Support  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Reply In Support Of Motion In Limine No. 14: To Preclude Argument Or Suggestion That Plaintiff's Treating Physicians Have A Conflict That Precludes Them From Offering Medical Causation Opinions*
- 03/12/2019  Reply in Support  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Reply In Support Of Motion In Limine No. 16: To Exclude Plaintiff's Prior Unrelated Accidents, Injuries, And Medical Conditions*
- 03/12/2019  Reply in Support  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Reply In Support Of Motion In Limine No. 17: To Exclude Any Testimony That Bahram Yahyavi Was "Hotrodding"*
- 03/12/2019  Reply in Support  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Reply In Support Of Motion In Limine No. 19: To Exclude Prejudicial Information*
- 03/18/2019  Stipulation  
Filed by: Plaintiff Yahyavi, Bahram  
*Stipulation And Order Regarding Pre-trial Motions In Limine Pursuant To EDCR 2.47*
- 03/18/2019  Notice of Entry  
Filed By: Plaintiff Yahyavi, Bahram  
*Notice Of Entry Of Stipulation And Order Regarding Pre-Trial Motion In limine Pursuant To EDCR 2.47*
- 03/21/2019  Transcript of Proceedings  
*All Pending Motions*
- 03/27/2019  Motion  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Motion To A Jury Questionnaire Prior To Voir Dire*
- 03/27/2019  Clerk's Notice of Hearing  
*Notice of Hearing*
- 03/28/2019  Supplement  
Filed by: Defendant Capriati Construction Corp Inc  
*Defendant Capriati Construction Corp. Inc. s Supplemental Brief in Support of Defendant's Motion in Limine No. 4 to Limit Specials to Amounts Paid in Worker's Compensation Benefits*
- 03/29/2019  Opposition to Motion  
Filed By: Defendant Capriati Construction Corp Inc  
*Defendant Capriati Construction Corp., Inc.'s Opposition to Plaintiff's Motion to Allow Parties to Present a Jury Questionnaire Prior to Voir Dire*

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

- 04/04/2019  Stipulation and Order  
Filed by: Plaintiff Yahyavi, Bahram  
*Stipulation And order Regarding Supplemental Briefing Concerning Defendant's Motion in Limine No.4*
- 04/05/2019  Supplement  
Filed by: Plaintiff Yahyavi, Bahram  
*Plaintiff s Supplemental Brief In Opposition Defendant Capriati Construction Corp., Inc s To Motion In Limine No. 4 To Limit Specials To Amounts Paid In Worker s Compensation Benefits*
- 04/08/2019  Notice of Entry  
Filed By: Plaintiff Yahyavi, Bahram  
*Notice of entry of Stipulation and Order Regarding Supplemental Briefing Concerning Defendant's Motion in Limine No. 4*
- 04/16/2019  Stipulation and Order  
Filed by: Plaintiff Yahyavi, Bahram  
*Stipulation and Order Regarding Supplemental Briefing concerning Defendant's Motion in limine*
- 04/16/2019  Notice of Entry  
Filed By: Plaintiff Yahyavi, Bahram  
*notice of entry of Stipulation and Order Regarding Supplemental Briefing Concerning Defendant's motion in Limine No. 4 (Second request)*
- 04/19/2019  Order  
Filed By: Defendant Capriati Construction Corp Inc  
*Orders on Defendants' Motions in Limine (1-17)*
- 04/23/2019  Order  
Filed By: Plaintiff Yahyavi, Bahram  
*Order Denying Defendant's Motion in Limine No. 4 To Limit Specials to Amounts Paid in Worker's Compensation Benefits*
- 04/23/2019  Reply  
Filed by: Plaintiff Yahyavi, Bahram  
*Reply In Support Of Plaintiffs Motion To Allow Parties to Present a Jury Quesstionnaire Prior to Voir Dire*
- 04/24/2019  Order  
*Order Denying Defendant's Motion in Limine No. 4 To Limit Specials to Amounts Paid in Worker's Compensation Benefits*
- 04/25/2019  Notice of Entry  
Filed By: Plaintiff Yahyavi, Bahram  
*Notice Of Entry Of Order Denying Defendant s Motion In Limine No. 4 To Limit Specials To Amounts Paid In Worker s Compensation Benefits*
- 05/03/2019  Motion to Continue Trial  
Filed By: Defendant Capriati Construction Corp Inc  
*Defendant Capriati Construction Corp., Inc.'s Motion to Continue Trial on an Order Shortening Time*
- 05/06/2019

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

-  Supplement  
 Filed by: Defendant Capriati Construction Corp Inc  
*Supplemental Points and Authorities re Defendant Capriati Construction Corp., Inc.'s Motion to Continue Trial on an Order Shortening Time*
- 05/10/2019  Opposition  
 Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Opposition to Defendant Capriati Construction Corp., Inc.'s Motion to Continue Trial on An Order Shortening Time*
- 05/14/2019  Reply to Opposition  
 Filed by: Defendant Capriati Construction Corp Inc  
*Defendant Capriati Construction Corp., Inc.'s Reply to Plaintiff's Opposition to Defendant's Motion to Continue Trial on Order Shortening Time*
- 05/17/2019  Affidavit  
 Filed By: Plaintiff Yahyavi, Bahram  
*Declaration of Thomas N. Beckom, Esq. in Compliance with 2.47*
- 05/17/2019  Motion in Limine  
 Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Motion In Limine No. 20: To Exclude Reference To Bahram Yahyavi et. al v. Service Corporation International et. al.*
- 05/17/2019  Motion in Limine  
 Filed By: Plaintiff Yahyavi, Bahram  
*Motion In Limine No. 21 To Exclude Argument That Bahram Yahyavi Lied To Ira Spector Concerning Arm Paralysis And Future Surgery*
- 05/20/2019  Clerk's Notice of Hearing  
*Notice of Hearing*
- 05/22/2019  Opposition to Motion in Limine  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Opposition to Plaintiff's Motion in Limine No. 21 to Exclude Argument that Bahram Yahyavi Lied to Ira Spector Concerning Arm Paralysis and Future Surgery*
- 05/23/2019  Order  
 Filed By: Plaintiff Yahyavi, Bahram  
*Order Regarding Plaintiff's Motions in Limine*
- 05/23/2019  Notice of Entry  
 Filed By: Plaintiff Yahyavi, Bahram  
*Notice of Entry Of Order Regarding Plaintiff's Motions in Limine*
- 05/24/2019  Transcript of Proceedings  
*Defendant's Motion to Continue Trial on Order Shortening Time; Status Check: Final Status of Jury Questionnaire*
- 05/28/2019  Opposition and Countermotion  
 Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Opposition to Plaintiff's Motion in Limine No. 20 to Exclude Reference to Bahram Yahyavi v. Service Corporation International, et al.; Countermotion for Offset*
- 06/13/2019  Notice



**CASE SUMMARY**

**CASE NO. A-15-718689-C**

*Notice Rescheduling Hearing*

06/18/2019



Notice of Change of Address  
*Notice of Change of Law Firm Address*

06/20/2019



Opposition to Motion For Summary Judgment  
Filed By: Plaintiff Yahyavi, Bahram  
*Order Denying Defendant's Motion to Continue Trial on Ordder Shortening Time*

06/20/2019



Notice of Entry  
Filed By: Plaintiff Yahyavi, Bahram  
*Notice of Entry of Order Denying Defendant's Motion to Continue Trial on Order Shortening Time*

06/20/2019



Notice of Entry  
Filed By: Plaintiff Yahyavi, Bahram  
*Notice of Entry of Order Deying Defendants Motion To CContinue Trial on Order Shortening Time*

06/25/2019



Notice of Firm Name Change  
Filed By: Plaintiff Yahyavi, Bahram  
*Notice of Firm Name Change*

06/25/2019



Notice of Change  
Filed By: Plaintiff Yahyavi, Bahram  
*Notice of Change of Lead Counsel and Change of Contact Information for Dennis M. Prince, Esq.*

06/25/2019



Notice  
Filed By: Plaintiff Yahyavi, Bahram  
*Notice of Disassociation of Counsel*

07/15/2019



Notice of Attorney Lien  
*Notice of Attorney Lien*

07/24/2019



Reply in Support  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Reply in Support of Motion in Limine No. 20: to Exclude Reference to Bahram Yahyavi, et al. v. Service Corporation International et al and Opposition to Countermotion to Offset*

07/24/2019



Reply in Support  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Reply in Support of Motion in Limine No. 21: to Exclude Argument That Bahram Yahyavi Lied to Ira Spector Concerning Arm Paralysis and Future Surgery*

08/09/2019



Mandatory Pretrial Disclosure  
Party: Plaintiff Yahyavi, Bahram  
*Second Supplement to Plaintiff's Amended PreTrial Disclosures Pursuant to NRCP 16.1(a)(3)*

08/13/2019



Motion  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Motion to Pre-Instruct the Jury*

08/14/2019





**CASE SUMMARY**

**CASE NO. A-15-718689-C**

-  Clerk's Notice of Hearing  
*Notice of Hearing*
- 08/20/2019  Notice of Hearing  
Filed By: Plaintiff Yahyavi, Bahram  
*Notice of Plaintiff's Motion to Pre-Instruct Jury on Order Shortening Time*
- 08/20/2019  Supplement  
Filed by: Plaintiff Yahyavi, Bahram  
*Supplement to Plaintiff's Motion to Pre-Instruct the Jury on Order Shortening Time*
- 08/20/2019  Order  
Filed By: Plaintiff Yahyavi, Bahram  
*Order Granting Plaintiff's Motion in Limine No. 20: to Exclude Reference to Bahram Yahyavi, et al. v. Service Corporation International, et al. and Denying Defendant's Counter-Motion for Offset*
- 08/20/2019  Order  
Filed By: Plaintiff Yahyavi, Bahram  
*Order Denying Plaintiff's Motion in Limine No. 21: to Exclude Argument that Bahram Yahyavi Lied to Ira Spector Concerning Arm Paralysis and Future Surgery*
- 08/20/2019  Order  
Filed By: Plaintiff Yahyavi, Bahram  
*Order Granting Plaintiff's Motion to Allow Parties to Present a Jury Questionnaire Prior to Voir Dire*
- 08/21/2019  Notice of Entry of Order  
Filed By: Plaintiff Yahyavi, Bahram  
*Notice of Entry of Order Granting Plaintiff's Motion to Allow Parties to Present A Jury Questionnaire Prior to Voir Dire*
- 08/21/2019  Notice of Entry of Order  
Filed By: Plaintiff Yahyavi, Bahram  
*Notice of Entry of Order Denying Plaintiff's Motion in Limine No. 21 to Exclude Argument That Bahram Yahyavi Lied to Ira Spector Concerning Arm Paralysis and Future Surgery*
- 08/22/2019  Notice of Entry of Order  
Filed By: Plaintiff Yahyavi, Bahram  
*Notice of Entry of Order Granting Plaintiff's Motion in Limine No. 20 to Exclude Reference to Bahram Yahyavi, et al. v. Service Corporation International, et al. and Denying Defendant's Counter-Motion for Offset*
- 08/22/2019  Trial Subpoena  
Filed by: Plaintiff Yahyavi, Bahram  
*Trial Subpoena*
- 08/22/2019  Opposition  
Filed By: Defendant Capriati Construction Corp Inc  
*Defendant s Opposition to Plaintiff's Motion to Pre-Instruct the Jury*
- 08/23/2019  Supplemental  
Filed by: Defendant Capriati Construction Corp Inc  
*Defendant Capriati Construction Corp., Inc.'s First Supplemental Individual Pre-Trial Memorandum*

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

- 08/26/2019  Reply in Support  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Reply in Support of the Motion to Pre-Instruct the Jury*
- 08/27/2019  Pre-trial Memorandum  
Filed by: Plaintiff Yahyavi, Bahram  
*Plaintiff's Second Supplement to Pre-Trial Memorandum*
- 08/27/2019  Order  
*Order RE: Jury Instructions*
- 08/29/2019  Trial Subpoena  
Filed by: Plaintiff Yahyavi, Bahram  
*Trial Subpoena - Mary Ann Shannon MD*
- 08/29/2019  Trial Subpoena  
Filed by: Plaintiff Yahyavi, Bahram  
*Trial Subpoena - Terrence Claurette PhD*
- 08/29/2019  Trial Subpoena  
Filed by: Plaintiff Yahyavi, Bahram  
*Trial Subpoena - David Oliveri MD*
- 08/29/2019  Trial Subpoena  
Filed by: Plaintiff Yahyavi, Bahram  
*Trial Subpoena - Archie Perry MD*
- 08/29/2019  Trial Subpoena  
Filed by: Plaintiff Yahyavi, Bahram  
*Trial Subpoena - Joseph Schifini MD*
- 08/29/2019  Trial Subpoena  
Filed by: Plaintiff Yahyavi, Bahram  
*Trial Subpoena - IRA Spector MS CRC*
- 08/29/2019  Trial Subpoena  
Filed by: Plaintiff Yahyavi, Bahram  
*Trial Subpoena - John Thalgott MD*
- 08/30/2019  Recorders Transcript of Hearing  
*Plaintiff's Motion to Pre-Instruct the Jury*
- 08/30/2019  Trial Brief  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Trial Brief to Limit Defense Medical Expert Witness, Howard Tung, M.D.'s Testimony*
- 09/03/2019  Trial Brief  
Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Trial Brief #1 as to Plaintiff's Improper Motions for Reconsideration Couched as Trial Briefs*
- 09/04/2019  Trial Subpoena

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

- Filed by: Plaintiff Yahyavi, Bahram  
*Trial Subpoena*
- 09/04/2019  Trial Subpoena  
Filed by: Plaintiff Yahyavi, Bahram  
*Trial Subpoena*
- 09/04/2019  Trial Subpoena  
Filed by: Plaintiff Yahyavi, Bahram  
*Trial Subpoena*
- 09/05/2019  Trial Brief  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Trial Brief to Exclude Argument, Reference, or Medical Expert Opinion That Plaintiff Bahram Yahyavi's Prior Neck Pain was Symptomatic During the Immediate Years Prior to and Immediately Before the Subject Collision*
- 09/06/2019  Trial Brief  
Filed By: Plaintiff Yahyavi, Bahram  
*Trial Brief to Exclude All Facebook, Myspace, Instagram, Twitter, Linked In and Other Social Media*
- 09/06/2019  Opposition to Motion  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Opposition to Defendant's Trial Brief #1 as to Plaintiff's Improper Motions for Reconsideration Couched as Trial Briefs*
- 09/08/2019  Trial Brief  
Filed By: Defendant Capriati Construction Corp Inc  
*DEFENDANT'S TRIAL BRIEF #2 AS TO PLAINTIFF'S UNTIMELY 18TH SUPPLEMENT TO HIS EARLY CASE CONFERENCE LIST OF DOCUMENTS AND WITNESSES AND NRCP 16.1(a)(3) PRETRIAL DISCLOSURES*
- 09/09/2019  Opposition  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Opposition to Defendant's Trial Brief #2 as to Plaintiff's Untimely 18th Supplement to His Early Case Conference List of Documents and Witnesses and NRCP 16.1(a)(3) PreTrial Disclosures*
- 09/09/2019  Trial Subpoena  
Filed by: Plaintiff Yahyavi, Bahram  
*Trial Subpoena*
- 09/11/2019  Trial Subpoena  
Filed by: Plaintiff Yahyavi, Bahram  
*Trial Subpoena*
- 09/12/2019  Jury List
- 09/16/2019  Recorders Transcript of Hearing  
*Day 5 Excerpt, Dr. David Oliveri*
- 09/16/2019  Trial Brief  
Filed By: Defendant Capriati Construction Corp Inc  
*DEFENDANT'S TRIAL BRIEF #3 AS TO PLAINTIFF'S VIOLATION OF PRETRIAL*

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

*AGREEMENT REGARDING DISCLOSURE OF POWER POINT SLIDES AND DEMONSTRATIVE EXHIBITS PRIOR TO USE AT TRIAL AND AS TO USE OF UNDISCLOSED PHOTOGRAPH DURING PLAINTIFF'S OPENING STATEMENT*

09/16/2019



Trial Brief

Filed By: Plaintiff Yahyavi, Bahram

*Plaintiff's Trial Brief to Exclude Testimony and Opinions of Defendant's Retained Expert John E. Baker, Ph.D., P.E.*

09/16/2019



Opposition

*Plaintiff's Opposition to Defendant's Trial Brief #3 as to Plaintiff's Violation of PreTrial Agreement Regarding Disclosure of Powerpoint Slides and Demonstrative Exhibits Prior to Use at Trial and as to Use of Undisclosed Photograph During Plaintiff's Opening Statement*

09/16/2019



Trial Brief

Filed By: Defendant Capriati Construction Corp Inc

*DEFENDANT'S TRIAL BRIEF #4 AS TO DR. OLIVERI'S IMPROPER AND PREVIOUSLY UNDISCLOSED TESTIMONY*

09/16/2019



Trial Subpoena

Filed by: Plaintiff Yahyavi, Bahram

*Trial Subpoena*

09/16/2019



Amended Jury List

09/18/2019



Recorders Transcript of Hearing

*Recorder's Transcript of Jury Trial - Day 6 09/16/19*

09/19/2019



Recorders Transcript of Hearing

*Recorder's Partial Transcript of Jury Trial - Day 7 Testimony of Joseph Schifini*

09/19/2019



Recorders Transcript of Hearing

*Recorder's Partial Transcript of Jury Trial - Day 5 Testimony of Clifford Goodrich*

09/19/2019



Recorders Transcript of Hearing

*Recorder's Partial Transcript of Jury Trial - Day 8 9/18/19*

09/19/2019



Trial Brief

Filed By: Defendant Capriati Construction Corp Inc

*Defendant's Opposition to Plaintiff's Trial Brief to Exclude Testimony and Opinions of Defendant's Retained Expert, John E. Baker, Ph.D., P.E.*

09/19/2019



Trial Brief

Filed By: Plaintiff Yahyavi, Bahram

*Plaintiff's Trial Brief for Curative Instruction to the Jury Regarding Collateral Sources of Payment*

09/20/2019



Trial Brief

Filed By: Defendant Capriati Construction Corp Inc

*Defendants's Opposition to Plaintiff's Trial Brief for Curative Instruction to the Jury Regarding Colateral Sources of Payment*

09/20/2019


















Notice

Filed By: Plaintiff Yahyavi, Bahram

*Plaintiff's Notice of De-Designation of Expert Witness, Timothy Leggett, P.E.*

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

- 09/23/2019  Reply in Support  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Reply in Support of Trial Brief to Exclude Testimony and Opinions of Defendant's Retained Expert, John E. Baker, Ph.D., P.E.*
- 09/23/2019  Trial Brief  
Filed By: Defendant Capriati Construction Corp Inc  
*DEFENDANT'S TRIAL BRIEF #5 AS TO PLAINTIFF'S IMPROPER IMPEACHMENT OF DR. TUNG WITH HIS ANNUAL SALARY INFORMATION*
- 09/25/2019  Trial Subpoena  
Filed by: Defendant Capriati Construction Corp Inc  
*Trial Subpeona - Yahyavi*
- 09/25/2019  Trial Subpoena  
Filed by: Defendant Capriati Construction Corp Inc  
*Trial Subpeona - SW Medical*
- 09/25/2019  Recorders Transcript of Hearing  
*Recorder's Partial Transcript of Jury Trial - Day 12 Howard Tung (Cross-Examination, Recross Examination, and Juror Question/Answer)*
- 09/26/2019  Recorders Transcript of Hearing  
*Recorder's Partial Transcript of Jury Trial - Day 13 Testimony of Cliff Goodrich*
- 09/26/2019  Motion for Sanctions  
Filed By: Plaintiff Yahyavi, Bahram  
*Motion for Sanctions Against Defendant for Willful Attorney Misconduct*
- 09/26/2019  Trial Brief  
Filed By: Defendant Capriati Construction Corp Inc  
*DEFENDANT CAPRIATI CONSTRUCTION CORP., INC.'S 6th TRIAL BRIEF AS TO EVIDENCE OF CAPRIATI'S BANKRUPTCY*
- 09/27/2019  Recorders Transcript of Hearing  
*Recorder's Transcript of Jury Trial - Day 14 9/26/19*
- 09/27/2019  Verdict
- 09/27/2019  Jury Instructions
- 10/01/2019  Jury List  
*Jury List*
- 10/01/2019  Order to Statistically Close Case  
*Civil Order To Statistically Close Case*
- 10/22/2019  Judgment Upon Jury Verdict  
Filed By: Plaintiff Yahyavi, Bahram  
*Judgment Upon the Jury Verdict*
- 10/22/2019  Notice of Entry of Judgment

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

- Filed By: Plaintiff Yahyavi, Bahram  
*Notice of Entry of Judgment*
- 10/22/2019  Memorandum of Costs and Disbursements  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Memorandum of Costs and Disbursements*
- 10/22/2019  Motion for Attorney Fees and Costs  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Motion for Attorney's Fees, Costs, and Interest*
- 10/23/2019  Clerk's Notice of Hearing  
*Notice of Hearing*
- 10/28/2019  Motion to Retax  
Filed By: Defendant Capriati Construction Corp Inc  
*Defendant Capriati Construction Corp., Inc.'s Motion to Re-Tax Costs*
- 10/29/2019  Clerk's Notice of Hearing  
*Notice of Hearing*
- 11/01/2019  Opposition to Motion  
Filed By: Defendant Capriati Construction Corp Inc  
*Defendant Capriati Construction Corp., Inc.'s Opposition to Plaintiff's Motion for Attorney's Fees, Costs and Interest*
- 11/05/2019  Decision and Order  
*Decision and Order*
- 11/05/2019  Notice of Entry of Order  
Filed By: Plaintiff Yahyavi, Bahram  
*Notice of Entry of Decision and Order*
- 11/13/2019  Opposition to Motion  
Filed By: Plaintiff Yahyavi, Bahram  
*Plaintiff's Opposition to Defendant Capriati Construction Corp., Inc.'s Motion to Re-Tax Costs*
- 11/14/2019  Motion to Reconsider  
Filed By: Defendant Capriati Construction Corp Inc  
*Defendant Capriati Construction Corp., Inc.'s Motion to Correct or Reconsider Decision and Order, Entered on November 5, 2019*
- 11/18/2019  Motion for New Trial  
Filed By: Defendant Capriati Construction Corp Inc  
*Defendant Capriati Construction Corp., Inc.'s Motion for New Trial*
- 11/19/2019  Clerk's Notice of Hearing  
*Notice of Hearing*
- 11/19/2019  Notice  
Filed By: Defendant Capriati Construction Corp Inc  
*Notice of Appearance*
- 11/19/2019  Notice of Appeal

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

Filed By: Defendant Capriati Construction Corp Inc  
*Notice of Appeal*

11/19/2019



Case Appeal Statement

Filed By: Defendant Capriati Construction Corp Inc  
*Defendant's Case Appeal Statement*

**DISPOSITIONS**

09/27/2019

**Verdict** (Judicial Officer: Israel, Ronald J.)  
 Debtors: Capriati Construction Corp Inc (Defendant)  
 Creditors: Bahram Yahyavi (Plaintiff)  
 Judgment: 09/27/2019, Docketed: 09/30/2019  
 Total Judgment: 5,870,283.24

10/22/2019

**Judgment Upon the Verdict** (Judicial Officer: Israel, Ronald J.)  
 Debtors: Capriati Construction Corp Inc (Defendant)  
 Creditors: Bahram Yahyavi (Plaintiff)  
 Judgment: 10/22/2019, Docketed: 10/22/2019  
 Total Judgment: 6,276,948.24

**HEARINGS**

12/02/2015

**CANCELED Motion** (9:30 AM) (Judicial Officer: Bulla, Bonnie)  
*Vacated - On in Error*  
*Notice of Motion and Motion to Revoke Defendant's Bail and/or O.R. Release and Remand Defendant into Custody*

12/08/2016



**Status Check** (9:45 AM) (Judicial Officer: Israel, Ronald J.)  
*Status Check: Referral to Settlement Conference // Trial Readiness (March 13, 2017 Trial Stack)*  
 Matter Heard; Status Check: Referral to Settlement Conference // Trial Readiness (March 13, 2017 Trial Stack)  
 Journal Entry Details:  
*Mr. Brown noted they completed most of the discovery and stated this was a motor vehicle accident and workers compensation issue. Mr. Brown further noted Defendant Capriati Construction had filed bankruptcy and the case should be stayed until the 12/21/16 bankruptcy hearing is held. Mr. Brown requested discovery be extended 60 days and further noted discovery cutoff is 02/12/17. Court noted it could not grant the extension while case is in bankruptcy and directed Counsel to file a motion after the bankruptcy hearing. At the request of Counsel, COURT ORDERED, Matter set for Status Check regarding the bankruptcy stay. 01/12/17 9:00 AM STATUS CHECK: BANKRUPTCY STAY CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Malik, Ahmad, Esq.;*

01/12/2017



**Status Check** (9:00 AM) (Judicial Officer: Israel, Ronald J.)  
**01/12/2017, 01/19/2017**  
*Status Check: Bankruptcy Stay*  
 Matter Continued; Status Check: Bankruptcy Stay  
 Matter Heard; Status Check: Bankruptcy Stay  
 Journal Entry Details:  
*Upon Court's inquiry, Mr. Sampson noted the bankruptcy stay was lifted and they have a settlement conference scheduled for 03/02/17. Mr. Brown requested 60 days for discovery and to move the trial out 120 days and the parties can stipulate to discovery dates. Mr. Sampson agreed, and stated, However, the stipulation regarding discovery, the designations are closed. COURT ORDERED, Trial VACATED and RESET. The Judicial Executive Assistant (JEA) to issue the trial order. Court will allow discovery, for 60 days from today. Counsel to submit a stipulation for the discovery. 07/06/17 9:30 AM PRE-TRIAL CONFERENCE 07/25/17 9:30 AM CALENDAR CALL 07/31/17 1:30 PM JURY TRIAL CLERK'S NOTE: Court Clerk corrected the trial dates given in Court to reflect the 2017 trial setting dates. kk A copy of this minute order was placed in the attorney folder(s) of: David Sampson, Esq. and Malik Ahmad, Esq. and Mark James Brown, Esq. (Law Office of Eric Larsen). kk 01/24/17.;*  
 Matter Continued; Status Check: Bankruptcy Stay



**CASE SUMMARY**


**CASE NO. A-15-718689-C**

Matter Heard; Status Check: Bankruptcy Stay

Journal Entry Details:


*Mr. Brown requested the stay be lifted and trial continued 60 days. Court noted Plaintiff's Counsel was not present and the trial would not be continued at this time. Court suggested Counsel go to a settlement conference, through Department 2 and then call chambers one week from Friday informing this Department, if the settlement conference was set. Colloquy regarding the discovery expert disclosure date and stay of the case. COURT ORDERED, Matter CONTINUED, for Plaintiff's counsel to be present or the Court may impose sanctions. 01/19/17 9:00 AM STATUS CHECK: BANKRUPTCY STAY CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Mark Brown, Esq. (Law Office of Erick Larsen) and Malik Ahmad, Esq. kk 01/17/17.;*

02/14/2017 **CANCELED Pre Trial Conference (9:30 AM)** (Judicial Officer: Israel, Ronald J.)  
*Vacated - per Judge*

03/02/2017  **Settlement Conference (9:00 AM)** (Judicial Officer: Becker, Nancy)  
Not Settled;  
Journal Entry Details:  
*Parties present for the settlement conference. Court Clerk not present. Settlement Conference held in chambers. The Judicial Executive Assistant (JEA) stated, David Sampson is new to this case and both sides agreed they will possibly return at a later date for another settlement conference. Case not settled. Trial dates Stand. ;*

03/07/2017 **CANCELED Calendar Call (9:30 AM)** (Judicial Officer: Israel, Ronald J.)  
*Vacated - per Judge*

03/13/2017 **CANCELED Jury Trial (1:30 PM)** (Judicial Officer: Israel, Ronald J.)  
*Vacated - per Judge*

07/06/2017  **Pre Trial Conference (9:30 AM)** (Judicial Officer: Israel, Ronald J.)  
*PRE TRIAL CONFERENCE*  
Matter Heard; PRE TRIAL CONFERENCE  
Journal Entry Details:  
*Mr. Sampson appearing by Court Call. Upon Court's inquiry, Mr. Brown noted the parties were unable to reach a settlement agreement. Mr. Sampson noted scheduling issues within this trial stack and requested trial be reset and re-open discovery as Defendant was in bankruptcy and did not inform Counsel of it. Mr. Brown noted the Defendant went to bankruptcy that proceeded in December and they lifted the stay. Court noted the seriousness of the Defendant being in bankruptcy and not notifying Counsel. Counsel noted the estimated time of the trial would depend on the outcome of the Motions In Limine. Mr. Brown requested the trial be set later in the stack. COURT ORDERED, Pending Motions In Limine, RESET time to 1:30 PM. COURT ORDERED, Oral Request to Continue Trial and Re-Open Discovery, DENIED. Trial Dates Stand. 07/18/17 1:30 PM MOTIONS IN LIMINE;*

07/18/2017 **Motion in Limine (1:30 PM)** (Judicial Officer: Israel, Ronald J.)  
*Defendant's Motion in Limine No. 1 - To Preclude Plaintiff From Presenting Expert Testimony*  
Off Calendar; Defendant's Motion in Limine No. 1 - To Preclude Plaintiff From Presenting Expert Testimony

07/18/2017 **Motion in Limine (1:30 PM)** (Judicial Officer: Israel, Ronald J.)  
*Defendant's Motion in Limine No. 2 - To Preclude Plaintiff from Introducing Any Documents or Medical Testimony or Reference Any Treatment Allegedly Related to the Accident after April 2015*  
Off Calendar; Defendant's Motion in Limine No. 2 - To Preclude Plaintiff from Introducing Any Documents or Medical Testimony or Reference Any Treatment Allegedly Related to the Accident after April 2015

07/18/2017 **Motion in Limine (1:30 PM)** (Judicial Officer: Israel, Ronald J.)  
*Defendant's Motion in Limine No. 3 - To Preclude Plaintiff or Plaintiff's Attorney From Claiming Disability, Loss of Earning Capacity, Future Medical Care, Loss of Household Services, or Right Knee Injury From Accident*  
Off Calendar; Defendant's Motion in Limine No. 3 - To Preclude Plaintiff or Plaintiff's

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-15-718689-C

Attorney From Claiming Disability, Loss of Earning Capacity, Future Medical Care, Loss of Household Services, or Right Knee Injury From Accident

07/18/2017

**Motion in Limine** (1:30 PM) (Judicial Officer: Israel, Ronald J.)

*Defendant's Motion in Limine No. 4 - To Limit Specials to Amounts Paid in Worker's Compensation Benefits Related to Accident and Preclude Introduction of Amounts Billed by Providers*

Off Calendar; Defendant's Motion in Limine No. 4 - To Limit Specials to Amounts Paid in Worker's Compensation Benefits Related to Accident and Preclude Introduction of Amounts Billed by Providers


07/18/2017

**Opposition and Counter-motion** (1:30 PM) (Judicial Officer: Israel, Ronald J.)

*Plaintiff's Omnibus Oppositions To Defendant's Motions In Limine And Counter-motion To Initiate/Reopen Discovery In This Matter*

Off Calendar; Plaintiff's Omnibus Oppositions To Defendant's Motions In Limine And Counter-motion To Initiate/Reopen Discovery In This Matter

07/18/2017

 **All Pending Motions** (1:30 PM) (Judicial Officer: Israel, Ronald J.)

*All Pending Motions (07/18/17)*

Matter Heard; All Pending Motions (07/18/17)

Journal Entry Details:

*DEFENDANT'S MOTION IN LIMINE NO. 1 - TO PRECLUDE PLAINTIFF FROM PRESENTING EXPERT TESTIMONY; DEFENDANT'S MOTION IN LIMINE NO. 2 - TO PRECLUDE PLAINTIFF FROM INTRODUCING ANY DOCUMENTS OR MEDICAL TESTIMONY OR REFERENCE ANY TREATMENT ALLEGEDLY RELATED TO THE ACCIDENT AFTER April 2015; DEFENDANT'S MOTION IN LIMINE NO 3 - TO PRECLUDE PLAINTIFF OR PLAINTIFF'S ATTORNEY FROM CLAIMING DISABILITY, LOSS OF EARNING CAPACITY, FUTURE MEDICAL CARE, LOSS OF HOUSEHOLD SERVICES, OR RIGHT KNEE INJURY FROM ACCIDENT; DEFENDANT'S MOTION IN LIMINE NO. 4 - TO LIMIT SPECIALS TO AMOUNTS PAID IN WORKER'S COMPENSATION BENEFITS RELATED TO ACCIDENT AND PRECLUDE INTRODUCTION OF AMOUNTS BILLED BY PROVIDERS; PLAINTIFF'S OMNIBUS OPPOSITION TO DEFENDANT'S MOTIONS IN LIMINE AND COUNTERMOTION TO INITIATE/REOPEN DISCOVERY IN THIS MATTER: Colloquy regarding the Defendant's bankruptcy. Mr. Brown noted the bankruptcy was filed the same time the answer was filed and there was no notice of the filed bankruptcy. Court noted discovery proceeded with no indication a stay was in place. Mr. Brown stated he was notified by Plaintiff's Counsel on 10/18/16 regarding a bankruptcy and the stay was lifted 10/22/16. Mr. Brown further noted the parties agreed to proceed with discovery and until Defendants filed the Motions In Limine and discovery was closed then the Plaintiff's objected to discovery additionally Plaintiff's agreed to extend discovery 60 days. Mr. Sampson argued the case was stayed when it was in bankruptcy under statute. Mr. Sampson stated he was not requesting sanctions, However would request to extend discovery or they can go to the Federal Judge. Further arguments by Counsel. COURT ORDERED, Matters CONTINUED, 90 days for Counsel to file their motion in Bankruptcy Court regarding both sides conducting discovery when stayed. This Court to make decisions on pending motions following the Bankruptcy Judges order. Counsel noted Capriati Construction Corp is still in bankruptcy. Mr. Sampson noted he would file the order regarding the bankruptcy stay and will ask to enforce the stay. Mr. Sampson further noted he would request to re-open discovery or have Defendants sanctioned. Court noted it would be up to the Bankruptcy Judge to decide those issues or if to dissolve everything. COURT ORDERED, Trial dates, VACATED and Motions In Limine, OFF CALENDAR. COURT ORDERED, Matter SET for a status check to reset Jury Trial and Motions In Limine following the Bankruptcy Courts decision regarding the stay. 10/17/17 9:00 AM STATUS CHECK: STATUS OF CASE// BANKRUPTCY COURT DECISION // RESETTING JURY TRIAL & MOTIONS IN LIMINE;*

07/25/2017

**CANCELED Calendar Call** (9:30 AM) (Judicial Officer: Israel, Ronald J.)


*Vacated*

07/31/2017

**CANCELED Jury Trial** (1:30 PM) (Judicial Officer: Israel, Ronald J.)

*Vacated*

10/19/2017

 **Status Check** (9:00 AM) (Judicial Officer: Barker, David)

**CASE SUMMARY**

**CASE NO. A-15-718689-C**


*Status Check Re: Status of Case // Bankruptcy Court decision of stay // Resetting Jury Trial & MIL's*

Matter Heard; Status Check Re: Status of Case // Bankruptcy Court decision of stay // Resetting Jury Trial & MIL's

Journal Entry Details:

*Mr. Sampson noted there was a question of bankruptcy stay regarding Defendant Capriati Construction Corporation and in that time all the discovery deadlines past. Mr. Sampson suggested to start forward and stipulate to depositions and hold an Early Case Conference (ECC), submit a Joint Case Conference Report (JCCR). Mr. Brown noted they held a (ECC) already and would stipulate to the (JCCR). Colloquy regarding scheduling issues. Court trailed matter to discuss available setting with the Judicial Executive Assistant (JEA). Later Recalled. Mr. Sampson stated the parties agreed to deadline dates; Initial expert 01/17/18, Rebuttal Experts 02/20/18, Discovery Closes 04/06/18, Dispositive Motions 05/07/18 and Trial Stack of 07/30/18. Mr. Brown noted there was a jury demand, stipulated to the dates and the Defendant will file their answer within 30 days. 07/10/18 9:30 AM PRE-TRIAL CONFERENCE 07/24/18 9:30 AM CALENDAR CALL 07/30/18 1:30 PM JURY TRIAL;*

02/21/2018

 **Motion to Withdraw as Counsel** (3:00 AM) (Judicial Officer: Israel, Ronald J.)  
*David Sampson, Esq.'s Motion to Withdraw as Counsel for Plaintiff*

**MINUTES**

Granted; David Sampson, Esq.'s Motion to Withdraw as Counsel for Plaintiff

Journal Entry Details:

*Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20 (b) the Motion to Withdraw is deemed unopposed. Therefore, good cause appearing, COURT ORDERED, motion is GRANTED. Moving Counsel is to prepare and submit an order including all dates for pretrial compliance with NRCP 16.1 within ten (10) days and distribute a filed copy to all parties involved in this matter. CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: David Sampson, Esq. and Malik Ahmad, Esq. and Mark Brown, Esq. (Eric R. Larsen) and Dennis Prince, Esq. (Eglet Prince). kk 02/21/18.;*

07/10/2018

**CANCELED Pre Trial Conference** (9:30 AM) (Judicial Officer: Israel, Ronald J.)  
*Vacated*

07/24/2018

**CANCELED Calendar Call** (9:30 AM) (Judicial Officer: Israel, Ronald J.)  
*Vacated*


07/30/2018

**CANCELED Jury Trial** (1:30 PM) (Judicial Officer: Israel, Ronald J.)  
*Vacated - per Stipulation and Order*

10/02/2018

**CANCELED Calendar Call** (9:30 AM) (Judicial Officer: Israel, Ronald J.)  
*Vacated - per Secretary*

11/09/2018

 **Motion to Extend Discovery** (9:00 AM) (Judicial Officer: Bulla, Bonnie)  
*Plaintiff's Motion to Extend Discovery Deadlines for the Limited Purpose of Taking Depositions on an Order Shortening Time (Fourth Request)*  
Granted; Plaintiff's Motion to Extend Discovery Deadlines for the Limited Purpose of Taking Depositions on an OST(Fourth Request)  
Journal Entry Details:  
*2015 case. Commissioner is not able to move the Trial date, and it would be addressed by the Judge. Mr. Prince stated Plaintiff doesn't want the Trial continued. Arguments by counsel. Mr. Kahn stated Plaintiff wants a number a depositions. Commissioner stated the proposed Rules limit depositions to ten for each side unless there is a Stipulation or a Court Order. COMMISSIONER RECOMMENDED, motion is GRANTED; discovery cutoff EXTENDED to 12-31-18; file dispositive motions by 12-24-18 unless the Court agrees to hear Motions on OST. Mr. Prince to prepare the Report and Recommendations, and Mr. Kahn to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution.;*

12/13/2018

**CANCELED Pretrial/Calendar Call** (9:30 AM) (Judicial Officer: Israel, Ronald J.)  
*Vacated - Superseding Order*

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

12/13/2018	<b>CANCELED Pretrial/Calendar Call</b> (9:30 AM) (Judicial Officer: Israel, Ronald J.) <i>Vacated</i>
12/31/2018	<b>CANCELED Jury Trial</b> (1:30 PM) (Judicial Officer: Israel, Ronald J.) <i>Vacated</i>
01/10/2019	<b>CANCELED Status Check: Compliance</b> (3:00 AM) (Judicial Officer: Truman, Erin) <i>Vacated - per Commissioner</i>
01/15/2019	 <b>Pre Trial Conference</b> (9:30 AM) (Judicial Officer: Israel, Ronald J.) Matter Heard; Journal Entry Details: <i>Mr. Prince announced ready and estimated 12 to 14 trial days. Mr. Kahn stated the parties submitted a joint motion to delay the Motions In Limine. Mr. Prince noted they would report back on Thursday regarding if the parties settled before the motions are heard. Court directed Counsel to send a letter or e-mail chambers. Trial dates STAND. ;</i>
01/29/2019	 <b>Calendar Call</b> (9:30 AM) (Judicial Officer: Israel, Ronald J.) Vacated and Reset; Journal Entry Details: <i>Conference at the bench. Upon Court's inquiry, Counsel estimated a 3 to 4 week trial and requested to reset the trial. Court trailed matter to confirm older case trial setting status. Later recalled. Due to Court's schedule, COURT ORDERED, Trial VACATED and RESET, Plaintiff's Counsel to prepare a trial schedule order. Colloquy regarding resetting the Motions In Limine. Court directed Counsel to review all the Motions In Limine and stated if there are any motions to enforce FCH-1 or to follow the law, Counsel may be sanctioned. COURT ORDERED, Motion's In Limine, RESET. 03/19/19 10:00 AM MOTIONS IN LIMINE 06/04/19 9:30 AM PRE-TRIAL CONFERENCE 06/18/19 9:30 AM CALENDAR CALL 07/01/19 1:30 PM JURY TRIAL (3-4 WKS);</i>
02/11/2019	<b>CANCELED Jury Trial</b> (1:30 PM) (Judicial Officer: Israel, Ronald J.) <i>Vacated - per Judge</i>
03/19/2019	<b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.) <i>Defendant's Motion in Limine No. 5 to Exclude Evidence of Traffic Citation</i> Stipulated; Defendant's Motion in Limine No. 5 to Exclude Evidence of Traffic Citation
03/19/2019	<b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.) <i>Defendant's Motion in Limine No. 6 to Exclude Evidence Any Expert Opinion Testimony by Lay Witnesses</i> Granted in Part; Defendant's Motion in Limine No. 6 to Exclude Evidence Any Expert Opinion Testimony by Lay Witnesses
03/19/2019	<b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.) <i>Defendant's Motion in Limine No. 7 to Exclude Rebuttal Expert Leggett or Alternatively to Require that His Testimony be in Plaintiff's Rebuttal Case</i> Granted in Part; Defendant's Motion in Limine No. 7 to Exclude Rebuttal Expert Leggett or Alternatively to Require that His Testimony be in Plaintiff's Rebuttal Case
03/19/2019	<b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.) <i>Notice of Withdrawal of Defendant Capriati Construction Corp.'s Motion in Limine No. 3 - to Preclude Plaintiff or Plaintiff's Attorney from Claiming Subarguments (1) Claiming Disability, (2) Loss of Earning Capacity, (3) Future Medical Care and (4) Loss of Household Services and Maintain and to Supplement and Re-Notice Subargument (5) to Preclude Right Knee Injury from Accident</i> Withdrawn Denied; Notice of Withdrawal of Defendant Capriati Construction Corp.'s Motion in Limine No. 3 - to Preclude Plaintiff or Plaintiff's Attorney from Claiming Subarguments (1) Claiming Disability, (2) Loss of Earning Capacity, (3) Future Medical Care and (4) Loss of Household Services and Maintain and to Supplement and Re-Notice Subargument (5) to Preclude Right Knee Injury from Accident

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

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| 03/19/2019 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Plaintiff's Motion In Limine No. 1: To Limit Defendants Experts Testimony To The Opinions And Bases Set Forth In Their Expert Reports</i><br/>                     Reserve Ruling; Plaintiff's Motion In Limine No. 1: To Limit Defendants Experts Testimony To The Opinions And Bases Set Forth In Their Expert Reports</p>   |
| 03/19/2019 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Plaintiff's Motion In Limine No. 2: To Exclude Argument That This Case Is Attorney Driven Or A Medical Buildup Case Because There Is No Evidence To Support Such Argument</i><br/>                     Granted; Plaintiff's Motion In Limine No. 2: To Exclude Argument That This Case Is Attorney Driven Or A Medical Buildup Case Because There Is No Evidence To Support Such Argument</p>  |
| 03/19/2019 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Defendant's Motion in Limine No. 8 to Exclude Plaintiff's Claims and Computations for Any Future Medical Treatment Not Previously Disclosed in Medical Records or Expert Opinions Within the Close of Discovery</i><br/>                     Off Calendar; Defendant's Motion in Limine No. 8 to Exclude Plaintiff's Claims and Computations for Any Future Medical Treatment Not Previously Disclosed in Medical Records or Expert Opinions Within the Close of Discovery</p> |
| 03/19/2019 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Defendant's Motion in Limine No. 9 to Exclude and Prevent Argument or Questions That Defendant is Avoiding Liability or Refusing to Accept Liability</i><br/>                     Denied; Defendant's Motion in Limine No. 9 to Exclude and Prevent Argument or Questions That Defendant is Avoiding Liability or Refusing to Accept Liability</p>   |
| 03/19/2019 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Plaintiff's Motion in Limine No. 3 to Exclude Closing Argument that Plaintiff is Requesting more then he Expects to Receive</i><br/>                     Granted; Plaintiff's Motion in Limine No. 3 to Exclude Closing Argument that Plaintiff is Requesting more then he Expects to Receive</p>  |
| 03/19/2019 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Plaintiff's Motion In Limine No. 5: To Exclude Evidence Of When The Parties Contacted And Retained Counsel</i><br/>                     Granted; Plaintiff's Motion In Limine No. 5: To Exclude Evidence Of When The Parties Contacted And Retained Counsel</p>  |
| 03/19/2019 | <p><b>CANCELED Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Vacated</i><br/> <i>Defendant's Motion in Limine No. 10 to Exclude Lack of Pre-Accident Medical Records as Proof That No Relevant Prior or Pre-Existing Treatment Occurred</i></p>  |
| 03/19/2019 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Plaintiffs Motion in Limine No 4: to Allow Voir Dire Questioning About Employment with or Financial Intrest in any Insurance Company</i><br/>                     Stipulated; Plaintiffs Motion in Limine No 4: to Allow Voir Dire Questioning About Employment with or Financial Intrest in any Insurance Company</p>   |
| 03/19/2019 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Plaintiff's Motion In Limine No. 7: To Exclude Reference To Plaintiff's Counsel Working With Plaintiff's Treating Physicians On Unrelated Cases</i><br/>                     Granted in Part; Plaintiff's Motion In Limine No. 7: To Exclude Reference To Plaintiff's Counsel Working With Plaintiff's Treating Physicians On Unrelated Cases</p>  |
| 03/19/2019 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Plaintiff's Motion In Limine No. 8: To Exclude Reference To Any Absence Of Medical Records Before The Subject Collision</i><br/>                     Granted; Plaintiff's Motion In Limine No. 8: To Exclude Reference To Any Absence Of Medical Records Before The Subject Collision</p>  |

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

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| 03/19/2019 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Plaintiff's Motion in Limine No.9 to Permit Treating Physicians to Testify as to Causation, Diagnosis, Prognosis, Future Treatment, and Extent of Disability without a Formal Expert Report</i><br/>                     Stipulated; Plaintiff's Motion in Limine No.9 to Permit Treating Physicians to Testify as to Causation, Diagnosis, Prognosis, Future Treatment, and Extent of Disability without a Formal Expert Report</p> |
| 03/19/2019 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Plaintiff's Motion In Limine No. 10 To Exclude Any Argument That The Plaintiff Has Any Symptomatic Conditions Prior To The Collision</i><br/>                     Denied; Plaintiff's Motion In Limine No. 10 To Exclude Any Argument That The Plaintiff Has Any Symptomatic Conditions Prior To The Collision</p>   |
| 03/19/2019 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Plaintiff's Motion In Limine No. 11 To Exclude Testimony And Opinions Of Defendants' Retained Expert, Kevin Kirkendall, CPA</i><br/>                     Denied; Plaintiff's Motion In Limine No. 11 To Exclude Testimony And Opinions Of Defendants' Retained Expert, Kevin Kirkendall, CPA</p>   |
| 03/19/2019 | <p><b>CANCELED Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Vacated</i><br/> <i>Defendant's Motion in Limine No. 12 to Exclude Expert Testimony Not Based on Evidence Adduced at Trial</i></p>  |
| 03/19/2019 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Defendant's Motion in Limine No. 13 to Exclude Shocking Evidence Such as Needles</i><br/>                     Denied in Part; Defendant's Motion in Limine No.13 to Exclude Shocking Evidence Such as Needles</p>  |
| 03/19/2019 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Plaintiff's Motion In Limine No. 12 To Exclude Reference To Plaintiff Being A Malingerer, Magnifying Symptoms, Or Manifesting Secondary Gain Motives</i><br/>                     Reserve Ruling; Plaintiff's Motion In Limine No. 12 To Exclude Reference To Plaintiff Being A Malingerer, Magnifying Symptoms, Or Manifesting Secondary Gain Motives</p>   |
| 03/19/2019 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Plaintiff's Motion In Limine No. 14: To Preclude Argument Or Suggestion That Plaintiff's Treating Physicians Have A Conflict That Precludes Them From Offering Medical Causation Opinions</i><br/>                     Granted; Plaintiff's Motion In Limine No. 14: To Preclude Argument Or Suggestion That Plaintiff's Treating Physicians Have A Conflict That Precludes Them From Offering Medical Causation Opinions</p>        |
| 03/19/2019 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Plaintiff's Motion In Limine No. 16: To Exclude Plaintiff's Prior Unrelated Accidents, Injuries, And Medical Conditions</i><br/>                     Reserve Ruling; Plaintiff's Motion In Limine No. 16: To Exclude Plaintiff's Prior Unrelated Accidents, Injuries, And Medical Conditions</p>   |
| 03/19/2019 | <p><b>CANCELED Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Vacated</i><br/> <i>Defendant's Motion in Limine No. 16 to Exclude Opinions or Testimony of Treating Physicians Beyond their Roles as Non-Retained Experts</i></p>  |
| 03/19/2019 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)<br/> <i>Plaintiff's Motion In Limine No. 17: To Exclude Any Testimony That Bahram Yahyavi Was Hotrodding</i><br/>                     Granted; Plaintiff's Motion In Limine No. 17: To Exclude Any Testimony That Bahram Yahyavi Was Hotrodding</p>  |

**CASE SUMMARY****CASE NO. A-15-718689-C**

03/19/2019	<p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)  <i>Plaintiff's Motion In Limine No. 18: To Exclude Any Evidence Of Worker's Compensation Payments To Bahram Yahyavi</i>  Stipulated; Plaintiff's Motion In Limine No. 18: To Exclude Any Evidence Of Worker's Compensation Payments To Bahram Yahyavi</p>
03/19/2019	<p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)  <i>Plaintiff's Motion In Limine No. 6: To Exclude Reference To And Evidence Of Medical Liens</i>  Denied; Plaintiff's Motion In Limine No. 6: To Exclude Reference To And Evidence Of Medical Liens</p>
03/19/2019	<p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)  <i>Defendant Capriati Construction Corp., Inc's Motion in Limine No. 11 to Preclude Evidence of Litigation Induced Stress or Damages Therefrom</i>  Granted; Defendant Capriati Construction Corp., Inc's Motion in Limine No. 11 to Preclude Evidence of Litigation Induced Stress or Damages Therefrom</p>
03/19/2019	<p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)  <i>Defendant's Motion in Limine No 14 to Pre Admit Certain Medical Records</i>  Denied; Defendant's Motion in Limine No 14 to Pre Admit Certain Medical Records</p>
03/19/2019	<p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)  <i>Defendant's Motion in Limine No.15 to Exclude Reference and Evidence of Investigating Officer's Narrative, Finding of "At Fault" and Any Other Opinions or Conclusions, Including Those in the Traffic Accident Report or Testified to at Deposition</i>  Granted in Part; Defendant's Motion in Limine No.15 to Exclude Reference and Evidence of Investigating Officer's Narrative, Finding of "At Fault" and Any Other Opinions or Conclusions, Including Those in the Traffic Accident Report or Testified to at Deposition</p>
03/19/2019	<p> <b>Hearing</b> (10:00 AM) (Judicial Officer: Israel, Ronald J.)  <b>03/19/2019, 04/04/2019</b>  <i>Notice of Hearing on Defendant Capriati Construction Corp Inc's Motion in Limine No 4 to Limit Specials to Amounts Paid in Worker's Compensation Benefits Related to Accident and Preclude Introduction of Amounts Billed by Providers</i>  Continued for Chambers Decision; Notice of Hearing on Defendant Capriati Construction Corp Inc's Motion in Limine No 4 to Limit Specials to Amounts Paid in Worker's Compensation Benefits Related to Accident and Preclude Introduction of Amounts Billed by Providers  Denied; Notice of Hearing on Defendant Capriati Construction Corp Inc's Motion in Limine No 4 to Limit Specials to Amounts Paid in Worker's Compensation Benefits Related to Accident and Preclude Introduction of Amounts Billed by Providers  Journal Entry Details:  <i>On March 19, 2019 this Court heard arguments on both Plaintiff's and Defendant's Motions in Limine. The Court heard arguments on the instant Motion and continued the matter for two weeks to allow supplemental briefing and a decision in chambers. On March 28, 2019, Defendant filed its supplemental brief. On April 3, 2019, the Parties submitted a Stipulation and Order allowing Plaintiff until April 4, 2019 to file Supplemental briefing on Defendant's Motion In Limine No. 4. The Stipulation and Order was signed April 3, 2019, and filed April 4, 2019. On April 5, 2019 Plaintiff filed its supplemental brief. After review of the moving papers, arguments of counsel, the supplemental briefing, and the documents on file the Court finds as follows: The workers compensation statutes, in general, were designed to both protect the worker as well as the employer in return for both parties giving up certain rights. In this case the defendant is neither employer or employee. NRS 116C.215(10) is to benefit reimbursement to an employer if a third party recovery is made. Defendant in this case cannot use the statute as a sword to reduce the Plaintiff's recovery. The section was enacted to prevent a double recovery not to reduce the amount claimed to benefit a potential tortfeasor. Therefore, the Plaintiff may introduce the actual amounts billed by the provider and the total amount paid to the Plaintiff or to be paid. Therefore, Defendant's Motion in Limine No. 4 is DENIED. This Decision sets forth the Court's intended disposition on the subject but anticipates further Order of the Court to make such disposition effective as an Order. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and argument. Plaintiff's counsel to prepare the Order and submit to Chambers for consideration in accordance with EDCR 7.21. Said order then must be filed in accordance with EDCR 7.24 CLERK'S NOTE: A</i></p>

## CASE SUMMARY

CASE NO. A-15-718689-C

copy of this minute order was e-served to counsel. kt 04/09/19.;

Continued for Chambers Decision; Notice of Hearing on Defendant Capriati Construction Corp Inc's Motion in Limine No 4 to Limit Specials to Amounts Paid in Worker's Compensation Benefits Related to Accident and Preclude Introduction of Amounts Billed by Providers

Denied; Notice of Hearing on Defendant Capriati Construction Corp Inc's Motion in Limine No 4 to Limit Specials to Amounts Paid in Worker's Compensation Benefits Related to Accident and Preclude Introduction of Amounts Billed by Providers

03/19/2019

**Motion in Limine** (10:00 AM) (Judicial Officer: Israel, Ronald J.)

*Order Granting Motion For An Order Shortening Time To Hear Plaintiff's Motion In Limine No. 19: To Exclude Prejudicial Information Concerning Mr. Yahyavi*

Granted; Order Granting Motion For An Order Shortening Time To Hear Plaintiff's Motion In Limine No. 19: To Exclude Prejudicial Information Concerning Mr. Yahyavi

03/19/2019

**Motion in Limine** (10:00 AM) (Judicial Officer: Israel, Ronald J.)

*Defendant's Motion in Limine No. 17 to Exclude Untimely and Supplemental Crash Testing Opinions,or Testimony of Plaintiff's Rebuttal Only Expert Timothy S. Leggett from 1/15/19 Disclosure*

Motion Denied; Defendant's Motion in Limine No. 17 to Exclude Untimely and Supplemental Crash Testing Opinions,or Testimony of Plaintiff's Rebuttal Only Expert Timothy S. Leggett from 1/15/19 Disclosure

03/19/2019



**All Pending Motions** (10:00 AM) (Judicial Officer: Israel, Ronald J.)

*All Pending Motions (03/19/19)*

Matter Heard; All Pending Motions (03/19/19)

Journal Entry Details:

*Kathy Thomas, Court Clerk, from 10:00 a.m. to 1:50 p.m. Mr. Kahn stated the parties did meet and confer regarding all the Motions In Limine. Mr. Kahn further stated he received notice and records, and further found out another case in California, involving the Plaintiff, claiming emotional distress, that may impact on this case if claiming emotional distress. Mr. Prince noted he had no knowledge of another case. Mr. Prince stated the Motions that the parties stipulated to are; Pltf's motions 4,9,18 and motions withdrawn; Deft's motions 1, 2, 3, 10, 12 & 16. Mr. Kahn noted Deft's Motion # 3 subsection 5 would still be heard today and was re-noticed. Further Plaintiff's motions 13 and 15 withdrawn. PLAINTIFF'S MOTION IN LIMINE NO. 1: TO LIMIT DEFENDANTS EXPERTS TESTIMONY TO THE OPINIONS AND BASES SET FORTH IN THEIR EXPERT REPORTS: Arguments by Counsel. Colloquy regarding if new evidence is presented. Court noted Counsel is asking the Court to follow the law. Court directed both counsel to provide their expert reports to the Court before their expert testifies. COURT ORDERED, Motion RESERVED for time of trial. PLAINTIFF'S MOTION IN LIMINE NO. 2: TO EXCLUDE ARGUMENT THAT THIS CASE IS ATTORNEY DRIVEN OR A MEDICAL BUILDUP CASE BECAUSE THERE IS NO EVIDENCE TO SUPPORT SUCH ARGUMENTS: Arguments by Counsel. Court noted the worker's compensation doctors are from a list. Mr. Kahn stated one of the doctors have become an expert. Court noted this was a worker's compensation injury and they do not get to pick their doctors. COURT ORDERED, Motion GRANTED. PLAINTIFF'S MOTION IN LIMINE NO. 3: TO EXCLUDE CLOSING ARGUMENT THAT PLAINTIFF IS REQUESTING MORE THEN HE EXPECTS TO RECEIVE: Counsel submitted on their briefs. COURT ORDERED, Motion GRANTED. Court finds the argument is not improper and the Court will follow Lioce. PLAINTIFF'S MOTION IN LIMINE NO. 4: TO ALLOW VOIR DIRE QUESTIONING ABOUT EMPLOYMENT WITH FINANCIAL INTEREST IN ANY INSURANCE COMPANY: Pursuant to Counsel, Motion STIPULATED. PLAINTIFF'S MOTION IN LIMINE NO. 5: TO EXCLUDE EVIDENCE OF WHEN THE PARTIES CONTACTED AND RETAINED COUNSEL: Mr. Prince argued in support of his motion. Mr. Kahn noted the Plaintiff went to a few different attorneys. Colloquy regarding the nature of the case being a worker's compensation injury. COURT stated its findings and ORDERED, Motion GRANTED. PLAINTIFF'S MOTION IN LIMINE NO. 6: TO EXCLUDE REFERENCE TO AND EVIDENCE OF MEDICAL LIENS: Arguments by counsel. Colloquy regarding liens and collateral source. Court will only allow counsel to ask "did you perform services on a lien". Mr. Kahn asked Mr. Prince to inform him, if the doctor treats on a lien and Mr. Price agreed to inform him. COURT ORDERED, Motion DENIED, however will allow the one question. PLAINTIFF'S MOTION IN LIMINE NO. 7: TO EXCLUDE REFERENCE TO PLAINTIFF'S COUNSEL WORKING WITH PLAINTIFF'S TREATING PHYSICIANS ON UNRELATED CASES: Mr. Prince noted this would only be related to treating physicians. Mr. Kahn stated he should be allowed to probe as to bias as to "the percentage of cases". Court noted if there are experts, then you can ask the question. COURT*



**CASE SUMMARY****CASE NO. A-15-718689-C**

*ORDERED, Motion, GRANTED IN PART as to the doctors and DENIED IN PART as to the retained experts. PLAINTIFF'S MOTION IN LIMINE NO. 8: TO EXCLUDE REFERENCE TO ANY ABSENCE OF MEDICAL RECORDS BEFORE THE SUBJECT COLLISION: Mr. Prince submitted on the briefs. Mr. Kahn stated the Plaintiff testified in his deposition, he had no problems, however his experts reviewed the records presented and will address it in testimony; Mr. Kahn further noted at this time he doesn't know of any other records. Court finds records that are not found is speculative because you don't know. Mr. Kahn noted if something new comes up, he will make an offer of proof. COURT ORDERED, Motion, GRANTED. PLAINTIFF'S MOTION IN LIMINE NO. 9: TO PERMIT TREATING PHYSICIANS TO TESTIFY AS TO CAUSATION, DIAGNOSIS, PROGNOSIS, FUTURE TREATMENT, AND EXTENT OF DISABILITY WITHOUT A FORMAL EXPERT REPORT: Pursuant to Counsel, Motion STIPULATED. PLAINTIFF'S MOTION IN LIMINE NO. 10: TO EXCLUDE ANY ARGUMENT THAT THE PLAINTIFF HAS ANY SYMPTOMATIC CONDITIONS PRIOR TO THE COLLISION: Mr. Prince noted the Plaintiff went to Southwest Medical for issues unrelated to this case, and referred to Giglio regarding the pre-existing conditions and noted the Southwest Medical records should be excluded. Mr. Kahn referred to his motion to pre-admit these records and stated in the records the doctor requested an MRI to be done regarding his right knee and the Plaintiff's mentioned his neck hurt for years. Mr. Kahn stated his experts reviewed the records and stated it would not change their opinions. Mr. Prince argued they read it but no new opinion; "the above new records does not change my opinion". COURT ORDERED, Motion, DENIED, Court finds the expert opinion with the additional records supports his opinion, he did supplement and the body parts are related to this case. PLAINTIFF'S MOTION IN LIMINE NO. 11: TO EXCLUDE TESTIMONY AND OPINIONS OF DEFENDANTS RETAINED EXPERT, KEVIN KIRKENDALL, CPA: Mr. Kahn stated he did not intend to have him testify as to legal opinions. Mr. Kahn further noted Mr. Kirkendall is a certified CPA. Mr. Prince stated he had seen legal opinions. Court stated the expert is not to testify as to legal opinions, pursuant to Hallmark. COURT ORDERED, Motion, DENIED. PLAINTIFF'S MOTION IN LIMINE NO. 12: TO EXCLUDE REFERENCE TO PLAINTIFF BEING A MALINGERER, MAGNIFYING SYMPTOMS, OR MANIFESTING SECONDARY GAIN MOTIVES: Arguments by Counsel. Colloquy regarding qualifications needed and requires a psychological assessment. Court noted the Functional Capacity Exam, (FCE) that was done could comment on. Further arguments by Counsel regarding symptom magnifications statements and statements of the FCE examiner. Court noted it would need to see the records before the trial for a decision to be rendered. COURT ORDERED, Motion, RESERVED for the time of trial. PLAINTIFF'S MOTION IN LIMINE NO. 14: TO PRECLUDE ARGUMENT OR SUGGESTION THAT PLAINTIFF'S TREATING PHYSICIANS HAVE A CONFLICT THAT PRECLUDES THEM FROM OFFERING MEDICAL CAUSATION OPINIONS: Court noted it would follow FCH-1. Arguments by Counsel. Colloquy regarding a possible conflict between the two doctors. Court noted they would need to find out. COURT ORDERED, Motion, GRANTED IN PART and RESERVED in part for time of trial, if it should come up. PLAINTIFF'S MOTION IN LIMINE NO. 16: TO EXCLUDE PLAINTIFF'S PRIOR UNRELATED ACCIDENTS, INJURIES, AND MEDICAL CONDITIONS: Mr. Kahn noted he would be redacting the unrelated issues. Mr. Prince inquired of the other injuries. Court directed Counsel to go over this at their 2.67 meeting and COURT ORDERED, Motion, RESERVED for time of trial. PLAINTIFF'S MOTION IN LIMINE NO. 17: TO EXCLUDE ANY TESTIMONY THAT BAHRAM YAHYAVI WAS HOTRODDING: Mr. Prince argued in support of his motion and stated the Plaintiff was not speeding and the characterization of hotrodding is labeling. Argument by Mr. Kahn. Court finds hotrodding is an opinion and ORDERED, Motion, GRANTED. PLAINTIFF'S MOTION IN LIMINE NO. 18: TO EXCLUDE ANY EVIDENCE OF WORKER'S COMPENSATION PAYMENTS TO BAHRAM YAHYAVI: Pursuant to Counsel, Motion, STIPULATED. COURT ORDERED, Matter OFF CALENDAR. PLAINTIFF'S MOTION IN LIMINE NO. 19: TO EXCLUDE PREJUDICIAL INFORMATION CONCERNING MR. YAHYAVI: Mr. Prince noted the Plaintiff's divorce is not relevant. Mr. Kahn submitted on his pleadings and noted the divorce case found yesterday was dealing with emotional distress and may relate to this case. COURT ORDERED, Motion, GRANTED with a caveat of this one case. DEFENDANT'S MOTION IN LIMINE NO. 3: SUBSECTION 5 ONLY: TO PRECLUDE RIGHT KNEE INJURY FROM ACCIDENT: COURT ORDERED, Motion, DENIED. Arguments by Mr. Kahn in support of his motion. Mr. Prince argued and stated the expert Dr. Miao was deposed and stated his opinion was based on "overall gestalt". Court requested the deposition. Court noted the expert could give a range and not a specific date of the injury. Court stated findings within the deposition and stated there was no reason to exclude the injury. COURT ORDERED, Motion DENIED. DEFENDANT'S MOTION IN LIMINE NO. 4: TO LIMIT SPECIALS TO AMOUNTS PAID IN WORKER'S COMPENSATION BENEFITS RELATED TO ACCIDENT AND PRECLUDE INTRODUCTION OF AMOUNTS BILLED BY PROVIDERS: Mr. Kahn noted the personal injury cases, the jury hears the amount paid and not billed. Argument by Mr. Prince. Mr. Prince noted the amount would include a number of things to include temporary total disability benefits and other payments*

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made and could get into liens. Mr. Kahn noted this was the law and the statutes require it. Further arguments. Court directed Counsel to submit simultaneous briefs in two weeks 04/02/19. COURT ORDERED, Motion CONTINUED to Chambers for decision.


DEFENDANT'S MOTION IN LIMINE NO. 5: TO EXCLUDE ANY EVIDENCE OF TRAFFIC CITATION: Pursuant to Counsel, COURT ORDERED, Motion STIPULATED. DEFENDANT'S MOTION IN LIMINE NO. 6: TO EXCLUDE EVIDENCE ANY EXPERT OPINION TESTIMONY BY LAY WITNESS: Mr. Price requested the motion be deferred for trial testimony. Mr. Kahn noted the witness stated his view was obstructed and he showed up after the fact. Court finds the witness is not qualified and COURT ORDERED, Motion, GRANTED IN PART, as to specific things that were put in the motion. DEFENDANT'S MOTION IN LIMINE NO. 7: TO EXCLUDE REBUTTAL EXPERT LEGGETT OR ALTERNATIVELY TO REQUIRE THAT HIS TESTIMONY BE IN PLAINTIFF'S REBUTTAL CASE: Court noted Leggett was not noticed as an expert, However he was noticed as a rebuttal expert witness and he can testify as a rebuttal expert. Arguments by Counsel. COURT ORDERED, Motion, DENIED IN PART, Leggett is not excluded, Court will allow Leggett to testify as a Rebuttal Expert, DEFENDANT'S MOTION IN LIMINE NO. 8: TO EXCLUDE PLAINTIFF'S CLAIMS AND COMPUTATIONS FOR ANY FUTURE MEDICAL TREATMENT NOT PREVIOUSLY DISCLOSED IN MEDICAL RECORDS OR EXPERT OPINIONS WITHIN THE CLOSE OF DISCOVERY: Colloquy regarding future medical treatment and Dr. Thalgot recommending a spinal cord stimulator and higher incurring costs. Further discussions regarding trial setting. Counsel noted Dr. Kaplan and Dr. Oliveri were now added to the list. COURT ORDERED, Motion, OFF CALENDAR. Court directed Counsel to submit their stipulation. Upon Courts inquiry, Mr. Prince noted the Plaintiff was rated for a permanent paid disability (PPD) and would not be sure if he will be re-rated after the next surgery. Colloquy regarding trial schedule. DEFENDANT'S MOTION IN LIMINE NO. 9: TO EXCLUDE AND PREVENT ARGUMENT OR QUESTIONS THAT DEFENDANT IS AVOIDING LIABILITY OR REFUSING TO ACCEPT LIABILITY: Mr. Kahn argued in support of his motion. Mr. Prince argued against the motion and stated it's about a legal responsibility. Colloquy regarding the reptile issue. Court noted the Defendant denied liability and the complaint and answer could be read at trial. COURT ORDERED, Motion, DENIED. DEFENDANT'S MOTION IN LIMINE NO. 11: TO PRECLUDE EVIDENCE OF LITIGATION INDUCED STRESS OR DAMAGES THEREFROM: There being no opposition, COURT ORDERED, Motion, GRANTED. DEFENDANT'S MOTION IN LIMINE NO. 13: TO EXCLUDE SHOCKING EVIDENCE SUCH AS NEEDLES: Mr. Prince stated he would have various forms of photos and needles. Court noted it would not allow needles and COURT ORDERED, Motion, GRANTED IN PART as to needles and DENIED IN PART as to all other. DEFENDANT'S MOTION IN LIMINE NO. 14: TO PRE ADMIT CERTAIN MEDICAL RECORDS. Mr. Prince requested to see the redacted records. Court noted it would not pre-admit records, However noted counsel could stipulate to admit. COURT ORDERED, Motion, DENIED. Court noted they may be pre-admitted only if counsel stipulates to the admission. DEFENDANT'S MOTION IN LIMINE NO. 15: TO EXCLUDE REFERENCE AND EVIDENCE OF INVESTIGATING OFFICER'S NARRATIVE, FINDING OF "AT FAULT" AND ANY OTHER OPINIONS OR CONCLUSIONS, INCLUDING THOSE IN THE TRAFFIC ACCIDENT REPORT OR TESTIFIED TO AT DEPOSITION: Court noted the Officer is not qualified to draw opinions as an expert, unless he is and listed as a reconstruction expert. Mr. Prince agreed as to the citation and requested the Court defer for the time of trial, depending upon what foundation is laid and the testimony given. COURT ORDERED, Motion, GRANTED IN PART as to the citation and RESERVED IN PART for time of trial. April Watkins, Court Clerk, present at 1:50 p.m. DEFT'S MOTION IN LIMINE NO. 17 TO EXCLUDE UNTIMELY AND SUPPLEMENTAL CRASH TESTING OPINIONS, OR TESTIMONY OF PLTF'S REBUTTAL ONLY EXPERT TIMOTHY S. LEGGETT FROM 1/15/19 DISCLOSURE: Following arguments by counsel, Court stated FINDINGS and ORDERED, motion DENIED. Pltf. REQUIRED to produce all videos, photographs or whatever taken at the time of this. Pltf. is also REQUIRED to produce rebuttal expert for deposition and Pltf. REQUIRED to pay for expert's time. If disclosure made two weeks prior to the rebuttal experts deposition and he needs to review and that is what he is relying on, the Court does not think it is late to allow supplementing and testing. As far as the testing, the Court DISAGREES and testing was done in the most recent case. More often, it is the Deft's doing an accident reconstruction and calculating the Delta V, using a similar car and whether it is the exact same type, it is always the same model and the use that to calculate the Delta V. This is all subject to cross examination at the time of trial whether the exemplar was identical or not which never seems to be the case and the Court is not quite sure the length of the forks themselves and counsel will be able to comment on that . Mr. Kahn argued he will need to either have a live crash test in front of the jury. Court stated there WILL NOT BE a live crash test during trial. Further, Mr. Kahn argued counsel will do his own crash test, not invite Pltf's counsel and then counsel will disclose and Pltf. can do what they need to do. COURT SO ORDERED. Mr. Prince argued they will then produce all available data and produce expert. FURTHER ORDERED, Deft. REQUIRED to produce

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*expert and Deft. required to pay for expert's time. Court further FINDS testing is not out of the ordinary and counsel can question expert during deposition as to qualifications. 04/04/19 (CHAMBERS) DEFENDANT'S MOTION IN LIMINE NO. 4: TO LIMIT SPECIALS TO AMOUNTS PAID IN WORKER'S COMPENSATION BENEFITS RELATED TO ACCIDENT AND PRECLUDE INTRODUCTION OF AMOUNTS BILLED BY PROVIDERS;*


04/30/2019

 **Motion** (9:00 AM) (Judicial Officer: Israel, Ronald J.)

*Plaintiff's Motion to Allow Parties to Present a Jury Questionnaire Prior to Voir Dire*  
Granted; Plaintiff's Motion to Allow Parties to Present a Jury Questionnaire Prior to Voir Dire  
Journal Entry Details:

*Court noted the trial is estimated to be one month and explained the difficult process in selecting a juror to sit on a panel for a month. Court disagreed regarding the questionnaire including a question regarding their income. Colloquy. COURT ORDERED, Motion to Allow a Jury Questionnaire, GRANTED. Court directed Counsel to meet and confer within one week and either agree or the Court will decide. Court further directed counsel to submit the proposed Jury Questionnaire in Word format to chambers. COURT ORDERED, Matter SET for a status check regarding the status of the final questionnaire. Court noted with a questionnaire, the voir dire in trial may be limited. Mr. Kahn had no objection to one day each side. 05/16/19 (CHAMBERS) STATUS CHECK: STATUS OF FINAL JURY QUESTIONNAIRE;*

05/16/2019

 **Status Check** (3:00 AM) (Judicial Officer: Israel, Ronald J.)

**05/16/2019, 05/21/2019**

*Status Check: Final Status of Jury Questionnaire*  
Matter Continued; Status Check: Final Status of Jury Questionnaire  
Matter Heard;  
Matter Continued; Status Check: Final Status of Jury Questionnaire  
Matter Heard;  
Journal Entry Details:

*COURT ORDERED, Matter CONTINUED to the next hearing date; To be heard with the pending Motion to Continue Trial. 05/21/19 9:00 AM STATUS CHECK: FINAL STATUS OF JURY QUESTIONNAIRE ;*


05/21/2019

**Motion to Continue Trial** (9:00 AM) (Judicial Officer: Israel, Ronald J.)

*Defendant Capriati Construction Corp. Inc's Motion to Continue Trial on an Order Shortening Time*

Granted; Defendant Capriati Construction Corp. Inc's Motion to Continue Trial on an Order Shortening Time

05/21/2019

 **All Pending Motions** (9:00 AM) (Judicial Officer: Israel, Ronald J.)

*All Pending Motions (05/21/19)*  
Matter Heard; All Pending Motions (05/20/19)

Journal Entry Details:  
*DEFENDANT CAPRIATI CONSTRUCTION CORP. INC'S MOTION TO CONTINUE TRIAL...STATUS CHECK: FINAL STATUS OF JURY QUESTIONNAIRE Colloquy regarding the discovery issues, Plaintiff's proprietary data unable to open, spinal cord stimulator for Plaintiff, crash testing and trial schedule issues. Court directed Mr. Kahn to complete the crash testing within 30 days. Court notes the Defendant is allowed a crash test, but no right to a rebuttal crash test. Mr. Prince noted Dr. Kaplan is now scheduling the spinal cord stimulator, it is part of the life care plan and it did change the damages. Court provided a draft copy of the jury questionnaire to counsel for the parties to review and edit. COURT ORDERED, Trial VACATED and RESET. Plaintiff's Counsel to prepare the trial scheduling order. Upon Court's inquiry, Mr. Kahn stated they did mediation once and will try again. Discovery will not be re-opened. 08/13/19 9:30 AM PRE-TRIAL CONFERENCE 08/27/19 9:30 AM CALENDAR CALL 09/09/19 1:30 PM JURY TRIAL (3-4 WEEKS);*

06/04/2019

**CANCELED Pre Trial Conference** (9:30 AM) (Judicial Officer: Israel, Ronald J.)

*Vacated - per Judge*

06/18/2019

**CANCELED Calendar Call** (9:30 AM) (Judicial Officer: Israel, Ronald J.)

*Vacated - per Judge*

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- 07/01/2019 **CANCELED Jury Trial** (1:30 PM) (Judicial Officer: Israel, Ronald J.)  
*Vacated - per Judge*  
*Jury Trial (3 to 4 weeks)*
  
- 07/30/2019  **All Pending Motions** (9:00 AM) (Judicial Officer: Barker, David)  
*All Pending Motions (07/30/19)*  
 Matter Heard; All Pending Motions (07/30/19)  
 Journal Entry Details:  
*PLAINTIFF'S MOTION IN LIMINE NO.20: TO EXCLUDE REFERENCE TO BAHRAM YAHYVI ET. AL V. SERVICE CORPORATION INTERNATIONAL ET.AL....DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE NO.20 TO EXCLUDE REFERENCE TO BAHRAM YAHYAVI ET.AL V. SERVICE CORPORATION INTERNATIONAL ET AL; COUNTER-MOTION FOR OFFSET: Mr. Prince noted the mother's body was buried as requested and that case was resolved and Mr. Prince requested any reference to this be excluded. Mr. Kahn noted the Plaintiff is claiming depression, sleeplessness and emotional distress and some claims could be off set. Further arguments by Counsel. Court finds prior case is not relevant and COURT ORDERED, Motion In Limine 20, GRANTED and Counter-Motion for Offset, DENIED. MOTIONIN LIMINE NO.21 TO EXCLUDE ARGUMENT THAT BAHRAM YAHYAVI LIED TO IRA SPECTOR CONCERNING ARM PARALYSIS AND FUTURE SURGERY: Arguments by Counsel. Colloquy regarding the Plaintiff's statement. Court finds this is an issue for the Jury and ORDERED, Motion In Limine 21, DENIED. Colloquy regarding deposition allowed by the Court. Mr. Kahn to confer with Mr. Prince and work it out. Court directed Mr. Prince to prepare the order.;*
  
- 07/30/2019 **Motion in Limine** (10:00 AM) (Judicial Officer: Barker, David)  
 Events: 05/17/2019 Motion in Limine  
*Plaintiff s Motion In Limine No. 20: To Exclude Reference To Bahram Yahyavi et. al v. Service Corporation International et. al.*  
 Granted; Plaintiff s Motion In Limine No. 20: To Exclude Reference To Bahram Yahyavi et. al v. Service Corporation International et. al.
  
- 07/30/2019 **Motion in Limine** (10:00 AM) (Judicial Officer: Barker, David)  
 Events: 05/17/2019 Motion in Limine  
*Motion In Limine No. 21 To Exclude Argument That Bahram Yahyavi Lied To Ira Spector Concerning Arm Paralysis And Future Surgery*  
 Denied; Motion In Limine No. 21 To Exclude Argument That Bahram Yahyavi Lied To Ira Spector Concerning Arm Paralysis And Future Surgery
  
- 07/30/2019 **Opposition and Countermotion** (10:00 AM) (Judicial Officer: Barker, David)  
*Defendant's Opposition to Plaintiff's Motion In Limine No. 20 To Exclude Reference to Bahram Yahyavi ET.AL V. Service Corporation International ET Al; Counter-Motion for Offset*  
 Denied; Defendant's Opposition to Plaintiff's Motion In Limine No. 20 To Exclude Reference to Bahram Yahyavi ET.AL V. Service Corporation International ET Al; Counter-Motion for Offset
  
- 08/13/2019  **Pre Trial Conference** (9:30 AM) (Judicial Officer: Israel, Ronald J.)  
 Matter Heard;  
 Journal Entry Details:  
*Court noted this trial will be set in this trial stack. Mr. Prince estimated 3 to 4 trial weeks. Mr. Prince noted the primary injury is the spine and stated they would be withdrawing the right knee injury. Upon Court's inquiry, Mr. Prince further noted he has a signed order regarding the Jury Questionnaire and other orders. Court directed Counsel to leave the orders for Court to review. Counsel agreed to start trial on 09/09/19. Trial to be confirmed at calendar call.;*
  
- 08/27/2019 **Motion** (9:00 AM) (Judicial Officer: Israel, Ronald J.)  
*Plaintiff's Motion to Pre-Instruct the Jury*  
 8/20/19 Notice of Plaintiff's Motion to Pre-Instruct Jury on Order Shortening Time  
 Granted; Plaintiff's Motion to Pre-Instruct the Jury
  
- 08/27/2019 **Calendar Call** (9:30 AM) (Judicial Officer: Israel, Ronald J.)  
 Trial Date Set;

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08/27/2019

 **All Pending Motions** (9:30 AM) (Judicial Officer: Israel, Ronald J.)


*All Pending Motions (08/27/19)*

Matter Heard; All Pending Motions (08/27/19)

Journal Entry Details:

*PLAINTIFF'S MOTION TO PRE-INSTRUCT THE JURY: Arguments by Counsel. Colloquy regarding the workman s compensation instruction applies. Mr. Kahn objected and noted in the beginning of trial the jury would hear of insurance and administrators and requested it be at the end of trial. Court stated findings and noted there is new legislation and COURT ORDERED, Motion to Pre-Instruct the Jury, GRANTED. Court directed Counsel to meet and confer on Friday and if counsel does not agree they are to submit their objections to chambers Monday. CALENDAR CALL: Counsel announced ready and estimated 3 weeks. Court directed Counsel to appear at 11:30 am and the Jury will be ready at 1:15 PM. 09/09/19 11:30 AM JURY TRIAL: 11:30 AM- COUNSEL PRESENT // 1:15 PM- JURY PRESENT;*

09/09/2019

 **Jury Trial** (11:30 AM) (Judicial Officer: Israel, Ronald J.)

**09/09/2019-09/13/2019, 09/16/2019-09/20/2019, 09/23/2019-09/27/2019**

*Jury Trial (3-4 weeks)*

Trial Continues;

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues;

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues;

Verdict for Plaintiff;

Verdict reached on 9/27/19

Journal Entry Details:

*OUTSIDE THE PRESENCE OF THE JURY Mr. Kahn moved to have his experts' reports admitted as Court's exhibits. Court admitted the expert reports. JURY PRESENT Court read the jury's instructions. Closing arguments by counsel. The jury retired to deliberate. Courtroom Clerk, Elizabeth Vargas, now present. JURY PRESENT: At the hour of 7:40 p.m. the jury returned with a Verdict for the Plaintiff (See Verdict on file herein). Jury polled. Court thanked and excused the jurors. ;*

Trial Continues;

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues;

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues;

Verdict for Plaintiff;

Verdict reached on 9/27/19

Trial Continues;

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues;

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Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)

Trial Continues;  
Verdict for Plaintiff;  
Verdict reached on 9/27/19  
Journal Entry Details:

*Also present Mr. Cliff Goodrich, a representative of Capriati Construction Corp. OUTSIDE THE PRESENCE OF THE JURY: Mr. Kahn proposed the front page of the OUTSIDE THE PRESENCE OF THE JURY: Arguments by Counsel regarding proposed AAAA exhibit/final lien, with log of workers compensation payments by provider (03/02/17). Court directed Mr. Kahn to bring a log from the worker compensation. Colloquy regarding NRD 616C.215 (10). Upon Mr. Kahn provided a 1 page document sent from workman s compensation, Mr. Prince objected and stated the document is inaccurate. Court noted counsel may need to subpoena someone from workman s compensation to testify. Mr. Kahn further proposed and offered redacted exhibit YY (Heart Center of Nevada) and Mr. Prince objected to the admission. JURY PRESENT: Counsel acknowledged the presence of the jury. Testimony and exhibits presented. (See worksheets). Mr. Kahn gave an offer of proof regarding the offered exhibit YY and stated the Plaintiff's income amounts. Mr. Prince argued the amounts the Plaintiff did make per year and noted it was down because of the accident. Court denied counsel's request to admit the exhibit. Court noted both parties stipulated to exclude an accepted body part. Mr. Severino provided another spreadsheet from workman s compensation with breakdowns and total amount, that he just received. Mr. Prince noted the Plaintiff receives total disability this year. Colloquy regarding amounts reduced and vocational rehabilitation noted. Court noted the calculation is difficult. JURY PRESENT: Testimony continued. (See worksheets). Plaintiff Rested. Testimony continued. OUTSIDE THE PRESENCE OF THE JURY: Mr. Prince argued the Deft. stated they had filed bankruptcy and would request the Defendant's answer be stricken or to have a curative instruction regarding willful misconduct. Mr. Kahn noted an offer of proof, and stated there were 250 employees and now down to 60 employees and it was elicited from the witness. Court admonished Mr. Kahn and noted bankruptcy is not admissible because of reorganization, it is their fault. Mr. Kahn apologized. Colloquy regarding sanctions. Mr. Prince noted he did not want a mistrial. Court directed Counsel to appear tomorrow at 9:00 AM and the Court will re-read Gunderson and decide on the appropriate sanctions. Evening recess. 09/26/19 10:00 AM JURY TRIAL;*

Trial Continues;  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues;  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)

Trial Continues;  
Verdict for Plaintiff;  
Verdict reached on 9/27/19  
Journal Entry Details:

*OUTSIDE THE PRESENCE OF THE JURY: Mr. Kahn asked if Dr. Tung s reports be marked as Court's exhibits. COURT SO ORDERED, See Exhibit List (See worksheets). JURY PRESENT: Counsel acknowledged the presence of the jury. Testimony and exhibits presented. (See worksheets). Conference at the bench. OUTSIDE THE PRESENCE OF THE JURY: Mr. Kahn objected to the Plaintiff's demonstrative exhibits being shown to the jury as it was beyond the scope of income. Arguments by counsel. Court over-ruled objection and ORDERED, the demonstrative exhibits be marked as a Courts exhibits. (See worksheets). Other arguments by counsel regarding publishing the report to the jury. Court sustained Mr.*

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*Kahn s objection and Mr. Prince was directed not to show the report to the jury, however he could refer to the report. JURY PRESENT Continued testimony (See worksheets). Conference at the bench regarding Counsel's objections. Continued testimony. OUTSIDE THE PRESENCE OF THE JURY: Mr. Prince argued noting the knee claim was being removed, However Mr. Kahn tried to back door this. Mr. Prince further noted the Social Security Records are not in. Mr. Kahn agreed the knee claim was out and explained the reasons, including the knee, why the Plaintiff had taken so much time off work. Mr. Prince noted there was nothing in the records regarding his knee. Court noted the knee is unrelated to the claims. Further arguments by Mr. Kahn and requested to make an offer of proof tomorrow with the documents and dates. Court will allow the offer of proof. Evening recess. 09/25/19 1:00 PM JURY TRIAL ;*

- Trial Continues;
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues;
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues;

Verdict for Plaintiff;  
Verdict reached on 9/27/19

Journal Entry Details:

*OUTSIDE THE PRESENCE OF THE JURY: Court received the Defendants trial brief #5 regarding improper impeachment of Dr. Tung and his annual salary information. Mr. Kahn requested Dr. Tung s deposition from another case be marked as an exhibit noting Plaintiff used that deposition regarding Dr. Tung's salary. Mr. Prince noted it was not published because it was from another case. Mr. Kahn advised he objected to the deposition being used from another case. Court allowed the deposition to be a courts exhibit. (See worksheets). JURY PRESENT: Counsel acknowledged the presence of the jury. Testimony and exhibits presented. (See worksheets) OUTSIDE THE PRESENCE OF THE JURY: Arguments by Counsel regarding the Plaintiff's ability to obtain other jobs. Colloquy regarding the Defendant expert, Mr. Bennett's two reports. Mr. Kahn directed the Court to the second page of the report. Court noted the issue should have been listed in the conclusion of the report. Court stated findings and sustained the objection and marked the reports as a courts exhibit (See worksheets). Mr. Prince requested the jury be admonished. Court noted it would sustain the objection and strike the question and answer. JURY PRESENT: Court instructed the Jury, striking the last question and answer. Continued testimony. (See worksheets). Evening recess. 09/24/19 11:00 AM JURY TRIAL;*

- Trial Continues;
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues;
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues;

Verdict for Plaintiff;  
Verdict reached on 9/27/19

Journal Entry Details:

*Also present Felicia Rieben, a representative for the Defendant present. OUTSIDE THE PRESENCE OF THE JURY: Mr. Prince note the two objections made during cross examination of Dr. Clauretje regarding collateral source and requested a curative instruction*

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

to the jury. Arguments by Counsel. Court noted at the time of the objection, Court did strike the question and instructed the jury to disregard the question and answer. Court trailed matter to review the recording. Later recalled. Court noted upon review; the fringe benefits amounts were not mentioned and the Court admonished the jury and therefore, COURT DENIED, Plaintiff's request for a curative instruction. JURY PRESENT: Counsel acknowledged the presence of the jury. Testimony and exhibits presented. (See worksheets) OUTSIDE THE PRESENCE OF THE JURY: Mr. Kahn noted Plaintiff's demonstrative was not provided as an exhibit and was used and requested to mark it as an exhibit. Mr. Prince stated the demonstrative documents shown to the jury was in his opening power-point. Colloquy regarding having to take Defendant's witness out-of-order due to scheduling issues. JURY PRESENT: Continued testimony. (See worksheets). OUTSIDE THE PRESENCE OF THE JURY: Arguments by Counsel regarding Dr. Tung's testimony and report. Mr. Kahn noted the Plaintiff's did not take Dr. Tung's deposition. Upon Court's inquiry, Dr. Tung did state the films he had seen and noted the dates he had received and reviewed them. Mr. Prince noted Dr. Tung did not state this in his report that he reviewed the films. Dr. Tung noted upon his review of films and imaging reports, his findings of the films is implied, you have to see the films when writing findings. Arguments by Counsel. Dr. Tung noted he did agree with the imaging reports. Court noted Dr. Tung agrees with the imaging reports. JURY PRESENT: Continued testimony. (See worksheets). OUTSIDE THE PRESENCE OF THE JURY: Mr. Kahn argued noted the Plaintiff's experts opined on the Southwest Medical records after seeing the records 1 day prior to testimony and not listed in the reports; and to prevent Deft's only expert not to opine on these records would be prejudicial and requested the Court reconsider Court's recent decision. Mr. Prince argued regarding stating chronic neck pain/chronic symptomatic before the accident. Mr. Kahn noted pre-existing is noted in the records. Further arguments by Counsel. Court will allow the expert to be allowed to testify to what is noted in his report. JURY PRESENT: Continued testimony. (See worksheets). OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding trial scheduling. Evening recess. 09/23/19 1:00 PM JURY TRIAL;

- Trial Continues;
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues;
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues;

Verdict for Plaintiff;  
Verdict reached on 9/27/19

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Mr. Kahn noted he would not object to counsel not disclosing power points, However, submitting the power points for Court's exhibits. Exhibit 92 redacted a second time as agreed by counsel. (see worksheets). JURY PRESENT: Counsel acknowledged the presence of the jury. Court noted the trial schedule. Testimony and exhibits presented. (See worksheets). Conference at the bench. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Court referred to NRS 48.035 and Counsel's argument at the conference at the bench. Court noted, pursuant to NRS 48.035, Counsel cannot publish a deposition or read the deposition of a witness who is not unavailable and further Counsel cannot impeach a witness on another deposition, it would be hearsay. JURY PRESENT: Further testimony. (See worksheets). Evening recess. 09/20/19 9:00 AM JURY TRIAL;

- Trial Continues;
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues;
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)



CASE SUMMARY

CASE NO. A-15-718689-C

Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)

Trial Continues;  
Verdict for Plaintiff;  
Verdict reached on 9/27/19

Journal Entry Details:

*Also present Felicia Rieben, Defendant's Corporate representative present. OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding scheduling issues. Court explained to counsel, a juror requested to end early tomorrow for a doctor appointment. Upon Court's inquiry, Counsel agreed to end early rather than to excuse the juror. JURY PRESENT: Counsel acknowledged the presence of the jury. Court informed the Jury of the Trial schedule. Testimony and exhibits presented. (See worksheets). Conference at the bench. OUTSIDE THE PRESENCE OF THE JURY: Arguments by Counsel. Mr. Kahn stipulated to various exhibits (see worksheets) and the amount within exhibit 84. JURY PRESENT: Counsel acknowledged the presence of the jury. Continued testimony and exhibits presented. (See worksheets). Conference at the bench. OUTSIDE THE PRESENCE OF THE JURY: Arguments by Counsel regarding exhibit 92 (bate #354). Counsel agreed to redact the document. Court marked the non-redacted document as a Court exhibit. Court will allow Counsel ask the witness of the surgery that was not done and not approved by workers compensation. Mr. Prince noted the Plaintiff had workers compensation re-opened to get the surgery done. Colloquy regarding if there was pre-approval from workers compensation and if workers compensation paid for that surgery. JURY PRESENT: Further testimony. (See worksheets). OUTSIDE THE PRESENCE OF THE JURY: Court noted the amount of billing and amount workers compensation has paid is needed. Mr. Kahn noted there is 6 years. Counsel to work together regarding this issue. Evening recess. 09/19/19 10:00 AM JURY TRIAL ;*

Trial Continues;  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues;  
Trial Continues; Jury Trial (3-4 weeks)  
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Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)

Trial Continues;  
Verdict for Plaintiff;  
Verdict reached on 9/27/19

Journal Entry Details:

*OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding scheduling issues. JURY PRESENT: Counsel acknowledged the presence of the jury. Testimony and exhibits presented. (See worksheets). OUTSIDE THE PRESENCE OF THE JURY: Upon Court's inquiry, Mr. Prince noted his witness schedule and further noted the proposed agreed upon jury instructions were submitted. Counsel to work on the not agreed jury instructions. Evening recess. 09/18/19 1:00 PM JURY TRIAL;*

Trial Continues;  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues;  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
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Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)  
Trial Continues; Jury Trial (3-4 weeks)

Trial Continues;

CASE SUMMARY

CASE NO. A-15-718689-C

Verdict for Plaintiff;

Verdict reached on 9/27/19

Journal Entry Details:

*OUTSIDE THE PRESENCE OF THE JURY: Court noted Juror #10 notified the court regarding sudden illness and was not able to appear. Court excused Juror #10 as the first alternate. Colloquy regarding scheduling issues. Arguments by Counsel regarding expert Kaplan's opinion not in his report. Court noted objections need to be raised at the time of testimony. JURY PRESENT: Counsel acknowledged the presence of the jury. Testimony and exhibits presented. (See worksheets). OUTSIDE THE PRESENCE OF THE JURY: Mr. Kahn argued regarding statement of permanent problem not noted in three of the expert reports and further noted the left arm and shoulder issue. Mr. Prince noted Dr. Kaplan is also the treating physician. Court noted the reports talk about neuropraxia. Colloquy regarding concerns of juror #3 being tired. JURY PRESENT: Counsel acknowledged the presence of the jury. Continued Testimony and exhibits presented. (See worksheets). Evening recess. 09/17/19 10:15 AM 10:15 AM JURY TRIAL;*

Trial Continues;

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues;

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues;

Verdict for Plaintiff;

Verdict reached on 9/27/19

Journal Entry Details:

*OUTSIDE THE PRESENCE OF THE JURY Colloquy regarding pre-jury instructions, reading of complaint and answer, and trial schedule. JURY PRESENT Court read pre-instructions to jury. Court Clerk read Complaint for Auto Negligence and Person Injury and Defendant's Answer to Plaintiff's Complaint to jury. Opening statements by Mr. Prince and Mr. Kahn. OUTSIDE THE PRESENCE OF THE JURY Colloquy regarding Plaintiff's powerpoint. JURY PRESENT Testimony and exhibits presented (see worksheets). Deposition of Clifford O. Goodrich PUBLISHED IN OPEN COURT. COURT ORDERED, trial CONTINUED. OUTSIDE THE PRESENCE OF THE JURY CONTINUED TO 9/16/2019 1:00 PM;*

Trial Continues;

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues;

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues; Jury Trial (3-4 weeks)

Trial Continues;

Verdict for Plaintiff;

Verdict reached on 9/27/19

Journal Entry Details:

*OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Mr. Kahn referred to NRS 616 C(215)10 and stated the workers compensation payment amounts made to the administrator must be an exhibit before opening statements. Court noted the Defendant's burden to produce it. Colloquy regarding deductions. Mr. Brown noted issues of all the bills coming in. Colloquy regarding the Court's 04/04/19 chamber decision. Later recalled. Court noted he reviewed Dr. Tungs report and he did not change his opinion. Further arguments on the admissibility of records. Court noted Court's decision stands. Upon Mr. Prince requested*

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

to pre-admit the Southwest Medical records for opening statements. Mr. Kahn agreed to pre-admit the records however would need to review the medical bills. Individual prospective jurors traversed outside the presence of the prospective panel. PROSPECTIVE JURY PANEL PRESENT: Voir Dire continued. (1st & 2nd Jury Lists). OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Upon Court's inquiry of the workers compensation payments and amounts admitted, Mr. Kahn noted he had proposed an amount, with the issue of segregating the knee treatments. PROSPECTIVE JURY PANEL PRESENT: Voir Dire continued. (1st, 2nd & 3rd Jury Lists). Jury and 3 secret alternates selected and sworn. Jury List FILED IN OPEN COURT. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: EXCLUSIONARY RULE INVOKED. Mr. Prince noted various Plaintiff's exhibits stipulated to admit. Mr. Kahn requested the Complaint and Answer be read to the jury. Evening recess. 09/13/19 8:30 AM JURY TRIAL;

- Trial Continues;
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues;
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues;

Verdict for Plaintiff;  
Verdict reached on 9/27/19

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Counsel noted their challenges for cause. Individual prospective jurors questions outside the presence of the panel. Colloquy regarding authenticity and admission of the medical records and objections noted in the 16.1. Mr. Kahn objected to the relevance and hearsay, with undue prejudice. Mr. Prince argued and referred to the collateral source issue and cited the Williams and Giglio cases. Mr. Kahn referred to the Motion In Limine 10. Mr. Prince requested an admonishment. Court noted they don't have a jury panel at this time. Court reviewed and referred to the Courts chamber decision regarding Motion In Limine 10. PROSPECTIVE JURY PANEL PRESENT: Voir Dire continued. (1st, 2nd & 3rd Jury Lists). OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Arguments by Counsel regarding causes for challenge and custodian of records. Counsel referred to case law; Siatta 134 Nv Adv Opn 38 (regarding the factors for challenges of cause) and Sayedbashe Sayedzada v. State of Nevada. PROSPECTIVE JURY PANEL PRESENT: Voir Dire continued. Evening recess. 09/12/19 9:00 AM JURY TRIAL;

- Trial Continues;
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues;
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues; Jury Trial (3-4 weeks)
- Trial Continues;

Verdict for Plaintiff;  
Verdict reached on 9/27/19

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Mr. Kahn objected the reports from Dr. Tung's regarding opinions of the Southwest Medical Records. Mr. Kahn further objected to Mr. Prince stating the specific identifications of the experts when they inform the prospective jury all the names of experts, parties and counsel. Mr. Prince requested to be

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**

**CASE NO. A-15-718689-C**

allowed to say their medical specialty. Court agreed with Mr. Kahn and directed Mr. Prince to only state the names of the doctors and not their specialty. Mr. Kahn noted Dr. Lauretie had a new opinion and the damages are changing, the expert should have raised this in his report a month ago. Mr. Prince noted the Plaintiff filed vocational disability and there are different issues. Court noted it would need to read the reports. Colloquy regarding jury schedules. PROSPECTIVE JURY PANEL PRESENT: Voir Dire continued. (1st & 2nd Jury Lists). Evening recess. 09/11/19 1:00 PM JURY TRIAL;

Trial Continues;  
 Trial Continues; Jury Trial (3-4 weeks)  
 Trial Continues; Jury Trial (3-4 weeks)  
 Trial Continues; Jury Trial (3-4 weeks)  
 Trial Continues;  
 Trial Continues; Jury Trial (3-4 weeks)  
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 Trial Continues; Jury Trial (3-4 weeks)  
 Trial Continues; Jury Trial (3-4 weeks)  
 Trial Continues; Jury Trial (3-4 weeks)  
 Trial Continues; Jury Trial (3-4 weeks)

Trial Continues;  
 Verdict for Plaintiff;  
 Verdict reached on 9/27/19

Journal Entry Details:  
 Colloquy regarding the length of time counsel thought the trial would last. Counsel agreed that the trial would, more than likely, go into a third week. Court and counsel agreed that there would be three alternate jurors and each side would have five preemptory challenges. Court reviewed jury selection and jury instructions with counsel. **INSIDE THE PRESENCE OF THE POTENTIAL JURY** Voir Dire begins. Court admonished prospective jurors and excused them for the evening recess. TRIAL CONTINUED TO: 9/10/19 10:00 AM;

12/05/2019 **Motion for Attorney Fees and Costs** (3:00 AM) (Judicial Officer: Israel, Ronald J.)  
*Plaintiff's Motion for Attorney's Fees, Costs, and Interest*

12/05/2019 **Motion to Retax** (3:00 AM) (Judicial Officer: Israel, Ronald J.)  
*Defendant Capriati Construction Corp., Inc's Motion to Re-Tax Costs*

01/07/2020 **Motion for New Trial** (9:00 AM) (Judicial Officer: Israel, Ronald J.)  
*Defendant Capriati Construction Corp., Inc.'s Motion for New Trial*

**DATE**

**FINANCIAL INFORMATION**

<b>Defendant</b> Capriati Construction Corp Inc	
Total Charges	247.00
Total Payments and Credits	247.00
<b>Balance Due as of 11/21/2019</b>	<b>0.00</b>
<b>Plaintiff</b> Yahyavi, Bahram	
Total Charges	270.00
Total Payments and Credits	270.00
<b>Balance Due as of 11/21/2019</b>	<b>0.00</b>
<b>Defendant</b> Capriati Construction Corp Inc	
Appeal Bond Balance as of 11/21/2019	<b>500.00</b>

# DISTRICT COURT CIVIL COVER SHEET

A-15-718689-C

County, Nevada

Case No. \_\_\_\_\_

XXVIII

*(Assigned by Clerk's Office)*

**I. Party Information** *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): <b>BAHRAM YAHYAVI</b>	Defendant(s) (name/address/phone): <b>CARRITTI CONSTRUCTION CORP, INC.</b> <b>ATTN: C/O DAVID ROCKHITO</b> <b>1020 WILLOW PARKWAY, Henderson NV 89072</b>
Attorney (name/address/phone): <b>MALIK W. AHMAD ESQ</b> <b>LAW OFFICE OF MALIK W. AHMAD</b> <b>8072 WEST SAHARA AVE, SUITE A</b> <b>Las Vegas, NV 89117</b>	Attorney (name/address/phone): <b>UNKNOWN (702) 547-1182</b>

**II. Nature of Controversy** *(please select the one most applicable filing type below)*

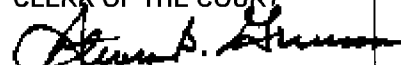
<b>Civil Case Filing Types</b>		
<p style="text-align: center;"><b>Real Property</b></p> <p><b>Landlord/Tenant</b></p> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <p><b>Title to Property</b></p> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <p><b>Other Real Property</b></p> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<p style="text-align: center;"><b>Negligence</b></p> <input checked="" type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <p style="text-align: center;"><b>Malpractice</b></p> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<p style="text-align: center;"><b>Torts</b></p> <p><b>Other Torts</b></p> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<p style="text-align: center;"><b>Probate</b></p> <p><b>Probate</b> <i>(select case type and estate value)</i></p> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <p><b>Estate Value</b></p> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<p style="text-align: center;"><b>Construction Defect &amp; Contract</b></p> <p><b>Construction Defect</b></p> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <p><b>Contract Case</b></p> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<p style="text-align: center;"><b>Judicial Review/Appeal</b></p> <p><b>Judicial Review</b></p> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <p><b>Nevada State Agency Appeal</b></p> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <p><b>Appeal Other</b></p> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b>		<b>Other Civil Filing</b>
<p><b>Civil Writ</b></p> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<p><b>Other Civil Filing</b></p> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

*Business Court filings should be filed using the Business Court civil coversheet.*

5/20/2015  
Date

*[Signature]*  
Signature of initiating party or representative

*See other side for family-related case filings.*



1 **JGJV**  
DENNIS M. PRINCE  
2 Nevada Bar No. 5092  
KEVIN T. STRONG  
3 Nevada Bar No. 12107  
**PRINCE LAW GROUP**  
4 8816 Spanish Ridge Ave.  
Las Vegas, NV 89148  
5 P: (702) 534-7600  
F: (702) 534-7601  
6 Email: [eservice@thedplg.com](mailto:eservice@thedplg.com)  
Attorneys for Plaintiff  
7 *Bahram Yahyavi*

8 **DISTRICT COURT**  
9  
10 **CLARK COUNTY, NEVADA**

11 BAHRAM YAHYAVI, an Individual,  
12 Plaintiff,  
13 vs.  
14 CAPRIATI CONSTRUCTION CORP., INC., a  
Nevada Corporation,  
15 Defendant  
16

CASE NO.: A-15-718689-C  
DEPT. NO.: XXVIII

**JUDGMENT UPON THE JURY**  
**VERDICT**

17 This action was brought to trial in front of Department XXVIII of the Eighth Judicial District  
18 Court, The Honorable Ronald J. Israel presiding, and the jury. The issues having been duly tried and  
19 the jury having duly rendered its verdict:


20 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff BAHRAM  
21 YAHYAVI, has and recovers from Defendant CAPRIATI CONSTRUCTION CORP., INC., the  
22 following sums:

23 **PAST DAMAGES:**

24 Past Medical and Related Expenses:	\$491,023.24
25 Past Loss of Wages and Earning Capacity:	+\$300,000.00
26 Past Pain, Suffering, Disability, and Loss of Enjoyment of Life:	<u>+\$500,000.00</u>
27 <b>Total Past Damages:</b>	<b>\$1,291,023.24</b>

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



AA000638 / 10/15/19 

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**FUTURE DAMAGES:**

Future Medical and Related Expenses:	\$529,260.00
Future Loss of Wages and Earning Capacity:	+\$1,550,000.00
Future Pain, Suffering, Disability, and Loss of Enjoyment of Life:	<u>+\$2,500,000.00</u>
<b>Total Future Damages:</b>	<b>\$4,579,260.00</b>

**TOTAL DAMAGES: \$5,870,283.24**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Plaintiff's past damages in the amount of One Million, Two Hundred Ninety-One Thousand, Twenty-Three Dollars and 24/100 Cents (\$1,291,023.24) shall bear prejudgment interest in accordance with *Lee v. Ball*, 121 Nev. 391, 395-96, 116 P.3d 64, 67 (2005) at the rate of 7.50% per annum from the date of service of the Summons and Complaint, August 20, 2015, through September 27, 2019, as follows:

**PREJUDGMENT INTEREST:**

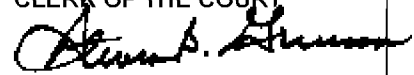
August 20, 2015 THROUGH September 27, 2019 = **\$406,665.00**  
(1500 days x \$271.11 per day)

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this Judgment is subject to future amendment in accordance with this Court's ruling on any motion brought by Plaintiff for attorney's fees and costs accrued in the action, the amount of which will be determined by this Court at that time.

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1 **NJUD**  
2 DENNIS M. PRINCE  
3 Nevada Bar No. 5092  
4 KEVIN T. STRONG  
5 Nevada Bar No. 12107  
6 **PRINCE LAW GROUP**  
7 8816 Spanish Ridge Avenue  
8 Las Vegas, NV 89148  
9 P: (702) 534-7600  
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11 Email: [eservice@thedplg.com](mailto:eservice@thedplg.com)  
12 Attorneys for Plaintiff  
13 *Bahram Yahyavi*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 BAHRAM YAHYAVI, an Individual,

12 Plaintiff,

13 vs.

14 CAPRIATI CONSTRUCTION CORP., INC., a  
15 Nevada Corporation,

16 Defendant

CASE NO.: A-15-718689-C  
DEPT. NO.: XXVIII

**NOTICE OF ENTRY OF JUDGMENT**

17  
18 PLEASE TAKE NOTICE that the Judgment Upon the Jury Verdict was entered on October  
19 18, 2019, a copy of which is attached hereto.

20 DATED this 22<sup>nd</sup> day of October, 2019.

21 **PRINCE LAW GROUP**

22   
23 DENNIS M. PRINCE, ESQ.

24 Nevada Bar No. 5092

25 KEVIN T. STRONG

26 Nevada Bar No. 12107

27 8816 Spanish Ridge Avenue

28 Las Vegas, NV 89148

Attorneys for Plaintiff

*Bahram Yahyavi*



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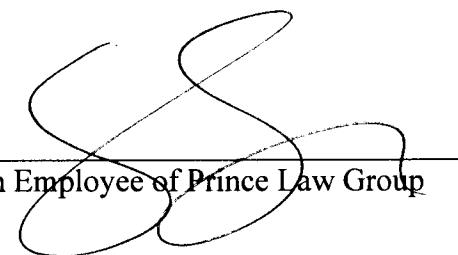
**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am employee of **PRINCE LAW GROUP**, and that on the 22 day of October, 2019, I caused the foregoing document entitled **NOTICE OF ENTRY OF JUDGMENT** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules, as follows:

David S. Kahn, Esq.  
WILSON,ELSER, MOSKOWITZ, EDELMAN  
& DICKER LLP.  
300 South Fourth Street, 11<sup>th</sup> Floor  
Las Vegas, NV 89101

Mark J. Brown, Esq.  
LAW OFFICES OF ERIC R. LARSEN  
750 E. Warm Springs Road  
Suite 320, Box 19  
Las Vegas, NV 89119

*Attorneys for Defendant  
Capriati Construction Corp., Inc.*

  
An Employee of Prince Law Group

*Steven D. Grlerson*

1 **JGJV**  
2 **DENNIS M. PRINCE**  
3 Nevada Bar No. 5092  
4 **KEVIN T. STRONG**  
5 Nevada Bar No. 12107  
6 **PRINCE LAW GROUP**  
7 8816 Spanish Ridge Ave.  
8 Las Vegas, NV 89148  
9 P: (702) 534-7600  
10 F: (702) 534-7601  
11 Email: eservice@thedplg.com  
12 Attorneys for Plaintiff  
13 *Bahram Yahyavi*

8 **DISTRICT COURT**  
9  
10 **CLARK COUNTY, NEVADA**

11 **BAHRAM YAHYAVI, an Individual,**  
12 **Plaintiff,**  
13 **vs.**  
14 **CAPRIATI CONSTRUCTION CORP., INC., a**  
15 **Nevada Corporation,**  
16 **Defendant**

CASE NO.: A-15-718689-C  
DEPT. NO.: XXVIII

**JUDGMENT UPON THE JURY**  
**VERDICT**

17 This action was brought to trial in front of Department XXVIII of the Eighth Judicial District  
18 Court, The Honorable Ronald J. Israel presiding, and the jury. The issues having been duly tried and  
19 the jury having duly rendered its verdict:

20 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff **BAHRAM**  
21 **YAHYAVI**, has and recovers from Defendant **CAPRIATI CONSTRUCTION CORP., INC.**, the  
22 following sums:

23 **PAST DAMAGES:**

24 Past Medical and Related Expenses:	\$491,023.24
25 Past Loss of Wages and Earning Capacity:	+\$300,000.00
26 Past Pain, Suffering, Disability, and Loss of Enjoyment of Life:	<u>+\$500,000.00</u>
27 <b>Total Past Damages:</b>	<b>\$1,291,023.24</b>

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



Prince Law Group  
8816 Spanish Ridge  
Las Vegas, NV 89148

*10/15/19*  
*JS*

1	<b>FUTURE DAMAGES:</b>	
2	Future Medical and Related Expenses:	\$529,260.00
3	Future Loss of Wages and Earning Capacity:	+ \$1,550,000.00
4	Future Pain, Suffering, Disability, and Loss of Enjoyment of Life:	<u>+ \$2,500,000.00</u>
5		
6	<b>Total Future Damages:</b>	<b>\$4,579,260.00</b>
7	<b>TOTAL DAMAGES:</b>	<b>\$5,870,283.24</b>

8           **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Plaintiff's past  
9 damages in the amount of One Million, Two Hundred Ninety-One Thousand, Twenty-Three Dollars  
10 and 24/100 Cents (\$1,291,023.24) shall bear prejudgment interest in accordance with *Lee v. Ball*, 121  
11 Nev. 391, 395-96, 116 P.3d 64, 67 (2005) at the rate of 7.50% per annum from the date of service of  
12 the Summons and Complaint, August 20, 2015, through September 27, 2019, as follows:

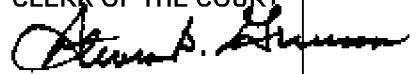
13           **PREJUDGMENT INTEREST:**  
14           August 20, 2015 THROUGH September 27, 2019 =                   **\$406,665.00**  
15           (1500 days x \$271.11 per day)

16           **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this Judgment is  
17 subject to future amendment in accordance with this Court's ruling on any motion brought by Plaintiff  
18 for attorney's fees and costs accrued in the action, the amount of which will be determined by this  
19 Court at that time.

19 ...  
20 ...  
21 ...  
22 ...  
23 ...  
24 ...  
25 ...  
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1 JUDGE RONALD J. ISRAEL  
2 EIGHTH JUDICIAL DISTRICT COURT  
3 DEPARTMENT 28  
4 Regional Justice Center  
200 Lewis Avenue, 15<sup>th</sup> Floor  
Las Vegas, Nevada 89155

5  
6 DISTRICT COURT  
7 CLARK COUNTY, NEVADA

8 Bahram Yahyavi,  
9 Plaintiff,

Case No.: A-15-718689-C

Dept.: XXVIII

10 v.

11 Capriati Construction Corp., Inc.,  
12 Defendant.

13  
14  
15 DECISION AND ORDER

16  
17 On September 9, 2019 through September 27, 2019, this Court conducted a jury trial  
18 in the case of Bahram Yahyavi v. Capriati Construction Corp., Inc. Plaintiff Bahram Yahyavi  
19 was represented by Dennis M. Prince and Kevin T. Strong and Defendant Capriati  
20 Construction was represented by David S. Kahn and Mark James Brown. On September 26,  
21 2019, this Court conducted a hearing to address sanctions for Defense counsel's misconduct  
22 during the jury trial.

23 The factual history of this case is as follows: On June 19, 2013, Defendant's  
24 employee was driving a fork lift truck with the forks sticking out and collided with Plaintiff  
25 who was driving a company-owned vehicle on city streets. Plaintiff filed the complaint on  
26 May 20, 2015 and trial commenced on September 9, 2019. On September 25, 2019, during  
27 his case in chief, Defense counsel asked Defendant's corporate representative Cliff Goodrich,  
28 "Between the date of the accident and today, did anything major happen to your company?"

1 The witness responded, “Yes, we filed for a reorganization in 2015” and Plaintiff’s counsel  
2 immediately objected. This Court has concluded that Defense counsel intentionally solicited  
3 testimony from the witness concerning Defendant’s bankruptcy.

4 In the third week of trial, after the same witness who was Defendant’s corporate  
5 representative testified at length in Plaintiff’s case in chief, Mr. Goodrich was called as a  
6 witness in Defendant’s case. The very first question was “Between the date of the accident  
7 and today, did anything major happen to your company?” At that point, Mr. Goodrich’s  
8 immediate answer was “Yes, we filed for reorganization in 2015.” This Court attached as a  
9 court’s exhibit the JAVS video which clearly shows that the question and answer were  
10 prepared in advance.

11 After Plaintiff’s counsel objected, the jury was excused and Defense counsel  
12 proffered that he thought bankruptcy was a legitimate issue since the file for the employee  
13 who drove the forklift that caused the accident was missing possibly due to the bankruptcy.<sup>1</sup>  
14 This explanation is simply not credible. This is one of the most severe abuses by counsel that  
15 this Court has seen.

16 **A. Defense Counsel’s Misconduct Warrants a Curative Instruction to the Jury.**

17 The Nevada Supreme Court has held that when an attorney commits misconduct and  
18 the opposing party objects, the district court should admonish the jury and counsel about the  
19 impropriety of counsel’s misconduct and should reprimand counsel for their misconduct.  
20 *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 75, 319 P.3d 606, 611–12 (2014). Here,  
21 Defense counsel committed misconduct when he intentionally solicited testimony about  
22 Defendant’s bankruptcy. On February 6, 2018, Defendant filed a motion for final decree in  
23 bankruptcy court to close its Chapter 11 case because it “was able to turn itself profitable”  
24 and paid all outstanding fees to its debtors. The bankruptcy court granted Defendant’s motion  
25 in its entirety on March 26, 2018. Now, eighteen months later, Defense counsel chose to  
26  
27

28 <sup>1</sup> Although not addressed, it stretches credulity to believe that a bankruptcy would result in the loss of computer records to an ongoing business.

1 bring up the bankruptcy, leading the jury to consider the Defendant's financial position  
2 despite its irrelevance and the closing of the bankruptcy.

3 Given Defense counsel's misconduct, this Court found it necessary to admonish the  
4 jury about the impropriety of such misconduct and to reprimand Defense counsel.

5 Accordingly, this Court admonished the jury on September 26, 2019:

6 You were instructed to disregard the question and answer, which is hereby  
7 stricken from these proceedings. Defendant is no longer in bankruptcy and is  
8 now profitable. You are further instructed not to consider whether the  
9 Defendant filed for bankruptcy for any reason, and it should have no effect on  
10 your verdict. You should not even discuss that when you go back to  
11 deliberate. Further by seeking to introduce such irrelevant evidence, counsel  
12 for the Defendant, Mr. Kahn, committed willful misconduct. Mr. Kahn is  
13 hereby reprimanded for his misconduct and admonished not to engage in any  
14 further misconduct.

15 **B. The *Young v. Ribiero* Factors Weigh Heavily in Favor of Sanctions for**  
16 **Defense Counsel's Misconduct.**

17 The Nevada Supreme Court has stated: "Courts by their nature have 'inherent  
18 equitable powers to dismiss actions or enter default judgments...for abusive litigation  
19 practices.'" *Young v. Johnny Ribeiro Building*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).  
20 When a court does not impose ultimate discovery sanctions such as dismissal, it may hold a  
21 hearing to consider matters that are important to the imposition of sanctions. *Bahena v.*  
22 *Goodyear Tire & Rubber Co.*, 126 Nev. 243, 256, 235 P.3d 592, 600-01 (2010). The district  
23 court should exercise its discretion to ensure that there is sufficient information to support  
24 these sanctions. *Id.* Further, the district should make its conclusions based on the factors set  
25 forth in *Young. Id.*

26 The court in *Young* states which factors are relevant to determine whether to strike an  
27 answer. The factors a court might consider include, but are not limited to: 1) the degree of  
28 willfulness of the offending party, 2) the extent to which the non-offending party would be  
prejudiced by a lesser sanction, 3) the severity of the sanction of dismissal relative to the  
severity of the discovery abuse, 4) whether any evidence has been irreparably lost, 5) the  
feasibility and fairness alternative, less severe sanctions, 6) the policy favoring adjudication



1 on the merits, 7) whether sanctions unfairly operate to penalize a party for misconduct of his  
2 or her attorney, 8) the need to deter both the parties and future litigants from similar abuses.  
3 *Young*, 106 Nev. at 93, 787 P.2d at 780.

4 **1. The degree of willfulness of the offending party**

5 Defense counsel's intentional misconduct in soliciting testimony concerning  
6 Defendant's bankruptcy is one of the most serious abuses this Court has seen. Defense  
7 counsel's question was phrased in a way to elicit testimony from Mr. Goodrich that the  
8 Defendant filed for bankruptcy. This case was already two weeks into trial when Defense  
9 counsel alerted the jury about Defendant's financial state by soliciting testimony regarding  
10 the bankruptcy. Defense counsel's actions lead the Court to believe that Defense counsel  
11 wanted to force a mistrial or wanted to influence the jury by way of sympathy for the  
12 Defendant.

13 At the hearing for sanctions, Defense counsel stated that the purpose of the question  
14 was related to the reduction of workforce to respond to information during Plaintiff's case in  
15 chief that the Defendant willfully destroyed documents. The Court does not find this  
16 testimony credible. There was no time between the question and the answer for this Court to  
17 conclude anything else other than that Defense counsel solicited the testimony about the  
18 bankruptcy. Further, Defense counsel is a senior partner at a national firm and should have  
19 known that he could not solicit testimony about irrelevant evidence that would prejudice the  
20 Plaintiff. It is important to note that liability was never an issue because the forklift driver  
21 admitted that he was not authorized to drive the forklift and testified that the accident was his  
22 fault. Thus, Defense counsel's actions were willful.

23 **2. The extent to which the non-offending party would be prejudiced by a lesser  
24 sanction**

25 To sanction Defense counsel's conduct, this Court is striking the answer as to  
26 liability, striking witness Mr. Goodrich's testimony about the bankruptcy, and striking  
27 Defendant's remaining witnesses. Since liability was not an issue, striking the answer as to  
28 liability was no sanction at all, and therefore the additional sanction of excluding Defendant's

1 rebuttal witness was a reasonable and minimal sanction. Further, since the Plaintiff argued it  
2 would suffer substantial harm if a mistrial was declared, Plaintiff requested a curative jury  
3 instruction that if any damages were awarded there was insurance to cover the verdict.  
4 Insurance coverage should generally be excluded and this Court gave the standard jury  
5 instruction that jurors are not to consider whether Plaintiff or Defendant have insurance.  
6 Nonetheless, this Court felt that the only way to cure the issue was to give the added  
7 instruction.

8 This Court is not imposing the ultimate sanction of striking the Defendant's Answer  
9 and proceeding to a prove-up hearing. Nonetheless, Plaintiff has been prejudiced because the  
10 jury became aware of the Defendant's bankruptcy and Plaintiff cannot make the jurors forget  
11 that information. This is a case about damages against a company. The fact that the company  
12 underwent bankruptcy is extremely prejudicial to the Plaintiff because it directly impacts the  
13 juror's decision regarding the amount of damages to award. Any lesser sanction than what  
14 this Court has imposed would further prejudice the Plaintiff and thus the sanctions here are  
15 appropriate.

### 16 3. The severity of the sanction relative to the abuse

17 This Court is striking the defense of liability and allowing the parties to try the case  
18 on damages. The severity of the sanction is equal to Defense counsel's intentional  
19 misconduct when soliciting testimony about Defendant's bankruptcy. Further, Defense  
20 counsel concedes that this Court's sanctions against the Defendant are appropriate: "I believe  
21 what Mr. Prince has proposed as curative is sufficient, striking the answer. And even if the  
22 answer is stricken, I still think Capriati Construction should have the ability to argue  
23 damages with these curative instructions." Therefore, Defense counsel's intentional  
24 misconduct warrants the severity of the sanctions imposed.

### 25 4. Whether any evidence had been irreparably lost

26 So far as this Court is aware, there is no evidence that has been lost.  
27  
28

1           **5. The feasibility and fairness of less severe sanctions**

2           This Court is imposing a lesser sanction than striking the answer completely and  
3 proceeding to a prove-up hearing. This Court's decision to strike the answer as to liability, to  
4 strike the witness who testified about the bankruptcy, and to strike Defendant's remaining  
5 witnesses is fair in light of Defense counsel's misconduct.

6           **6. The policy favoring adjudication on the merits**

7           The Supreme Court favors adjudication on the merits but abusive litigation practices  
8 must face sanctions. Under these facts of this case any lesser sanctions would encourage  
9 further abuse. Defense counsel's misconduct was willful and thus warrants sanctions.

10           **7. Whether sanctions unfairly operate to penalize a party for misconduct of his  
11 or her attorney**

12           In this case, the sanctions for Defense counsel's misconduct do not unfairly penalize  
13 Defendant Capriati Construction because Defendant faces no monetary loss whatsoever. This  
14 matter is the subject of an order from the bankruptcy court to lift the stay in order to proceed  
15 against the insurance policies. Capriati Construction is only a figurehead in this case and  
16 does not face any monetary loss. The fact that the bankruptcy stay has been lifted does not  
17 allow the Plaintiff to proceed for money against Capriati Construction. Accordingly, this  
18 Court's decision to impose sanctions for Defense counsel's misconduct does not operate to  
19 unfairly penalize Defendant.

20           **8. The need to deter both parties and future litigants from similar abuses**

21           Defense counsel's misconduct was intentional and serious; therefore, there must be  
22 serious and far reaching sanctions in order to deter Defense counsel from even considering  
23 repeating their actions again. Information about the Defendant's financial condition distracts  
24 the jury from reaching an impartial decision regarding the amount of damages, if any, to  
25 award the Plaintiff in a personal injury trial. A jury must fairly evaluate the evidence  
26 presented to them without regard to the financial position of the parties. A party's attempt to  
27 secure a verdict not based on the evidence will have major consequences. This Court finds  
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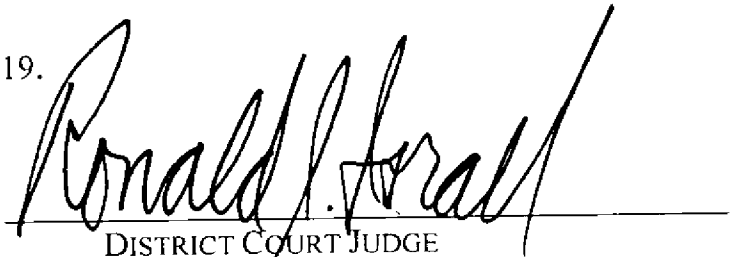
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that deterrence is necessary to prevent future abuse and thus the sanctions imposed are necessary and appropriate.

IT IS HEREBY ORDERED that Defendant's Answer and Affirmative Defenses on Liability are STRICKEN. The Jury Trial on damages will proceed as scheduled.

IT IS FURTHER ORDERED that witness Cliff Goodrich's testimony is STRICKEN and that Defendant's remaining witnesses are STRICKEN.

DATED November 5 ~~October~~ 2019.

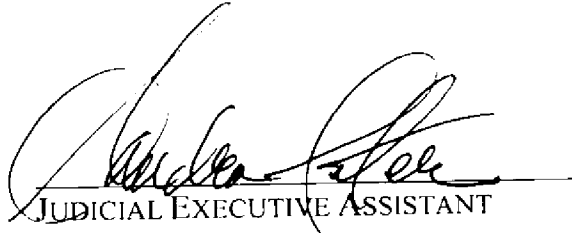


DISTRICT COURT JUDGE  
RONALD J. ISRAEL  
A-15-718689-C

**CERTIFICATE OF SERVICE**

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I hereby certify that on the 5<sup>th</sup> day of November, 2019, a copy of this **DECISION AND ORDER** was electronically served to all registered parties in the Eighth Judicial District Court Electronic Filing Program per the attached Service Contacts List:



JUDICIAL EXECUTIVE ASSISTANT  
SANDRA JETER  
A-15-718689-C

JUDGE RONALD J. ISRAEL  
EIGHTH JUDICIAL DISTRICT COURT  
DEPARTMENT 28

**File Into Existing Case**

Service Contacts: A-15-718689-C

Case Number	Name	Location	Description	Email	Case Type
A-15-718689-C	Department: 20		Bahram Matijavi, Plaintiff		Negligence - Auto
	▼ <b>Party: Bahram Yahyavi - Plaintiff</b>				

© 2019 Tyler Technology, Inc. Malik W Ahmad malik@lasvegaslawgroup.com  
 Version: 2018.1.7.8190 E Service eservice@egletlaw.com

▼ **Party: Capriati Construction Corp Inc - Defendant**

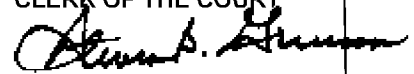
Amanda Hill amanda.hill@wilsonelser.com  
 David S. Kahn david.kahn@wilsonelser.com  
 Efile LasVegas efilelasvegas@wilsonelser.com  
 Mark Severino mark.severino@wilsonelser.com  
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 Lisa M. Lee llee@thedplg.com

1 10 items per page

1 - 3 of 3 items



1 **NEOJ**  
2 DENNIS M. PRINCE  
3 Nevada Bar No. 5092  
4 KEVIN T. STRONG  
5 Nevada Bar No. 12107  
6 **PRINCE LAW GROUP**  
7 8816 Spanish Ridge Avenue  
8 Las Vegas, NV 89148  
9 P: (702) 534-7600  
10 F: (702) 534-7601  
11 Email: [eservice@thedplg.com](mailto:eservice@thedplg.com)  
12 Attorneys for Plaintiff  
13 *Bahram Yahyavi*

9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA

11 BAHRAM YAHYAVI, an Individual,  
12 Plaintiff,

13 vs.

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15 Nevada Corporation,  
16 Defendant

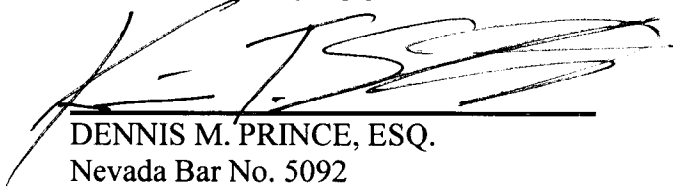
CASE NO.: A-15-718689-C  
DEPT. NO.: XXVIII

**NOTICE OF ENTRY OF DECISION  
AND ORDER**

17  
18 PLEASE TAKE NOTICE that a Decision and Order was entered on the 5<sup>th</sup> day of November,  
19 2019, a copy of which is attached hereto.

20 DATED this 5<sup>th</sup> day of November, 2019.

21 **PRINCE LAW GROUP**

22   
23 DENNIS M. PRINCE, ESQ.  
24 Nevada Bar No. 5092  
25 KEVIN T. STRONG  
26 Nevada Bar No. 12107  
27 8816 Spanish Ridge Avenue  
28 Las Vegas, NV 89148  
Attorneys for Plaintiff  
*Bahram Yahyavi*



**CERTIFICATE OF SERVICE**

Pursuant to NRCPC 5(b), I certify that I am employee of **PRINCE LAW GROUP**, and that on the 5 day of November, 2019, I caused the foregoing document entitled **NOTICE OF ENTRY OF DECISION AND ORDER** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules, as follows:

David S. Kahn, Esq.  
WILSON, ELSER, MOSKOWITZ, EDELMAN  
& DICKER LLP.  
300 South Fourth Street, 11<sup>th</sup> Floor  
Las Vegas, NV 89101

Mark J. Brown, Esq.  
LAW OFFICES OF ERIC R. LARSEN  
750 E. Warm Springs Road  
Suite 320, Box 19  
Las Vegas, NV 89119

*Attorneys for Defendant  
Capriati Construction Corp., Inc.*

  
An Employee of Prince Law Group







1 JUDGE RONALD J. ISRAEL  
2 EIGHTH JUDICIAL DISTRICT COURT  
3 DEPARTMENT 28  
4 Regional Justice Center  
5 200 Lewis Avenue, 15<sup>th</sup> Floor  
6 Las Vegas, Nevada 89155

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 Bahram Yahyavi,  
10 Plaintiff,

Case No.: A-15-718689-C  
Dept.: XXVIII

11 v.

12 Capriati Construction Corp., Inc.,  
13 Defendant.

14  
15 DECISION AND ORDER

16  
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27 his case in chief, Defense counsel asked Defendant's corporate representative Cliff Goodrich,  
28 "Between the date of the accident and today, did anything major happen to your company?"

1 The witness responded, “Yes, we filed for a reorganization in 2015” and Plaintiff’s counsel  
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4 In the third week of trial, after the same witness who was Defendant’s corporate  
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6 witness in Defendant’s case. The very first question was “Between the date of the accident  
7 and today, did anything major happen to your company?” At that point, Mr. Goodrich’s  
8 immediate answer was “Yes, we filed for reorganization in 2015.” This Court attached as a  
9 court’s exhibit the JAVS video which clearly shows that the question and answer were  
10 prepared in advance.

11 After Plaintiff’s counsel objected, the jury was excused and Defense counsel  
12 proffered that he thought bankruptcy was a legitimate issue since the file for the employee  
13 who drove the forklift that caused the accident was missing possibly due to the bankruptcy.<sup>1</sup>  
14 This explanation is simply not credible. This is one of the most severe abuses by counsel that  
15 this Court has seen.

16 **A. Defense Counsel’s Misconduct Warrants a Curative Instruction to the Jury.**

17 The Nevada Supreme Court has held that when an attorney commits misconduct and  
18 the opposing party objects, the district court should admonish the jury and counsel about the  
19 impropriety of counsel’s misconduct and should reprimand counsel for their misconduct.  
20 *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 75, 319 P.3d 606, 611–12 (2014). Here,  
21 Defense counsel committed misconduct when he intentionally solicited testimony about  
22 Defendant’s bankruptcy. On February 6, 2018, Defendant filed a motion for final decree in  
23 bankruptcy court to close its Chapter 11 case because it “was able to turn itself profitable”  
24 and paid all outstanding fees to its debtors. The bankruptcy court granted Defendant’s motion  
25 in its entirety on March 26, 2018. Now, eighteen months later, Defense counsel chose to  
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28 <sup>1</sup> Although not addressed, it stretches credulity to believe that a bankruptcy would result in the loss of computer records to an ongoing business.

1 bring up the bankruptcy, leading the jury to consider the Defendant's financial position  
2 despite its irrelevance and the closing of the bankruptcy.

3 Given Defense counsel's misconduct, this Court found it necessary to admonish the  
4 jury about the impropriety of such misconduct and to reprimand Defense counsel.

5 Accordingly, this Court admonished the jury on September 26, 2019:

6 You were instructed to disregard the question and answer, which is hereby  
7 stricken from these proceedings. Defendant is no longer in bankruptcy and is  
8 now profitable. You are further instructed not to consider whether the  
9 Defendant filed for bankruptcy for any reason, and it should have no effect on  
10 your verdict. You should not even discuss that when you go back to  
11 deliberate. Further by seeking to introduce such irrelevant evidence, counsel  
12 for the Defendant, Mr. Kahn, committed willful misconduct. Mr. Kahn is  
13 hereby reprimanded for his misconduct and admonished not to engage in any  
14 further misconduct.

15 **B. The *Young v. Ribiero* Factors Weigh Heavily in Favor of Sanctions for**  
16 **Defense Counsel's Misconduct.**

17 The Nevada Supreme Court has stated: "Courts by their nature have 'inherent  
18 equitable powers to dismiss actions or enter default judgments...for abusive litigation  
19 practices.'" *Young v. Johnny Ribeiro Building*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).

20 When a court does not impose ultimate discovery sanctions such as dismissal, it may hold a  
21 hearing to consider matters that are important to the imposition of sanctions. *Bahena v.*  
22 *Goodyear Tire & Rubber Co.*, 126 Nev. 243, 256, 235 P.3d 592, 600-01 (2010). The district  
23 court should exercise its discretion to ensure that there is sufficient information to support  
24 these sanctions. *Id.* Further, the district should make its conclusions based on the factors set  
25 forth in *Young. Id.*

26 The court in *Young* states which factors are relevant to determine whether to strike an  
27 answer. The factors a court might consider include, but are not limited to: 1) the degree of  
28 willfulness of the offending party, 2) the extent to which the non-offending party would be  
prejudiced by a lesser sanction, 3) the severity of the sanction of dismissal relative to the  
severity of the discovery abuse, 4) whether any evidence has been irreparably lost, 5) the  
feasibility and fairness alternative, less severe sanctions, 6) the policy favoring adjudication

1 on the merits, 7) whether sanctions unfairly operate to penalize a party for misconduct of his  
2 or her attorney, 8) the need to deter both the parties and future litigants from similar abuses.  
3 *Young*, 106 Nev. at 93, 787 P.2d at 780.

4 **1. The degree of willfulness of the offending party**

5 Defense counsel's intentional misconduct in soliciting testimony concerning  
6 Defendant's bankruptcy is one of the most serious abuses this Court has seen. Defense  
7 counsel's question was phrased in a way to elicit testimony from Mr. Goodrich that the  
8 Defendant filed for bankruptcy. This case was already two weeks into trial when Defense  
9 counsel alerted the jury about Defendant's financial state by soliciting testimony regarding  
10 the bankruptcy. Defense counsel's actions lead the Court to believe that Defense counsel  
11 wanted to force a mistrial or wanted to influence the jury by way of sympathy for the  
12 Defendant.

13 At the hearing for sanctions, Defense counsel stated that the purpose of the question  
14 was related to the reduction of workforce to respond to information during Plaintiff's case in  
15 chief that the Defendant willfully destroyed documents. The Court does not find this  
16 testimony credible. There was no time between the question and the answer for this Court to  
17 conclude anything else other than that Defense counsel solicited the testimony about the  
18 bankruptcy. Further, Defense counsel is a senior partner at a national firm and should have  
19 known that he could not solicit testimony about irrelevant evidence that would prejudice the  
20 Plaintiff. It is important to note that liability was never an issue because the forklift driver  
21 admitted that he was not authorized to drive the forklift and testified that the accident was his  
22 fault. Thus, Defense counsel's actions were willful.

23 **2. The extent to which the non-offending party would be prejudiced by a lesser**  
24 **sanction**

25 To sanction Defense counsel's conduct, this Court is striking the answer as to  
26 liability, striking witness Mr. Goodrich's testimony about the bankruptcy, and striking  
27 Defendant's remaining witnesses. Since liability was not an issue, striking the answer as to  
28 liability was no sanction at all, and therefore the additional sanction of excluding Defendant's

1 rebuttal witness was a reasonable and minimal sanction. Further, since the Plaintiff argued it  
2 would suffer substantial harm if a mistrial was declared, Plaintiff requested a curative jury  
3 instruction that if any damages were awarded there was insurance to cover the verdict.  
4 Insurance coverage should generally be excluded and this Court gave the standard jury  
5 instruction that jurors are not to consider whether Plaintiff or Defendant have insurance.  
6 Nonetheless, this Court felt that the only way to cure the issue was to give the added  
7 instruction.

8 This Court is not imposing the ultimate sanction of striking the Defendant's Answer  
9 and proceeding to a prove-up hearing. Nonetheless, Plaintiff has been prejudiced because the  
10 jury became aware of the Defendant's bankruptcy and Plaintiff cannot make the jurors forget  
11 that information. This is a case about damages against a company. The fact that the company  
12 underwent bankruptcy is extremely prejudicial to the Plaintiff because it directly impacts the  
13 juror's decision regarding the amount of damages to award. Any lesser sanction than what  
14 this Court has imposed would further prejudice the Plaintiff and thus the sanctions here are  
15 appropriate.

16 **3. The severity of the sanction relative to the abuse**

17 This Court is striking the defense of liability and allowing the parties to try the case  
18 on damages. The severity of the sanction is equal to Defense counsel's intentional  
19 misconduct when soliciting testimony about Defendant's bankruptcy. Further, Defense  
20 counsel concedes that this Court's sanctions against the Defendant are appropriate: "I believe  
21 what Mr. Prince has proposed as curative is sufficient, striking the answer. And even if the  
22 answer is stricken, I still think Capriati Construction should have the ability to argue  
23 damages with these curative instructions." Therefore, Defense counsel's intentional  
24 misconduct warrants the severity of the sanctions imposed.

25 **4. Whether any evidence had been irreparably lost**

26 So far as this Court is aware, there is no evidence that has been lost.  
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**5. The feasibility and fairness of less severe sanctions**

This Court is imposing a lesser sanction than striking the answer completely and proceeding to a prove-up hearing. This Court's decision to strike the answer as to liability, to strike the witness who testified about the bankruptcy, and to strike Defendant's remaining witnesses is fair in light of Defense counsel's misconduct.

**6. The policy favoring adjudication on the merits**

The Supreme Court favors adjudication on the merits but abusive litigation practices must face sanctions. Under these facts of this case any lesser sanctions would encourage further abuse. Defense counsel's misconduct was willful and thus warrants sanctions.

**7. Whether sanctions unfairly operate to penalize a party for misconduct of his or her attorney**

In this case, the sanctions for Defense counsel's misconduct do not unfairly penalize Defendant Capriati Construction because Defendant faces no monetary loss whatsoever. This matter is the subject of an order from the bankruptcy court to lift the stay in order to proceed against the insurance policies. Capriati Construction is only a figurehead in this case and does not face any monetary loss. The fact that the bankruptcy stay has been lifted does not allow the Plaintiff to proceed for money against Capriati Construction. Accordingly, this Court's decision to impose sanctions for Defense counsel's misconduct does not operate to unfairly penalize Defendant.

**8. The need to deter both parties and future litigants from similar abuses**

Defense counsel's misconduct was intentional and serious; therefore, there must be serious and far reaching sanctions in order to deter Defense counsel from even considering repeating their actions again. Information about the Defendant's financial condition distracts the jury from reaching an impartial decision regarding the amount of damages, if any, to award the Plaintiff in a personal injury trial. A jury must fairly evaluate the evidence presented to them without regard to the financial position of the parties. A party's attempt to secure a verdict not based on the evidence will have major consequences. This Court finds

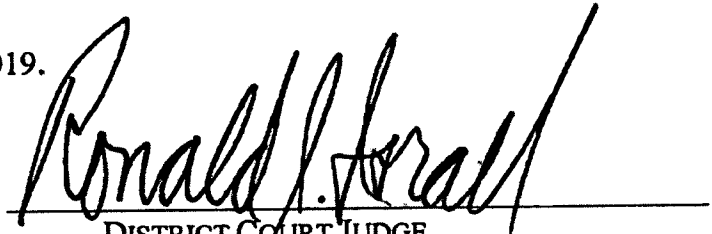
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that deterrence is necessary to prevent future abuse and thus the sanctions imposed are necessary and appropriate.

IT IS HEREBY ORDERED that Defendant's Answer and Affirmative Defenses on Liability are STRICKEN. The Jury Trial on damages will proceed as scheduled.

IT IS FURTHER ORDERED that witness Cliff Goodrich's testimony is STRICKEN and that Defendant's remaining witnesses are STRICKEN.

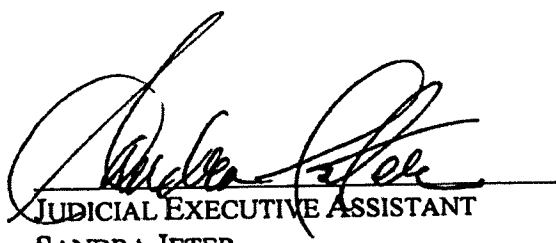
DATED November 5 ~~October~~ 2019.

  
\_\_\_\_\_  
DISTRICT COURT JUDGE  
RONALD J. ISRAEL  
A-15-718689-C

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 5<sup>th</sup> day of November, 2019, a copy of this **DECISION AND ORDER** was electronically served to all registered parties in the Eighth Judicial District Court Electronic Filing Program per the attached Service Contacts List:



JUDICIAL EXECUTIVE ASSISTANT  
SANDRA JETER  
A-15-718689-C



**File Into Existing Case**

Service Contacts: A-15-718689-C

Case Number	Name	Location	Description	Email	Case Type
A-15-718689-C	Department 20		Bahram Yahyavi, Plaintiff...		Negligence - Auto
	▼ Party: Bahram Yahyavi - Plaintiff				
© 2019 Tyler Technology Version: 2018.1.7.8100	Malik W Ahmad			malik@lasvegaslawgroup.com	
	E Service			eservice@egletlaw.com	
▼ Party: Capriati Construction Corp Inc - Defendant					
	Amanda Hill			amanda.hill@wilsonelser.com	
	David S. Kahn			david.kahn@wilsonelser.com	
	Efile Las Vegas			efilelasvegas@wilsonelser.com	
	Mark Severino			mark.severino@wilsonelser.com	
	Agnes Wong			agnes.wong@wilsonelser.com	
▼ Other Service Contacts					
	"David Sampson, Esq. "			davidsampsonlaw@gmail.com	
	Amanda Nalder .			amanda@davidsampsonlaw.com	
	Joshua Montoya .			Joshua.Montoya@thehartford.com	
	Mark Brown .			Mark.Brown@thehartford.com	
	Eservice Filing			eservice@thedpig.com	
	Eric R Larsen			Eric.Larsen@thehartford.com	
	Lisa M Lee			lee@thedpig.com	
	1	10	Items per page		1 - 3 of 3 items

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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**December 08, 2016**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

**December 08, 2016      9:45 AM      Status Check      Status Check:  
Referral to  
Settlement  
Conference // Trial  
Readiness (March 13,  
2017 Trial Stack)**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:** Brown, Mark James      Attorney

**JOURNAL ENTRIES**

- Mr. Brown noted they completed most of the discovery and stated this was a motor vehicle accident and workers compensation issue. Mr. Brown further noted Defendant Capriati Construction had filed bankruptcy and the case should be stayed until the 12/21/16 bankruptcy hearing is held. Mr. Brown requested discovery be extended 60 days and further noted discovery cutoff is 02/12/17. Court noted it could not grant the extension while case is in bankruptcy and directed Counsel to file a motion after the bankruptcy hearing. At the request of Counsel, COURT ORDERED, Matter set for Status Check regarding the bankruptcy stay.

01/12/17 9:00 AM STATUS CHECK: BANKRUPTCY STAY

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Malik, Ahmad, Esq.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**January 12, 2017**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

**January 12, 2017      9:00 AM      Status Check      Status Check:  
Bankruptcy Stay**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:** Brown, Mark James      Attorney

**JOURNAL ENTRIES**

- Mr. Brown requested the stay be lifted and trial continued 60 days. Court noted Plaintiff's Counsel was not present and the trial would not be continued at this time. Court suggested Counsel go to a settlement conference, through Department 2 and then call chambers one week from Friday informing this Department, if the settlement conference was set. Colloquy regarding the discovery expert disclosure date and stay of the case. COURT ORDERED, Matter CONTINUED, for Plaintiff's counsel to be present or the Court may impose sanctions.

01/19/17 9:00 AM STATUS CHECK: BANKRUPTCY STAY

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Mark Brown, Esq. (Law Office of Erick Larsen) and Malik Ahmad, Esq. kk 01/17/17.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**January 19, 2017**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

**January 19, 2017      9:00 AM      Status Check      Status Check:  
Bankruptcy Stay**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:**      Ahmad, Malik W.      Attorney  
Brown, Mark James      Attorney  
Sampson, David F.      Attorney

**JOURNAL ENTRIES**

- Upon Court's inquiry, Mr. Sampson noted the bankruptcy stay was lifted and they have a settlement conference scheduled for 03/02/17. Mr. Brown requested 60 days for discovery and to move the trial out 120 days and the parties can stipulate to discovery dates. Mr. Sampson agreed, and stated, However, the stipulation regarding discovery, the designations are closed. COURT ORDERED, Trial VACATED and RESET. The Judicial Executive Assistant (JEA) to issue the trial order. Court will allow discovery, for 60 days from today. Counsel to submit a stipulation for the discovery.

07/06/17 9:30 AM PRE-TRIAL CONFERENCE

07/25/17 9:30 AM CALENDAR CALL

07/31/17 1:30 PM JURY TRIAL

CLERK'S NOTE: Court Clerk corrected the trial dates given in Court to reflect the 2017 trial setting

PRINT DATE:      11/21/2019      Page 3 of 61      Minutes Date:      December 08, 2016

dates. kk A copy of this minute order was placed in the attorney folder(s) of: David Sampson, Esq. and Malik Ahmad, Esq. and Mark James Brown, Esq. (Law Office of Eric Larsen). kk 01/24/17.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**March 02, 2017**

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A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

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**March 02, 2017      9:00 AM      Settlement Conference**

**HEARD BY:** Becker, Nancy      **COURTROOM:** No Location

**COURT CLERK:** Kathy Thomas

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Parties present for the settlement conference. Court Clerk not present. Settlement Conference held in chambers. The Judicial Executive Assistant (JEA) stated, David Sampson is new to this case and both sides agreed they will possibly return at a later date for another settlement conference. Case not settled. Trial dates Stand.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**July 06, 2017**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

**July 06, 2017      9:30 AM      Pre Trial Conference      PRE TRIAL  
CONFERENCE**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:**      Brown, Mark James      Attorney  
Sampson, David F.      Attorney

**JOURNAL ENTRIES**

- Mr. Sampson appearing by Court Call. Upon Court's inquiry, Mr. Brown noted the parties were unable to reach a settlement agreement. Mr. Sampson noted scheduling issues within this trial stack and requested trial be reset and re-open discovery as Defendant was in bankruptcy and did not inform Counsel of it. Mr. Brown noted the Defendant went to bankruptcy that proceeded in December and they lifted the stay. Court noted the seriousness of the Defendant being in bankruptcy and not notifying Counsel. Counsel noted the estimated time of the trial would depend on the outcome of the Motions In Limine. Mr. Brown requested the trial be set later in the stack. **COURT ORDERED, Pending Motions In Limine, RESET time to 1:30 PM. COURT ORDERED, Oral Request to Continue Trial and Re-Open Discovery, DENIED. Trial Dates Stand.**

07/18/17 1:30 PM MOTIONS IN LIMINE



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**July 18, 2017**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

**July 18, 2017      1:30 PM      All Pending Motions      All Pending Motions  
(07/18/17)**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Sandra Pruchnic

**REPORTER:**

**PARTIES**

**PRESENT:**      Brown, Mark James      Attorney  
                 Sampson, David F.      Attorney

**JOURNAL ENTRIES**

- DEFENDANT'S MOTION IN LIMINE NO. 1 - TO PRECLUDE PLAINTIFF FROM PRESENTING EXPERT TESTIMONY:

DEFENDANT'S MOTION IN LIMINE NO. 2 - TO PRECLUDE PLAINTIFF FROM INTRODUCING ANY DOCUMENTS OR MEDICAL TESTIMONY OR REFERENCE ANY TREATMENT ALLEGEDLY RELATED TO THE ACCIDENT AFTER April 2015:

DEFENDANT'S MOTION IN LIMINE NO 3 - TO PRECLUDE PLAINTIFF OR PLAINTIFF'S ATTORNEY FROM CLAIMING DISABILITY, LOSS OF EARNING CAPACITY, FUTURE MEDICAL CARE, LOSS OF HOUSEHOLD SERVICES, OR RIGHT KNEE INJURY FROM ACCIDENT:

DEFENDANT'S MOTION IN LIMINE NO. 4 - TO LIMIT SPECIALS TO AMOUNTS PAID IN WORKER'S COMPENSATION BENEFITS RELATED TO ACCIDENT AND PRECLUDE INTRODUCTION OF AMOUNTS BILLED BY PROVIDERS:

PLAINTIFF'S OMNIBUS OPPOSITION TO DEFENDANT'S MOTIONS IN LIMINE AND

COUNTERMOTION TO INITIATE/REOPEN DISCOVERY IN THIS MATTER:

Colloquy regarding the Defendant's bankruptcy. Mr. Brown noted the bankruptcy was filed the same time the answer was filed and there was no notice of the filed bankruptcy. Court noted discovery proceeded with no indication a stay was in place. Mr. Brown stated he was notified by Plaintiff's Counsel on 10/18/16 regarding a bankruptcy and the stay was lifted 10/22/16. Mr. Brown further noted the parties agreed to proceed with discovery and until Defendants filed the Motions In Limine and discovery was closed then the Plaintiff's objected to discovery additionally Plaintiff's agreed to extend discovery 60 days. Mr. Sampson argued the case was stayed when it was in bankruptcy under statute. Mr. Sampson stated he was not requesting sanctions, However would request to extend discovery or they can go to the Federal Judge. Further arguments by Counsel. COURT ORDERED, Matters CONTINUED, 90 days for Counsel to file their motion in Bankruptcy Court regarding both sides conducting discovery when stayed. This Court to make decisions on pending motions following the Bankruptcy Judges order. Counsel noted Capriati Construction Corp is still in bankruptcy. Mr. Sampson noted he would file the order regarding the bankruptcy stay and will ask to enforce the stay. Mr. Sampson further noted he would request to re-open discovery or have Defendants sanctioned. Court noted it would be up to the Bankruptcy Judge to decide those issues or if to dissolve everything. COURT ORDERED, Trial dates, VACATED and Motions In Limine, OFF CALENDAR. COURT ORDERED, Matter SET for a status check to reset Jury Trial and Motions In Limine following the Bankruptcy Courts decision regarding the stay.

10/17/17 9:00 AM STATUS CHECK: STATUS OF CASE// BANKRUPTCY COURT DECISION // RESETTING JURY TRIAL & MOTIONS IN LIMINE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

October 19, 2017

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

<b>October 19, 2017</b>	<b>9:00 AM</b>	<b>Status Check</b>	<b>Status Check Re: Status of Case // Bankruptcy Court decision of stay // Resetting Jury Trial &amp; MIL's</b>
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**HEARD BY:** Barker, David**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Kathy Thomas**RECORDER:** Judy Chappell**REPORTER:****PARTIES**

<b>PRESENT:</b>	Brown, Mark James	Attorney
	Sampson, David F.	Attorney

**JOURNAL ENTRIES**

- Mr. Sampson noted there was a question of bankruptcy stay regarding Defendant Capriati Construction Corporation and in that time all the discovery deadlines past. Mr. Sampson suggested to start forward and stipulate to depositions and hold an Early Case Conference (ECC), submit a Joint Case Conference Report (JCCR). Mr. Brown noted they held a (ECC) already and would stipulate to the (JCCR). Colloquy regarding scheduling issues. Court trailed matter to discuss available setting with the Judicial Executive Assistant (JEA).

Later Recalled. Mr. Sampson stated the parties agreed to deadline dates; Initial expert 01/17/18, Rebuttal Experts 02/20/18, Discovery Closes 04/06/18, Dispositive Motions 05/07/18 and Trial Stack of 07/30/18. Mr. Brown noted there was a jury demand, stipulated to the dates and the Defendant will file their answer within 30 days.

07/10/18 9:30 AM PRE-TRIAL CONFERENCE

PRINT DATE:	11/21/2019	Page 9 of 61	Minutes Date:	December 08, 2016
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AA000675

07/24/18 9:30 AM CALENDAR CALL

07/30/18 1:30 PM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**February 21, 2018**

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A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

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**February 21, 2018      3:00 AM      Motion to Withdraw as Counsel      David Sampson, Esq.'s Motion to Withdraw as Counsel for Plaintiff**

**HEARD BY:** Israel, Ronald J.

**COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20(b) the Motion to Withdraw is deemed unopposed. Therefore, good cause appearing, COURT ORDERED, motion is GRANTED. Moving Counsel is to prepare and submit an order including all dates for pretrial compliance with NRCP 16.1 within ten (10) days and distribute a filed copy to all parties involved in this matter.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: David Sampson, Esq. and Malik Ahmad, Esq. and Mark Brown, Esq. (Eric R. Larsen) and Dennis Prince, Esq. (Eglet Prince). kk 02/21/18.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**November 09, 2018**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

<b>November 09, 2018</b>	<b>9:00 AM</b>	<b>Motion to Extend Discovery</b>	<b>Plaintiff's Motion to Extend Discovery Deadlines for the Limited Purpose of Taking Depositions on an OST(Fourth Request)</b>
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**HEARD BY:** Bulla, Bonnie

**COURTROOM:** RJC Level 5 Hearing Room

**COURT CLERK:** Jennifer Lott

**RECORDER:** Francesca Haak

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Beckom, Thomas N.	Attorney
	Kahn, David S.	Attorney
	Prince, Dennis M	Attorney

**JOURNAL ENTRIES**

- 2015 case. Commissioner is not able to move the Trial date, and it would be addressed by the Judge. Mr. Prince stated Plaintiff doesn't want the Trial continued. Arguments by counsel. Mr. Kahn stated Plaintiff wants a number a depositions. Commissioner stated the proposed Rules limit depositions to ten for each side unless there is a Stipulation or a Court Order. COMMISSIONER RECOMMENDED, motion is GRANTED; discovery cutoff EXTENDED to 12-31-18; file dispositive motions by 12-24-18 unless the Court agrees to hear Motions on OST. Mr. Prince to prepare the Report and Recommendations, and Mr. Kahn to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**January 15, 2019**

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A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

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**January 15, 2019      9:30 AM      Pre Trial Conference**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:**      Kahn, David S.      Attorney  
Prince, Dennis M      Attorney

**JOURNAL ENTRIES**

- Mr. Prince announced ready and estimated 12 to 14 trial days. Mr. Kahn stated the parties submitted a joint motion to delay the Motions In Limine. Mr. Prince noted they would report back on Thursday regarding if the parties settled before the motions are heard. Court directed Counsel to send a letter or e-mail chambers. Trial dates STAND.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**January 29, 2019**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

**January 29, 2019      9:30 AM      Calendar Call**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:**      Beckom, Thomas N.      Attorney  
Brown, Mark James      Attorney  
Kahn, David S.      Attorney  
Prince, Dennis M      Attorney

**JOURNAL ENTRIES**

- Conference at the bench. Upon Court's inquiry, Counsel estimated a 3 to 4 week trial and requested to reset the trial. Court trailed matter to confirm older case trial setting status.

Later recalled. Due to Court's schedule, COURT ORDERED, Trial VACATED and RESET, Plaintiff's Counsel to prepare a trial schedule order. Colloquy regarding resetting the Motions In Limine. Court directed Counsel to review all the Motions In Limine and stated if there are any motions to enforce FCH-1 or to follow the law, Counsel may be sanctioned. COURT ORDERED, Motion's In Limine, RESET.

03/19/19 10:00 AM MOTIONS IN LIMINE

06/04/19 9:30 AM PRE-TRIAL CONFERENCE

06/18/19 9:30 AM CALENDAR CALL



07/01/19 1:30 PM JURY TRIAL (3-4 WKS)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**March 19, 2019**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

**March 19, 2019      10:00 AM      All Pending Motions      All Pending Motions  
(03/19/19)**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas  
April Watkins

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:** Beckom, Thomas N.      Attorney  
Kahn, David S.      Attorney  
Prince, Dennis M      Attorney  
Trummell, James A.      Attorney

**JOURNAL ENTRIES**

- Kathy Thomas, Court Clerk, from 10:00 a.m. to 1:50 p.m.  
Mr. Kahn stated the parties did meet and confer regarding all the Motions In Limine. Mr. Kahn further stated he received notice and records, and further found out another case in California, involving the Plaintiff, claiming emotional distress, that may impact on this case if claiming emotional distress. Mr. Prince noted he had no knowledge of another case. Mr. Prince stated the Motions that the parties stipulated to are; Pltf's motions 4,9,18 and motions withdrawn; Deft's motions 1, 2, 3, 10, 12 & 16. Mr. Kahn noted Deft's Motion # 3 subsection 5 would still be heard today and was re-noticed. Further Plaintiff's motions 13 and 15 withdrawn.

PLAINTIFF'S MOTION IN LIMINE NO. 1: TO LIMIT DEFENDANTS EXPERTS TESTIMONY TO THE OPINIONS AND BASES SET FORTH IN THEIR EXPERT REPORTS: Arguments by Counsel. Colloquy regarding if new evidence is presented. Court noted Counsel is asking the Court to follow the law. Court directed both counsel to provide their expert reports to the Court before their expert

testifies. COURT ORDERED, Motion RESERVED for time of trial.

PLAINTIFF'S MOTION IN LIMINE NO. 2: TO EXCLUDE ARGUMENT THAT THIS CASE IS ATTORNEY DRIVEN OR A MEDICAL BUILDUP CASE BECAUSE THERE IS NO EVIDENCE TO SUPPORT SUCH ARGUMENTS: Arguments by Counsel. Court noted the worker's compensation doctors are from a list. Mr. Kahn stated one of the doctors have become an expert. Court noted this was a worker's compensation injury and they do not get to pick their doctors. COURT ORDERED, Motion GRANTED.

PLAINTIFF'S MOTION IN LIMINE NO. 3: TO EXCLUDE CLOSING ARGUMENT THAT PLAINTIFF IS REQUESTING MORE THEN HE EXPECTS TO RECEIVE: Counsel submitted on their briefs. COURT ORDERED, Motion GRANTED. Court finds the argument is not improper and the Court will follow Lioce.

PLAINTIFF'S MOTION IN LIMINE NO. 4: TO ALLOW VOIR DIRE QUESTIONING ABOUT EMPLOYMENT WITH FINANCIAL INTEREST IN ANY INSURANCE COMPANY: Pursuant to Counsel, Motion STIPULATED.

PLAINTIFF'S MOTION IN LIMINE NO. 5: TO EXCLUDE EVIDENCE OF WHEN THE PARTIES CONTACTED AND RETAINED COUNSEL: Mr. Prince argued in support of his motion. Mr. Kahn noted the Plaintiff went to a few different attorneys. Colloquy regarding the nature of the case being a worker's compensation injury. COURT stated its findings and ORDERED, Motion GRANTED.

PLAINTIFF'S MOTION IN LIMINE NO. 6: TO EXCLUDE REFERENCE TO AND EVIDENCE OF MEDICAL LIENS: Arguments by counsel. Colloquy regarding liens and collateral source. Court will only allow counsel to ask "did you perform services on a lien". Mr. Kahn asked Mr. Prince to inform him, if the doctor treats on a lien and Mr. Price agreed to inform him. COURT ORDERED, Motion DENIED, however will allow the one question.

PLAINTIFF'S MOTION IN LIMINE NO. 7: TO EXCLUDE REFERENCE TO PLAINTIFF'S COUNSEL WORKING WITH PLAINTIFF'S TREATING PHYSICIANS ON UNRELATED CASES: Mr. Prince noted this would only be related to treating physicians. Mr. Kahn stated he should be allowed to probe as to bias as to "the percentage of cases". Court noted if there are experts, then you can ask the question. COURT ORDERED, Motion, GRANTED IN PART as to the doctors and DENIED IN PART as to the retained experts.

PLAINTIFF'S MOTION IN LIMINE NO. 8: TO EXCLUDE REFERENCE TO ANY ABSENCE OF MEDICAL RECORDS BEFORE THE SUBJECT COLLISION: Mr. Prince submitted on the briefs. Mr. Kahn stated the Plaintiff testified in his deposition, he had no problems, however his experts reviewed the records presented and will address it in testimony; Mr. Kahn further noted at this time he doesn't know of any other records. Court finds records that are not found is speculative because you don't know. Mr. Kahn noted if something new comes up, he will make an offer of proof. COURT ORDERED, Motion, GRANTED.

PLAINTIFF'S MOTION IN LIMINE NO. 9: TO PERMIT TREATING PHYSICIANS TO TESTIFY AS TO CAUSATION, DIAGNOSIS, PROGNOSIS, FUTURE TREATMENT, AND EXTENT OF DISABILITY WITHOUT A FORMAL EXPERT REPORT: Pursuant to Counsel, Motion STIPULATED.

PLAINTIFF'S MOTION IN LIMINE NO. 10: TO EXCLUDE ANY ARGUMENT THAT THE PLAINTIFF HAS ANY SYMPTOMATIC CONDITIONS PRIOR TO THE COLLISION: Mr. Prince noted the Plaintiff went to Southwest Medical for issues unrelated to this case, and referred to Giglio regarding the pre-existing conditions and noted the Southwest Medical records should be excluded. Mr. Kahn referred to his motion to pre-admit these records and stated in the records the doctor requested an MRI to be done regarding his right knee and the Plaintiff's mentioned his neck hurt for years. Mr. Kahn stated his experts reviewed the records and stated it would not change their opinions. Mr. Prince argued they read it but no new opinion; "the above new records does not change my opinion". COURT ORDERED, Motion, DENIED, Court finds the expert opinion with the additional records supports his opinion, he did supplement and the body parts are related to this case.

PLAINTIFF'S MOTION IN LIMINE NO. 11: TO EXCLUDE TESTIMONY AND OPINIONS OF DEFENDANTS RETAINED EXPERT, KEVIN KIRKENDALL, CPA: Mr. Kahn stated he did not intend to have him testify as to legal opinions. Mr. Kahn further noted Mr. Kirkendall is a certified CPA. Mr. Prince stated he had seen legal opinions. Court stated the expert is not to testify as to legal opinions, pursuant to Hallmark. COURT ORDERED, Motion, DENIED.

PLAINTIFF'S MOTION IN LIMINE NO. 12: TO EXCLUDE REFERENCE TO PLAINTIFF BEING A MALINGERER, MAGNIFYING SYMPTOMS, OR MANIFESTING SECONDARY GAIN MOTIVES: Arguments by Counsel. Colloquy regarding qualifications needed and requires a psychological assessment. Court noted the Functional Capacity Exam, (FCE) that was done could comment on. Further arguments by Counsel regarding symptom magnifications statements and statements of the FCE examiner. Court noted it would need to see the records before the trial for a decision to be rendered. COURT ORDERED, Motion, RESERVED for the time of trial.

PLAINTIFF'S MOTION IN LIMINE NO. 14: TO PRECLUDE ARGUMENT OR SUGGESTION THAT PLAINTIFF'S TREATING PHYSICIANS HAVE A CONFLICT THAT PRECLUDES THEM FROM OFFERING MEDICAL CAUSATION OPINIONS: Court noted it would follow FCH-1. Arguments by Counsel. Colloquy regarding a possible conflict between the two doctors. Court noted they would need to find out. COURT ORDERED, Motion, GRANTED IN PART and RESERVED in part for time of trial, if it should come up.

PLAINTIFF'S MOTION IN LIMINE NO. 16: TO EXCLUDE PLAINTIFF'S PRIOR UNRELATED ACCIDENTS, INJURIES, AND MEDICAL CONDITIONS: Mr. Kahn noted he would be redacting the unrelated issues. Mr. Prince inquired of the other injuries. Court directed Counsel to go over this at their 2.67 meeting and COURT ORDERED, Motion, RESERVED for time of trial.

PLAINTIFF'S MOTION IN LIMINE NO. 17: TO EXCLUDE ANY TESTIMONY THAT BAHRAM YAHYAVI WAS HOTRODDING: Mr. Prince argued in support of his motion and stated the Plaintiff was not speeding and the characterization of hotrodding is labeling. Argument by Mr. Kahn. Court finds hotrodding is an opinion and ORDERED, Motion, GRANTED.

PLAINTIFF'S MOTION IN LIMINE NO. 18: TO EXCLUDE ANY EVIDENCE OF WORKER'S COMPENSATION PAYMENTS TO BAHRAM YAHYAVI: Pursuant to Counsel, Motion, STIPULATED. COURT ORDERED, Matter OFF CALENDAR.

PLAINTIFF'S MOTION IN LIMINE NO. 19: TO EXCLUDE PREJUDICIAL INFORMATION CONCERNING MR. YAHYAVI: Mr. Prince noted the Plaintiff's divorce is not relevant. Mr. Kahn submitted on his pleadings and noted the divorce case found yesterday was dealing with emotional distress and may relate to this case. COURT ORDERED, Motion, GRANTED with a caveat of this one case.

DEFENDANT'S MOTION IN LIMINE NO. 3: SUBSECTION 5 ONLY: TO PRECLUDE RIGHT KNEE INJURY FROM ACCIDENT: COURT ORDERED, Motion, DENIED. Arguments by Mr. Kahn in support of his motion. Mr. Prince argued and stated the expert Dr. Miao was deposed and stated his opinion was based on " overall gestalt". Court requested the deposition. Court noted the expert could give a range and not a specific date of the injury. Court stated findings within the deposition and stated there was no reason to exclude the injury. COURT ORDERED, Motion DENIED.

DEFENDANT'S MOTION IN LIMINE NO. 4: TO LIMIT SPECIALS TO AMOUNTS PAID IN WORKER'S COMPENSATION BENEFITS RELATED TO ACCIDENT AND PRECLUDE INTRODUCTION OF AMOUNTS BILLED BY PROVIDERS: Mr. Kahn noted the personal injury cases, the jury hears the amount paid and not billed. Argument by Mr. Prince. Mr. Prince noted the amount would include a number of things to include temporary total disability benefits and other payments made and could get into liens. Mr. Kahn noted this was the law and the statutes require it. Further arguments. Court directed Counsel to submit simultaneous briefs in two weeks 04/02/19. COURT ORDERED, Motion CONTINUED to Chambers for decision.

DEFENDANT'S MOTION IN LIMINE NO. 5: TO EXCLUDE ANY EVIDENCE OF TRAFFIC CITATION: Pursuant to Counsel, COURT ORDERED, Motion STIPULATED.

DEFENDANT'S MOTION IN LIMINE NO. 6: TO EXCLUDE EVIDENCE ANY EXPERT OPINION TESTIMONY BY LAY WITNESS: Mr. Price requested the motion be deferred for trial testimony. Mr. Kahn noted the witness stated his view was obstructed and he showed up after the fact. Court finds the witness is not qualified and COURT ORDERED, Motion, GRANTED IN PART, as to specific things that were put in the motion.

DEFENDANT'S MOTION IN LIMINE NO. 7: TO EXCLUDE REBUTTAL EXPERT LEGGETT OR ALTERNATIVELY TO REQUIRE THAT HIS TESTIMONY BE IN PLAINTIFF'S REBUTTAL CASE: Court noted Leggett was not noticed as an expert, However he was noticed as a rebuttal expert

witness and he can testify as a rebuttal expert. Arguments by Counsel. COURT ORDERED, Motion, DENIED IN PART, Leggett is not excluded, Court will allow Leggett to testify as a Rebuttal Expert,

DEFENDANT'S MOTION IN LIMINE NO. 8: TO EXCLUDE PLAINTIFF'S CLAIMS AND COMPUTATIONS FOR ANY FUTURE MEDICAL TREATMENT NOT PREVIOUSLY DISCLOSED IN MEDICAL RECORDS OR EXPERT OPINIONS WITHIN THE CLOSE OF DISCOVERY: Colloquy regarding future medical treatment and Dr. Thalgott recommending a spinal cord stimulator and higher incurring costs. Further discussions regarding trial setting. Counsel noted Dr. Kaplan and Dr. Oliveri were now added to the list. COURT ORDERED, Motion, OFF CALENDAR. Court directed Counsel to submit their stipulation.

Upon Courts inquiry, Mr. Prince noted the Plaintiff was rated for a permanent paid disability (PPD) and would not be sure if he will be re-rated after the next surgery. Colloquy regarding trial schedule.

DEFENDANT'S MOTION IN LIMINE NO. 9: TO EXCLUDE AND PREVENT ARGUMENT OR QUESTIONS THAT DEFENDANT IS AVOIDING LIABILITY OR REFUSING TO ACCEPT LIABILITY: Mr. Kahn argued in support of his motion. Mr. Prince argued against the motion and stated it's about a legal responsibility. Colloquy regarding the reptile issue. Court noted the Defendant denied liability and the complaint and answer could be read at trial. COURT ORDERED, Motion, DENIED.

DEFENDANT'S MOTION IN LIMINE NO. 11: TO PRECLUDE EVIDENCE OF LITIGATION INDUCED STRESS OR DAMAGES THEREFROM: There being no opposition, COURT ORDERED, Motion, GRANTED.

DEFENDANT'S MOTION IN LIMINE NO. 13: TO EXCLUDE SHOCKING EVIDENCE SUCH AS NEEDLES: Mr. Prince stated he would have various forms of photos and needles. Court noted it would not allow needles and COURT ORDERED, Motion, GRANTED IN PART as to needles and DENIED IN PART as to all other.

DEFENDANT'S MOTION IN LIMINE NO. 14: TO PRE ADMIT CERTAIN MEDICAL RECORDS. Mr. Prince requested to see the redacted records. Court noted it would not pre-admit records, However noted counsel could stipulate to admit. COURT ORDERED, Motion, DENIED. Court noted they may be pre-admitted only if counsel stipulates to the admission.

DEFENDANT'S MOTION IN LIMINE NO. 15: TO EXCLUDE REFERENCE AND EVIDENCE OF INVESTIGATING OFFICER'S NARRATIVE, FINDING OF "AT FAULT" AND ANY OTHER OPINIONS OR CONCLUSIONS, INCLUDING THOSE IN THE TRAFFIC ACCIDENT REPORT OR TESTIFIED TO AT DEPOSITION: Court noted the Officer is not qualified to draw opinions as an expert, unless he is and listed as a reconstruction expert. Mr. Prince agreed as to the citation and requested the Court defer for the time of trial, depending upon what foundation is laid and the testimony given. COURT ORDERED, Motion, GRANTED IN PART as to the citation and RESERVED IN PART for time of trial.

April Watkins, Court Clerk, present at 1:50 p.m.

DEFT'S MOTION IN LIMINE NO. 17 TO EXCLUDE UNTIMELY AND SUPPLEMENTAL CRASH TESTING OPINIONS, OR TESTIMONY OF PLTF'S REBUTTAL ONLY EXPERT TIMOTHY S. LEGGETT FROM 1/15/19 DISCLOSURE:

Following arguments by counsel, Court stated FINDINGS and ORDERED, motion DENIED. Pltf. REQUIRED to produce all videos, photographs or whatever taken at the time of this. Pltf. is also REQUIRED to produce rebuttal expert for deposition and Pltf. REQUIRED to pay for expert's time. If disclosure made two weeks prior to the rebuttal experts deposition and he needs to review and that is what he is relying on, the Court does not think it is late to allow supplementing and testing. As far as the testing, the Court DISAGREES and testing was done in the most recent case. More often, it is the Deft's doing an accident reconstruction and calculating the Delta V, using a similar car and whether it is the exact same type, it is always the same model and the use that to calculate the Delta V. This is all subject to cross examination at the time of trial whether the exemplar was identical or not which never seems to be the case and the Court is not quite sure the length of the forks themselves and counsel will be able to comment on that. Mr. Kahn argued he will need to either have a live crash test in front of the jury. Court stated there WILL NOT BE a live crash test during trial. Further, Mr. Kahn argued counsel will do his own crash test, not invite Pltf's counsel and then counsel will disclose and Pltf. can do what they need to do. COURT SO ORDERED. Mr. Prince argued they will then produce all available data and produce expert. FURTHER ORDERED, Deft. REQUIRED to produce expert and Deft. required to pay for expert's time. Court further FINDS testing is not out of the ordinary and counsel can question expert during deposition as to qualifications.

04/04/19 (CHAMBERS) DEFENDANT'S MOTION IN LIMINE NO. 4: TO LIMIT SPECIALS TO AMOUNTS PAID IN WORKER'S COMPENSATION BENEFITS RELATED TO ACCIDENT AND PRECLUDE INTRODUCTION OF AMOUNTS BILLED BY PROVIDERS

DISTRICT COURT  
CLARK COUNTY, NEVADA

Negligence - Auto

COURT MINUTES

March 19, 2019

A-15-718689-C Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

<b>March 19, 2019</b>	<b>10:00 AM</b>	<b>Motion in Limine</b>	<b>Notice of Withdrawal of Defendant Capriati Construction Corp.'s Motion in Limine No. 3 - to Preclude Plaintiff or Plaintiff's Attorney from Claiming Subarguments (1) Claiming Disability, (2) Loss of Earning Capacity, (3) Future Medical Care and (4) Loss of Household Services and Maintain and to Supplement and Re-Notice Subargument (5) to Preclude Right Knee Injury from Accident</b>
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**HEARD BY:** Israel, Ronald J.

**COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas  
April Watkins

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES  
PRESENT:**



JOURNAL ENTRIES

DISTRICT COURT  
CLARK COUNTY, NEVADA

**Negligence - Auto**

**COURT MINUTES**

**April 04, 2019**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

<b>April 04, 2019</b>	<b>3:00 AM</b>	<b>Hearing</b>	<b>Notice of Hearing on Defendant Capriati Construction Corp Inc's Motion in Limine No 4 to Limit Specials to Amounts Paid in Worker's Compensation Benefits Related to Accident and Preclude Introduction of Amounts Billed by Providers</b>
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**HEARD BY:** Israel, Ronald J.

**COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- On March 19, 2019 this Court heard arguments on both Plaintiff's and Defendant's Motions in Limine. The Court heard arguments on the instant Motion and continued the matter for two weeks to allow supplemental briefing and a decision in chambers. On March 28, 2019, Defendant filed its supplemental brief. On April 3, 2019, the Parties submitted a Stipulation and Order allowing Plaintiff until April 4, 2019 to file Supplemental briefing on Defendant's Motion In Limine No. 4. The Stipulation and Order was signed April 3, 2019, and filed April 4, 2019. On April 5, 2019 Plaintiff filed

its supplemental brief.

After review of the moving papers, arguments of counsel, the supplemental briefing, and the documents on file the Court finds as follows:

The workers compensation statutes, in general, were designed to both protect the worker as well as the employer in return for both parties giving up certain rights. In this case the defendant is neither employer or employee. NRS 116C.215(10) is to benefit reimbursement to an employer if a third party recovery is made.

Defendant in this case cannot use the statute as a sword to reduce the Plaintiff's recovery. The section was enacted to prevent a double recovery not to reduce the amount claimed to benefit a potential tortfeasor.

Therefore, the Plaintiff may introduce the actual amounts billed by the provider and the total amount paid to the Plaintiff or to be paid.

Therefore, Defendant's Motion in Limine No. 4 is DENIED.

This Decision sets forth the Court's intended disposition on the subject but anticipates further Order of the Court to make such disposition effective as an Order. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and argument.

Plaintiff's counsel to prepare the Order and submit to Chambers for consideration in accordance with EDCR 7.21. Said order then must be filed in accordance with EDCR 7.24

CLERK'S NOTE: A copy of this minute order was e-served to counsel. kt 04/09/19.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**April 30, 2019**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

**April 30, 2019      9:00 AM      Motion      Plaintiff's Motion to Allow Parties to Present a Jury Questionnaire Prior to Voir Dire**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:**      Beckom, Thomas N.      Attorney  
                         Kahn, David S.      Attorney  
                         Prince, Dennis M      Attorney

**JOURNAL ENTRIES**

- Court noted the trial is estimated to be one month and explained the difficult process in selecting a juror to sit on a panel for a month. Court disagreed regarding the questionnaire including a question regarding their income. Colloquy. COURT ORDERED, Motion to Allow a Jury Questionnaire, GRANTED. Court directed Counsel to meet and confer within one week and either agree or the Court will decide. Court further directed counsel to submit the proposed Jury Questionnaire in Word format to chambers. COURT ORDERED, Matter SET for a status check regarding the status of the final questionnaire.  
Court noted with a questionnaire, the voir dire in trial may be limited. Mr. Kahn had no objection to one day each side.

05/16/19 (CHAMBERS) STATUS CHECK: STATUS OF FINAL JURY QUESTIONNAIRE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**May 16, 2019**

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A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

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**May 16, 2019      3:00 AM      Status Check      Status Check: Final  
Status of Jury  
Questionnaire**

**HEARD BY:** Israel, Ronald J.

**COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- COURT ORDERED, Matter CONTINUED to the next hearing date; To be heard with the pending Motion to Continue Trial.

05/21/19 9:00 AM STATUS CHECK: FINAL STATUS OF JURY QUESTIONNAIRE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**May 21, 2019**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

**May 21, 2019      9:00 AM      All Pending Motions      All Pending Motions  
(05/20/19)**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:** Kahn, David S.      Attorney  
Prince, Dennis M      Attorney  
Trummell, James A.      Attorney

**JOURNAL ENTRIES**

- DEFENDANT CAPRIATI CONSTRUCTION CORP. INC'S MOTION TO CONTINUE TRIAL...STATUS CHECK: FINAL STATUS OF JURY QUESTIONNAIRE

Colloquy regarding the discovery issues, Plaintiff's proprietary data unable to open, spinal cord stimulator for Plaintiff, crash testing and trial schedule issues. Court directed Mr. Kahn to complete the crash testing within 30 days. Court notes the Defendant is allowed a crash test, but no right to a rebuttal crash test. Mr. Prince noted Dr. Kaplan is now scheduling the spinal cord stimulator, it is part of the life care plan and it did change the damages. Court provided a draft copy of the jury questionnaire to counsel for the parties to review and edit. COURT ORDERED, Trial VACATED and RESET. Plaintiff's Counsel to prepare the trial scheduling order. Upon Court's inquiry, Mr. Kahn stated they did mediation once and will try again. Discovery will not be re-opened.

08/13/19 9:30 AM PRE-TRIAL CONFERENCE

08/27/19 9:30 AM CALENDAR CALL

09/09/19 1:30 PM JURY TRIAL (3-4 WEEKS)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**July 30, 2019**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

**July 30, 2019      9:00 AM      All Pending Motions      All Pending Motions  
(07/30/19)**

**HEARD BY:** Barker, David      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:** Kahn, David S.      Attorney  
Prince, Dennis M      Attorney  
Yahyavi, Bahram      Plaintiff

**JOURNAL ENTRIES**

- PLAINTIFF'S MOTION IN LIMINE NO.20: TO EXCLUDE REFERENCE TO BAHRAM YAHYVI ET. AL V. SERVICE CORPORATION INTERNATIONAL ET.AL....DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE NO.20 TO EXCLUDE REFERENCE TO BAHRAM YAHYAVI ET.AL V. SERVICE CORPORATION INTERNATIONAL ET AL; COUNTER-MOTION FOR OFFSET: Mr. Prince noted the mother's body was buried as requested and that case was resolved and Mr. Prince requested any reference to this be excluded. Mr. Kahn noted the Plaintiff is claiming depression, sleeplessness and emotional distress and some claims could be off set. Further arguments by Counsel. Court finds prior case is not relevant and COURT ORDERED, Motion In Limine 20, GRANTED and Counter-Motion for Offset, DENIED.

MOTIONIN LIMINE NO.21 TO EXCLUDE ARGUMENT THAT BAHRAM YAHYAVI LIED TO IRA SPECTOR CONCERNING ARM PARALYSIS AND FUTURE SURGERY: Arguments by Counsel. Colloquy regarding the Plaintiff's statement. Court finds this is an issue for the Jury and ORDERED, Motion In Limine 21, DENIED.



Colloquy regarding deposition allowed by the Court. Mr. Kahn to confer with Mr. Prince and work it out.

Court directed Mr. Prince to prepare the order.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**August 13, 2019**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

**August 13, 2019      9:30 AM      Pre Trial Conference**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:**      Kahn, David S.      Attorney  
Prince, Dennis M      Attorney  
Verde, Brandon C.      Attorney

**JOURNAL ENTRIES**

- Court noted this trial will be set in this trial stack. Mr. Prince estimated 3 to 4 trial weeks. Mr. Prince noted the primary injury is the spine and stated they would be withdrawing the right knee injury. Upon Court's inquiry, Mr. Prince further noted he has a signed order regarding the Jury Questionnaire and other orders. Court directed Counsel to leave the orders for Court to review. Counsel agreed to start trial on 09/09/19. Trial to be confirmed at calendar call.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**August 27, 2019**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

**August 27, 2019      9:30 AM      All Pending Motions      All Pending Motions  
(08/27/19)**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:** Kahn, David S.      Attorney  
Prince, Dennis M      Attorney  
Severino, Mark C      Attorney  
Verde, Brandon C.      Attorney

**JOURNAL ENTRIES**

- PLAINTIFF'S MOTION TO PRE-INSTRUCT THE JURY: Arguments by Counsel. Colloquy regarding the workman s compensation instruction applies. Mr. Kahn objected and noted in the beginning of trial the jury would hear of insurance and administrators and requested it be at the end of trial. Court stated findings and noted there is new legislation and COURT ORDERED, Motion to Pre-Instruct the Jury, GRANTED. Court directed Counsel to meet and confer on Friday and if counsel does not agree they are to submit their objections to chambers Monday.

CALENDAR CALL: Counsel announced ready and estimated 3 weeks. Court directed Counsel to appear at 11:30 am and the Jury will be ready at 1:15 PM.

09/09/19 11:30 AM JURY TRIAL: 11:30 AM- COUNSEL PRESENT // 1:15 PM- JURY PRESENT



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**September 10, 2019**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

**September 10, 2019      10:00 AM      Jury Trial      Jury Trial (3-4 weeks)**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Brown, Mark James	Attorney
	Kahn, David S.	Attorney
	Prince, Dennis M	Attorney
	Severino, Mark C	Attorney
	Strong, Kevin T.	Attorney
	Yahyavi, Bahram	Plaintiff

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Mr. Kahn objected the reports from Dr. Tung's regarding opinions of the Southwest Medical Records. Mr. Kahn further objected to Mr. Prince stating the specific identifications of the experts when they inform the prospective jury all the names of experts, parties and counsel. Mr. Prince requested to be allowed to say their medical specialty. Court agreed with Mr. Kahn and directed Mr. Prince to only state the names of the doctors and not their specialty. Mr. Kahn noted Dr. Clauretie had a new opinion and the damages are changing, the expert should have raised this in his report a month ago. Mr. Prince noted the Plaintiff filed vocational disability and there are different issues. Court noted it would need to read the reports. Colloquy regarding jury schedules.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire continued. (1st & 2nd Jury Lists).

Evening recess.

09/11/19 1:00 PM JURY TRIAL



PROSPECTIVE JURY PANEL PRESENT: Voir Dire continued.

Evening recess.

09/12/19 9:00 AM JURY TRIAL



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**September 12, 2019**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

**September 12, 2019    9:00 AM                      Jury Trial                      Jury Trial (3-4 weeks)**

**HEARD BY:** Israel, Ronald J.                      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Brown, Mark James	Attorney
	Kahn, David S.	Attorney
	Prince, Dennis M	Attorney
	Severino, Mark C	Attorney
	Strong, Kevin T.	Attorney

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Mr. Kahn referred to NRS 616 C(215)10 and stated the workers compensation payment amounts made to the administrator must be an exhibit before opening statements. Court noted the Defendant's burden to produce it. Colloquy regarding deductions. Mr. Brown noted issues of all the bills coming in. Colloquy regarding the Court's 04/04/19 chamber decision. Later recalled. Court noted he reviewed Dr. Tungs report and he did not change his opinion. Further arguments on the admissibility of records. Court noted Court's decision stands. Upon Mr. Prince requested to pre-admit the Southwest Medical records for opening statements. Mr. Kahn agreed to pre-admit the records however would need to review the medical bills. Individual prospective jurors traversed outside the presence of the prospective panel.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire continued. (1st & 2nd Jury Lists).

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Upon Court's inquiry of the workers compensation payments and amounts admitted, Mr. Kahn noted he had proposed an

amount, with the issue of segregating the knee treatments.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire continued. (1st, 2nd & 3rd Jury Lists). Jury and 3 secret alternates selected and sworn. Jury List FILED IN OPEN COURT.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: EXCLUSIONARY RULE INVOKED. Mr. Prince noted various Plaintiff's exhibits stipulated to admit. Mr. Kahn requested the Complaint and Answer be read to the jury.

Evening recess.

09/13/19 8:30 AM JURY TRIAL



OUTSIDE THE PRESENCE OF THE JURY

CONTINUED TO 9/16/2019 1:00 PM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**September 16, 2019**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

**September 16, 2019    1:00 PM                      Jury Trial                      Jury Trial (3-4 weeks)**

**HEARD BY:** Israel, Ronald J.                      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Brown, Mark James	Attorney
	Kahn, David S.	Attorney
	Prince, Dennis M	Attorney
	Severino, Mark C	Attorney
	Strong, Kevin T.	Attorney

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY: Court noted Juror #10 notified the court regarding sudden illness and was not able to appear. Court excused Juror #10 as the first alternate. Colloquy regarding scheduling issues. Arguments by Counsel regarding expert Kaplan's opinion not in his report. Court noted objections need to be raised at the time of testimony.

JURY PRESENT: Counsel acknowledged the presence of the jury. Testimony and exhibits presented. (See worksheets).

OUTSIDE THE PRESENCE OF THE JURY: Mr. Kahn argued regarding statement of permanent problem not noted in three of the expert reports and further noted the left arm and shoulder issue. Mr. Prince noted Dr. Kaplan is also the treating physician. Court noted the reports talk about neuropraxia. Colloquy regarding concerns of juror #3 being tired.

JURY PRESENT: Counsel acknowledged the presence of the jury. Continued Testimony and exhibits

presented. (See worksheets).

Evening recess.

09/17/19 10:15 AM 10:15 AM JURY TRIAL



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**September 18, 2019**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

**September 18, 2019    1:00 PM                      Jury Trial                      Jury Trial (3-4 weeks)**

**HEARD BY:** Israel, Ronald J.                      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Brown, Mark James	Attorney
	Kahn, David S.	Attorney
	Prince, Dennis M	Attorney
	Severino, Mark C	Attorney
	Strong, Kevin T.	Attorney
	Yahyavi, Bahram	Plaintiff

**JOURNAL ENTRIES**

- Also present Felicia Rieben, Defendant's Corporate representative present.

**OUTSIDE THE PRESENCE OF THE JURY:** Colloquy regarding scheduling issues. Court explained to counsel, a juror requested to end early tomorrow for a doctor appointment. Upon Court's inquiry, Counsel agreed to end early rather than to excuse the juror.

**JURY PRESENT:** Counsel acknowledged the presence of the jury. Court informed the Jury of the Trial schedule. Testimony and exhibits presented. (See worksheets). Conference at the bench.

**OUTSIDE THE PRESENCE OF THE JURY:** Arguments by Counsel. Mr. Kahn stipulated to various exhibits (see worksheets) and the amount within exhibit 84.

**JURY PRESENT:** Counsel acknowledged the presence of the jury. Continued testimony and exhibits



presented. (See worksheets). Conference at the bench.

OUTSIDE THE PRESENCE OF THE JURY: Arguments by Counsel regarding exhibit 92 (bate #354). Counsel agreed to redact the document. Court marked the non-redacted document as a Court exhibit. Court will allow Counsel ask the witness of the surgery that was not done and not approved by workers compensation. Mr. Prince noted the Plaintiff had workers compensation re-opened to get the surgery done. Colloquy regarding if there was pre-approval from workers compensation and if workers compensation paid for that surgery.

JURY PRESENT: Further testimony. (See worksheets).

OUTSIDE THE PRESENCE OF THE JURY: Court noted the amount of billing and amount workers compensation has paid is needed. Mr. Kahn noted there is 6 years. Counsel to work together regarding this issue.

Evening recess.

09/19/19 10:00 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**September 19, 2019**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

**September 19, 2019    9:45 AM                      Jury Trial                      Jury Trial (3-4 weeks)**

**HEARD BY:** Israel, Ronald J.                      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Brown, Mark James	Attorney
	Kahn, David S.	Attorney
	Prince, Dennis M	Attorney
	Severino, Mark C	Attorney
	Strong, Kevin T.	Attorney

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Mr. Kahn noted he would not object to counsel not disclosing power points, However, submitting the power points for Court's exhibits. Exhibit 92 redacted a second time as agreed by counsel. (see worksheets).

JURY PRESENT: Counsel acknowledged the presence of the jury. Court noted the trial schedule. Testimony and exhibits presented. (See worksheets). Conference at the bench.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Court referred to NRS 48.035 and Counsel's argument at the conference at the bench. Court noted, pursuant to NRS 48.035, Counsel cannot publish a deposition or read the deposition of a witness who is not unavailable and further Counsel cannot impeach a witness on another deposition, it would be hearsay.

JURY PRESENT: Further testimony. (See worksheets).

Evening recess.

09/20/19 9:00 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**September 20, 2019**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

**September 20, 2019    9:00 AM                      Jury Trial                      Jury Trial (3-4 weeks)**

**HEARD BY:** Israel, Ronald J.                      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Brown, Mark James	Attorney
	Kahn, David S.	Attorney
	Prince, Dennis M	Attorney
	Severino, Mark C	Attorney
	Strong, Kevin T.	Attorney
	Yahyavi, Bahram	Plaintiff

**JOURNAL ENTRIES**

- Also present Felicia Rieben, a representative for the Defendant present.

**OUTSIDE THE PRESENCE OF THE JURY:** Mr. Prince note the two objections made during cross examination of Dr. Clauretie regarding collateral source and requested a curative instruction to the jury. Arguments by Counsel. Court noted at the time of the objection, Court did strike the question and instructed the jury to disregard the question and answer. Court trailed matter to review the recording. Later recalled. Court noted upon review; the fringe benefits amounts were not mentioned and the Court admonished the jury and therefore, **COURT DENIED**, Plaintiff's request for a curative instruction.

**JURY PRESENT:** Counsel acknowledged the presence of the jury. Testimony and exhibits presented. (See worksheets)

**OUTSIDE THE PRESENCE OF THE JURY:** Mr. Kahn noted Plaintiff's demonstrative was not

provided as an exhibit and was used and requested to mark it as an exhibit. Mr. Prince stated the demonstrative documents shown to the jury was in his opening power-point. Colloquy regarding having to take Defendant's witness out-of-order due to scheduling issues.

JURY PRESENT: Continued testimony. (See worksheets).

OUTSIDE THE PRESENCE OF THE JURY: Arguments by Counsel regarding Dr. Tung's testimony and report. Mr. Kahn noted the Plaintiff's did not take Dr. Tung's deposition. Upon Court's inquiry, Dr. Tung did state the films he had seen and noted the dates he had received and reviewed them. Mr. Prince noted Dr. Tung did not state this in his report that he reviewed the films. Dr. Tung noted upon his review of films and imaging reports, his findings of the films is implied, you have to see the films when writing findings. Arguments by Counsel. Dr. Tung noted he did agree with the imaging reports. Court noted Dr. Tung agrees with the imaging reports.

JURY PRESENT: Continued testimony. (See worksheets).

OUTSIDE THE PRESENCE OF THE JURY: Mr. Kahn argued noted the Plaintiff's experts opined on the Southwest Medical records after seeing the records 1 day prior to testimony and not listed in the reports; and to prevent Deft's only expert not to opine on these records would be prejudicial and requested the Court reconsider Court's recent decision. Mr. Prince argued regarding stating chronic neck pain/chronic symptomatic before the accident. Mr. Kahn noted pre-existing is noted in the records. Further arguments by Counsel. Court will allow the expert to be allowed to testify to what is noted in his report.

JURY PRESENT: Continued testimony. (See worksheets).

OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding trial scheduling.

Evening recess.

09/23/19 1:00 PM JURY TRIAL



reports as a courts exhibit (See worksheets). Mr. Prince requested the jury be admonished. Court noted it would sustain the objection and strike the question and answer.

JURY PRESENT: Court instructed the Jury, striking the last question and answer. Continued testimony. (See worksheets).

Evening recess.

09/24/19 11:00 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**September 24, 2019**

A-15-718689-C      Bahram Yahyavi, Plaintiff(s)  
vs.  
Capriati Construction Corp Inc, Defendant(s)

**September 24, 2019      11:00 AM      Jury Trial      Jury Trial (3-4 weeks)**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Brown, Mark James	Attorney
	Kahn, David S.	Attorney
	Prince, Dennis M	Attorney
	Severino, Mark C	Attorney
	Strong, Kevin T.	Attorney
	Yahyavi, Bahram	Plaintiff

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY: Mr. Kahn asked if Dr. Tung s reports be marked as Court's exhibits. COURT SO ORDERED, See Exhibit List (See worksheets).

JURY PRESENT: Counsel acknowledged the presence of the jury. Testimony and exhibits presented. (See worksheets). Conference at the bench.

OUTSIDE THE PRESENCE OF THE JURY: Mr. Kahn objected to the Plaintiff's demonstrative exhibits being shown to the jury as it was beyond the scope of income. Arguments by counsel. Court over-ruled objection and ORDERED, the demonstrative exhibits be marked as a Courts exhibits. (See worksheets). Other arguments by counsel regarding publishing the report to the jury. Court sustained Mr. Kahn s objection and Mr. Prince was directed not to show the report to the jury, however he could refer to the report.



JURY PRESENT Continued testimony (See worksheets). Conference at the bench regarding Counsel's objections. Continued testimony.

OUTSIDE THE PRESENCE OF THE JURY: Mr. Prince argued noting the knee claim was being removed, However Mr. Kahn tried to back door this. Mr. Prince further noted the Social Security Records are not in. Mr. Kahn agreed the knee claim was out and explained the reasons, including the knee, why the Plaintiff had taken so much time off work. Mr. Prince noted there was nothing in the records regarding his knee. Court noted the knee is unrelated to the claims. Further arguments by Mr. Kahn and requested to make an offer of proof tomorrow with the documents and dates. Court will allow the offer of proof.

Evening recess.

09/25/19 1:00 PM JURY TRIAL