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20 RIVES, M.D. and LAPAROSCOPIC
21 SURGERY OF NEVADA, LLC

22 DISTRICT COURT
23 CLARK COUNTY, NEVADA

24 TITINA FARRIS and PATRICK FARRIS,) CASE NO. A-16-739464-C
25) DEPT. NO. 31
26 Plaintiffs,)
vs.) SUPPLEMENTAL AND/OR AMENDED
BARRY RIVES, M.D.; LAPAROSCOPIC) NOTICE OF APPEAL
SURGERY OF NEVADA, LLC, et al.,)
Defendants.)

27 NOTICE IS HEREBY GIVEN that Defendants Barry J. Rives, M.D. and Laparoscopic
28 Surgery of Nevada, LLC appeal to the Nevada Supreme Court from the Judgment on
29 Verdict, entered on November 14, 2019 (Exhibit 1), from the Order on Plaintiffs' Motion
30 for Fees and Costs and Defendants' Motion to Retax and Settle Plaintiffs' Costs, entered

1 on March 30, 2020 (Exhibit 2), and from all other orders made final and appealable by the
2 foregoing.

3 This notice is intended to supplement and/or amend the appeal already on file in
4 this case, presently docketed in the Nevada Supreme Court as No. 80271.

5 Dated: April 13, 2020

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7
8 By /s/ Thomas J. Doyle
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16 NEVADA, LLC
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EXHIBIT 1



JGJV

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10 Attorneys for Plaintiffs

11 TITINA FARRIS and PATRICK FARRIS

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 TITINA FARRIS and PATRICK FARRIS,

15 Plaintiffs,

16 vs.

17 BARRY RIVES, M.D., LAPAROSCOPIC
18 SURGERY OF NEVADA LLC; DOES I-V,
inclusive; and ROE CORPORATIONS I-V,
inclusive,

19 Defendants.

Case No.: A-16-739464-C

Dept. No.: 31

JUDGMENT ON VERDICT

21
22 The above-entitled matter having come on for trial by jury on October 14, 2019, before the
23 Honorable Joanna S. Kishner, District Court Judge, presiding. Plaintiffs TITINA FARRIS and
24 PATRICK FARRIS ("Plaintiffs"), appeared in person with their counsel of record, KIMBALL
25 JONES, ESQ. and JACOB LEAVITT, ESQ., of the law firm of Bighorn Law, and GEORGE
26 HAND, ESQ., of the law firm of Hand & Sullivan, LLC. Defendants BARRY J. RIVES, M.D. and
27 LAPAROSCOPIC SURGERY OF NEVADA, LLC ("Defendants") appeared by and through their
28 counsel of record, THOMAS DOYLE, ESQ., of the law firm of Schuering, Zimmerman & Doyle,

1 LLP.

2 Testimony was taken, evidence was offered, introduced and admitted. Counsel argued the
3 merits of their cases. The jury rendered a verdict in favor of Plaintiffs and against the Defendants as
4 to claims concerning medical malpractice in the following amounts:

- 5 1. \$1,063,006.94 for TITINA FARRIS' past medical and related expenses;
- 6 2. \$4,663,473.00 for TITINA FARRIS' future medical and related expenses;
- 7 3. \$1,571,000.00 for TITINA FARRIS' past physical and mental pain, suffering,
8 anguish, disability and loss of enjoyment of life;
- 9 4. \$4,786,000.00 for TITINA FARRIS' future physical and mental pain, suffering,
10 anguish, disability and loss of enjoyment of life;
- 11 5. \$821,000.00 for PATRICK' past loss of companionship, society, comfort and
12 consortium; and
- 13 6. \$736,000.00 for PATRICK' future loss of companionship, society, comfort and
14 consortium.

15 The Defendants requested that the jury be polled, and the Court found that seven (7) out of
16 the eight (8) jurors were in agreement with the verdict.

17 NOW, THEREFORE, judgment upon the verdict is hereby entered in favor of the Plaintiffs
18 and against the Defendants as follows:

19 IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs shall have and recover
20 against Defendants non-economic damages of \$350,000.00 pursuant to NRS 41A.035, economic
21 damages of \$5,726,479.94, and the pre-judgment interest of \$291,325.58, calculated as follows:

- 22 1. \$1,063,006.94 for TITINA FARRIS' past medical and related expenses, plus
23 prejudgment interest in the amount of \$258,402.69 (interest calculated at 5.50%
24 prime plus 2% for a total of 7.50% from date of service August 16, 2016 to
25 November 12, 2019, for a total of 1,183 days = \$218.43 per day) pursuant to NRS
26 17.130 for a total judgment of \$1,321,409.63; with daily post-judgment interest
accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained
by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be
adjusted accordingly on each January 1 and July 1 thereafter until the judgment is
satisfied;

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- 1 2. \$4,663,473.00 for TITINA FARRIS' future medical and related expenses, plus post-
2 judgment interest accruing at \$958.25 per day (interest calculated at 5.50% prime
3 plus 2% for a total of 7.50%) pursuant to NRS 17.130 from the time of entry of the
4 judgment with daily post-judgment interest accruing at a rate equal to the prime rate
5 at the largest bank in Nevada as ascertained by the Commissioner of Financial
6 Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1
7 and July 1 thereafter until the judgment is satisfied;
- 8 3. \$43,225.00 for TITINA FARRIS' past physical and mental pain, suffering, anguish,
9 disability and loss of enjoyment of life, plus prejudgment interest in the amount of
10 \$10,505.04 (interest calculated at 5.50% prime plus 2% for a total of 7.50% from
11 date of service August 16, 2016 to November 12, 2019, for a total of 1,183 days =
12 \$8.88 per day) pursuant to NRS 17.130 for a total judgment of \$53,730.04; with daily
13 post-judgment interest accruing at a rate equal to the prime rate at the largest bank in
14 Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent.
15 The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until
16 the judgment is satisfied;
- 17 4. \$131,775.00 for TITINA FARRIS' future physical and mental pain, suffering,
18 anguish, disability and loss of enjoyment of life, plus post-judgment interest accruing
19 at \$27.07 per day (interest calculated at 5.50% prime plus 2% for a total of 7.50%)
20 pursuant to NRS 17.130 from the time of entry of the judgment with daily post-
21 judgment interest accruing at a rate equal to the prime rate at the largest bank in
22 Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent.
23 The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until
24 the judgment is satisfied;
- 25 5. \$92,225.00 for PATRICK FARRIS' past loss of companionship, society, comfort and
26 consortium, plus prejudgment interest in the amount of \$22,417.85 (interest
27 calculated at 5.50% prime plus 2% for a total of 7.50% from date of service August
28 16, 2016 to November 12, 2019, for a total of 1,183 days = \$18.95 per day) pursuant
to NRS 17.130 for a total judgment of \$114,642.85; with daily post-judgment interest
accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained
by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be
adjusted accordingly on each January 1 and July 1 thereafter until the judgment is
satisfied; and
6. \$82,775.00 for PATRICK FARRIS' future loss of companionship, society, comfort
and consortium, plus post-judgment interest accruing at \$17.00 per day (interest
calculated at 5.50% prime plus 2% for a total of 7.50%) pursuant to NRS 17.130
from the time of entry of the judgment with daily post-judgment interest accruing at a
rate equal to the prime rate at the largest bank in Nevada as ascertained by the
Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted
accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

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1 IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs TITINA FARRIS and
2 PATRICK FARRIS has judgment against Defendants BARRY RIVES, M.D. and
3 LAPAROSCOPIC SURGERY OF NEVADA LLC as follows:

4 Principal \$ 6,076,479.94
5 Pre-Judgment Interest \$ 291,325.58 (1,183 days @ 7.50%)
6 **TOTAL JUDGMENT of: \$ 6,367,805.52**

7 Pursuant to NRS 17.130, the judgment shall continue to accrue daily post-judgment interest
8 at \$1,248.58 per day (interest calculated at 5.50% prime plus 2% for a total of 7.50%); daily post-
9 judgment interest shall accrue at a rate equal to the prime rate at the largest bank in Nevada as
10 ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted
11 accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

12 SO ORDERED this 12 day of November, 2019.

13
14  JOANNA S. KISHNER
15 HONORABLE JOANNA S. KISHNER
16 District Court Judge

17 Respectfully Submitted by:

Approved as to form and content:

18 Dated this 11th day of November, 2019.

Dated this 11th day of November, 2019.

19
20 **BIGHORN LAW**

SCHUERING ZIMMERMAN & DOYLE, LLP

21 By: George F. Hand (8483)

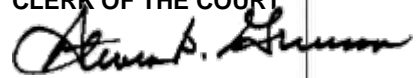
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EXHIBIT 2



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13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 TITINA FARRIS and PATRICK FARRIS,
16 Plaintiffs,
17 vs.

Case No.: A-16-739464-C
Dept. No.: 31

18 BARRY RIVES, M.D.; LAPAROSCOPIC
19 SURGERY OF NEVADA LLC; DOES I-V,
inclusive; and ROE CORPORATIONS I-V,
20 inclusive,
21 Defendants.

**ORDER ON PLAINTIFFS' MOTION
FOR FEES AND COSTS AND
DEFENDANTS' MOTION TO RE-
TAX AND SETTLE PLAINTIFFS'
COSTS**

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23 Plaintiffs' Motion for Fees and Costs having come on for hearing on the 7th day of January,
24 2020, at 10:00 a.m., KIMBALL JONES, ESQ., with the Law Offices of **BIGHORN LAW**, and
25 GEORGE F. HAND, ESQ. with the Law Offices of **HAND & SULLIVAN, LLC**, appearing on
26 behalf of Plaintiffs, and THOMAS J. DOYLE, ESQ., with the Law Offices of **SCHUERING**
27 **ZIMMERMAN & DOYLE, LLP**, appearing on behalf of Defendants, and Defendants' Motion to
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2 Re-Tax and Settle Plaintiffs' Costs having come on for hearing on the 7th day of January, 2020, at
3 10:00 a.m. and February 11, 2020 at 9:30 a.m. with the Honorable Court having reviewed the
4 pleadings and papers on file herein and with hearing the arguments of counsel:

5 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

6 ***Plaintiffs' Request for Attorneys' Fees***

7 The Court finds that attorneys' fees are properly awarded to Plaintiffs in this matter for the
8 reasons outlined in Plaintiffs' Motion, Reply, and supporting affidavits.

9 Under *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983), *Yamaha Motor Co., U.S.A. v.*
10 *Arnoult*, 114 Nev. 233, 955 P.2d 661 (1998), and *Brunzell v. Golden Gate National Bank*, 85 Nev.
11 345, 455 P.2d 31 (1969), the Court considers the following factors in making an award of attorney
12 fees to Plaintiffs based upon an offer of judgment: According to *Beattie*, the Court is required to
13 consider: (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants'
14 offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the
15 plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith;
16 and (4) whether the fees sought by the offeror are reasonable and justified in amount. *Id.*, 99 Nev.
17 at 588–589, 668 P.2d at 274.

18 Since Plaintiffs are the prevailing offerors, however, the analysis of the *Beattie* factors is
19 reversed, such that the Court considers: (1) whether the defendant's claim or defense was brought
20 in good faith; (2) whether the plaintiff's offer of judgment was reasonable and in good faith in both
21 its timing and amount; (3) whether the defendant's decision to reject the offer and proceed to trial
22 was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are
23 reasonable and justified in amount. See *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252,
24 955 P.2d 661, 673 (1998).

25 With regard to the reasonableness of requested attorneys' fees, the Court considers the
26 *Brunzell* factors: (1) the qualities of the advocate: his ability, his training, education, experience,
27 professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy,
28 its importance, time and skill required, the responsibility imposed and the prominence and

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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; and (4) the result: whether the attorney was successful and what benefits were derived. See *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). If the record reflects that the court properly considered these factors, there is no abuse of discretion. See *Wynn v. Smith*, 117 Nev. 6, 13,16 P.3d 424, 428-429 (2001); *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). Further, the Court retains the right to determine a reasonable amount of attorneys' fees. *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864-865, 124 P.3d 530, 548-549 (2005).

Beattie/Yahama Factors

1. Whether the Defendants' Defenses Were Brought in Good Faith.

Defendants' defenses, and refusal to pay the Offer of Judgment, were not brought in good faith based on the facts of this case. It was known by Defendants before the trial commenced and at the time of the NRS 41A.081 settlement conference that there were serious issues with the credibility of ~~counsel and Defendant Rives~~ ^{including} ~~concerning~~ ^{positions taken in court and the issue of} the *Center v. Rives* case. In fact, before the trial commenced, there were pending NRCP 37 motions before this Court. Despite the demonstrated misconduct by Defendants in discovery and depositions, Defendants still elected to risk going to trial. In fact, ^{there was a pending issue of} it was a possibility that terminating sanctions ~~may issue~~ ^{as provided through evidence to the court, Defendants could} be based on the aforementioned conduct by Defendants. Moreover, given Defendants' (and Counsel's) knowledge of this misconduct, ~~they were also obliged to consider and calculate the impact of the discovery and~~ ^{as provided through evidence to the court, Defendants could} likely consequences of their misconduct.

Further, there were serious problems with Defendants' expert opinions. The defense liability expert, Dr. Brian Juell, opined at trial that the use of a LigaSure was relatively contraindicated and that it should not be used in the setting of the subject surgery if there was any other alternative, such as cold scissors. Then, it was established that Defendant Rives actually had cold scissors, but used the LigaSure anyway. The defense should have been aware of this weakness in their own case when they rejected Plaintiffs' offer.

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2 Defendants also tried to put forth a defense that the sepsis of Plaintiff Titina Farris
3 originated from "pulmonary aspiration syndrome." This defense was put forward, despite no other
4 physician, treating Titina Farris during her hospitalization, ever diagnosing her with this condition.
5 ~~This ^{the} defense was clearly attempted to misdirect attention from Defendant Rives' failure to~~
6 ~~treat the sepsis originating from the holes in the bowel that he caused and failed to adequately~~
7 ~~repair.~~ Dr. Juell still tried to put forth this theory before the jury, even though it was shown at trial
8 that he opined in his expert reports ^{differently including the} that Titina Farris had pulmonary aspiration syndrome without
9 first reviewing the relevant films. Thus, this first *Beattie* factor weighs in Plaintiffs' favor.

Defendants' were aware of the weakness and positions of their experts at the time of the offer.

10 **2. Whether the Plaintiffs' Offer of Judgment Was Reasonable and in Good Faith in Both Its Timing and Amount.**

11 Plaintiffs' Offer of Judgment was reasonable and was in good faith in timing and amount,
12 and Defendants' decision to reject the offer was grossly unreasonable. Plaintiffs served their offer
13 of judgment for \$1,000,000 on June 5, 2019. At the time, expert reports had been exchanged, key
14 witnesses were deposed, and medical records had been exchanged. Thus, Defendants were aware
15 of all the supporting information for Plaintiffs' Offer of Judgment, including Plaintiffs' injuries,
16 related medical specials, and pain and suffering. The amount of Plaintiffs' Offer of Judgment was
17 less than Plaintiffs' disclosed past medical expenses ^{which was an additional factor showing it was} and was, therefore, reasonable and in good
18 faith. This second *Beattie* factor weighs in Plaintiffs' favor. _{Walden}

19
20 **3. Whether the Defendants' Decision to Reject the Offer and Proceed to Trial Was Grossly Unreasonable or in Bad Faith.**

21 In light of the severity of Plaintiffs' injuries and damages, as well as a very strong case of
22 liability, presented at the time of their Offer of Judgment, it was grossly unreasonable and in bad
23 faith for Defendants to reject the \$1,000,000 offer and proceed to trial. At the time of Plaintiffs'
24 Offer of Judgment, they had already disclosed over \$4,000,000 in special damages. ~~Defendants~~
25 ~~simply undervalued this case, as evidenced by their zero offer of judgment.~~ The Court weighs this
26 third *Beattie* factor in favor of Plaintiffs, despite Defendants' argument that its experts had
27 differing opinions.
28

4. Whether the Fees Sought by the Offeror are Reasonable and Justified in Amount.

The amount of attorney's fees requested by Plaintiffs are reasonable and justified in amount based on the outcome at trial. Plaintiffs contracted to pay an attorney's fees in the amount of 40% of the gross recovery. That amount totals \$2,547,122.21 (40% of \$6,367,805.52). Even if attorneys' fees are calculated under NRS 7.095 on \$6,367,805.52, that amount is \$1,026,835.83.

Although the Court of Appeals has approved a determination of attorney fees based upon a contingency fee agreement, this Court determines that NRS 7.095 is controlling in this matter. See *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. Adv. Op. 7, 429 P.3d 664, 671-672 (Nev. App. 2018). Thus, the Court awards Plaintiffs the sum of \$821,468.66 in attorney fees, as further elaborated based upon the *Brunzell* factors.

Brunzell Factors

1. Qualities of the Advocates.

Mr. Jones is a managing partner with the Law Offices of BIGHORN LAW. He graduated Magna Cum Laude from Brigham Young University-Idaho in 2005 and graduated as the top student in economics that year. He graduated from Brigham Young University in 2008 and was awarded a Dean's Scholarship for academic merit all three years of law school. Mr. Jones was first admitted to practice law in Nevada in 2013, scoring in the 98th percentile nationally on the MBE. He has also passed the Idaho Bar Exam. Mr. Jones has prevailed in more than 95 percent of the arbitrations and trials he has litigated. Further, he has recovered more than \$30,000,000 for clients through judgments and settlements in the last six years. Mr. Jones' usual and customary fee on an hourly basis is \$500.00 an hour, which is at or below average for attorneys of his skill and experience who handle similar matters in Clark County, Nevada.

Likewise, Mr. Leavitt is a partner with Bighorn Law. He has been licensed to practice law since 2012 and has a billing rate of \$500.00 per hour, a rate at or below average for attorneys of his skill and experience who handle similar matters in Clark County, Nevada. Mr. Leavitt graduated Cum Laude from the University of Las Vegas, Nevada in 2004. He attended Cooley Law School

That Contingency Amount is standard in the community and that Reasonable

Give the Agent provided, the NRS 7.095 is controlling in this matter.

while fees were provided pursuant to NRS 7.095 he asserted that his

He asserted that his rate is at or below average for attorneys of his skill and experience who handle similar matters in Clark County, Nevada.

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on scholarship and graduated in the top 13% of his class. Mr. Leavitt completed an externship under retired Nevada Supreme Court Justice Michael Cherry and is admitted to practice in the Ninth Circuit Court of Appeals. Mr. Leavitt has conducted numerous trials and administrative proceedings.

Mr. Hand is a partner of Hand & Sullivan, LLC. He is licensed to practice law in Nevada and New York. He has been licensed to practice law in Nevada for sixteen years. Prior to that, he was licensed as an attorney in New York where he practiced in areas of personal injury, medical malpractice, and insurance defense litigation. He has conducted more than 125 jury and bench trials. Mr. Hand also served as a Deputy County Attorney for Nassau County, New York. Mr. Hand's billing rate of \$500.00 per hour ^{is} at or below average for attorneys of his skill and experience who handle similar matters in Clark County, Nevada.

and he too asserted that it is

Additionally, the Court found this factor to be considered by the Court and was not contested by Defendants in written opposition or in argument.

Therefore, the qualities of the advocates who performed work in this matter are proven. Further, the market rate of \$500.00 per hour ^{give the was no objection to the rate and the award was paid to} is appropriate under *Marrocco v. Hill*, 291 F.R.D. 586 (D. Nev. 2013), for this type of case. ^{could be}

NAS 71055

2. Character of the Work to be Done.

Plaintiffs' Counsel was engaged in proving a complicated and complex Professional Negligence matter of medical malpractice, an area of law few practitioners of law engage in due to the complexity and stringent laws. In this case the legal work required retaining and questioning numerous experts and dealing with nuanced medical topics which not only increased the actual cost of litigating, but also consumed many hours of research and preparation. The nature of the work was time-consuming, complicated and difficult due to the nature of the area of law and medicine combined.

3. Work Actually Performed by the Lawyer.

Plaintiffs' Counsel engaged in multitudinous depositions, written discovery, and this work culminated in a three-week trial on the matter. Plaintiffs' Counsel worked extensively for the

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entirety of trial and demonstrated substantial skill in the work performed. Coupled with the second factor, the character of the work, the work performed included long hours of trial and the long hours of preparation during the hours of the day while not in trial. Not only did the work require preparation for the substance of the trial, yet the numerous issues Defendants raised requiring many hearings outside the presence of the jury.

Albeit there are three attorneys on this matter, the substantive matter of the trial coupled with the many collateral issues required the presence and work of all in order to effectively try the case.

4. Result—whether the Attorney was Successful and what Benefits were Derived.

Plaintiffs were successful in their attempts before this Court. The jury returned a verdict of more than \$13 million, and the Court Awarded a Judgment on the Verdict in favor of Plaintiffs and against Defendants in the amount of \$6,367,805.52. Plaintiffs’ Counsel was able to procure a highly favorable outcome for their clients.

Therefore, the Court found Attorneys’ Fees in the amount of \$821,468.66 are properly granted to Plaintiffs in this matter, pursuant to *Brunzell, Beattie, O’Connell*, NRCP 68, and NRS 7.095.

It is undisputed that Plaintiffs served an offer of judgment for \$1,000,000 under NRCP 68 and that Defendants chose to let that offer expire. The offer was made several months after expert witness disclosures. It is undisputed that at the time of the offer Plaintiffs had already disclosed more than \$4,000,000 in special damages. Moreover, Plaintiffs’ experts had already outlined the breaches in the standard of care that the jury ultimately agreed were committed by Defendants. Ultimately, the Court finds that Defendants’ decision to reject the offer was unreasonable. Under NRCP 68, attorney fees are properly awarded for Plaintiffs and against Defendants.

NRCP 68 (f) states: Penalties for Rejection of Offer

- (1) In General. If the offeree rejects an offer and fails to obtain a more favorable judgment:
 - (A) the offeree cannot recover any costs, expenses, or attorney fees and may not recover interest for the period after the service of the offer and before the judgment; and

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2 (B) the offeree must pay the offeror's post-offer costs and expenses, including a reasonable
3 sum to cover any expenses incurred by the offeror for each expert witness whose services were
4 reasonably necessary to prepare for and conduct the trial of the case, applicable interest on the
5 judgment from the time of the offer to the time of entry of the judgment and reasonable attorney
6 fees, if any be allowed, actually incurred by the offeror from the time of the offer.

7 Plaintiffs served an Offer of Judgment on June 5, 2019. Judgment in the amount of
8 \$6,367,805.52 was entered on November 14, 2019. Pursuant to NRCP 68(f)(1)(B) Defendants
9 must pay applicable interest on the judgment from the time of the offer to the time of entry of the
10 judgment in the amount of \$202,269.96 (interest calculated at 5.50% prime plus 2% for a total of
11 7.5% from the date of the Offer of Judgment, June 5, 2019 to Entry of Judgment on November 14,
12 2019, for a total of 162 days = \$1,248.58 per day) pursuant to NRS 17.130.

13 The Court then needs to analyze the attorney fees to be awarded. *O'Connell v. Wynn Las*
14 *Vegas, LLC*, 134 Nev. Adv. Op. 7, 429 P. 3d 664 (Nev. App. 2018) demonstrates that attorney fees
15 are appropriately awarded based on contingency fee agreements, which is the nature of the
16 agreement between Plaintiffs and Counsel in this matter. Given the \$6,565,830.84 judgment in this
17 matter, Plaintiffs' attorney fees would be approximately \$1,026,835.82 under the sliding scale of
18 NRS 7.095. However, at the time of the offer of judgment in this matter, approximately twenty
19 percent (20%) of the total attorney work had already been performed. As a result, the Court
20 determined that the fee should be reduced by an additional 20% and that eighty percent (80%) of
21 the projected contingent fee under the NRS 7.095 sliding scale, or \$821,468.66, should be awarded.
22 The Court further analyzed whether this number was unreasonable, given the hours likely expended
23 by Plaintiffs' attorneys in this case multiplied by their reasonable billing rates. The Court
24 determined that \$821,468.66 was not unreasonable and was likely comparable to the amount that
25 would be awarded had Plaintiffs' attorneys billed their time on an hourly basis. As NRS 7.095
26 already has a built-in reduction, and given the Court's decision to further reduce the fee to only the
27 percentage of work done after the offer, no further reduction is warranted. Plaintiffs are awarded
28 \$821,468.66 in attorney fees.

Plaintiffs' Request for Additional Attorneys' Fees as a Sanction

The Court did find there was significant inappropriate conducted by Defendants and Defense Counsel. This misconduct was the basis of numerous hearings and was an ongoing problem during discovery and through the end of trial. The Court found this to be a substantive and compelling reason to consider striking Defendants' Answer and that the misconduct was certainly a proper basis to award substantial attorney fees to Plaintiffs and against Defendants. Sanctionable conduct in this case included, but is not limited to the following: (1) Defendants and their Counsel intentionally withholding evidence during discovery; (2) Defendants omitting relevant evidence that had been asked for regarding his medical malpractice history; (3) Defendant blurting out that Plaintiff's bills were paid through medical insurance to the jury; (4) Defendants' Counsel signing affidavits containing verifiably false information for procedural reasons prior to trial; (5) Defendants improperly filing numerous "offers of proof" after the close of evidence and without leave of the Court; and (6) Defendants violating Court orders during the course of trial on numerous occasions, including during the cross-examination of Dr. Michael Hurwitz. *See* NRCP 37; *Emerson v. Eighth Judicial Dist. Court*, 127 Nev. 672, 263 P.3d 224 (2011).

Nevertheless, the Court did not find it appropriate to award additional attorneys' fees above the \$821,468.66 already awarded. However, the Court did find that independent of *Brunzell, Beattie, O'Connell*, NRCP 68 and NRS 7.095, \$821,468.66 in attorney fees would be properly awarded to Plaintiffs as a sanction for inappropriate conduct by Defendants and Defense Counsel in this matter. Thus, the total award of \$821,468.66 in Attorneys' Fees is granted, with these two independent grounds supporting the Court's finding for this award: (1) the analysis under *Brunzell, Beattie, O'Connell*, NRCP 68 and NRS 7.095 and (2) the misconduct of Defendants and their counsel.

THEREFORE, IT IS ORDERED that Plaintiffs' Request for Attorneys' Fees is GRANTED in the amount of Eight Hundred Twenty-One Thousand Four Hundred Sixty-Eight Dollars and Sixty-Six Cents (\$821,468.66).

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IT IS FURTHER ORDERED that Plaintiffs’ Request for Costs and Defendants’ Motion to Re-Tax such Costs is CONTINUED to February 11, 2020 at 9:30 a.m., for Supplemental Pleadings to be filed.

IT IS FURTHER ORDERED that the Supplemental Briefing Schedule SET as follows: Plaintiffs’ Supplemental Opposition due January 21, 2020 and Defendants’ Supplemental Reply due February 3, 2020.

Plaintiffs’ Costs and Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs

On November 19, 2019, Plaintiffs filed a Verified Memorandum of Costs and Disbursements in the total amount of \$153,118.26. On November 22, 2019, Defendants filed a Motion to Re-Tax and Settle Plaintiffs’ Costs. On January 21, 2020 Plaintiffs filed a Supplemental Verified Memorandum of Costs and Disbursements in the total amount of \$153,118.26. On January 21, 2020, Plaintiffs filed a Supplemental Opposition to Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs. On February 3, 2020 Defendants filed a Supplemental Reply to Plaintiffs’ Opposition to Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs. The matter having come on for hearing on February 11, 2020 at 9:30 a.m., the Court makes the following Findings of Facts and Conclusions of Law:

NRS 18.005(5) states, “Reasonable fees of not more than five expert witnesses in an amount of not more than \$1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert’s testimony were of such necessity as to require the larger fee.”

Plaintiffs’ have submitted fees paid to experts as follows:

- | | | |
|----|--|--------------|
| 1. | Michael Hurwitz, M.D. (surgeon) | \$ 11,000.00 |
| 2. | Justin Willer, M.D. (neurologist) | \$ 17,245.00 |
| 3. | Alex Barchuck, M.D. (physical medicine
and rehabilitaton) | \$ 26,120.00 |
| 4. | Dawn Cook, R.N. (life care planning) | \$ 23,960.03 |
| 5. | Alan Stein, M.D. (infectious diseases) | \$ 19,710.00 |

- 6. Daniel Feingold, M.D. (surgeon) \$ 2,000.00
- 7. Terence Clauretje, Ph.D. (economist) \$ 3,500.00

The Court has analyzed the factors in *Frazier v Drake*, 131 Nev. 632 (2015) and has determined that the circumstances surrounding certain of the expert’s testimony were necessary to require larger fees than \$1,500.00 per expert. The Court is only considering the fees of experts Hurwitz, Willer, Barchuk, Cook, and Stein as NRS 18.005(5) limits recoverable expert fees to five experts. This was a medical malpractice case that took approximately three weeks to try. There were complex medical issues as to both the standard of care, proximate cause and damages that required medical expert review and testimony. Plaintiffs’ experts Hurwitz, Willer, Barchuk, and Cook testified at trial. Plaintiffs’ infectious disease expert Alan Stein, M.D. from New York was present in Las Vegas prepared to testify. Dr. Stein did not testify at the trial. The opinions of Plaintiffs’ experts Hurwitz, Willer, Barchuk, Cook, and Stein aided the jury in deciding the case as each area of medical specialty in that each area of medical specialty was at issue during the trial. Plaintiffs’ experts Hurwitz, Willer, Barchuk, Cook, and Stein were not repetitive of each other as they each addressed different medical issues and were of different specialties. The extent and nature of the work performed by the experts was of high quality. The various experts’ education and training was significant and extensive. Experts Hurwitz, Willer, Barchuk, and Cook spent time preparing and testifying at trial. Experts Hurwitz, Willer, Barchuk, Cook, and Stein were also deposed in the case and prepared expert reports. The fees charged by these experts are similar to the experts in other malpractice cases in this venue. Dawn Cook was a local expert. Dr. Barchuk traveled from the Bay area. Dr. Willer and Dr. Stein traveled from the New York City area. Dr. Hurwitz traveled from Orange County, California. The fees charged by these experts are comparable to what a local expert would charge.

Pursuant to the factors in *Frazier v. Drake*, 131 Nev. 632, 650–51, 357 P.3d 365, 377–78 (Nev. App. 2015) the Court therefore awards the following expert fees:

- Dr. Hurwitz: \$ 11,000.00
- Dr. Willer: \$ 17,245.00

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2 Dr. Barchuk: \$ 26,120.00

3 Dawn Cook: \$ 13,960.03

4 Dr. Stein: \$ 1,500.00

5 Pursuant to the same *Frazier* factors, this Court does not find \$19,710.00 for Plaintiffs'
6 Expert Dr. Alan J. Stein is warranted, as Dr. Stein did not testify at trial in this matter and reduces
7 the amount for Dr. Stein to \$1,500.00. This Court further does not find that \$23,960.03 for
8 Plaintiffs' Expert Dawn Cook is warranted, as Ms. Cook billed for items that can be utilized in
9 other life care plans and incorporated other number from other experts which Plaintiff was already
10 charged for and, thus, not approving the double charging and reduces the amount for Ms. Cook to
11 \$13,960.03.

12 Pursuant to NRCP 68, Plaintiffs' request in the amount of \$1,200.00 for the "Day In The
13 Life Video," is not warranted, as Plaintiffs did not utilize this video during the trial in this matter.

14 As to Plaintiffs' request for costs for deposition testimony, the Court finds the video charge
15 portion of these costs is not warranted, as the video portion of the deposition testimony was not
16 utilized during the trial in this matter and, therefore, reduces said deposition testimony costs by
17 \$5,032.02.

18 Pursuant to *Cadle Co. v. Woods & Erickson, LLP*, 345 P.3d 1049 (2015) and *Bobby*
19 *Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352 (1998), Plaintiffs' remaining costs are warranted.

20 THEREFORE, IT IS ORDERED that Plaintiffs' Request for Attorneys' Fees is GRANTED
21 in the amount of Eight Hundred Twenty-One Thousand Four Hundred Sixty-Eight Dollars and
22 Sixty-Six Cents (\$821,468.66).

23 IT IS FURTHER ORDERED that pursuant to NRCP 68(f)(1)(B), Defendants are to pay the
24 applicable interest on the Judgment in the amount of \$6,367,805.52 from the date of the Offer of
25 Judgment on June 5, 2019 to entry of the Judgment on November 14, 2019 in the amount of
26 \$202,269.96;

27 IT IS FURTHER ORDERED that Plaintiffs' Request for Costs and Defendants' Motion to
28 Retax Costs are each GRANTED IN PART AND DENIED IN PART.

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IT IS FURTHER ORDERED that Plaintiffs' Costs request for Experts Dr. Michael Hurwitz, Dr. Justin Willer, Dr. Alex Barchuk, Dawn Cook, R.N. and Dr. Alan Stein are GRANTED in the total amount of \$69,825.03.

IT IS FURTHER ORDERED that Plaintiffs' Costs request for Expert Dr. Alan J. Stein is reduced to \$1,500.00.

IT IS FURTHER ORDERED that Plaintiffs' Costs request for Expert Dawn Cook is reduced to \$13,960.03.

IT IS FURTHER ORDERED that Plaintiffs' Costs request for the "Day In The Life Video," in the amount of \$1,200.00 is DENIED.

IT IS FURTHER ORDERED that Plaintiffs' Costs request for deposition testimony is reduced by \$5,032.02.

IT IS FURTHER ORDERED that Plaintiffs' remaining Costs request in the amount of \$44,851.21 is GRANTED.

IT IS FURTHER ORDERED that the total amount of Plaintiffs' Cost Award in this matter is \$113,186.24.

THEREFORE, IT IS ORDERED that Plaintiffs' Costs are Re-Taxed in the amount of \$113,186.24.

IT IS FURTHER ORDERED that interest on Plaintiffs' costs of \$113,186.24 will accrue from November 14, 2019 (the date of entry of judgment) at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

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IT IS FURTHER ORDERED that interest on Plaintiffs' award of attorneys' fees of \$821,468.66 will accrue from the date of entry of this order at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

DATED this 23 day of March, 2020.


JOANNA S. KISHNER
DISTRICT COURT JUDGE

Respectfully Submitted By:

Approved as to Form and Content:

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Attorneys for Defendants

CASE SUMMARY

CASE NO. A-16-739464-C

Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

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§

Location: **Department 31**
 Judicial Officer: **Kishner, Joanna S.**
 Filed on: **07/01/2016**
 Case Number History:
 Cross-Reference Case Number: **A739464**
 Supreme Court No.: **80271**

CASE INFORMATION

Statistical Closures
 11/19/2019 Verdict Reached

Case Type: **Malpractice - Medical/Dental**
 Case Status: **11/19/2019 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number: A-16-739464-C
 Court: Department 31
 Date Assigned: 08/09/2018
 Judicial Officer: Kishner, Joanna S.

PARTY INFORMATION





		<i>Lead Attorneys</i>
Plaintiff	Farris, Patrick	Jones, Kimball <i>Retained</i> 702-333-1111(W)
	Farris, Titina	Jones, Kimball <i>Retained</i> 702-333-1111(W)
Defendant	Laparoscopic Surgery of Nevada LLC	Doyle, Thomas J. <i>Retained</i> 9165670400(W)
	Rives, Barry, M.D.	Doyle, Thomas J. <i>Retained</i> 9165670400(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

- 07/01/2016  Initial Appearance Fee Disclosure
 Filed By: Plaintiff Farris, Titina
Initial Appearance Fee Disclosure(NRS Chapter 19)
- 07/01/2016  Complaint
 Filed By: Plaintiff Farris, Titina
Complaint
- 08/25/2016  Affidavit of Service
 Filed By: Plaintiff Farris, Titina
Affidavit of Service
- 09/14/2016  Answer

CASE SUMMARY

CASE NO. A-16-739464-C

Filed By: Defendant Rives, Barry, M.D.
Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Answer to Complaint

09/14/2016



Demand for Jury Trial

Filed By: Defendant Rives, Barry, M.D.
Demand for Jury Trial

09/14/2016



Initial Appearance Fee Disclosure

Filed By: Defendant Rives, Barry, M.D.
Defendants' Initial Appearance Fee Disclosure

09/29/2016



Notice

Filed By: Plaintiff Farris, Titina
Notice of Early Case Conference

10/24/2016



Disclosure of Documents and Witnesses Pursuant to NRC 16.1

Filed By: Defendant Rives, Barry, M.D.
Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Initial NRC 16.1 Disclosure of Witnesses and Documents

10/31/2016



Joint Case Conference Report

Filed By: Plaintiff Farris, Titina
Joint Case Conference Report

11/28/2016



Notice to Appear for Discovery Conference

Notice to Appear for Discovery Conference

01/12/2017



Order Setting Medical/Dental Malpractice Status Check

Order Setting Medical/Dental Malpractice Status Check and Trial Setting Conference

01/12/2017



Scheduling Order

Scheduling Order

02/23/2017



Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call

Order Setting Civil Jury Trial

11/07/2017



Stipulation to Extend Discovery

Party: Plaintiff Farris, Titina
Stipulation and Order to Extend Discovery (First Request)

11/09/2017



Amended Order Setting Jury Trial

First Amended Order Setting Civil Jury Trial

12/19/2017



Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call

Order Setting Civil Jury Trial

02/05/2018



Stipulation and Order to Extend Discovery Deadlines

Filed By: Plaintiff Farris, Titina; Plaintiff Farris, Patrick
Stipulation and Order to Extend Discovery (Second Request)

04/19/2018



Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call

Order Setting Civil Jury Trial

CASE SUMMARY

CASE NO. A-16-739464-C

- 04/20/2018  Stipulation and Order
Filed by: Defendant Rives, Barry, M.D.
Stipulation and Order to Continue Trial and Extend Discovery Deadlines and Trial Date
- 09/21/2018  Stipulation and Order
Stipulation and Order to Extend Discovery Deadlines (Fourth Request)
- 09/26/2018  Notice of Entry of Stipulation and Order
Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (Fourth Request)
- 10/04/2018  Notice of Taking Deposition
Filed By: Plaintiff Farris, Titina; Plaintiff Farris, Patrick
Notice of Taking the Deposition of Barry Rives, M.D.
- 10/05/2018  Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call
Amended Order Setting Civil Jury Trial, Pre Trial Conference, Calendar Call and Status Check
- 11/27/2018  Stipulation and Order
Stipulation and Order to Extend Discovery Deadlines (Fifth Request)
- 11/30/2018  Notice of Entry of Stipulation and Order
Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (Fifth Request)
- 01/22/2019  Amended Order Setting Jury Trial
Amended Order Setting Jury Trial, Pre-Trial Conference, Calendar Call, and Status Check
- 01/23/2019  Stipulation and Order
Stipulation and Order to Reset Trial and Waive Three Year Trial Rule
- 03/19/2019  Stipulation and Order
Stipulation and Order to Extend Discovery Deadlines (Sixth Request)
- 03/19/2019  Notice of Entry
Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (Sixth Request)
- 05/15/2019  Objection
Defendants' Objection to Plaintiffs' Fifth Supplement to Early Case Conference Disclosure of Witnesses and Documents
- 06/26/2019  Stipulation and Order
Stipulation and Order to Extend Discovery Deadlines (Seventh Request)
- 06/27/2019  Notice of Entry
Notice of Entry of Stipulation and ORder to Extend Discovery Deadlines (Seventh Request)
- 07/15/2019  Notice of Association of Counsel
Notice of Association of Counsel
- 07/16/2019  Amended Notice of Taking Deposition
Filed By: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC

CASE SUMMARY

CASE NO. A-16-739464-C

Amended Notice of Deposition of Dr. Michael Hurwitz

- 09/06/2019  Notice
 Filed By: Plaintiff Farris, Titina; Plaintiff Farris, Patrick
Notice of 2.67 Conference

- 09/10/2019  Notice
Notice of Scheduling Settlement Conference

- 09/13/2019  Motion to Compel
 Filed By: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Motion to Compel the Deposition of Gregg Ripplinger, M.D. and Extend the Close of Discovery (9th Request) on Order Shortening time

- 09/13/2019  Clerk's Notice of Hearing
Notice of Hearing

- 09/13/2019  Pre-Trial Disclosure
Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's NRCP 16.1(A)(3) Pretrial Disclosure

- 09/16/2019  Trial Subpoena
Trial Subpoena - Civil Regular

- 09/16/2019  Application
 Filed By: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Application for an Order Shortening Time on Defendants Barry River MD's and Laparoscopic Surgery of Nevada LLC's Motion to Compel the Deposition of Gregg Ripplinger MD and Extend the Close of Discovery (9th Request)

- 09/18/2019  Motion for Sanctions
 Filed By: Plaintiff Farris, Titina; Plaintiff Farris, Patrick
Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and Litigation and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time

- 09/19/2019  Receipt of Copy
 Filed by: Plaintiff Farris, Titina; Plaintiff Farris, Patrick
Receipt of Copy-Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and Litigation and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time

- 09/19/2019  Motion to Strike
Plaintiffs Motion to Strike Defendants Rebuttal Witnesses Sarah Larsen, R.N., Bruce Adornato, M.D. and Scott Kush, M.D., and to Limit the Testimony of Lance Stone, D.O. and Kim Erlich, M.D., for Giving Improper Rebuttal Opinions, on Order Shortening Time

- 09/19/2019  Order
Order Denying Stipulation Regarding Motions in Limine and Order Setting hearing for September 26, 2019

- 09/20/2019  Objection
Plaintiffs Objections to Defendants Pre-Trial Disclosure Statement Pursuant to NRCP 16.1(a)(3)(C)

CASE SUMMARY

CASE NO. A-16-739464-C

- 09/20/2019  **Objection**
Plaintiffs Objection to Defendants Second Amended Notice of Taking Deposition of Dr. Gregg Ripplinger
- 09/20/2019  **Objection**
Plaintiffs Objection to Defendants Trial Subpoena of Naomi Chaney, M.D.
- 09/24/2019  **Opposition to Motion**
Filed By: Plaintiff Farris, Titina; Plaintiff Farris, Patrick
Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Opposition to Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and Litigatoin and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time
- 09/24/2019  **Declaration**
Declaration of Chad Couchot in Support of Opposition to Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants Intentional Concealment of Defendant Rives' History of Negligence and Litigation and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time
- 09/24/2019  **Transcript of Proceedings**
Transcript: Telephonic Conference 1/7/19
- 09/24/2019  **Transcript of Proceedings**
Transcript: Mandatory In-Person Status Check Per Court's Memo Dated August 30, 2019 - 9/5/19
- 09/24/2019  **Transcript of Proceedings**
Transcript of Proceedings Pretrial Conference 9/12/19
- 09/25/2019  **Objection**
Filed By: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants' Objection to Plaintiffs' 9th Supplement to Early CAsE Conference Disclosure of Witnesses and Documents
- 09/26/2019  **Objection**
Plaintiffs Objection to Defendants Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents
- 09/26/2019  **Objection**
Filed By: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants' Objections to Plaintiffs' Initial Pre-Trial Disclosures
- 09/27/2019  **Opposition to Motion**
Plaintiffs' Opposition to Defendants Motion to Compel the Deposition of Gregg Ripplinger, M.D. and Extend the Close of Discovery (9th Request) on an Order Shortening Time
- 09/27/2019  **Motion to Strike**
Filed By: Plaintiff Farris, Titina
Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents on Order Shortening Time
- 09/27/2019  **Receipt of Copy**
Receipt of Copy

CASE SUMMARY

CASE NO. A-16-739464-C

- 09/30/2019  Pre-trial Memorandum
Filed by: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants' Separate Pretrial Memorandum
- 09/30/2019  Objection
Filed By: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants' Supplemental Objection to Plaintiffs' Initial Pre-Trial Disclosures
- 09/30/2019  Supplement
Filed by: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants 1st Supplemental NRCP 16.1(A)(3) Pretrial Disclosur
- 09/30/2019  Pre-trial Memorandum
Plaintiffs Pre-Trial Memorandum Pursuant to EDCR 2.67
- 10/01/2019  Transcript of Proceedings
Transcript: All Pending Motions 9/26/19
- 10/02/2019  Order Denying
Order Denying Defendants' Order Shortening Time
- 10/02/2019  Opposition to Motion
Filed By: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Opposition to Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents on Order Shortening Time
- 10/02/2019  Declaration
Declaration of Chad Couchot in Support of Opposition to Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents on Order Shortening Time
- 10/02/2019  Declaration
Declaration of Thomas J. Doyle in Support of Opposition to Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents on Order Shortening Time
- 10/03/2019  Reply in Support
Reply in Support of Plaintiffs Motion to Strike Defendants Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents on Order Shortening Time
- 10/07/2019  Proposed Voir Dire Questions
Filed By: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants' Proposed Voir Dire
- 10/07/2019  Jury Instructions
Party: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Joint Agreed Upon Jury Instructions
- 10/07/2019  Jury Instructions
Party: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants' Proposed Special Jury Instructions Objected to by Plaintiffs (Cited)

CASE SUMMARY

CASE NO. A-16-739464-C

- 10/07/2019  Jury Instructions
 Party: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants' Proposed Special Jury Instructions Objected to by Plaintiff (Uncited)
- 10/07/2019  Exhibits
 Filed By: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants' Proposed Exhibit List
- 10/10/2019  Reply to Opposition
 Filed by: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Reply to Plaintiff's Opposition to Motion to Compel the Deposition of Gregg Ripplinger, M.D. and Extend the Close of Discovery (9th Request) on an Order Shortening Time
- 10/14/2019  Recorders Transcript of Hearing
Transcript: Status Check 7/16/19
- 10/14/2019  Recorders Transcript of Hearing
Transcript: All Pending Motions 10/7/19
- 10/14/2019  Recorders Transcript of Hearing
Transcript: Calendar Call 10/8/19
- 10/14/2019  Recorders Transcript of Hearing
Transcript: All Pending Motions 10/10/19
- 10/14/2019  Trial Brief
 Filed By: Defendant Rives, Barry, M.D.
Defendants Barry Rives, M.D. s and Laparoscopic Surgery of Nevada, LLC s Trial Brief Regarding Their Request to Preclude Defendants Expert Witnesses Involvement as a Defendant in Medical Malpractice Actions
- 10/14/2019  Trial Brief
 Filed By: Defendant Rives, Barry, M.D.
Defendants Barry Rives, M.D. s and Laparoscopic Surgery of Nevada, LLC s Trial Brief Regarding the Need to Limit Evidence of past Medical Expenses to Actual Out-of-Pocket Expenses or the Amounts Reimbursed
- 10/14/2019  Trial Brief
 Filed By: Defendant Rives, Barry, M.D.
Defendants Barry Rives, M.D. s and Laparoscopic Surgery of Nevada, LLC s Trial Brief Regarding the Need to Preclude Evidence of the Cap on Non-Economic Damages
- 10/16/2019  Jury List
- 10/18/2019  Motion to Strike
Plaintiffs' Motion to Strike Defendants' Trial Briefs On Order Shortening Time
- 10/21/2019  Opposition to Motion
 Filed By: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Opposition to Plaintiffs' Motion to Strike Defendants' Trial Briefs on Order Shortening Time
- 10/21/2019  Audiovisual Transmission Equipment Appearance Consent

CASE SUMMARY

CASE NO. A-16-739464-C

Audiovisual Transmission Equipment Appearance Consent

- 10/21/2019  Audiovisual Transmission Equipment Appearance Request
Audiovisual Transmission Equipment Appearance Request
- 10/22/2019  Opposition to Motion
Filed By: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Opposition to Plaintiffs' Renewed Motion to Strike
- 10/22/2019  Reply in Support
Filed By: Plaintiff Farris, Titina; Plaintiff Farris, Patrick
Reply in Support of, and Supplement to, Plaintiffs' Renewed Motion to Strike Defendants' Answer for Rule 37 Violations, Including Perjury and Discovery Violations on an Order Shortening Time
- 10/22/2019  Trial Brief
Filed By: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendant's Trial Brief in Support of their Position Regarding The Property of Dr. Rives' Responses to Plaintiffs' Counsel's Questions Eliciting Insurance Information
- 10/23/2019  Trial Brief
Filed By: Plaintiff Farris, Titina; Plaintiff Farris, Patrick
Plaintiffs' Trial Brief Regarding Improper Arguments, Including "Medical Judgment", "Risk of Procedure" and "Assumption of Risk"
- 10/23/2019  Notice of Entry of Order
Notice of Entry of Order
- 10/23/2019  Order
Order on Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplements to NRC 16.1 Disclosures
- 10/24/2019  Trial Brief
Plaintiffs Trial Brief on Rebuttal Experts Must Only be Limited to Rebuttal Opinions Not Initial Opinions
- 10/27/2019  Trial Brief
Plaintiffs Trial Brief on Admissibility of Malpractice Lawsuits Against an Expert Witness
- 10/28/2019  Trial Brief
Filed By: Plaintiff Farris, Titina; Plaintiff Farris, Patrick
Plaintiffs' Trial Brief Regarding Disclosure Requirements for Non-Retained Experts
- 10/28/2019  Trial Brief
Filed By: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants' Barry Rivas, MD's and Laparoscopic Surgery of Nevada, LLC's Trial Brief on Rebuttal Experts Being Limited to Rebuttal Opinions Not Initial Opinions
- 10/29/2019  Trial Brief
Plaintiffs' Trial Brief on Defendants' Retained Rebuttal Experts' Testimony
- 10/29/2019  Trial Subpoena
Filed by: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Trial Subpoena - Civil Regular

CASE SUMMARY

CASE NO. A-16-739464-C

- 10/29/2019  Trial Brief
Filed By: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants' Barry Rivas, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Trial Brief Regarding Propriety of Disclosure of Naomi Chaney, M.D. as a Non-retained Expert Witness
- 10/29/2019  Objection
Plaintiffs Objection to Defendants Misleading Demonstratives (11-17)
- 10/29/2019  Trial Brief
Plaintiffs Trial Brief Regarding the Testimony of Dr. Barry Rives
- 10/29/2019  Motion to Quash
Filed By: Plaintiff Farris, Titina; Plaintiff Farris, Patrick
Plaintiffs Motion to Quash Trial Subpoena of Dr. Naomi Chaney on Order Shortening Time
- 10/30/2019  Clerk's Notice of Hearing
Notice of Hearing
- 10/31/2019  Clerk's Notice of Nonconforming Document
Clerk's Notice of Nonconforming Document
- 10/31/2019  Amended Jury List
- 11/01/2019  Special Verdict Form
- 11/01/2019  Jury List
Second Amended Jury List
- 11/01/2019  Jury Instructions
- 11/04/2019  Miscellaneous Filing
Filed by: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Correspondence from Schuering Zimmerman & Doyle, LLP
- 11/05/2019  Order to Show Cause
Order to Show Cause
- 11/14/2019  Recorders Transcript of Hearing
Partial Transcript: Jury Trial Day 5 - Testimony of Michael Hurwitz, M.D. 10/18/19
- 11/14/2019  Recorders Transcript of Hearing
Partial Transcript: Jury Trial Day 8 - Testimony of Michael Hurwitz, M.D. 10/23/19
- 11/14/2019  Judgment on Jury Verdict
Filed By: Plaintiff Farris, Titina; Plaintiff Farris, Patrick
Judgment on Verdict
- 11/19/2019  Order to Statistically Close Case
Civil Order to Statistically Close Case on Judgment on Jury Verdict
- 11/19/2019  Notice of Entry of Judgment

CASE SUMMARY

CASE NO. A-16-739464-C

Notice of Entry of Judgment

- 11/19/2019  Memorandum of Costs and Disbursements
Plaintiffs Verified Memorandum of Costs and Disbursements

- 11/20/2019  Transcript of Proceedings
Partial Transcript: Trial by Jury - Day 4 - Testimony of Justin Willer, M.D. 10/17/19

- 11/22/2019  Motion to Retax
Filed By: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants Barry J Rivers MD's and Laraposcopic Surgery of Nevada LLC's Motion to Re-Tax and Settle Plaintiffs Costs

- 11/22/2019  Clerk's Notice of Hearing
Notice of Hearing

- 11/22/2019  Motion for Attorney Fees and Costs
Filed By: Plaintiff Farris, Titina; Plaintiff Farris, Patrick
Plaintiffs Motion for Fees and Costs

- 11/25/2019  Clerk's Notice of Hearing
Notice of Hearing

- 11/26/2019  Opposition to Motion
Filed By: Plaintiff Farris, Titina; Plaintiff Farris, Patrick
Plaintiffs' Opposition to Defendants Barry J. Rives, M.D. s and Laparoscopic Surgery of Nevada, LLC s Motion to Re-Tax and Settle Plaintiffs Costs

- 11/27/2019  Reply to Opposition
Filed by: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants Barry J Rives MD's and Laparoscopic Surgery of Nevada LLC's Reply to Plaintiffs' Opposition to Motion to Re-Tax and Settle Plaintiffs' Costs

- 12/02/2019  Notice of Change of Hearing
Notice of Change of Hearing

- 12/02/2019  Opposition to Motion
Filed By: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants Barry J. Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Opposition to Plaintiffs' Motion for Fees and Costs

- 12/02/2019  Transcript of Proceedings
Transcript: Status Check: Judgment / Show Cause Hearing 11/7/19

















- 12/05/2019  Recorders Transcript of Hearing
Transcript: All Pending Motions 11/13/19

- 12/05/2019  Recorders Transcript of Hearing
Recorder's Transcript of All Pending Motions 11/14/19

- 12/05/2019  Recorders Transcript of Hearing
Recorder's Transcript of All Pending Motions 11/20/19

CASE SUMMARY

CASE NO. A-16-739464-C

- 12/18/2019  Notice of Appeal
Notice of Appeal
- 12/18/2019  Case Appeal Statement
Filed By: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Case Appeal Statement
- 12/18/2019  Notice of Filing Cost Bond
Filed By: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Notice of Filing Cost Bond
- 12/18/2019  Notice
Filed By: Defendant Rives, Barry, M.D.
Notice of Filing Supersedeas Bond
- 12/30/2019  Notice of Appeal
Notice of Cross-Appeal
- 12/30/2019  Case Appeal Statement
Case Appeal Statement
- 12/31/2019  Reply in Support
Reply in Support of Plaintiffs Motion for Fees and Costs
- 01/21/2020  Memorandum of Costs and Disbursements
Plaintiffs Supplemental Verified Memorandum of Costs and Disbursements
- 01/21/2020  Supplemental Brief
Plaintiffs Supplemental Opposition to Defendants Barry J. Rives, M.D. s and Laparoscopic Surgery of Nevada, LLC s Motion to Re-Tax and Settle Plaintiffs Costs
- 02/03/2020  Reply to Opposition
Filed by: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC
Defendants Barry J. Rives, M.D.'s And Laparoscopic Surgery Of Nevada, LLC's Supplemental Reply to Plaintiffs' Supplemental Opposition to Motion to Re-Tax and Settle Plaintiffs' Costs
- 03/02/2020  Recorders Transcript of Hearing
Transcript: Jury Trial Day 1 - 10/14/19
- 03/02/2020  Recorders Transcript of Hearing
Transcript: Jury Trial Day 2 - 10/15/19
- 03/02/2020  Recorders Transcript of Hearing
Transcript: Jury Trial Day 3 - 10/16/19
- 03/02/2020  Recorders Transcript of Hearing
Transcript: Jury Trial Day 4 - 10/17/19
- 03/02/2020  Recorders Transcript of Hearing
Transcript Jury Trial Day 5 - 10/18/19
- 03/02/2020  Recorders Transcript of Hearing

CASE SUMMARY

CASE NO. A-16-739464-C

Transcript: Jury Trial Day 6 - 10/21/19

03/02/2020



Recorders Transcript of Hearing

Transcript: Jury Trial Day 7 - 10/22/19

03/02/2020



Recorders Transcript of Hearing

Transcript: Jury Trial Day 8 - 10/23/19

03/02/2020



Recorders Transcript of Hearing

Transcript: Jury Trial Day 9 - 10/24/19

03/02/2020



Recorders Transcript of Hearing

Transcript: Jury Trial Day 10 - 10/28/19

03/02/2020



Recorders Transcript of Hearing

Transcript: Jury Trial Day 11 - 10/29/19

03/02/2020



Recorders Transcript of Hearing

Transcript: Jury Trial Day 12 - 10/30/19

03/02/2020



Recorders Transcript of Hearing

Transcript: Jury Trial Day 13 - 10/31/19

03/02/2020



Recorders Transcript of Hearing

Transcript: Jury Trial Day 14 - 11/1/19

03/30/2020



Order

Filed By: Plaintiff Farris, Titina; Plaintiff Farris, Patrick

Order on Plaintiff's Motion for Fees and Costs and Defendant's Motion to Re-tax and Settle Plaintiff's Costs

03/31/2020



Notice of Entry of Order

Filed By: Plaintiff Farris, Titina; Plaintiff Farris, Patrick

Notice of Entry of Order on Plaintiff's Motion for Fees and Costs and Defendants Motion to Re-Tax and Settle Plaintiff's Costs

04/08/2020



Substitution of Attorney

Filed by: Defendant Rives, Barry, M.D.

SUBSTITUTION OF ATTORNEYS

04/08/2020



Substitution of Attorney

Filed by: Defendant Laparoscopic Surgery of Nevada LLC

SUBSTITUTION OF ATTORNEYS

04/13/2020



Amended Notice of Appeal

Party: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC

Defendants Barry J. Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Supplemental and/or Amended Notice of Appeal

04/13/2020




Case Appeal Statement


Filed By: Defendant Rives, Barry, M.D.; Defendant Laparoscopic Surgery of Nevada LLC

Supplemental Case Appeal Statement

CASE SUMMARY

CASE NO. A-16-739464-C

04/13/2020  Notice of Filing Cost Bond
Supplemental Notice of Filing Cost Bond

04/13/2020  Amended Notice of Appeal
Supplemental and/or Amended Notice of Appeal w/Exhibits


DISPOSITIONS


11/01/2019 **Verdict** (Judicial Officer: Kishner, Joanna S.)
Debtors: Barry Rives, MD. (Defendant), Laparoscopic Surgery of Nevada LLC (Defendant)
Creditors: Titina Farris (Plaintiff)
Judgment: 11/01/2019, Docketed: 11/08/2019
Total Judgment: 12,083,479.94
Debtors: Barry Rives, MD. (Defendant), Laparoscopic Surgery of Nevada LLC (Defendant)
Creditors: Patrick Farris (Plaintiff)
Judgment: 11/01/2019, Docketed: 11/08/2019
Total Judgment: 1,557,000.00

11/14/2019 **Judgment Upon the Verdict** (Judicial Officer: Kishner, Joanna S.)
Debtors: Barry Rives, MD. (Defendant), Laparoscopic Surgery of Nevada LLC (Defendant)
Creditors: Titina Farris (Plaintiff)
Judgment: 11/14/2019, Docketed: 11/15/2019
Total Judgment: 6,170,387.67
Debtors: Barry Rives, MD. (Defendant), Laparoscopic Surgery of Nevada LLC (Defendant)
Creditors: Patrick Farris (Plaintiff)
Judgment: 11/14/2019, Docketed: 11/15/2019
Total Judgment: 197,417.85
Debtors: Barry Rives, MD. (Defendant), Laparoscopic Surgery of Nevada LLC (Defendant)
Creditors: Titina Farris (Plaintiff), Patrick Farris (Plaintiff)
Judgment: 11/14/2019, Docketed: 11/15/2019
Total Judgment: 6,367,805.52

03/30/2020 **Order** (Judicial Officer: Kishner, Joanna S.)
Debtors: Barry Rives, MD. (Defendant), Laparoscopic Surgery of Nevada LLC (Defendant)
Creditors: Titina Farris (Plaintiff), Patrick Farris (Plaintiff)
Judgment: 03/30/2020, Docketed: 03/30/2020
Total Judgment: 1,136,924.86

HEARINGS

12/13/2016  **Discovery Conference** (8:55 AM) (Judicial Officer: Bulla, Bonnie)
Scheduling Order Will Issue;
Journal Entry Details:
Counsel anticipate 7 to 10 days for trial re: Medical malpractice; no Settlement Conference requested. COMMISSIONER RECOMMENDED, discovery cutoff is 2/7/18; adding parties, amended pleadings, and initial expert disclosures DUE 11/7/17; rebuttal expert disclosures DUE 12/7/17; FILE dispositive motions by 3/7/18; Trial ready 4/23/18. Scheduling Order will issue. No Medicare / Medicaid. Insurance information exchanged, and counsel are communicating about authorizations. Commissioner Bulla will hear discovery disputes.;

02/06/2017  **Status Check: Medical/Dental Malpractice** (1:00 PM) (Judicial Officer: Wiese, Jerry A.)
Matter Heard;
Journal Entry Details:
Court advised the case had been reassigned to another department due to the unavailability of the Judge. COURT ORDERED, trial date 7/9/18; case REASSIGNED to Department 26. Counsel estimated 10 days for trial.;

06/07/2018 **CANCELED Calendar Call** (9:00 AM) (Judicial Officer: Sturman, Gloria)
Vacated - per Order

07/09/2018 **CANCELED Jury Trial** (9:00 AM) (Judicial Officer: Sturman, Gloria)


EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-16-739464-C

Vacated - per Order

08/08/2018

 **Status Check: Medical/Dental Malpractice** (1:00 PM) (Judicial Officer: Wiese, Jerry A.)
Matter Heard;
Journal Entry Details:
The Med-Mal Status Check was conducted by Judge Jerry A. Wiese II. Mr. Hand advised he had a conflict with the current trial date and requested trial date be vacated and reset. Court stated it would reassign the case and directed Mr. Hand to file a motion with his new trial judge. Mr. Hand advised 5 - 7 days for trial, Ms. Clark Newberry advised 7 - 10 days. COURT ORDERED, trial date STANDS. Pursuant to EDCR 1.30, due to unavailability of Dept. or counsel, CHIEF JUDGE ORDERED, case REASSIGNED to Dept. 31. 3/18/19 JURY TRIAL (DEPT 31);

09/20/2018

CANCELED Calendar Call (9:00 AM) (Judicial Officer: Sturman, Gloria)
Vacated - per Stipulation and Order

09/24/2018

CANCELED Status Check (10:30 AM) (Judicial Officer: Jones, David M)
Vacated

10/08/2018

CANCELED Pre Trial Conference (10:30 AM) (Judicial Officer: Jones, David M)
Vacated

10/15/2018

CANCELED Jury Trial (9:30 AM) (Judicial Officer: Sturman, Gloria)
Vacated - per Stipulation and Order


10/17/2018

CANCELED Calendar Call (10:30 AM) (Judicial Officer: Jones, David M)
Vacated


10/22/2018

CANCELED Jury Trial (10:30 AM) (Judicial Officer: Jones, David M)
Vacated

12/18/2018

 **Status Check** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Matter Heard;
Journal Entry Details:
Court stated there was a firm trial setting of March 18, 2019 in this case, and also a construction defect trial starting in February, stated more would be known by February 11, 2019, and advised counsel they may reach out to counsel on the construction defect trial for status. Counsel stated they discussed potentially moving the trial due to the document review and experts. Colloquy regarding continuing trial and potential dates. Court stated a telephonic hearing would be set; advised counsel to confer and send a letter with potential dates and times for the telephonic hearing for the week of January 7, 2019; advised counsel to prepare a stipulation regarding extending the 3-year rule to a particular date. CLERK'S NOTE: Minutes completed using JAVS by Court Clerk Elizabeth Vargas. //ev 12/28/18;

01/07/2019




 **Telephonic Conference** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
Telephonic Conference Regarding Resetting Trial
Matter Heard;
Journal Entry Details:
Counsel requested the trial be continued to January 2020, with the parties stipulating to a waive of the three year rule. The Court noted under Rule 1.90 it would be more than three years after the case was commenced and inquired if the parties could agree to the Fall of 2019. Ms. Clark Newberry indicated that there were other cases up against their five year rule and with the number of depositions to be completed in this case, that early 2020 is their reasonable estimate to be ready for trial. Court stated it could not push the case to January but with a waive would consider September 2019. Ms. Clark Newberry inquired regarding November 2019. Counsel anticipate 10 days for trial. The Court inquired if the parties could agree to October 14, 2019, otherwise it would be September 18, 2019. Ms. Clark Newberry then contacted her office and returned to the conference call with all parties and indicated that the October 14, 2019 date was their best option. Mr. Hand had no objection. The Court indicated that provided the parties submit a stipulation to the Court waiving the three year rule through October 2019, the Trial Date would be continued to October 14, 2019; with Pre Trial Conference on September 12, 2019; and Calendar Call October 8, 2019; that the Judicial

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-16-739464-C

Executive Assistant would set a additional Status Check with the new Trial Order and the Motions In Limine deadline will be tied tot he new trial date, eight weeks prior to trial. Ms. Clark Newberry to prepare the Stipulation, circulate it to Mr. Hand and submit it to the Court by week's end.;

- 02/14/2019 **CANCELED Pre Trial Conference** (10:15 AM) (Judicial Officer: Kishner, Joanna S.)
Vacated - per Stipulation and Order
- 02/21/2019 **CANCELED Calendar Call** (9:00 AM) (Judicial Officer: Sturman, Gloria)
Vacated
- 03/12/2019 **CANCELED Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Vacated - per Stipulation and Order
- 03/18/2019 **CANCELED Jury Trial** (9:00 AM) (Judicial Officer: Sturman, Gloria)
Vacated
- 03/18/2019 **CANCELED Jury Trial** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Vacated - per Stipulation and Order
Moving Trial to 10/14/19 pending receipt of Stipulation waiving 3 year rule thru October 2019
- 07/16/2019  **Status Check** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Matter Heard;
Journal Entry Details:
Court reminded parties about the upcoming trial date. Mr. Jones stated additional discovery is needing to be done; and requested the trial be extended out a couple of months. Ms. Clark Newberry stated defense is not in the position to move the trial date, and defense is still evaluating Plaintiff's counsel's request. Court DENIED the request; and noted the current waiver on the five year rule is good until November, 2019, therefore the Court cannot grant the request to move the trial date out, and the Court will not change anything unless there is a stipulation submitted by the parties. Court inquired to the parties whether a settlement conference / mediation was done; and stated the parties have a lot of options. Mr. Jones stated it does not appear there is a likelihood the case will settle. Mr. Jones added the remaining depositions will go outside of the discovery date; and requested Court to consider an extension of the deadline date. Court DENIED the request; and stated it cannot allow an extension unless there is an agreement by the parties. Ms. Clark Newberry stated parties can meet and confer to see what can be done, and defense would prefer to submit things in writing. COURT ORDERED, trial date for October 14, 2019 STANDS. Trial handout was provided to counsel in open Court. ;
- 09/05/2019  **Status Check** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Mandatory In-Person Status Check per Court's Memo Dated August 30, 2019
Matter Heard;
Journal Entry Details:
Court explained to the parties why the status check hearing was scheduled for today, and noted the Court was inclined to deny the eighth request to continue the trial date. Arguments by counsel. Objections were also made by counsel, which were noted by Court. COURT ORDERED, trial date STANDS, as there has been no good cause shown to continue the trial date. Court noted it is not precluding the parties whatsoever from doing their discovery.;
- 09/12/2019  **Pre Trial Conference** (10:15 AM) (Judicial Officer: Kishner, Joanna S.)
Matter Heard;
Journal Entry Details:
Plaintiff's counsel announced ready for trial. Court orally provided a trial schedule. Mr. Doyle stated there was an agreement by parties to have the deposition of Dr. Hurwitz taken next week, further noting defense was seeking to have the deposition of Dr. Ripplinger taken first, and it has been scheduled, however, Plaintiff is now objecting to defense having the deposition of Dr. Ripplinger taken. Court stated it cannot address this; and any issue needs to be raised by proper motion and by the rules. Court also reminded both sides not to send impermissible letters to the Court. Mr. Doyle argued there were discussions made with the parties about a briefing schedule on motions in limine. Court stated counsel is to raise things properly under the rules. 10/02/19 9:00 A.M. SETTLEMENT CONFERENCE (SENIOR JUDGE) 10/08/19

CASE SUMMARY

CASE NO. A-16-739464-C

9:00 A.M. CALENDAR CALL 10/14/19 9:00 A.M. TRIAL BY JURY (#1);

09/20/2019



Minute Order (3:15 PM) (Judicial Officer: Truman, Erin)

Minute Order: Vacate Plaintiffs' Motion to Strike set 9-25-19

Minute Order - No Hearing Held; Minute Order: Vacate Plaintiffs' Motion to Strike set 9-25-19

Journal Entry Details:

Plaintiffs' Motion to Strike was VACATED. (9-25-19 Hearing in Discovery was VACATED in Odyssey on 9-20-19.) CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jennifer Lott, to all registered parties for Odyssey File & Serve. jl CLERK'S NOTE: Minute Order amended 9-25-19, and electronically served by Courtroom Clerk, Jennifer Lott, to all registered parties for Odyssey File & Serve. jl;

09/25/2019

CANCELED Motion to Strike (9:30 AM) (Judicial Officer: Truman, Erin)

Vacated

Plaintiffs Motion to Strike Defendants Rebuttal Witnesses Sarah Larsen, R.N., Bruce Adornato, M.D. and Scott Kush, M.D., and to Limit the Testimony of Lance Stone, D.O. and Kim Erlich, M.D., for Giving Improper Rebuttal Opinions, on Order Shortening Time

09/26/2019



Motion for Sanctions (10:00 AM) (Judicial Officer: Kishner, Joanna S.)

09/26/2019, 10/07/2019, 10/10/2019

Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and Litigation and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time

Evidentiary Hearing;

Continued;

Denied in Part;

Evidentiary Hearing;

Continued;

Denied in Part;

Evidentiary Hearing;

Continued;

Denied in Part;

Journal Entry Details:

Arguments by counsel regarding allegations of intentional concealment of defense, deposition of Dr. Rives, and Plaintiff's request for sanctions and punitive damages. Court stated its findings; and offered to set an evidentiary hearing for Dr. Rives to appear. Court noted punitive damages are not appropriate on a sanction basis based on what was provided to the Court at this juncture and applicable case law. Following statements by counsel regarding scheduling, Plaintiff's counsel estimated no more than an hour for the hearing. COURT ORDERED, matter SET for evidentiary hearing. Parties to notify the Court in advance by no later than noon on October 3, 2019, confirming whether or not they want the evidentiary hearing to go forward; and the Court will issue a ruling, if the evidentiary hearing does not go forward. Issues not addressed today may be addressed at time of Calendar Call. 10/07/19 8:30 A.M. EVIDENTIARY HEARING 10/08/19 9:00 A.M. CALENDAR CALL 10/14/19 9:00 A.M. TRIAL BY JURY (MED MAL #1);

10/02/2019



Settlement Conference (10:00 AM) (Judicial Officer: Bixler, James)

Not Settled;

Journal Entry Details:

Pursuant to the Sr. Judge Executive Assistant at 11:21 AM. Senior Judge Bixler conducted the settlement conference and a settlement was not reached. The sign in sheet will be left side filed in the case file.;

10/07/2019

Evidentiary Hearing (8:30 AM) (Judicial Officer: Kishner, Joanna S.)

Matter Heard;

10/07/2019

Motion to Strike (8:30 AM) (Judicial Officer: Kishner, Joanna S.)

10/07/2019, 10/10/2019

Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents on Order Shortening Time

Continued;

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-16-739464-C

Granted;
Continued;
Granted;

10/07/2019

Hearing (8:30 AM) (Judicial Officer: Kishner, Joanna S.)

10/07/2019, 10/10/2019

Continued Hearing from September 26, 2019 Re: Non Compliance (Per Order Filed September 19, 2019)

Continued;
Matter Heard;
Continued;
Matter Heard;

10/07/2019



All Pending Motions (8:30 AM) (Judicial Officer: Kishner, Joanna S.)

All Pending Motions (10/07/2019)

Matter Heard;

Journal Entry Details:

Court addressed the matters on for today; and also addressed the supplemental pleadings filed October 4, 2019 by defense, and non-compliance issues. Mr. Jones requested Court not to consider the supplemental pleadings. Arguments by Mr. Doyle. Court stated findings; and determined the supplemental pleadings are rogue documents, and cannot be considered by the Court. COURT ORDERED, Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Supplemental Opposition to Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and Litigation and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time filed October 4, 2019, and Declaration of Thomas J. Doyle in Support of Supplemental Opposition to Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and Litigation and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time filed October 4, 2019, are STRICKEN. EVIDENTIARY HEARING...PLAINTIFFS' MOTION FOR SANCTIONS UNDER RULE 37 FOR DEFENDANTS' INTENTIONAL CONCEALMENT OF DEFENDANT RIVES' HISTORY OF NEGLIGENCE AND LITIGATION AND MOTION FOR LEAVE TO AMEND COMPLAINT TO ADD CLAIM FOR PUNITIVE DAMAGES ON ORDER SHORTENING TIME Defendant Barry Rives, M.D., sworn and testified. Counsel provided binders of documents to the Court during testimony. After testimony concluded, Court determined it had done what the parties had asked for, in regards to today's hearing. Court noted it will issue its ruling on October 10, 2019; and provided a short version of its analysis on the Motion for sanctions. COURT ORDERED, Motion CONTINUED to October 10, 2019, for remaining matters to be addressed, for sanction components to be discussed, and for Court's ruling to issue. PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' FOURTH AND FIFTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS ON ORDER SHORTENING TIME...CONTINUED HEARING FROM SEPTEMBER 26, 2019 RE: NON COMPLIANCE (PER ORDER FILED SEPTEMBER 19, 2019) COURT ORDERED, matters CONTINUED to October 10, 2019 at 1:30 P.M. ;

10/08/2019



Calendar Call (9:00 AM) (Judicial Officer: Kishner, Joanna S.)

Matter Heard;

Journal Entry Details:

Statements by counsel regarding 2.67 conference and supplemental meetings having been done. Discussions as to proposed trial exhibits, including what has and has not been stipulated to for admission. Trial exhibits, demonstrative exhibits, deposition transcripts, proposed voir dire, proposed jury instructions, proposed verdict forms and thumb drives, were provided by both sides. Parties agreed to have 70 jurors ordered for trial. Court provided the general voir dire handouts to both sides.;

10/10/2019



All Pending Motions (1:30 PM) (Judicial Officer: Kishner, Joanna S.)

All Pending Motions (10/10/2019)

Matter Heard;

Journal Entry Details:


CONTINUED HEARING FROM September 26, 2019 RE: NON COMPLIANCE (PER ORDER FILED September 19, 2019)...PLAINTIFFS' MOTION FOR SANCTIONS UNDER RULE 37 FOR DEFENDANTS' INTENTIONAL CONCEALMENT OF DEFENDANT RIVES' HISTORY OF NEGLIGENCE AND LITIGATION AND MOTION FOR LEAVE TO AMEND

CASE SUMMARY

CASE NO. A-16-739464-C

COMPLAINT TO ADD CLAIM FOR PUNITIVE DAMAGES ON ORDER SHORTENING TIME...PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' FOURTH AND FIFTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS ON ORDER SHORTENING TIME Discussions regarding status of trial exhibits and there having been document confusion by counsel on Exhibit 1. Court determined nothing additional was provided by either side by end of day after Calendar Call. COURT ORDERED, nothing additional can be added to Exhibit 1 and nothing from proposed Exhibit 8 or 9 that was not in the hard bound, can come in; and the exhibit binders as presented in their proposed format at time of Calendar Call are the only things that could be potentially be brought in as proposed trial exhibits. Plaintiffs' Motion to Strike was addressed. Arguments by counsel. Discussions as to Rule 37 (c) (1). Court stated its findings. COURT ORDERED, Motion to strike GRANTED. The reports of Dr. Juell and Dr. Adornato were addressed. Court stated additional findings. Court addressed the Motion for sanctions under Rule 37 for Defendants' intentional concealment of Defendant Rives' history of negligence and litigation. Court also addressed Plaintiffs' alternative relief request regarding terminating sanctions and to strike the Answer. Court stated findings; and gave its ruling not to impose punitive damages. Court also issued its ruling including that it would defer on monetary fees being imposed pending trial proceedings, and the Court DENIED the request to strike the Answer. Court also addressed the Order Denying the Stipulation Regarding Motions in Limine filed September 19, 2019, and Order Denying Defendants' Order Shortening Time filed October 2, 2019. Statements by Mr. Leavitt in support of the Answer being stricken. Mr. Doyle stated the Court should impose a substantial monetary sanction against Defendants to punish and deter, but not strike the Answer. Arguments by counsel. Discussions as to language in two written declarations provided by counsel, voir dire, and trial schedule. At request of defense counsel, COURT ORDERED, Defendants' Motion to Compel Deposition of Gregg Ripplinger, M.D., and Extend the Close of Discovery (9th Request) on Order Shortening Time scheduled for October 15, 2019 WITHDRAWN. Counsel made statements to Court regarding Exhibit 1. Court provided EDCR Rule 2.67. Mr. Doyle requested to have additional exhibits marked for record on appeal. Court stated there is no record on appeal. Mr. Doyle requested to submit a written declaration to the Court, to provide an explanation. Discussion as to additional documents not having been provided at Rule 2.67 conference. Court reminded parties on the directive the Court gave at Calendar Call in regards to trial exhibits. Arguments by parties. COURT ORDERED, the exhibits received Tuesday, October 8, 2019 are the only things coming into this case for trial.;

10/14/2019 **CANCELED Jury Trial - FIRM (8:30 AM)** (Judicial Officer: Kishner, Joanna S.)
Vacated - Duplicate Entry

10/14/2019  **Jury Trial (8:30 AM)** (Judicial Officer: Kishner, Joanna S.)
10/14/2019-10/18/2019, 10/21/2019-10/24/2019, 10/28/2019-11/01/2019
Jury Trial - Med Mal #1

Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict for Plaintiff;
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;

CASE SUMMARY

CASE NO. A-16-739464-C

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

OUTSIDE PRESENCE OF JURY: Jury Instructions and proposed Verdict Forms were addressed. Objections were placed on the record. JURY INSTRUCTIONS SETTLED. JURY PRESENT: Testimony and Exhibits presented (See Worksheets.). Lunch recess. OUTSIDE PRESENCE OF JURY: Colloquy as to status of finalized jury instructions and verdict forms. Counsel provided the finalized jury instructions to the Court. Colloquy regarding Juror No. 6 having a scheduled training appointment all day tomorrow. By agreement of counsel, COURT ORDERED, Juror No. 6 will remain on the panel until end of day today, and Alternate Juror No. 9 will replace Juror No. 6. Amended Jury List FILED IN OPEN COURT. JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). OUTSIDE PRESENCE OF JURY: Discussions as to Plaintiffs' counsel seeking to play a video clip from the Vickie Center civil case to the Jury for impeachment purposes. Following arguments by counsel, Court stated its findings. COURT ORDERED, the audio clip can be played to the Jury, but not the video clip. JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). Defense rested. Jury was admonished and excused by the Court for the evening, to return tomorrow at the given time, being 8:30 A.M. OUTSIDE PRESENCE OF JURY: Both sides moved for direct verdict under Rule 50. Following arguments by parties, Court stated its findings. COURT ORDERED, Plaintiffs' Motion for Direct Verdict GRANTED IN PART as to damages for past medical and related expenses and life care plan; and Motion DENIED IN PART as to remaining portion of Plaintiffs' Motion. FURTHER, Defendants' Motion for Direct Verdict DENIED. A modified proposed verdict form to be provided to the Court. Court directed both sides to appear in the courtroom tomorrow for trial, at 8:20 A.M. Evening recess. Plaintiffs' Renewed Motion to Strike CONTINUED. TRIAL CONTINUES. 11/01/19 8:30 A.M. TRIAL BY JURY ;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

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Trial Continues;

Trial Continues;

Mr. Hand and Defendant Barry Rives, not present. Robert Eisenberg, present with defense counsel and seated in the gallery. OUTSIDE PRESENCE OF JURY: Colloquy as to witness line up for today. Objections placed on the record in regards to there being a Leavitt vs. Siems issue. Arguments by counsel. Mr. Hand present in Court. Discussions as to service of subpoena issue, defense witness Dr. Chaney, and NRCP 45. Defendant Barry Rives present in Court. Further arguments by counsel as to ex parte communication issue with defense counsel and Plaintiffs' treating provider. Following statements by Court, additional arguments were made by counsel as to there having been no agreement as to some testimony from witness Erik Volk, and calculations not having been disclosed. Arguments by Mr. Doyle. Discussions as to testimony of Erik Volk to be limited. JURY PRESENT: Testimony and Exhibits presented (See Worksheets.). OUTSIDE PRESENCE OF JURY: Statements by Mr. Jones as to Defendants' Exhibit A not being resolved. Arguments by counsel. Court stated findings; and ORDERED, Defendants' Motion to introduce Exhibit A DENIED WITHOUT PREJUDICE. Subpoena and service issue as to Dr. Chaney were addressed further. Attorney Todd Wise, Esq., present; and made statements to Court. Arguments by Mr. Jones as to non-compliance by defense counsel, Rule 16.1 issue, and testimony of Dr. Chaney being problematic. Arguments by Mr. Doyle in support of the testimony being given by the witness. Dr. Naomi Chaney present in Court. Court canvassed the witness in regards to the subpoena. Thereafter, the witness was excused by Court after Court's questions were asked. Objections placed on the record. Arguments by defense counsel as to requirements having been satisfied to have the witness appear and testify for trial. Opposition by Plaintiffs' counsel. Mr. Doyle made offer of proof as to what the

CASE SUMMARY

CASE NO. A-16-739464-C

witness will testify to. Arguments by counsel as to Callister case law. Court stated findings. Discussions as to testimony of Dr. Chaney to be limited. JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). OUTSIDE PRESENCE OF JURY: Colloquy regarding trial schedule, due to tomorrow being Nevada Day and Halloween. Court directed both sides to appear in Court tomorrow at 8:00 a.m., to resolve and finalize jury instructions. Both sides to meet after trial to work out the ongoing issues that were raised to the Court earlier when standard objections were raised, and to also work out the jury instructions. JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). Jury was admonished and excused for the evening to return tomorrow morning at the time given, being 10:15 A.M. OUTSIDE PRESENCE OF JURY: Court addressed the scheduling for tomorrow; and reminded both sides of their obligations prior to tomorrow morning. Evening recess. Plaintiffs' Renewed Motion to Strike CONTINUED. TRIAL CONTINUES. 10/31/19 8:00 A.M. TRIAL BY JURY;

Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

Robert Eisenberg, present with defense counsel and seated in the gallery. OUTSIDE PRESENCE OF JURY: Court addressed trial briefs submitted by counsel, plus the October 14, 2019 proceedings and case law from McCrosky vs. Carson Tahoe Regional Medical Center. Arguments were made by the parties as to alleged continued violations with defense counsel, and collateral source issue. Court stated findings; and noted collateral source will not be mentioned in front of the Jury. Court deferred Plaintiffs' request for sanctions. Discussions as to Hallmark standards and witness line up. Plaintiffs' counsel objected to defense counsel having Dr. Stone appear to testify; and moved to strike. Arguments by Mr. Doyle. Court SUSTAINED Plaintiffs' objection. Mr. Doyle agreed to release Dr. Larson from the subpoena; and Plaintiffs' counsel made no objection. Defense counsel provided courtesy copy of trial brief to the Court in regards to Dr. Chaney. JURY PRESENT: Testimony presented (See Worksheets.). Plaintiffs' rested. OUTSIDE PRESENCE OF JURY: Court stated a request from a juror was received to conclude trial for the day before 5:00 P.M. By agreement of both sides, Court stated trial will conclude for the evening at 4:30 P.M., today. Lunch recess. OUTSIDE PRESENCE OF JURY: Objections were placed on record. Plaintiffs' counsel moved to strike an additional defense witness; and argued in support of relief requested. Arguments and responses were made by Mr. Doyle. Discussions as to prior disclosure not having been made. Court stated findings; and noted Dr. Adornato's testimony would be limited. JURY PRESENT: Testimony presented; and deposition was published (See Worksheets.). OUTSIDE PRESENCE OF JURY: At request of counsel, Dr. Adornato was directed by Court to exit the Courtroom and remain in the ante room, until further order. Dr. Adornato exited the Courtroom. Shortly thereafter, Mr. Leavitt informed the Court Dr. Adornato allegedly brushed up against him while walking out of the Courtroom; and stated he wants to press charges against the witness. Following discussions, Court recessed and all parties left the Courtroom for the afternoon break. CASE RECALLED. Attorney Jacqueline Bittrell, Esq., was present; and made statements to the Court regarding what she observed on the witness contact in the courtroom being alleged by Plaintiffs' counsel. Further colloquy as to prior objection made during testimony. Plaintiffs' counsel requested Court to admonish the witness regarding Court's order on causation and the testimony. Witness was admonished by Court about its prior order; and the witness was also admonished by Court not to review documents at any inappropriate time including during bench conferences, while on the stand. JURY PRESENT: Further testimony presented (See Worksheets.). Jury was admonished and excused by Court for the evening, to return tomorrow at the given time, being 9:00 A.M. OUTSIDE PRESENCE OF JURY: Colloquy as to subpoena issue with Dr. Chaney to be addressed further tomorrow at 8:30 A.M. Evening recess. Plaintiffs' Renewed Motion to Strike CONTINUED. TRIAL CONTINUES. 10/30/19 8:30 A.M. TRIAL BY JURY;

Trial Continues;

CASE SUMMARY

CASE NO. A-16-739464-C

Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

Robert Eisenberg, present with defense counsel and seated in the gallery. Defendant Barry Rives not present. OUTSIDE PRESENCE OF JURY: Colloquy regarding status of what exhibits have been admitted, witness line up and limited testimony with Dr. Juell. Defendant Barry Rives present in Court. Court addressed the medical malpractice issue and 7.27 trial briefs. JURY PRESENT: Testimony and Exhibits presented (See Worksheets.). OUTSIDE PRESENCE OF JURY: Court addressed the medical malpractice issue. The 7.27 trial briefs that were submitted to the Court previously, were evaluated. Counsel stated objections and made arguments on the record. Lunch recess. OUTSIDE PRESENCE OF JURY: Discussions as to limited testimony of Dr. Juell. Colloquy as to witness line up. Objections were made on the record by Plaintiffs' counsel regarding alleged violation by defense counsel. JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). OUTSIDE PRESENCE OF JURY: Objections were placed on record as to examination of Dr. Juell, and defense seeking to call Dr. Chaney to testify. Attorney Todd Wise, Esq., present in Court on behalf of witness Naomi Chaney, M.D; and addressed the subpoena issue, and also made statements to the Court regarding Dr. Chaney having canceled appointments with patients to appear to testify in this matter. Arguments by counsel. Colloquy as to there having been no agreement with the parties to have Dr. Chaney appear to testify. Relief was sought by Plaintiffs' counsel. Further discussions as to subpoena issue. Court stated it has no information for Court to rule on. Both sides to meet and confer during afternoon break to get a plan in place on the witness issues. Colloquy as to trial schedule. JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). Jury was admonished and excused by Court for the evening, to return tomorrow morning at the time given. OUTSIDE PRESENCE OF JURY: Courtesy copy of additional trial brief was provided to Court. Colloquy as to witness line up for tomorrow, and scheduling on when to address additional expert witness issues. Evening recess. Plaintiffs' Renewed Motion to Strike CONTINUED. TRIAL CONTINUES. 10/29/19 9:00 A.M. TRIAL BY JURY ;

Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding scheduling inclusive of when to hold the sanctions hearing, scope of witness testimony, and CONFERENCES AT BENCH. JURY PANEL PRESENT: Testimony PRESENTED, Deposition PUBLISHED (see worksheets). CONFERENCES AT BENCH. COURT ORDERED, Trial CONTINUES. CONTINUED TO: 10/28/19 8:30 A.M.;

Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;

CASE SUMMARY

CASE NO. A-16-739464-C

Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

OUTSIDE PRESENCE OF JURY: Colloquy regarding witness line up for today, and status of witness scheduled to appear by video conference at 2:00 P.M. JURY PRESENT: Testimony and Exhibits presented (See Worksheets.). OUTSIDE PRESENCE OF JURY: Objections were placed on record as to there having been no agreement between the parties as to specific documents, for Dr. Juell's testimony. Discussions as to demonstrative exhibits, films, and deposition testimony. Arguments by counsel. Further discussions as to Exhibit No. 8. Court stated the witness cannot make a reference to the document at issue, until verification is made by the parties about whether the document was previously disclosed. Discussions as to trial schedule for the afternoon and witness line up. JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). OUTSIDE PRESENCE OF JURY: Statements by counsel as to Plaintiffs' Exhibit No. 8. Objections placed on the record. Discussions as to demonstrative exhibits for Dr. Juell's examination. At request of counsel, COURT ORDERED, Plaintiffs' renewed Motion to Strike Defendants' Answer CONTINUED to be addressed outside the presence of the Jury, at a later date. JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). OUTSIDE PRESENCE OF JURY: Objections placed on the record by Plaintiffs' counsel as to defense counsel addressing specific language in regards to a deposition during testimony. Mr. Doyle requested to have a deposition lodged; and argued in support of relief requested. Discussion regarding what was said to the Court by counsel earlier. Counsel was cautioned by Court not to make inadvertently improper or inaccurate statements in front of the Jury. JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). Evening recess. TRIAL CONTINUES. 10/24/19 10:15 A.M. TRIAL BY JURY;

Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

OUTSIDE PRESENCE OF JURY: Mr. Leavitt not present. Juror questions were addressed. Mr. Jones requested juror questions be asked to Defendant Dr. Rives, when he testifies again during Defendant's case in chief. Arguments by Mr. Doyle in support of the questions being asked during current testimony in Plaintiffs' case in chief. Court stated findings; and noted this presents a challenge to have the questions read to the witness at this juncture. Court also stated if there is an agreement by the parties, or a joint request, the Court will consider it. Colloquy as to witness line up. JURY PRESENT: Mr. Leavitt present in Court. Testimony and Exhibits presented (See Worksheets.). OUTSIDE PRESENCE OF JURY: Counsel addressed the examination of Plaintiff Titina Farris; and objections were placed on the record. Plaintiffs' Exhibit No. 1 and the Calendar Call proceedings were addressed. Mr. Jones provided the proposed Order on Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplements to NRCF 16.1 Disclosures, to the Court. Colloquy as to witness line up for the afternoon. JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). OUTSIDE PRESENCE OF JURY: Courtesy copy of pleadings and trial brief were provided to the Court by counsel. JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). Jury admonished and excused by Court to return tomorrow by 9:45 A.M. OUTSIDE PRESENCE OF JURY: Upon Court's inquiry, both sides confirmed on the admission to

CASE SUMMARY

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Plaintiffs' Exhibit No. 1 having been done by stipulation. Objections were placed on the record. Following discussions as to specific pages from Exhibit No. 1, earlier bench conference, ERISA plan, discovery, and witness testimony, Court reminded both sides any objections regarding a witness need to be addressed, before the witness takes the Stand. Further discussions as to case law from McCrosky vs. Carson Tahoe Regional Medical Center. Evening recess. TRIAL CONTINUES. 10/23/19 9:45 A.M. TRIAL BY JURY;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

OUTSIDE PRESENCE OF JURY: Counsel provided courtesy copy of responsive pleadings to Court in regards to Plaintiffs' pending Motion to Strike. Colloquy as to witness line up. Court reminded both sides to follow the rules as to witnesses and witness binders for the witness stand. JURY PRESENT: Testimony and Exhibits presented (See Worksheets.). Deposition of Alex Barchuk, M.D., was FILED AND PUBLISHED IN OPEN COURT. OUTSIDE PRESENCE OF JURY: Objections placed on record by Plaintiffs' counsel as to alleged misconduct from opposing counsel during cross examination earlier. Mr. Jones requested a curative instruction be given to the Jury by Court. Arguments by counsel. Discussions as to earlier bench conference and the witness testimony. Court stated findings. Colloquy as to witness line up. Court noted it had received another OST request from counsel this morning, addressing Plaintiffs' renewed Motion to strike. Court inquired whether a date for the Motion was agreed upon by the parties. Statements by counsel as to proposed briefing schedule having been discussed. Court stated this will be revisited. JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). Lunch recess. OUTSIDE PRESENCE OF JURY: Court stated it will keep the extra copy of the pleadings that were provided by counsel on Plaintiffs' renewed Motion to strike Defendants' Answer. COURT ORDERED, hearing SET on the Motion for October 23, 2019 at 1:00 P.M. Statements by Mr. Doyle as to status of written opposition to be filed. Order Shortening Time SIGNED IN OPEN COURT. JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). Deposition of Barry Rives, M.D. SIGNED AND PUBLISHED IN OPEN COURT. OUTSIDE PRESENCE OF JURY: Defendant Barry Rives, M.D., present on witness stand. Objections placed on record by Plaintiffs' counsel regarding testimony from the witness and insurance information having been allegedly elicited during testimony by Defendant. JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). OUTSIDE PRESENCE OF JURY: Plaintiffs' counsel moved for mistrial, and alternatively requested Court to strike Defendants' Answer. Following arguments by counsel, and discussions as to what was previously discussed before the Court earlier, the matter was deferred to a later date, for both sides to have an opportunity to submit additional briefing on the Motion to strike, including additional briefing on the witness and insurance information issue, and Plaintiffs' renewed Motion to strike Defendants' Answer. Mr. Jones requested Defendant not to discuss insurance information in front of the Jury. JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). Court admonished and excused the Jury for the evening, to return tomorrow at the time given by Court. OUTSIDE PRESENCE OF JURY: Court reminded both sides the deadline dates to file pleadings on pending Motions. Evening recess. TRIAL CONTINUES. 10/22/19 10:30 A.M. TRIAL BY JURY ;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

CASE SUMMARY

CASE NO. A-16-739464-C

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE JURY: Colloquy between the Court and counsel regarding Joint Jury Instructions, Interrogatories, and Verifications 18 and 19 to be used for impeachment purposes. JURY PRESENT: Barry Rives sworn and testified. OUTSIDE THE PRESENCE OF THE JURY: Objections put on the record regarding legal conclusion and

relevance on ethics question. JURY PRESENT: Michael Hurwitz sworn and testified.

OUTSIDE THE PRESENCE OF THE JURY: Objections put on the record regarding new opinions and failure to disclose timely. COURT ORDERED, GRANTED IN PART and DENIED IN PART. JURY PRESENT: Further testimony by Michael Hurwitz. Court excused the jury for the evening. OUTSIDE THE PRESENCE OF THE JURY: Court admonished Defense counsel for making statements regarding the transcript against the Court's directive and would consider a mistrial for his conduct. Trial CONTINUED 10/21/19. ;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

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Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

OUTSIDE PRESENCE OF JURY: Colloquy as to witness line up and trial exhibits. JURY PRESENT: Testimony and Exhibits presented (See Worksheets.). Court admonished and excused the Jury for the evening, to return tomorrow by 9:00 A.M. OUTSIDE PRESENCE OF JURY: Plaintiff's counsel moved to strike Defendant's Answer. Arguments by counsel. Court deferred the Motion to a later date, to allow parties to talk to reach other about scheduling on having the Motion to strike addressed further. Evening recess. TRIAL CONTINUES. 10/18/19 9:00 A.M. TRIAL BY JURY;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

Robert Eisenberg, present with defense counsel and seated in gallery. Juror consultant Amy Hanegan, present in Court. OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL:

Objections placed on record as to Mary Jane Langan testifying; which was sustained by Court. Court addressed the general rules regarding objections. Both sides gave a time

estimate on their opening statements. PROSPECTIVE JURY PANEL PRESENT: Voir Dire commenced further. Lunch recess until 1:15 p.m. OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: No parties were present in Court as required at 1:21 p.m. Thereafter, parties arrived in the courtroom and were admonished by Court regarding timeliness. Parties confirmed on having completed their peremptory challenges during the lunch hour. Court reviewed peremptory challenges; and verified the names of remaining jurors for the seated

CASE SUMMARY

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jury panel. Discussions as to proposed curative pre-instruction to be read to the Jury by Court. PROSPECTIVE JURY PANEL PRESENT: JURY SELECTED and SWORN by Clerk. Court instructed Jury. OUTSIDE PRESENCE OF JURY: Tech checks were done in open Court. Further discussions as to language of the proposed curative pre-instruction. Objections were placed on record. Court stated findings. JURY PRESENT: Court read pre-instruction to Jury. Court's Exhibit ADMITTED (See Worksheets.). Opening statements by counsel. Evening recess. TRIAL CONTINUES. 10/17/19 12:30 P.M. TRIAL BY JURY;

Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
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Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

Robert Eisenberg, present with defense counsel and seated in gallery. Juror consultant Amy Hanegan, present at defense counsel's table with Mr. Doyle. OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Discussions as to missing jurors. Defense counsel requested Court to instruct the jurors not to consider anything with regards to various counsel arriving in and out of the courtroom at various times, throughout trial. Discussions as to unavailability of witness Mary Jayne Langan and records review. Objections were made by Plaintiff's counsel. Court stated it will revisit this. PROSPECTIVE JURY PANEL PRESENT: Voir Dire commenced further. OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Challenge for cause was addressed; and objections were placed on record. Court deferred ruling. Court addressed proposed jury instruction requirements. Court cautioned counsel not to make inaccurate statements in front of the jury panel. Objections were made by counsel regarding trial briefs submitted by defense counsel; and noted Plaintiff will have briefing prepared with an order shortening time for the Court. PROSPECTIVE JURY PANEL PRESENT: Voir Dire commenced further. Evening recess. TRIAL CONTINUES. 10/16/19 9:30 A.M. TRIAL BY JURY;

Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;

Verdict for Plaintiff;

Journal Entry Details:

Robert Eisenberg, present with defense counsel and seated in gallery. Mr. Hand and Plaintiffs not present. OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Discussions as to pre-trial matters, including voir dire procedures, number of peremptory challenges for each side, and parties agreeing to have two alternate jurors for this trial. Plaintiff's counsel objected to defense counsel having a juror consultant to assist at trial. Arguments by Mr. Doyle. Court provided the rules for juror consultants; and indicated each side can have individuals accurately identified seated in Court. Court TRAILED and RECALLED matter for the prospective jury panel to be lined up by Jury Services and brought up to Court. Mr. Hand present in Court with the Plaintiffs. Juror consultant Amy Hanegan, present at defense counsel's table with Mr. Doyle. Discussions as to proposed voir dire and proposed statement by counsel to the jury panel. Court's Exhibit ADMITTED (See Worksheets.). PROSPECTIVE JURY PANEL PRESENT: Introductory statements by Court. Clerk called roll. PROSPECTIVE


EIGHTH JUDICIAL DISTRICT COURT


CASE SUMMARY

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JURY PANEL SWORN. Voir Dire commenced. Introductory statements by counsel. OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Juror excusals were addressed. Objections were made regarding defense counsel's three trial briefs filed October 14, 2019. PROSPECTIVE JURY PANEL PRESENT: Voir Dire commenced further. OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Additional juror excusals were addressed. At request of counsel, Court noted trial will start tomorrow at 1:00 p.m. Mr. Doyle presented an additional deposition to be provided to the Clerk for trial. Objections by Mr. Leavitt. Court noted counsel can let the Court tomorrow as to whether the name of the deponent was previously disclosed. PROSPECTIVE JURY PANEL PRESENT: Voir Dire commenced further. Court admonished and excused the prospective jury panel for the evening to return to Court by 12:45 P.M. OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Additional juror excusals were addressed. Parties were directed to arrive to Court tomorrow by 12:40 P.M. Evening recess. TRIAL CONTINUES. 10/15/19 1:00 P.M. TRIAL BY JURY;

10/15/2019 **CANCELED Motion to Compel** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Vacated
Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Motion to Compel the Deposition of Gregg Ripplinger, M.D. and Extend the Close of Discovery (9th Request) on Order Shortening time

10/22/2019  **Motion to Strike** (1:00 PM) (Judicial Officer: Kishner, Joanna S.)
Plaintiffs' Motion to Strike Defendants' Trial Briefs on Order Shortening Time
Denied Without Prejudice;
Journal Entry Details:
Court addressed EDCR 7.27, and stated its findings. Statements by counsel. COURT ORDERED, Motion DENIED WITHOUT PREJUDICE; the Court will review briefs under EDCR 7.27, and the Court will look at the trial briefs and treat them as Rule 7.27 briefs.;

10/23/2019  **Motion to Strike** (1:00 PM) (Judicial Officer: Kishner, Joanna S.)

10/23/2019, 11/01/2019, 11/07/2019, 11/13/2019-11/14/2019

Plaintiffs' Renewed Motion to Strike

Continued;

Motion Not Addressed;

Trial concluded 11/01/19 sb

Continued;

Continued;

Decision Made;

Continued;

Motion Not Addressed;

Trial concluded 11/01/19 sb

Continued;

Continued;

Decision Made;

Continued;

Motion Not Addressed;

Trial concluded 11/01/19 sb

Continued;

Continued;

Decision Made;

Continued;

Motion Not Addressed;

Trial concluded 11/01/19 sb

Continued;

Continued;

Decision Made;

Continued;

Motion Not Addressed;

Trial concluded 11/01/19 sb

Continued;

Continued;

Decision Made;


EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-16-739464-C

Journal Entry Details:
COURT ORDERED, Motion CONTINUED.;

11/01/2019

 **All Pending Motions** (8:30 AM) (Judicial Officer: Kishner, Joanna S.)

Verdict for Plaintiff;
Journal Entry Details:
JURY TRIAL...PLAINTIFF'S RENEWED MOTION TO STRIKE OUTSIDE THE PRESENCE OF THE JURY. The Court noted it directed counsel to present a new Special Verdict form and since this has not been done, COURT ORDERED, the form presented by the Plaintiff will be used. IN THE PRESENCE OF THE JURY. The Court instructed jurors on the law of the case. Closing arguments by Mr. Jones. Closing arguments by Mr. Doyle. Rebuttal arguments by Mr. Jones. At the hour of 12:35 PM the jury retired to deliberate. At the hour of 2:20 PM the jury returned with a verdict in favor of plaintiff. Plaintiff's Renewed Motion to Strike CONTINUED and matter SET for a status check regarding judgment. CONTINUED TO: 11/7/19 9:30 AM;

11/04/2019

CANCELED Jury Trial (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Vacated

11/07/2019


Status Check (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
Status Check: Judgment
Matter Heard;

11/07/2019

Show Cause Hearing (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
11/07/2019, 11/13/2019-11/14/2019

Hearing Continued;
Continued;
Decision Made;
Hearing Continued;
Continued;
Decision Made;
Hearing Continued;
Continued;
Decision Made;

11/07/2019

 **All Pending Motions** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)

All Pending Motions (11/07/2019)
Matter Heard;
Journal Entry Details:


Court reminded the parties regarding the EDCR provisions that outline courtesy copy requirements. Statements by counsel. Upon Court's inquiry, both sides acknowledged courtesy copies of their documents that were filed within 24 hours, were not provided to the Court. Court stated findings, including that there has been no good cause shown, both sides waived anything written in their objections, and both sides are in non-compliance for failing to provide courtesy copies of the filed pleadings to the Court. COURT ORDERED, Plaintiffs' Objection to Defendants Proposed Judgment on Verdict filed November 6, 2019, and Defendants' Objection to Plaintiffs' Proposed Judgment on Jury Verdict filed November 6, 2019 are ORDERED, STRICKEN as rogue pleadings, and documents being improperly filed. Court also noted there was no request given to Court by counsel to file such documents and there was no basis to file such documents. STATUS CHECK: JUDGMENT Court acknowledged receiving courtesy copies of proposed judgments on verdicts from both sides. Discussion as to non-economic damages, case law from Tam, McGrosky, and Zhang, NRS 41A, NRS 42.021 (1) and NRS 42.021 (2). Arguments by counsel. Court stated its findings; and ORDERED, numeric breakdown as follows: damages for Plaintiff Titina Farris's past physical and mental pain, suffering, anguish, disability and loss of enjoyment of life will be in the amount of \$43,225.00; damages for Plaintiff Titina Farris's future physical and mental pain, suffering, anguish, disability and loss of enjoyment of life will be in the amount of \$131,775.00; damages for Plaintiff Patrick Farris's past loss of companionship, society, comfort, and consortium will be in the amount of \$92,225.00; and, damages for Plaintiff Patrick Farris's future loss of companionship, society, comfort, and consortium will be in the amount of \$82,775.00, for a grand total of \$350,000.00. Parties agreed on the percentages rate, and the language will be included in the written Judgment which will be submitted to the Court. Plaintiffs' counsel to prepare the written judgment; and defense counsel to approve form and

CASE SUMMARY

CASE NO. A-16-739464-C

content. SHOW CAUSE HEARING Upon Court's inquiry, both sides confirmed having rested each of their cases in chief at time of trial. Court noted it will have to continue this matter to another day, due to the Court having a scheduled commitment this morning and the Court needing to adjourn. Following discussions as to scheduling, COURT ORDERED, Show Cause Hearing CONTINUED. Court noted this continuance does not impact the filing of the written judgment. Parties acknowledged. Remaining portion of Plaintiffs' Renewed Motion to Strike CONTINUED. 11/13/19 10:30 A.M. PLAINTIFFS' MOTION FOR SANCTIONS...SHOW CAUSE HEARING...PLAINTIFFS' RENEWED MOTION TO STRIKE CLERK'S NOTE: Plaintiffs' Renewed Motion to Strike Defendants' Answer was not addressed, and was continued to November 13, 2019 at 10:15 a.m. sb;

11/13/2019

 **Motion for Sanctions (10:15 AM)** (Judicial Officer: Kishner, Joanna S.)

11/13/2019-11/14/2019, 11/20/2019

Plaintiffs' Motion for Sanctions

Continued;

Continued;

Matter Heard;

Journal Entry Details:

Court indicated the hearing today was to address counsel submitting multiple inadmissible documents. Court gave a brief history of the case. Mr. Leavitt indicated he was willing to accept a sanction payable to the Law Library or Legal Aid. Mr. Doyle mirrored Mr. Leavitt's comments and did not wish to add anything. Colloquy regarding Court's previous trial order. Court indicated it was not inclined to issue sanctions to Plaintiff counsel. Mr. Leavitt advised he would prefer to give \$500.00 to the Law Library. Colloquy regarding Mr. Doyle continuing to submit impermissible filings. Colloquy regarding electronically signed document used at trial. Mr. Doyle indicated he did not know the specific acts or failures to act that Court is using for basis for sanctions. Court offered to continue the matter; however, Mr. Doyle declined. Upon Court's inquiry, Mr. Doyle indicated the filings were a clerical oversight and a mistake on part of his office. Colloquy regarding Mr. Doyle's readiness for the hearing. Mr. Doyle stated he did not want to look into the issues and wanted to hear the Court's ruling. Colloquy regarding possibly continuing the hearing. Upon Court's inquiry, Mr. Doyle declined to respond individually or globally. Upon Court's inquiry, Mr. Leavitt indicated Ms. Clark Newberry and Mr. Couchot's conduct was egregious in a number of aspects and requested heavy monetary sanctions. Court advised it is not taking this case back to discovery. Court stated its findings and advised it would issue the order at the time of the hearing on fees and costs. Parties to submit their proposals in Word to the Judicial Executive Assistant and CC opposing counsel.;

Continued;

Continued;


Matter Heard;

Continued;

Continued;

Matter Heard;

11/13/2019

 **All Pending Motions (10:15 AM)** (Judicial Officer: Kishner, Joanna S.)


All Pending Motions (11/13/2019)

Matter Heard;

Journal Entry Details:

Court confirmed the written judgment was signed. Parties acknowledged. SHOW CAUSE HEARING Court addressed defense counsel's seven offers of proof that were filed in the case November 1, 2019. Statements by Mr. Doyle in support of these proofs having been filed in the case. Court canvassed counsel the November 1, 2019 filings. Discussions as to trial proceedings. Mr. Doyle objected to the order to show cause; and made arguments. Further discussions as to Court's rulings from trial on October 14, 2019 and October 29, 2019, and EDCR 2.69. COURT ORDERED, matter CONTINUED to November 14, 2019 at 1:30 p.m. PLAINTIFFS' MOTION FOR SANCTIONS...PLAINTIFFS' RENEWED MOTION TO STRIKE COURT ORDERED, matters CONTINUED to November 14, 2019 at 1:30 P.M.;

11/14/2019

 **All Pending Motions (1:30 PM)** (Judicial Officer: Kishner, Joanna S.)

All Pending Motions (11/14/19)

Matter Heard;

Journal Entry Details:

PLAINTIFFS' RENEWED MOTION TO STRIKE Arguments by Mr. Leavitt. Opposition by Mr.


EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY


CASE NO. A-16-739464-C

Doyle. Reply by Mr. Leavitt. Discussions as to transcript from September 26, 2019. Court stated findings. A trial proceedings clip dated October 18, 2019 at 4:44:54 P.M. was played back in open Court. COURT ORDERED, Motion DENIED IN PART as to striking Defendants' Answer. ORDER TO SHOW CAUSE Court addressed the remaining of seven offers of proof filed by defense counsel dated November 1, 2019. Following responses and arguments made by counsel, Court gave an analysis and stated its findings. There being no good cause shown as to why the offers of proof were filed without any notice given to the Court, COURT ORDERED, the Offer of Proof Re: Defendants' Exhibit C filed November 1, 2019, Offer of Proof Re: Brian Juell, M.D., filed November 1, 2019, Offer of Proof Re: Sarah Larsen filed November 1, 2019; Offer of Proof Re: Michael Hurwitz, M.D. filed November 1, 2019, Offer of Proof Re: Lance Stone, D.O. filed November 1, 2019, Offer of Proof Re: Erik Volk filed November 1, 2019, and, Offer of Proof Re: Bruce Adornato, M.D.'s Testimony filed November 1, 2019 are ORDERED, STRICKEN as rogue documents. PLAINTIFFS' MOTION FOR SANCTIONS COURT ORDERED, Motion CONTINUED to November 20, 2019 at 1:30 P.M. ;

12/03/2019 **CANCELED Motion to Quash** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
 Vacated - Moot
 Plaintiff's Motion to Quash Trial Subpoena of Dr. Naomi Chaney on Order Shortening Time

01/07/2020  **Motion to Retax** (10:00 AM) (Judicial Officer: Kishner, Joanna S.)
01/07/2020, 02/11/2020
 Defendants Barry J. Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Motion to Re-Tax and Settle Plaintiffs' Costs
 Continued;
 Granted in Part;
 Journal Entry Details:
 Following arguments by counsel, COURT ORDERED, motion GRANTED IN PART, DENIED IN PART. Other than Stein and Cook, the motion is GRANTED; the Court finds it is appropriate and meets all the Frasier factors. As to Dr. Stein, COURT ORDERED, Dr. Stein's amount is lowered to \$1,500.00. As to Dr. Cook, COURT FURTHER ORDERED, Dr. Cook's amount is reduced to \$13,960.03. ADDITIONALLY, the \$5,032.02 cost is reduced. COURT FINDS, the remaining costs are appropriately supported and GRANTED. Mr. Hand to provide the net figure to Mr. Doyle.;
 Continued;
 Granted in Part;

01/07/2020 **Motion for Attorney Fees and Costs** (10:00 AM) (Judicial Officer: Kishner, Joanna S.)
 Plaintiffs' Motion for Fees and Costs
 Granted;

01/07/2020  **All Pending Motions** (10:00 AM) (Judicial Officer: Kishner, Joanna S.)
 All Pending Motions (1/07/2020)
 Matter Heard;
 Journal Entry Details:
 PLAINTIFFS' MOTION FOR FEES AND COSTS Arguments by Mr. Jones and Mr. Doyle. Discussion as to Capana case law and NRCP 68. Court stated findings; and provided analysis under Beattie, Brunzell, and NRS 7.095. Court also noted it will not impose additional sanctions. COURT ORDERED, attorney fees GRANTED in the amount of \$821,468.66. DEFENDANTS BARRY J. RIVES, M.D.'S AND LAPAROSCOPIC SURGERY OF NEVADA, LLC'S MOTION TO RE-TAX AND SETTLE PLAINTIFFS' COSTS Following arguments by counsel as to costs and Dr. Stein, COURT ORDERED, Motion CONTINUED to February 11, 2020 at 9:30 A.M., for supplemental pleadings to be filed. FURTHER, briefing schedule SET as follows: Plaintiffs' supplemental opposition due January 21, 2020, Defendants' supplemental reply due February 3, 2020. ;

DATE

FINANCIAL INFORMATION

Defendant Laparoscopic Surgery of Nevada LLC	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 4/14/2020	0.00
Defendant Rives, Barry, M.D.	
Total Charges	257.50

CASE SUMMARY

CASE NO. A-16-739464-C

Total Payments and Credits	257.50
Balance Due as of 4/14/2020	0.00
Plaintiff Farris, Patrick	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 4/14/2020	0.00
Plaintiff Farris, Titina	
Total Charges	294.00
Total Payments and Credits	294.00
Balance Due as of 4/14/2020	0.00
Defendant Rives, Barry, MD	
Appeal Bond Balance as of 4/14/2020	500.00
Plaintiff Farris, Titina	
Appeal Bond Balance as of 4/14/2020	500.00

DISTRICT COURT CIVIL COVER SHEET

CLARK

County, Nevada

XXI I

Case No. _____

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone): Tatina Farris Patrick Farris	Defendant(s) (name/address/phone): Barry Rives, M.D. Laparoscopic Surgery of Nevada LLC
Attorney (name/address/phone): George F. Hand 3442 N. Buffalo Dr. Las Vegas, NV 89129	Attorney (name/address/phone):

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

Civil Case Filing Types

<p>Real Property</p> <p>Landlord/Tenant</p> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <p>Title to Property</p> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <p>Other Real Property</p> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<p>Negligence</p> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <p>Malpractice</p> <input checked="" type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<p>Torts</p> <p>Other Torts</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>Probate</p> <p>Probate (select case type and estate value)</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>Estate Value</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>Construction Defect & Contract</p> <p>Construction Defect</p> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <p>Contract Case</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>Judicial Review/Appeal</p> <p>Judicial Review</p> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <p>Nevada State Agency Appeal</p> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <p>Appeal Other</p> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<p>Civil Writ</p> <p>Civil Writ</p> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrantum	<p>Other Civil Filing</p> <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	<p>Other Civil Filing</p> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

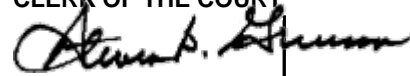
Business Court filings should be filed using the Business Court civil coversheet.

07/01/16

Date

Signature of initiating party or representative

See other side for family-related case filings.



JGJV

1 KIMBALL JONES, ESQ.
Nevada Bar No.: 12982

2 JACOB G. LEAVITT, ESQ.
Nevada Bar No. 12608

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9 Phone: (702) 656-5814

ghand@handsullivan.com

10 Attorneys for Plaintiffs

11 TITINA FARRIS and PATRICK FARRIS

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 TITINA FARRIS and PATRICK FARRIS,

15 Plaintiffs,

16 vs.

17 BARRY RIVES, M.D., LAPAROSCOPIC
18 SURGERY OF NEVADA LLC; DOES I-V,
inclusive; and ROE CORPORATIONS I-V,
inclusive,

19 Defendants.

Case No.: A-16-739464-C

Dept. No.: 31

JUDGMENT ON VERDICT

21
22 The above–entitled matter having come on for trial by jury on October 14, 2019, before the
23 Honorable Joanna S. Kishner, District Court Judge, presiding. Plaintiffs TITINA FARRIS and
24 PATRICK FARRIS (“Plaintiffs”), appeared in person with their counsel of record, KIMBALL
25 JONES, ESQ. and JACOB LEAVITT, ESQ., of the law firm of Bighorn Law, and GEORGE
26 HAND, ESQ., of the law firm of Hand & Sullivan, LLC. Defendants BARRY J. RIVES, M.D. and
27 LAPAROSCOPIC SURGERY OF NEVADA, LLC (“Defendants”) appeared by and through their
28 counsel of record, THOMAS DOYLE, ESQ., of the law firm of Schuering, Zimmerman & Doyle,

1 LLP.

2 Testimony was taken, evidence was offered, introduced and admitted. Counsel argued the
3 merits of their cases. The jury rendered a verdict in favor of Plaintiffs and against the Defendants as
4 to claims concerning medical malpractice in the following amounts:

- 5 1. \$1,063,006.94 for TITINA FARRIS' past medical and related expenses;
- 6 2. \$4,663,473.00 for TITINA FARRIS' future medical and related expenses;
- 7 3. \$1,571,000.00 for TITINA FARRIS' past physical and mental pain, suffering,
8 anguish, disability and loss of enjoyment of life;
- 9 4. \$4,786,000.00 for TITINA FARRIS' future physical and mental pain, suffering,
10 anguish, disability and loss of enjoyment of life;
- 11 5. \$821,000.00 for PATRICK' past loss of companionship, society, comfort and
12 consortium; and
- 13 6. \$736,000.00 for PATRICK' future loss of companionship, society, comfort and
14 consortium.

15 The Defendants requested that the jury be polled, and the Court found that seven (7) out of
16 the eight (8) jurors were in agreement with the verdict.

17 NOW, THEREFORE, judgment upon the verdict is hereby entered in favor of the Plaintiffs
18 and against the Defendants as follows:

19 IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs shall have and recover
20 against Defendants non-economic damages of \$350,000.00 pursuant to NRS 41A.035, economic
21 damages of \$5,726,479.94, and the pre-judgment interest of \$291,325.58, calculated as follows:

- 22 1. \$1,063,006.94 for TITINA FARRIS' past medical and related expenses, plus
23 prejudgment interest in the amount of \$258,402.69 (interest calculated at 5.50%
24 prime plus 2% for a total of 7.50% from date of service August 16, 2016 to
25 November 12, 2019, for a total of 1,183 days = \$218.43 per day) pursuant to NRS
26 17.130 for a total judgment of \$1,321,409.63; with daily post-judgment interest
accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained
by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be
adjusted accordingly on each January 1 and July 1 thereafter until the judgment is
satisfied;

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2. \$4,663,473.00 for TITINA FARRIS' future medical and related expenses, plus post-judgment interest accruing at \$958.25 per day (interest calculated at 5.50% prime plus 2% for a total of 7.50%) pursuant to NRS 17.130 from the time of entry of the judgment with daily post-judgment interest accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied;
3. \$43,225.00 for TITINA FARRIS' past physical and mental pain, suffering, anguish, disability and loss of enjoyment of life, plus prejudgment interest in the amount of \$10,505.04 (interest calculated at 5.50% prime plus 2% for a total of 7.50% from date of service August 16, 2016 to November 12, 2019, for a total of 1,183 days = \$8.88 per day) pursuant to NRS 17.130 for a total judgment of \$53,730.04; with daily post-judgment interest accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied;
4. \$131,775.00 for TITINA FARRIS' future physical and mental pain, suffering, anguish, disability and loss of enjoyment of life, plus post-judgment interest accruing at \$27.07 per day (interest calculated at 5.50% prime plus 2% for a total of 7.50%) pursuant to NRS 17.130 from the time of entry of the judgment with daily post-judgment interest accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied;
5. \$92,225.00 for PATRICK FARRIS' past loss of companionship, society, comfort and consortium, plus prejudgment interest in the amount of \$22,417.85 (interest calculated at 5.50% prime plus 2% for a total of 7.50% from date of service August 16, 2016 to November 12, 2019, for a total of 1,183 days = \$18.95 per day) pursuant to NRS 17.130 for a total judgment of \$114,642.85; with daily post-judgment interest accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied; and
6. \$82,775.00 for PATRICK FARRIS' future loss of companionship, society, comfort and consortium, plus post-judgment interest accruing at \$17.00 per day (interest calculated at 5.50% prime plus 2% for a total of 7.50%) pursuant to NRS 17.130 from the time of entry of the judgment with daily post-judgment interest accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

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///

1 IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs TITINA FARRIS and
2 PATRICK FARRIS has judgment against Defendants BARRY RIVES, M.D. and
3 LAPAROSCOPIC SURGERY OF NEVADA LLC as follows:

4 Principal \$ 6,076,479.94
5 Pre-Judgment Interest \$ 291,325.58 (1,183 days @ 7.50%)
6 **TOTAL JUDGMENT of: \$ 6,367,805.52**

7 Pursuant to NRS 17.130, the judgment shall continue to accrue daily post-judgment interest
8 at \$1,248.58 per day (interest calculated at 5.50% prime plus 2% for a total of 7.50%); daily post-
9 judgment interest shall accrue at a rate equal to the prime rate at the largest bank in Nevada as
10 ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted
11 accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

12 SO ORDERED this 12 day of November, 2019.

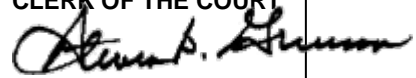
13
14  JOANNA S. KISHNER
15 HONORABLE JOANNA S. KISHNER
16 District Court Judge

17 Respectfully Submitted by:
18 Dated this 11th day of November, 2019.

Approved as to form and content:
Dated this 11th day of November, 2019.

19
20 **BIGHORN LAW**
21 By: George F. Hand (8483)
22 Kimball Jones, Esq.
23 Nevada Bar No. 12982
24 716 S. Jones Blvd
25 Las Vegas, NV 89107
26 George F. Hand, Esq.
27 Nevada Bar No. 8483
28 3442 N. Buffalo Drive
Las Vegas, NV 89129
Attorneys for Plaintiffs

SCHUERING ZIMMERMAN & DOYLE, LLP
By: /s/ Thomas J. Doyle, Esq.
Thomas J. Doyle, Esq.
Nevada Bar No. 1120
Aimee Clark Newberry, Esq.
Nevada Bar No. 11084
400 University Avenue
Sacramento, CA 95825
Attorneys for Defendants
Barry J. Rives, M.D.;
Laparoscopic Surgery of Nevada, LLC



1 **NEOJ**

2 KIMBALL JONES, ESQ.

3 Nevada Bar No.: 12982

4 JACOB G. LEAVITT, ESQ.

5 Nevada Bar No.: 12608

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17 Phone: (702) 656-5814

18 Email: GHand@HandSullivan.com

19 *Attorneys for Plaintiffs*

20 **DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 TITINA FARRIS and PATRICK FARRIS,

23 Plaintiffs,

24 vs.

25 BARRY RIVES, M.D.; LAPAROSCOPIC
26 SURGERY OF NEVADA, LLC et al.,

27 Defendants.

CASE NO.: A-16-739464-C

DEPT. NO.: XXXI

28 **NOTICE OF ENTRY OF JUDGMENT**

29 YOU, AND EACH OF YOU WILL PLEASE TAKE NOTICE that a Judgment on Verdict
30 was entered, in the above-entitled matter, on November 14, 2019, a copy of which is attached hereto.

31 DATED this 19th day of November, 2019.

32 **BIGHORN LAW**

33 By: /s/ Kimball Jones

34 **KIMBALL JONES, ESQ.**

35 Nevada Bar.: 12982

36 **JACOB G. LEAVITT, ESQ.**

37 Nevada Bar No.: 12608

38 716 S. Jones Blvd.

Las Vegas, Nevada 89107

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of
3 **BIGHORN LAW**, and on the 19th day of November, 2019, I served the foregoing ***NOTICE OF***
4 ***ENTRY OF JUDGMENT*** as follows:

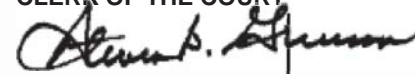
5
6 Electronic Service – By serving a copy thereof through the Court’s electronic
7 service system; and/or

8 U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage
9 prepaid and addressed as listed below:

10 Kim Mandelbaum, Esq.
11 MANDELBAUM ELLERTON & ASSOCIATES
12 2012 Hamilton Lane
13 Las Vegas, Nevada 89106
14 &
15 Thomas J. Doyle, Esq.
16 Chad C. Couchot, Esq.
17 SCHUERING ZIMMERMAN & DOYLE, LLP
18 400 University Avenue
19 Sacramento, California 95825
20 *Attorneys for Defendants*

21
22
23
24
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26
27
28

/s/ Erickson Finch
An employee of **BIGHORN LAW**



JGJV

1 KIMBALL JONES, ESQ.
Nevada Bar No.: 12982

2 JACOB G. LEAVITT, ESQ.
Nevada Bar No. 12608

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ghand@handsullivan.com

10 Attorneys for Plaintiffs

11 TITINA FARRIS and PATRICK FARRIS

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 TITINA FARRIS and PATRICK FARRIS,

15 Plaintiffs,

16 vs.

17 BARRY RIVES, M.D., LAPAROSCOPIC
18 SURGERY OF NEVADA LLC; DOES I-V,
inclusive; and ROE CORPORATIONS I-V,
inclusive,

19 Defendants.

Case No.: A-16-739464-C

Dept. No.: 31

JUDGMENT ON VERDICT

21

22 The above–entitled matter having come on for trial by jury on October 14, 2019, before the

23 Honorable Joanna S. Kishner, District Court Judge, presiding. Plaintiffs TITINA FARRIS and

24 PATRICK FARRIS (“Plaintiffs”), appeared in person with their counsel of record, KIMBALL

25 JONES, ESQ. and JACOB LEAVITT, ESQ., of the law firm of Bighorn Law, and GEORGE

26 HAND, ESQ., of the law firm of Hand & Sullivan, LLC. Defendants BARRY J. RIVES, M.D. and

27 LAPAROSCOPIC SURGERY OF NEVADA, LLC (“Defendants”) appeared by and through their

28 counsel of record, THOMAS DOYLE, ESQ., of the law firm of Schuering, Zimmerman & Doyle,

1 LLP.

2 Testimony was taken, evidence was offered, introduced and admitted. Counsel argued the
3 merits of their cases. The jury rendered a verdict in favor of Plaintiffs and against the Defendants as
4 to claims concerning medical malpractice in the following amounts:

- 5 1. \$1,063,006.94 for TITINA FARRIS' past medical and related expenses;
- 6 2. \$4,663,473.00 for TITINA FARRIS' future medical and related expenses;
- 7 3. \$1,571,000.00 for TITINA FARRIS' past physical and mental pain, suffering,
8 anguish, disability and loss of enjoyment of life;
- 9 4. \$4,786,000.00 for TITINA FARRIS' future physical and mental pain, suffering,
10 anguish, disability and loss of enjoyment of life;
- 11 5. \$821,000.00 for PATRICK' past loss of companionship, society, comfort and
12 consortium; and
- 13 6. \$736,000.00 for PATRICK' future loss of companionship, society, comfort and
14 consortium.

15 The Defendants requested that the jury be polled, and the Court found that seven (7) out of
16 the eight (8) jurors were in agreement with the verdict.

17 NOW, THEREFORE, judgment upon the verdict is hereby entered in favor of the Plaintiffs
18 and against the Defendants as follows:

19 IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs shall have and recover
20 against Defendants non-economic damages of \$350,000.00 pursuant to NRS 41A.035, economic
21 damages of \$5,726,479.94, and the pre-judgment interest of \$291,325.58, calculated as follows:

- 22 1. \$1,063,006.94 for TITINA FARRIS' past medical and related expenses, plus
23 prejudgment interest in the amount of \$258,402.69 (interest calculated at 5.50%
24 prime plus 2% for a total of 7.50% from date of service August 16, 2016 to
25 November 12, 2019, for a total of 1,183 days = \$218.43 per day) pursuant to NRS
26 17.130 for a total judgment of \$1,321,409.63; with daily post-judgment interest
accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained
by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be
adjusted accordingly on each January 1 and July 1 thereafter until the judgment is
satisfied;

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- 1 2. \$4,663,473.00 for TITINA FARRIS' future medical and related expenses, plus post-
2 judgment interest accruing at \$958.25 per day (interest calculated at 5.50% prime
3 plus 2% for a total of 7.50%) pursuant to NRS 17.130 from the time of entry of the
4 judgment with daily post-judgment interest accruing at a rate equal to the prime rate
5 at the largest bank in Nevada as ascertained by the Commissioner of Financial
6 Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1
7 and July 1 thereafter until the judgment is satisfied;

- 8 3. \$43,225.00 for TITINA FARRIS' past physical and mental pain, suffering, anguish,
9 disability and loss of enjoyment of life, plus prejudgment interest in the amount of
10 \$10,505.04 (interest calculated at 5.50% prime plus 2% for a total of 7.50% from
11 date of service August 16, 2016 to November 12, 2019, for a total of 1,183 days =
12 \$8.88 per day) pursuant to NRS 17.130 for a total judgment of \$53,730.04; with daily
13 post-judgment interest accruing at a rate equal to the prime rate at the largest bank in
14 Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent.
15 The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until
16 the judgment is satisfied;

- 17 4. \$131,775.00 for TITINA FARRIS' future physical and mental pain, suffering,
18 anguish, disability and loss of enjoyment of life, plus post-judgment interest accruing
19 at \$27.07 per day (interest calculated at 5.50% prime plus 2% for a total of 7.50%)
20 pursuant to NRS 17.130 from the time of entry of the judgment with daily post-
21 judgment interest accruing at a rate equal to the prime rate at the largest bank in
22 Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent.
23 The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until
24 the judgment is satisfied;

- 25 5. \$92,225.00 for PATRICK FARRIS' past loss of companionship, society, comfort and
26 consortium, plus prejudgment interest in the amount of \$22,417.85 (interest
27 calculated at 5.50% prime plus 2% for a total of 7.50% from date of service August
28 16, 2016 to November 12, 2019, for a total of 1,183 days = \$18.95 per day) pursuant
to NRS 17.130 for a total judgment of \$114,642.85; with daily post-judgment interest
accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained
by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be
adjusted accordingly on each January 1 and July 1 thereafter until the judgment is
satisfied; and

- 6. \$82,775.00 for PATRICK FARRIS' future loss of companionship, society, comfort
and consortium, plus post-judgment interest accruing at \$17.00 per day (interest
calculated at 5.50% prime plus 2% for a total of 7.50%) pursuant to NRS 17.130
from the time of entry of the judgment with daily post-judgment interest accruing at a
rate equal to the prime rate at the largest bank in Nevada as ascertained by the
Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted
accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

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1 IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs TITINA FARRIS and
2 PATRICK FARRIS has judgment against Defendants BARRY RIVES, M.D. and
3 LAPAROSCOPIC SURGERY OF NEVADA LLC as follows:

4 Principal \$ 6,076,479.94
5 Pre-Judgment Interest \$ 291,325.58 (1,183 days @ 7.50%)
6 **TOTAL JUDGMENT of: \$ 6,367,805.52**

7 Pursuant to NRS 17.130, the judgment shall continue to accrue daily post-judgment interest
8 at \$1,248.58 per day (interest calculated at 5.50% prime plus 2% for a total of 7.50%); daily post-
9 judgment interest shall accrue at a rate equal to the prime rate at the largest bank in Nevada as
10 ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted
11 accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

12 SO ORDERED this 12 day of November, 2019.

13
14  JOANNA S. KISHNER
15 HONORABLE JOANNA S. KISHNER
16 District Court Judge

17 Respectfully Submitted by:

Approved as to form and content:

18 Dated this 11th day of November, 2019.

Dated this 11th day of November, 2019.

19
20 **BIGHORN LAW**

SCHUERING ZIMMERMAN & DOYLE, LLP

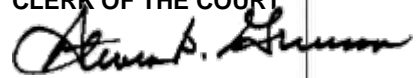
21 By: George F. Hand (8483)

By: /s/ Thomas J. Doyle, Esq.

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11 *Attorneys for Plaintiffs*

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

15 TITINA FARRIS and PATRICK FARRIS,
16 Plaintiffs,
17 vs.

Case No.: A-16-739464-C
Dept. No.: 31

18 BARRY RIVES, M.D.; LAPAROSCOPIC
19 SURGERY OF NEVADA LLC; DOES I-V,
inclusive; and ROE CORPORATIONS I-V,
20 inclusive,
21 Defendants.

**ORDER ON PLAINTIFFS' MOTION
FOR FEES AND COSTS AND
DEFENDANTS' MOTION TO RE-
TAX AND SETTLE PLAINTIFFS'
COSTS**

22
23 Plaintiffs' Motion for Fees and Costs having come on for hearing on the 7th day of January,
24 2020, at 10:00 a.m., KIMBALL JONES, ESQ., with the Law Offices of **BIGHORN LAW**, and
25 GEORGE F. HAND, ESQ. with the Law Offices of **HAND & SULLIVAN, LLC**, appearing on
26 behalf of Plaintiffs, and THOMAS J. DOYLE, ESQ., with the Law Offices of **SCHUERING**
27 **ZIMMERMAN & DOYLE, LLP**, appearing on behalf of Defendants, and Defendants' Motion to
28

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2 Re-Tax and Settle Plaintiffs' Costs having come on for hearing on the 7th day of January, 2020, at
3 10:00 a.m. and February 11, 2020 at 9:30 a.m. with the Honorable Court having reviewed the
4 pleadings and papers on file herein and with hearing the arguments of counsel:

5 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

6 ***Plaintiffs' Request for Attorneys' Fees***

7 The Court finds that attorneys' fees are properly awarded to Plaintiffs in this matter for the
8 reasons outlined in Plaintiffs' Motion, Reply, and supporting affidavits.

9 Under *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983), *Yamaha Motor Co., U.S.A. v.*
10 *Arnoult*, 114 Nev. 233, 955 P.2d 661 (1998), and *Brunzell v. Golden Gate National Bank*, 85 Nev.
11 345, 455 P.2d 31 (1969), the Court considers the following factors in making an award of attorney
12 fees to Plaintiffs based upon an offer of judgment: According to *Beattie*, the Court is required to
13 consider: (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants'
14 offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the
15 plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith;
16 and (4) whether the fees sought by the offeror are reasonable and justified in amount. *Id.*, 99 Nev.
17 at 588–589, 668 P.2d at 274.

18 Since Plaintiffs are the prevailing offerors, however, the analysis of the *Beattie* factors is
19 reversed, such that the Court considers: (1) whether the defendant's claim or defense was brought
20 in good faith; (2) whether the plaintiff's offer of judgment was reasonable and in good faith in both
21 its timing and amount; (3) whether the defendant's decision to reject the offer and proceed to trial
22 was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are
23 reasonable and justified in amount. See *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252,
24 955 P.2d 661, 673 (1998).

25 With regard to the reasonableness of requested attorneys' fees, the Court considers the
26 *Brunzell* factors: (1) the qualities of the advocate: his ability, his training, education, experience,
27 professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy,
28 its importance, time and skill required, the responsibility imposed and the prominence and

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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; and (4) the result: whether the attorney was successful and what benefits were derived. See *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). If the record reflects that the court properly considered these factors, there is no abuse of discretion. See *Wynn v. Smith*, 117 Nev. 6, 13,16 P.3d 424, 428-429 (2001); *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). Further, the Court retains the right to determine a reasonable amount of attorneys' fees. *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864-865, 124 P.3d 530, 548-549 (2005).

Beattie/Yahama Factors

1. Whether the Defendants' Defenses Were Brought in Good Faith.

Defendants' defenses, and refusal to pay the Offer of Judgment, were not brought in good faith based on the facts of this case. It was known by Defendants before the trial commenced and at the time of the NRS 41A.081 settlement conference that there were serious issues with the credibility of ~~counsel and Defendant Rives~~ ^{including} ~~concerning~~ ^{positions taken in court and the issue of} the *Center v. Rives* case. In fact, before the trial commenced, there were pending NRCP 37 motions before this Court. Despite the demonstrated misconduct by Defendants in discovery and depositions, Defendants still elected to risk going to trial. In fact, ^{there was a pending issue of} it was a possibility that terminating sanctions ~~may issue~~ ^{as provided through evidence to the court, Defendants could} based on the aforementioned conduct by Defendants. Moreover, given Defendants' (and Counsel's) knowledge of this misconduct, ~~they were also obliged to consider and calculate the impact of the discovery and~~ likely consequences of their misconduct.

Further, there were serious problems with Defendants' expert opinions. The defense liability expert, Dr. Brian Juell, opined at trial that the use of a LigaSure was relatively contraindicated and that it should not be used in the setting of the subject surgery if there was any other alternative, such as cold scissors. Then, it was established that Defendant Rives actually had cold scissors, but used the LigaSure anyway. The defense should have been aware of this weakness in their own case when they rejected Plaintiffs' offer.

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2 Defendants also tried to put forth a defense that the sepsis of Plaintiff Titina Farris
3 originated from "pulmonary aspiration syndrome." This defense was put forward, despite no other
4 physician, treating Titina Farris during her hospitalization, ever diagnosing her with this condition.
5 ~~This ^{the} defense was clearly attempted to misdirect attention from Defendant Rives' failure to~~
6 ~~treat the sepsis originating from the holes in the bowel that he caused and failed to adequately~~
7 ~~repair.~~ Dr. Juell still tried to put forth this theory before the jury, even though it was shown at trial
8 that he opined in his expert reports ^{differently including the} that Titina Farris had pulmonary aspiration syndrome without
9 first reviewing the relevant films. Thus, this first *Beattie* factor weighs in Plaintiffs' favor.

Defendants' were aware of the weakness and positions of their expert at the time of the offer.

10 **2. Whether the Plaintiffs' Offer of Judgment Was Reasonable and in Good Faith in Both Its Timing and Amount.**

11 Plaintiffs' Offer of Judgment was reasonable and was in good faith in timing and amount,
12 and Defendants' decision to reject the offer was grossly unreasonable. Plaintiffs served their offer
13 of judgment for \$1,000,000 on June 5, 2019. At the time, expert reports had been exchanged, key
14 witnesses were deposed, and medical records had been exchanged. Thus, Defendants were aware
15 of all the supporting information for Plaintiffs' Offer of Judgment, including Plaintiffs' injuries,
16 related medical specials, and pain and suffering. The amount of Plaintiffs' Offer of Judgment was
17 less than Plaintiffs' disclosed past medical expenses ^{which was an additional factor showing it was} and was, therefore, reasonable and in good
18 faith. This second *Beattie* factor weighs in Plaintiffs' favor. _{wait}

19
20 **3. Whether the Defendants' Decision to Reject the Offer and Proceed to Trial Was Grossly Unreasonable or in Bad Faith.**

21 In light of the severity of Plaintiffs' injuries and damages, as well as a very strong case of
22 liability, presented at the time of their Offer of Judgment, it was grossly unreasonable and in bad
23 faith for Defendants to reject the \$1,000,000 offer and proceed to trial. At the time of Plaintiffs'
24 Offer of Judgment, they had already disclosed over \$4,000,000 in special damages. ~~Defendants~~
25 ~~simply undervalued this case, as evidenced by their zero offer of judgment.~~ The Court weighs this
26 third *Beattie* factor in favor of Plaintiffs, despite Defendants' argument that its experts had
27 differing opinions.
28

4. Whether the Fees Sought by the Offeror are Reasonable and Justified in Amount.

The amount of attorney's fees requested by Plaintiffs are reasonable and justified in amount based on the outcome at trial. Plaintiffs contracted to pay an attorney's fees in the amount of 40% of the gross recovery. That amount totals \$2,547,122.21 (40% of \$6,367,805.52). Even if attorneys' fees are calculated under NRS 7.095 on \$6,367,805.52, that amount is \$1,026,835.83.

Although the Court of Appeals has approved a determination of attorney fees based upon a contingency fee agreement, this Court determines that NRS 7.095 is controlling in this matter. See *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. Adv. Op. 7, 429 P.3d 664, 671-672 (Nev. App. 2018). Thus, the Court awards Plaintiffs the sum of \$821,468.66 in attorney fees, as further elaborated based upon the *Brunzell* factors.

Brunzell Factors

1. Qualities of the Advocates.

Mr. Jones is a managing partner with the Law Offices of BIGHORN LAW. He graduated Magna Cum Laude from Brigham Young University-Idaho in 2005 and graduated as the top student in economics that year. He graduated from Brigham Young University in 2008 and was awarded a Dean's Scholarship for academic merit all three years of law school. Mr. Jones was first admitted to practice law in Nevada in 2013, scoring in the 98th percentile nationally on the MBE. He has also passed the Idaho Bar Exam. Mr. Jones has prevailed in more than 95 percent of the arbitrations and trials he has litigated. Further, he has recovered more than \$30,000,000 for clients through judgments and settlements in the last six years. Mr. Jones' usual and customary fee on an hourly basis is \$500.00 an hour, which is at or below average for attorneys of his skill and experience who handle similar matters in Clark County, Nevada.

Likewise, Mr. Leavitt is a partner with Bighorn Law. He has been licensed to practice law since 2012 and has a billing rate of \$500.00 per hour, a rate at or below average for attorneys of his skill and experience who handle similar matters in Clark County, Nevada. Mr. Leavitt graduated Cum Laude from the University of Las Vegas, Nevada in 2004. He attended Cooley Law School

That Contingency Amt Standard is the Contingency Amt And That Reasonable

Give the Amt provided, NRS 7.095 is controlling in this matter.

while fees were provided pursuant to NRS 7.095 He asserted that his

He asserted that his rate is at or below average

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on scholarship and graduated in the top 13% of his class. Mr. Leavitt completed an externship under retired Nevada Supreme Court Justice Michael Cherry and is admitted to practice in the Ninth Circuit Court of Appeals. Mr. Leavitt has conducted numerous trials and administrative proceedings.

Mr. Hand is a partner of Hand & Sullivan, LLC. He is licensed to practice law in Nevada and New York. He has been licensed to practice law in Nevada for sixteen years. Prior to that, he was licensed as an attorney in New York where he practiced in areas of personal injury, medical malpractice, and insurance defense litigation. He has conducted more than 125 jury and bench trials. Mr. Hand also served as a Deputy County Attorney for Nassau County, New York. Mr. Hand's billing rate of \$500.00 per hour ^{is} at or below average for attorneys of his skill and experience who handle similar matters in Clark County, Nevada.

and he too asserted that it is

Additionally, the Court found this factor to be considered by the Court and was not contested by Defendants in written opposition or in argument.

Therefore, the qualities of the advocates who performed work in this matter are proven. Further, the market rate of \$500.00 per hour ^{give the was no objection to the mark and the award was point to} is appropriate under *Marrocco v. Hill*, 291 F.R.D. 586 (D. Nev. 2013), for this type of case. ^{could be}

NRS 710.55

2. Character of the Work to be Done.

Plaintiffs' Counsel was engaged in proving a complicated and complex Professional Negligence matter of medical malpractice, an area of law few practitioners of law engage in due to the complexity and stringent laws. In this case the legal work required retaining and questioning numerous experts and dealing with nuanced medical topics which not only increased the actual cost of litigating, but also consumed many hours of research and preparation. The nature of the work was time-consuming, complicated and difficult due to the nature of the area of law and medicine combined.

3. Work Actually Performed by the Lawyer.

Plaintiffs' Counsel engaged in multitudinous depositions, written discovery, and this work culminated in a three-week trial on the matter. Plaintiffs' Counsel worked extensively for the

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entirety of trial and demonstrated substantial skill in the work performed. Coupled with the second factor, the character of the work, the work performed included long hours of trial and the long hours of preparation during the hours of the day while not in trial. Not only did the work require preparation for the substance of the trial, yet the numerous issues Defendants raised requiring many hearings outside the presence of the jury.

Albeit there are three attorneys on this matter, the substantive matter of the trial coupled with the many collateral issues required the presence and work of all in order to effectively try the case.

4. Result—whether the Attorney was Successful and what Benefits were Derived.

Plaintiffs were successful in their attempts before this Court. The jury returned a verdict of more than \$13 million, and the Court Awarded a Judgment on the Verdict in favor of Plaintiffs and against Defendants in the amount of \$6,367,805.52. Plaintiffs’ Counsel was able to procure a highly favorable outcome for their clients.

Therefore, the Court found Attorneys’ Fees in the amount of \$821,468.66 are properly granted to Plaintiffs in this matter, pursuant to *Brunzell, Beattie, O’Connell*, NRCP 68, and NRS 7.095.

It is undisputed that Plaintiffs served an offer of judgment for \$1,000,000 under NRCP 68 and that Defendants chose to let that offer expire. The offer was made several months after expert witness disclosures. It is undisputed that at the time of the offer Plaintiffs had already disclosed more than \$4,000,000 in special damages. Moreover, Plaintiffs’ experts had already outlined the breaches in the standard of care that the jury ultimately agreed were committed by Defendants. Ultimately, the Court finds that Defendants’ decision to reject the offer was unreasonable. Under NRCP 68, attorney fees are properly awarded for Plaintiffs and against Defendants.

NRCP 68 (f) states: Penalties for Rejection of Offer

- (1) In General. If the offeree rejects an offer and fails to obtain a more favorable judgment:
 - (A) the offeree cannot recover any costs, expenses, or attorney fees and may not recover interest for the period after the service of the offer and before the judgment; and

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2 (B) the offeree must pay the offeror's post-offer costs and expenses, including a reasonable
3 sum to cover any expenses incurred by the offeror for each expert witness whose services were
4 reasonably necessary to prepare for and conduct the trial of the case, applicable interest on the
5 judgment from the time of the offer to the time of entry of the judgment and reasonable attorney
6 fees, if any be allowed, actually incurred by the offeror from the time of the offer.

7 Plaintiffs served an Offer of Judgment on June 5, 2019. Judgment in the amount of
8 \$6,367,805.52 was entered on November 14, 2019. Pursuant to NRCP 68(f)(1)(B) Defendants
9 must pay applicable interest on the judgment from the time of the offer to the time of entry of the
10 judgment in the amount of \$202,269.96 (interest calculated at 5.50% prime plus 2% for a total of
11 7.5% from the date of the Offer of Judgment, June 5, 2019 to Entry of Judgment on November 14,
12 2019, for a total of 162 days = \$1,248.58 per day) pursuant to NRS 17.130.

13 The Court then needs to analyze the attorney fees to be awarded. *O'Connell v. Wynn Las*
14 *Vegas, LLC*, 134 Nev. Adv. Op. 7, 429 P. 3d 664 (Nev. App. 2018) demonstrates that attorney fees
15 are appropriately awarded based on contingency fee agreements, which is the nature of the
16 agreement between Plaintiffs and Counsel in this matter. Given the \$6,565,830.84 judgment in this
17 matter, Plaintiffs' attorney fees would be approximately \$1,026,835.82 under the sliding scale of
18 NRS 7.095. However, at the time of the offer of judgment in this matter, approximately twenty
19 percent (20%) of the total attorney work had already been performed. As a result, the Court
20 determined that the fee should be reduced by an additional 20% and that eighty percent (80%) of
21 the projected contingent fee under the NRS 7.095 sliding scale, or \$821,468.66, should be awarded.
22 The Court further analyzed whether this number was unreasonable, given the hours likely expended
23 by Plaintiffs' attorneys in this case multiplied by their reasonable billing rates. The Court
24 determined that \$821,468.66 was not unreasonable and was likely comparable to the amount that
25 would be awarded had Plaintiffs' attorneys billed their time on an hourly basis. As NRS 7.095
26 already has a built-in reduction, and given the Court's decision to further reduce the fee to only the
27 percentage of work done after the offer, no further reduction is warranted. Plaintiffs are awarded
28 \$821,468.66 in attorney fees.

Plaintiffs’ Request for Additional Attorneys’ Fees as a Sanction

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The Court did find there was significant inappropriate conducted by Defendants and Defense Counsel. This misconduct was the basis of numerous hearings and was an ongoing problem during discovery and through the end of trial. The Court found this to be a substantive and compelling reason to consider striking Defendants’ Answer and that the misconduct was certainly a proper basis to award substantial attorney fees to Plaintiffs and against Defendants. Sanctionable conduct in this case included, but is not limited to the following: (1) Defendants and their Counsel intentionally withholding evidence during discovery; (2) Defendants omitting relevant evidence that had been asked for regarding his medical malpractice history; (3) Defendant blurting out that Plaintiff’s bills were paid through medical insurance to the jury; (4) Defendants’ Counsel signing affidavits containing verifiably false information for procedural reasons prior to trial; (5) Defendants improperly filing numerous “offers of proof” after the close of evidence and without leave of the Court; and (6) Defendants violating Court orders during the course of trial on numerous occasions, including during the cross-examination of Dr. Michael Hurwitz. See NRCP 37; *Emerson v. Eighth Judicial Dist. Court*, 127 Nev. 672, 263 P.3d 224 (2011).

Nevertheless, the Court did not find it appropriate to award additional attorneys’ fees above the \$821,468.66 already awarded. However, the Court did find that independent of *Brunzell, Beattie, O’Connell*, NRCP 68 and NRS 7.095, \$821,468.66 in attorney fees would be properly awarded to Plaintiffs as a sanction for inappropriate conduct by Defendants and Defense Counsel in this matter. Thus, the total award of \$821,468.66 in Attorneys’ Fees is granted, with these two independent grounds supporting the Court’s finding for this award: (1) the analysis under *Brunzell, Beattie, O’Connell*, NRCP 68 and NRS 7.095 and (2) the misconduct of Defendants and their counsel.

THEREFORE, IT IS ORDERED that Plaintiffs’ Request for Attorneys’ Fees is GRANTED in the amount of Eight Hundred Twenty-One Thousand Four Hundred Sixty-Eight Dollars and Sixty-Six Cents (\$821,468.66).

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IT IS FURTHER ORDERED that Plaintiffs’ Request for Costs and Defendants’ Motion to Re-Tax such Costs is CONTINUED to February 11, 2020 at 9:30 a.m., for Supplemental Pleadings to be filed.

IT IS FURTHER ORDERED that the Supplemental Briefing Schedule SET as follows: Plaintiffs’ Supplemental Opposition due January 21, 2020 and Defendants’ Supplemental Reply due February 3, 2020.

Plaintiffs’ Costs and Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs

On November 19, 2019, Plaintiffs filed a Verified Memorandum of Costs and Disbursements in the total amount of \$153,118.26. On November 22, 2019, Defendants filed a Motion to Re-Tax and Settle Plaintiffs’ Costs. On January 21, 2020 Plaintiffs filed a Supplemental Verified Memorandum of Costs and Disbursements in the total amount of \$153,118.26. On January 21, 2020, Plaintiffs filed a Supplemental Opposition to Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs. On February 3, 2020 Defendants filed a Supplemental Reply to Plaintiffs’ Opposition to Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs. The matter having come on for hearing on February 11, 2020 at 9:30 a.m., the Court makes the following Findings of Facts and Conclusions of Law:

NRS 18.005(5) states, “Reasonable fees of not more than five expert witnesses in an amount of not more than \$1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert’s testimony were of such necessity as to require the larger fee.”

Plaintiffs’ have submitted fees paid to experts as follows:

- 1. Michael Hurwitz, M.D. (surgeon) \$ 11,000.00
- 2. Justin Willer, M.D. (neurologist) \$ 17,245.00
- 3. Alex Barchuck, M.D. (physical medicine and rehabilitaton) \$ 26,120.00
- 4. Dawn Cook, R.N. (life care planning) \$ 23,960.03
- 5. Alan Stein, M.D. (infectious diseases) \$ 19,710.00

- 6. Daniel Feingold, M.D. (surgeon) \$ 2,000.00
- 7. Terence Clauretje, Ph.D. (economist) \$ 3,500.00

The Court has analyzed the factors in *Frazier v Drake*, 131 Nev. 632 (2015) and has determined that the circumstances surrounding certain of the expert’s testimony were necessary to require larger fees than \$1,500.00 per expert. The Court is only considering the fees of experts Hurwitz, Willer, Barchuk, Cook, and Stein as NRS 18.005(5) limits recoverable expert fees to five experts. This was a medical malpractice case that took approximately three weeks to try. There were complex medical issues as to both the standard of care, proximate cause and damages that required medical expert review and testimony. Plaintiffs’ experts Hurwitz, Willer, Barchuk, and Cook testified at trial. Plaintiffs’ infectious disease expert Alan Stein, M.D. from New York was present in Las Vegas prepared to testify. Dr. Stein did not testify at the trial. The opinions of Plaintiffs’ experts Hurwitz, Willer, Barchuk, Cook, and Stein aided the jury in deciding the case as each area of medical specialty in that each area of medical specialty was at issue during the trial. Plaintiffs’ experts Hurwitz, Willer, Barchuk, Cook, and Stein were not repetitive of each other as they each addressed different medical issues and were of different specialties. The extent and nature of the work performed by the experts was of high quality. The various experts’ education and training was significant and extensive. Experts Hurwitz, Willer, Barchuk, and Cook spent time preparing and testifying at trial. Experts Hurwitz, Willer, Barchuk, Cook, and Stein were also deposed in the case and prepared expert reports. The fees charged by these experts are similar to the experts in other malpractice cases in this venue. Dawn Cook was a local expert. Dr. Barchuk traveled from the Bay area. Dr. Willer and Dr. Stein traveled from the New York City area. Dr. Hurwitz traveled from Orange County, California. The fees charged by these experts are comparable to what a local expert would charge.

Pursuant to the factors in *Frazier v. Drake*, 131 Nev. 632, 650–51, 357 P.3d 365, 377–78 (Nev. App. 2015) the Court therefore awards the following expert fees:

- Dr. Hurwitz: \$ 11,000.00
- Dr. Willer: \$ 17,245.00

1
2 Dr. Barchuk: \$ 26,120.00

3 Dawn Cook: \$ 13,960.03

4 Dr. Stein: \$ 1,500.00

5 Pursuant to the same *Frazier* factors, this Court does not find \$19,710.00 for Plaintiffs'
6 Expert Dr. Alan J. Stein is warranted, as Dr. Stein did not testify at trial in this matter and reduces
7 the amount for Dr. Stein to \$1,500.00. This Court further does not find that \$23,960.03 for
8 Plaintiffs' Expert Dawn Cook is warranted, as Ms. Cook billed for items that can be utilized in
9 other life care plans and incorporated other number from other experts which Plaintiff was already
10 charged for and, thus, not approving the double charging and reduces the amount for Ms. Cook to
11 \$13,960.03.

12 Pursuant to NRCP 68, Plaintiffs' request in the amount of \$1,200.00 for the "Day In The
13 Life Video," is not warranted, as Plaintiffs did not utilize this video during the trial in this matter.

14 As to Plaintiffs' request for costs for deposition testimony, the Court finds the video charge
15 portion of these costs is not warranted, as the video portion of the deposition testimony was not
16 utilized during the trial in this matter and, therefore, reduces said deposition testimony costs by
17 \$5,032.02.

18 Pursuant to *Cadle Co. v. Woods & Erickson, LLP*, 345 P.3d 1049 (2015) and *Bobby*
19 *Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352 (1998), Plaintiffs' remaining costs are warranted.

20 THEREFORE, IT IS ORDERED that Plaintiffs' Request for Attorneys' Fees is GRANTED
21 in the amount of Eight Hundred Twenty-One Thousand Four Hundred Sixty-Eight Dollars and
22 Sixty-Six Cents (\$821,468.66).

23 IT IS FURTHER ORDERED that pursuant to NRCP 68(f)(1)(B), Defendants are to pay the
24 applicable interest on the Judgment in the amount of \$6,367,805.52 from the date of the Offer of
25 Judgment on June 5, 2019 to entry of the Judgment on November 14, 2019 in the amount of
26 \$202,269.96;

27 IT IS FURTHER ORDERED that Plaintiffs' Request for Costs and Defendants' Motion to
28 Retax Costs are each GRANTED IN PART AND DENIED IN PART.

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IT IS FURTHER ORDERED that Plaintiffs' Costs request for Experts Dr. Michael Hurwitz, Dr. Justin Willer, Dr. Alex Barchuk, Dawn Cook, R.N. and Dr. Alan Stein are GRANTED in the total amount of \$69,825.03.

IT IS FURTHER ORDERED that Plaintiffs' Costs request for Expert Dr. Alan J. Stein is reduced to \$1,500.00.

IT IS FURTHER ORDERED that Plaintiffs' Costs request for Expert Dawn Cook is reduced to \$13,960.03.

IT IS FURTHER ORDERED that Plaintiffs' Costs request for the "Day In The Life Video," in the amount of \$1,200.00 is DENIED.

IT IS FURTHER ORDERED that Plaintiffs' Costs request for deposition testimony is reduced by \$5,032.02.

IT IS FURTHER ORDERED that Plaintiffs' remaining Costs request in the amount of \$44,851.21 is GRANTED.

IT IS FURTHER ORDERED that the total amount of Plaintiffs' Cost Award in this matter is \$113,186.24.

THEREFORE, IT IS ORDERED that Plaintiffs' Costs are Re-Taxed in the amount of \$113,186.24.

IT IS FURTHER ORDERED that interest on Plaintiffs' costs of \$113,186.24 will accrue from November 14, 2019 (the date of entry of judgment) at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

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IT IS FURTHER ORDERED that interest on Plaintiffs' award of attorneys' fees of \$821,468.66 will accrue from the date of entry of this order at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

DATED this 23 day of March, 2020.


JOANNA S. KISHNER
DISTRICT COURT JUDGE

Respectfully Submitted By:

Approved as to Form and Content:

BIGHORN LAW


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Sacramento, California 95825

KIM MANDELBAUM, ESQ.

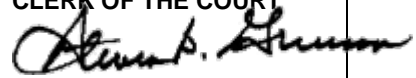
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Attorneys for Defendants



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11 *Attorneys for Plaintiffs*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 TITINA FARRIS and PATRICK FARRIS,
15 Plaintiffs,

16 vs.

17 BARRY RIVES, M.D.; LAPAROSCOPIC
18 SURGERY OF NEVADA LLC; DOES I-V,
inclusive; and ROE CORPORATIONS I-V,
inclusive,

19 Defendants.
20

Case No.: A-16-739464-C

Dept. No.: 31

21 **NOTICE OF ENTRY OF ORDER ON PLAINTIFFS' MOTION FOR FEES AND**
22 **COSTS AND DEFENDANTS' MOTION TO RE-TAX AND SETTLE PLAINTIFFS'**
23 **COSTS**

24 PLEASE TAKE NOTICE that an Order on Plaintiffs' Motion for Fees and Costs and
25 Defendants' Motion to Re-Tax and Settle Plaintiffs' Costs heard on the 7th day of January, 2020
26 and on the 11th day of February, 2020 was entered in the above-entitled Court on the 30th day of
27 March, 2020, a true and correct copy of which is attached hereto as Exhibit "A".
28

1 DATED the 31st day of March, 2020.

2 **HAND & SULLIVAN, LLC**

3 /s/ George F. Hand
4 George F. Hand, Esq.
5 Nevada State Bar No. 8483
6 3442 N. Buffalo Drive
7 Las Vegas, Nevada 89129
8 *Attorneys for Plaintiffs*

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1 **CERTIFICATE OF SERVICE**

2 I am employed in the County of Clark, State of Nevada. I am over the age of 18 and not a
3 party to the within action. My business address is 3442 N. Buffalo Drive, Las Vegas, NV 89129.

4 On March 31, 2020, I served the within document(s) described as:

5 **NOTICE OF ENTRY OF ORDER ON PLAINTIFFS' MOTION FOR FEES AND
6 COSTS AND DEFENDANTS' MOTION TO RE-TAX AND SETTLE PLAINTIFFS'
7 COSTS**

8 on the interested parties in this action as stated on the below mailing list.

9 (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope
10 addressed to Defendant's last-known address. I placed such envelope for collection and
11 mailing following ordinary business practices. I am readily familiar with this Firm's
12 practice for collection and processing of correspondence for mailing. Under that practice,
13 the correspondence would be deposited with the United States Postal Service on that same
14 day, with postage thereon fully prepaid at Las Vegas, Nevada. I am aware that on motion
15 of the party served, service is presumed invalid if postal cancellation date or postage meter
16 date is more than one day after date of deposit for mailing in affidavit.

17 (BY ELECTRONIC SERVICE) By e-serving through Odyssey, pursuant to Administrative
18 Order 14-2 mandatory electronic service, a true file stamped copy of the foregoing
19 document(s) to the last known email address listed below of each Defendant which Plaintiff
20 knows to be a valid email address for each Defendant.

21 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
22 is true and correct.

23 Anna Grigoryan
24 (Type or print name)

25 /s/ Anna Grigoryan
26 (Signature)

27 **Farris v. Rives, et al.**

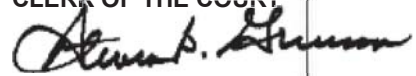
28 **Court Case No.: A-16-739464-C**

SERVICE LIST

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<p>Thomas J. Doyle, Esq. Chad C. Couchot, Esq. calendar@szs.com SCHUERING ZIMMERMAN & DOYLE, LLP 400 University Avenue Sacramento, California 95825-6502 (916) 567-0400 (916) 568-0400 Fax</p> <p><i>Attorneys for Defendants</i></p>	<p>Kim Mandelbaum, Esq. filing@memlaw.net MANDELBAUM ELLERTON & ASSOCIATES 2012 Hamilton Lane Las Vegas, Nevada 89106 (702) 367-1234</p> <p><i>Attorneys for Defendants</i></p>
<p>Kimball Jones, Esq. Nevada Bar No. 12982 Kimball@BighornLaw.com Jacob G. Leavitt, Esq. Nevada Bar No. 12608 Jacob@BighornLaw.com BIGHORN LAW 716 S. Jones Blvd. Las Vegas, Nevada 89107 Telephone: (702) 333-1111</p> <p><i>Attorneys for Plaintiffs</i> TITINA FARRIS and PATRICK FARRIS</p>	

EXHIBIT “A”



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20 *Attorneys for Plaintiffs*

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22
23 **DISTRICT COURT**
24 **CLARK COUNTY, NEVADA**

25 TITINA FARRIS and PATRICK FARRIS,
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27 Plaintiffs,
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29 vs.

Case No.: A-16-739464-C
Dept. No.: 31

30 BARRY RIVES, M.D.; LAPAROSCOPIC
31 SURGERY OF NEVADA LLC; DOES I-V,
32 inclusive; and ROE CORPORATIONS I-V,
33 inclusive,
34
35 Defendants.

**ORDER ON PLAINTIFFS' MOTION
FOR FEES AND COSTS AND
DEFENDANTS' MOTION TO RE-
TAX AND SETTLE PLAINTIFFS'
COSTS**

36 Plaintiffs' Motion for Fees and Costs having come on for hearing on the 7th day of January,
37 2020, at 10:00 a.m., KIMBALL JONES, ESQ., with the Law Offices of **BIGHORN LAW**, and
38 GEORGE F. HAND, ESQ. with the Law Offices of **HAND & SULLIVAN, LLC**, appearing on
39 behalf of Plaintiffs, and THOMAS J. DOYLE, ESQ., with the Law Offices of **SCHUERING**
40 **ZIMMERMAN & DOYLE, LLP**, appearing on behalf of Defendants, and Defendants' Motion to

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2 Re-Tax and Settle Plaintiffs' Costs having come on for hearing on the 7th day of January, 2020, at
3 10:00 a.m. and February 11, 2020 at 9:30 a.m. with the Honorable Court having reviewed the
4 pleadings and papers on file herein and with hearing the arguments of counsel:

5 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

6 ***Plaintiffs' Request for Attorneys' Fees***

7 The Court finds that attorneys' fees are properly awarded to Plaintiffs in this matter for the
8 reasons outlined in Plaintiffs' Motion, Reply, and supporting affidavits.

9 Under *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983), *Yamaha Motor Co., U.S.A. v.*
10 *Arnoult*, 114 Nev. 233, 955 P.2d 661 (1998), and *Brunzell v. Golden Gate National Bank*, 85 Nev.
11 345, 455 P.2d 31 (1969), the Court considers the following factors in making an award of attorney
12 fees to Plaintiffs based upon an offer of judgment: According to *Beattie*, the Court is required to
13 consider: (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants'
14 offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the
15 plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith;
16 and (4) whether the fees sought by the offeror are reasonable and justified in amount. *Id.*, 99 Nev.
17 at 588–589, 668 P.2d at 274.

18 Since Plaintiffs are the prevailing offerors, however, the analysis of the *Beattie* factors is
19 reversed, such that the Court considers: (1) whether the defendant's claim or defense was brought
20 in good faith; (2) whether the plaintiff's offer of judgment was reasonable and in good faith in both
21 its timing and amount; (3) whether the defendant's decision to reject the offer and proceed to trial
22 was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are
23 reasonable and justified in amount. See *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252,
24 955 P.2d 661, 673 (1998).

25 With regard to the reasonableness of requested attorneys' fees, the Court considers the
26 *Brunzell* factors: (1) the qualities of the advocate: his ability, his training, education, experience,
27 professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy,
28 its importance, time and skill required, the responsibility imposed and the prominence and

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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; and (4) the result: whether the attorney was successful and what benefits were derived. See *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). If the record reflects that the court properly considered these factors, there is no abuse of discretion. See *Wynn v. Smith*, 117 Nev. 6, 13,16 P.3d 424, 428-429 (2001); *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). Further, the Court retains the right to determine a reasonable amount of attorneys' fees. *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864-865, 124 P.3d 530, 548-549 (2005).

Beattie/Yahama Factors

1. Whether the Defendants' Defenses Were Brought in Good Faith.

Defendants' defenses, and refusal to pay the Offer of Judgment, were not brought in good faith based on the facts of this case. It was known by Defendants before the trial commenced and at the time of the NRS 41A.081 settlement conference that there were serious issues with the credibility of ~~counsel and Defendant Rives~~ ^{including} ~~concerning~~ ^{positions taken in court and the issue of} the *Center v. Rives* case. In fact, before the trial commenced, there were pending NRCP 37 motions before this Court. Despite the demonstrated misconduct by Defendants in discovery and depositions, Defendants still elected to risk going to trial. In fact, ^{there was a pending issue of} ~~it was a possibility that terminating sanctions may issue,~~ based on the aforementioned conduct by Defendants. Moreover, given Defendants' (and Counsel's) knowledge of this misconduct, ^{as provided through evidence to the court, Defendants could} ~~they were also obliged to consider and calculate the impact of the discovery and~~ likely consequences of their misconduct.

Further, there were serious problems with Defendants' expert opinions. The defense liability expert, Dr. Brian Juell, opined at trial that the use of a LigaSure was relatively contraindicated and that it should not be used in the setting of the subject surgery if there was any other alternative, such as cold scissors. Then, it was established that Defendant Rives actually had cold scissors, but used the LigaSure anyway. The defense should have been aware of this weakness in their own case when they rejected Plaintiffs' offer.

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Defendants also tried to put forth a defense that the sepsis of Plaintiff Titina Farris originated from "pulmonary aspiration syndrome." This defense was put forward, despite no other physician, treating Titina Farris during her hospitalization, ever diagnosing her with this condition. This ~~specific~~ defense was clearly attempted to misdirect attention from Defendant Rives' failure to treat the sepsis originating from the holes in the bowel that he caused and failed to adequately repair. Dr. Juell still tried to put forth this theory before the jury, even though it was shown at trial that he opined in his expert reports that Titina Farris had pulmonary aspiration syndrome without first reviewing the relevant films. Thus, this first *Beattie* factor weighs in Plaintiffs' favor.

2. Whether the Plaintiffs' Offer of Judgment Was Reasonable and in Good Faith in Both Its Timing and Amount.

Plaintiffs' Offer of Judgment was reasonable and was in good faith in timing and amount, and Defendants' decision to reject the offer was grossly unreasonable. Plaintiffs served their offer of judgment for \$1,000,000 on June 5, 2019. At the time, expert reports had been exchanged, key witnesses were deposed, and medical records had been exchanged. Thus, Defendants were aware of all the supporting information for Plaintiffs' Offer of Judgment, including Plaintiffs' injuries, related medical specials, and pain and suffering. The amount of Plaintiffs' Offer of Judgment was less than Plaintiffs' disclosed past medical expenses and was, therefore, reasonable and in good faith. This second *Beattie* factor weighs in Plaintiffs' favor.

3. Whether the Defendants' Decision to Reject the Offer and Proceed to Trial Was Grossly Unreasonable or in Bad Faith.

In light of the severity of Plaintiffs' injuries and damages, as well as a very strong case of liability, presented at the time of their Offer of Judgment, it was grossly unreasonable and in bad faith for Defendants to reject the \$1,000,000 offer and proceed to trial. At the time of Plaintiffs' Offer of Judgment, they had already disclosed over \$4,000,000 in special damages. Defendants simply undervalued this case, as evidenced by their zero offer of judgment. The Court weighs this third *Beattie* factor in favor of Plaintiffs, despite Defendants' argument that its experts had differing opinions.

Defendants' were aware of the weakness and positions of their experts at the time of the offer.

differently including

which was an additional factor showing it was

4. Whether the Fees Sought by the Offeror are Reasonable and Justified in Amount.

The amount of attorney's fees requested by Plaintiffs are reasonable and justified in amount based on the outcome at trial. Plaintiffs contracted to pay an attorney's fees in the amount of 40% of the gross recovery. That amount totals \$2,547,122.21 (40% of \$6,367,805.52). Even if attorneys' fees are calculated under NRS 7.095 on \$6,367,805.52, that amount is \$1,026,835.83.

Although the Court of Appeals has approved a determination of attorney fees based upon a contingency fee agreement, this Court determines that NRS 7.095 is controlling in this matter. See *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. Adv. Op. 7, 429 P.3d 664, 671-672 (Nev. App. 2018). Thus, the Court awards Plaintiffs the sum of \$821,468.66 in attorney fees, as further elaborated based upon the *Brunzell* factors.

Brunzell Factors

1. Qualities of the Advocates.

Mr. Jones is a managing partner with the Law Offices of BIGHORN LAW. He graduated Magna Cum Laude from Brigham Young University-Idaho in 2005 and graduated as the top student in economics that year. He graduated from Brigham Young University in 2008 and was awarded a Dean's Scholarship for academic merit all three years of law school. Mr. Jones was first admitted to practice law in Nevada in 2013, scoring in the 98th percentile nationally on the MBE. He has also passed the Idaho Bar Exam. Mr. Jones has prevailed in more than 95 percent of the arbitrations and trials he has litigated. Further, he has recovered more than \$30,000,000 for clients through judgments and settlements in the last six years. Mr. Jones' usual and customary fee on an hourly basis is \$500.00 an hour, which is at or below average for attorneys of his skill and experience who handle similar matters in Clark County, Nevada.

Likewise, Mr. Leavitt is a partner with Bighorn Law. He has been licensed to practice law since 2012 and has a billing rate of \$500.00 per hour, a rate at or below average for attorneys of his skill and experience who handle similar matters in Clark County, Nevada. Mr. Leavitt graduated Cum Laude from the University of Las Vegas, Nevada in 2004. He attended Cooley Law School

That Contingency Amount is standard in the community and that Reasonable

Give the Agent provided, the NRS 7.095 is controlling in this matter.

while fees were provided pursuant to NRS 7.095 he asserted that his

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on scholarship and graduated in the top 13% of his class. Mr. Leavitt completed an externship under retired Nevada Supreme Court Justice Michael Cherry and is admitted to practice in the Ninth Circuit Court of Appeals. Mr. Leavitt has conducted numerous trials and administrative proceedings.

Mr. Hand is a partner of Hand & Sullivan, LLC. He is licensed to practice law in Nevada and New York. He has been licensed to practice law in Nevada for sixteen years. Prior to that, he was licensed as an attorney in New York where he practiced in areas of personal injury, medical malpractice, and insurance defense litigation. He has conducted more than 125 jury and bench trials. Mr. Hand also served as a Deputy County Attorney for Nassau County, New York. Mr. Hand's billing rate of \$500.00 per hour ^{is} at or below average for attorneys of his skill and experience who handle similar matters in Clark County, Nevada.

and he too asserted that it is

Additionally, the Court found this factor to be considered by the Court and was not contested by Defendants in written opposition or in argument.

Therefore, the qualities of the advocates who performed work in this matter are proven. Further, the market rate of \$500.00 per hour ^{is} appropriate under *Marrocco v. Hill*, 291 F.R.D. 586 (D. Nev. 2013), for this type of case. *could be*

2. Character of the Work to be Done.

Plaintiffs' Counsel was engaged in proving a complicated and complex Professional Negligence matter of medical malpractice, an area of law few practitioners of law engage in due to the complexity and stringent laws. In this case the legal work required retaining and questioning numerous experts and dealing with nuanced medical topics which not only increased the actual cost of litigating, but also consumed many hours of research and preparation. The nature of the work was time-consuming, complicated and difficult due to the nature of the area of law and medicine combined.

3. Work Actually Performed by the Lawyer.

Plaintiffs' Counsel engaged in multitudinous depositions, written discovery, and this work culminated in a three-week trial on the matter. Plaintiffs' Counsel worked extensively for the

give the was no objection to the remark and the award was paid to
NRS 710.55

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entirety of trial and demonstrated substantial skill in the work performed. Coupled with the second factor, the character of the work, the work performed included long hours of trial and the long hours of preparation during the hours of the day while not in trial. Not only did the work require preparation for the substance of the trial, yet the numerous issues Defendants raised requiring many hearings outside the presence of the jury.

Albeit there are three attorneys on this matter, the substantive matter of the trial coupled with the many collateral issues required the presence and work of all in order to effectively try the case.

4. Result—whether the Attorney was Successful and what Benefits were Derived.

Plaintiffs were successful in their attempts before this Court. The jury returned a verdict of more than \$13 million, and the Court Awarded a Judgment on the Verdict in favor of Plaintiffs and against Defendants in the amount of \$6,367,805.52. Plaintiffs’ Counsel was able to procure a highly favorable outcome for their clients.

Therefore, the Court found Attorneys’ Fees in the amount of \$821,468.66 are properly granted to Plaintiffs in this matter, pursuant to *Brunzell, Beattie, O’Connell*, NRCP 68, and NRS 7.095.

It is undisputed that Plaintiffs served an offer of judgment for \$1,000,000 under NRCP 68 and that Defendants chose to let that offer expire. The offer was made several months after expert witness disclosures. It is undisputed that at the time of the offer Plaintiffs had already disclosed more than \$4,000,000 in special damages. Moreover, Plaintiffs’ experts had already outlined the breaches in the standard of care that the jury ultimately agreed were committed by Defendants. Ultimately, the Court finds that Defendants’ decision to reject the offer was unreasonable. Under NRCP 68, attorney fees are properly awarded for Plaintiffs and against Defendants.

NRCP 68 (f) states: Penalties for Rejection of Offer

- (1) In General. If the offeree rejects an offer and fails to obtain a more favorable judgment:
 - (A) the offeree cannot recover any costs, expenses, or attorney fees and may not recover interest for the period after the service of the offer and before the judgment; and

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2 (B) the offeree must pay the offeror's post-offer costs and expenses, including a reasonable
3 sum to cover any expenses incurred by the offeror for each expert witness whose services were
4 reasonably necessary to prepare for and conduct the trial of the case, applicable interest on the
5 judgment from the time of the offer to the time of entry of the judgment and reasonable attorney
6 fees, if any be allowed, actually incurred by the offeror from the time of the offer.

7 Plaintiffs served an Offer of Judgment on June 5, 2019. Judgment in the amount of
8 \$6,367,805.52 was entered on November 14, 2019. Pursuant to NRCP 68(f)(1)(B) Defendants
9 must pay applicable interest on the judgment from the time of the offer to the time of entry of the
10 judgment in the amount of \$202,269.96 (interest calculated at 5.50% prime plus 2% for a total of
11 7.5% from the date of the Offer of Judgment, June 5, 2019 to Entry of Judgment on November 14,
12 2019, for a total of 162 days = \$1,248.58 per day) pursuant to NRS 17.130.

13 The Court then needs to analyze the attorney fees to be awarded. *O'Connell v. Wynn Las*
14 *Vegas, LLC*, 134 Nev. Adv. Op. 7, 429 P. 3d 664 (Nev. App. 2018) demonstrates that attorney fees
15 are appropriately awarded based on contingency fee agreements, which is the nature of the
16 agreement between Plaintiffs and Counsel in this matter. Given the \$6,565,830.84 judgment in this
17 matter, Plaintiffs' attorney fees would be approximately \$1,026,835.82 under the sliding scale of
18 NRS 7.095. However, at the time of the offer of judgment in this matter, approximately twenty
19 percent (20%) of the total attorney work had already been performed. As a result, the Court
20 determined that the fee should be reduced by an additional 20% and that eighty percent (80%) of
21 the projected contingent fee under the NRS 7.095 sliding scale, or \$821,468.66, should be awarded.
22 The Court further analyzed whether this number was unreasonable, given the hours likely expended
23 by Plaintiffs' attorneys in this case multiplied by their reasonable billing rates. The Court
24 determined that \$821,468.66 was not unreasonable and was likely comparable to the amount that
25 would be awarded had Plaintiffs' attorneys billed their time on an hourly basis. As NRS 7.095
26 already has a built-in reduction, and given the Court's decision to further reduce the fee to only the
27 percentage of work done after the offer, no further reduction is warranted. Plaintiffs are awarded
28 \$821,468.66 in attorney fees.

Plaintiffs' Request for Additional Attorneys' Fees as a Sanction

The Court did find there was significant inappropriate conducted by Defendants and Defense Counsel. This misconduct was the basis of numerous hearings and was an ongoing problem during discovery and through the end of trial. The Court found this to be a substantive and compelling reason to consider striking Defendants' Answer and that the misconduct was certainly a proper basis to award substantial attorney fees to Plaintiffs and against Defendants. Sanctionable conduct in this case included, but is not limited to the following: (1) Defendants and their Counsel intentionally withholding evidence during discovery; (2) Defendants omitting relevant evidence that had been asked for regarding his medical malpractice history; (3) Defendant blurting out that Plaintiff's bills were paid through medical insurance to the jury; (4) Defendants' Counsel signing affidavits containing verifiably false information for procedural reasons prior to trial; (5) Defendants improperly filing numerous "offers of proof" after the close of evidence and without leave of the Court; and (6) Defendants violating Court orders during the course of trial on numerous occasions, including during the cross-examination of Dr. Michael Hurwitz. *See* NRCP 37; *Emerson v. Eighth Judicial Dist. Court*, 127 Nev. 672, 263 P.3d 224 (2011).

Nevertheless, the Court did not find it appropriate to award additional attorneys' fees above the \$821,468.66 already awarded. However, the Court did find that independent of *Brunzell, Beattie, O'Connell*, NRCP 68 and NRS 7.095, \$821,468.66 in attorney fees would be properly awarded to Plaintiffs as a sanction for inappropriate conduct by Defendants and Defense Counsel in this matter. Thus, the total award of \$821,468.66 in Attorneys' Fees is granted, with these two independent grounds supporting the Court's finding for this award: (1) the analysis under *Brunzell, Beattie, O'Connell*, NRCP 68 and NRS 7.095 and (2) the misconduct of Defendants and their counsel.

THEREFORE, IT IS ORDERED that Plaintiffs' Request for Attorneys' Fees is GRANTED in the amount of Eight Hundred Twenty-One Thousand Four Hundred Sixty-Eight Dollars and Sixty-Six Cents (\$821,468.66).

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IT IS FURTHER ORDERED that Plaintiffs’ Request for Costs and Defendants’ Motion to Re-Tax such Costs is CONTINUED to February 11, 2020 at 9:30 a.m., for Supplemental Pleadings to be filed.

IT IS FURTHER ORDERED that the Supplemental Briefing Schedule SET as follows: Plaintiffs’ Supplemental Opposition due January 21, 2020 and Defendants’ Supplemental Reply due February 3, 2020.

Plaintiffs’ Costs and Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs

On November 19, 2019, Plaintiffs filed a Verified Memorandum of Costs and Disbursements in the total amount of \$153,118.26. On November 22, 2019, Defendants filed a Motion to Re-Tax and Settle Plaintiffs’ Costs. On January 21, 2020 Plaintiffs filed a Supplemental Verified Memorandum of Costs and Disbursements in the total amount of \$153,118.26. On January 21, 2020, Plaintiffs filed a Supplemental Opposition to Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs. On February 3, 2020 Defendants filed a Supplemental Reply to Plaintiffs’ Opposition to Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs. The matter having come on for hearing on February 11, 2020 at 9:30 a.m., the Court makes the following Findings of Facts and Conclusions of Law:

NRS 18.005(5) states, “Reasonable fees of not more than five expert witnesses in an amount of not more than \$1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert’s testimony were of such necessity as to require the larger fee.”

Plaintiffs’ have submitted fees paid to experts as follows:

- 1. Michael Hurwitz, M.D. (surgeon) \$ 11,000.00
- 2. Justin Willer, M.D. (neurologist) \$ 17,245.00
- 3. Alex Barchuck, M.D. (physical medicine and rehabilitaton) \$ 26,120.00
- 4. Dawn Cook, R.N. (life care planning) \$ 23,960.03
- 5. Alan Stein, M.D. (infectious diseases) \$ 19,710.00

- 6. Daniel Feingold, M.D. (surgeon) \$ 2,000.00
- 7. Terence Clauretje, Ph.D. (economist) \$ 3,500.00

The Court has analyzed the factors in *Frazier v Drake*, 131 Nev. 632 (2015) and has determined that the circumstances surrounding certain of the expert’s testimony were necessary to require larger fees than \$1,500.00 per expert. The Court is only considering the fees of experts Hurwitz, Willer, Barchuk, Cook, and Stein as NRS 18.005(5) limits recoverable expert fees to five experts. This was a medical malpractice case that took approximately three weeks to try. There were complex medical issues as to both the standard of care, proximate cause and damages that required medical expert review and testimony. Plaintiffs’ experts Hurwitz, Willer, Barchuk, and Cook testified at trial. Plaintiffs’ infectious disease expert Alan Stein, M.D. from New York was present in Las Vegas prepared to testify. Dr. Stein did not testify at the trial. The opinions of Plaintiffs’ experts Hurwitz, Willer, Barchuk, Cook, and Stein aided the jury in deciding the case as each area of medical specialty in that each area of medical specialty was at issue during the trial. Plaintiffs’ experts Hurwitz, Willer, Barchuk, Cook, and Stein were not repetitive of each other as they each addressed different medical issues and were of different specialties. The extent and nature of the work performed by the experts was of high quality. The various experts’ education and training was significant and extensive. Experts Hurwitz, Willer, Barchuk, and Cook spent time preparing and testifying at trial. Experts Hurwitz, Willer, Barchuk, Cook, and Stein were also deposed in the case and prepared expert reports. The fees charged by these experts are similar to the experts in other malpractice cases in this venue. Dawn Cook was a local expert. Dr. Barchuk traveled from the Bay area. Dr. Willer and Dr. Stein traveled from the New York City area. Dr. Hurwitz traveled from Orange County, California. The fees charged by these experts are comparable to what a local expert would charge.

Pursuant to the factors in *Frazier v. Drake*, 131 Nev. 632, 650–51, 357 P.3d 365, 377–78 (Nev. App. 2015) the Court therefore awards the following expert fees:

- Dr. Hurwitz: \$ 11,000.00
- Dr. Willer: \$ 17,245.00

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2 Dr. Barchuk: \$ 26,120.00

3 Dawn Cook: \$ 13,960.03

4 Dr. Stein: \$ 1,500.00

5 Pursuant to the same *Frazier* factors, this Court does not find \$19,710.00 for Plaintiffs'
6 Expert Dr. Alan J. Stein is warranted, as Dr. Stein did not testify at trial in this matter and reduces
7 the amount for Dr. Stein to \$1,500.00. This Court further does not find that \$23,960.03 for
8 Plaintiffs' Expert Dawn Cook is warranted, as Ms. Cook billed for items that can be utilized in
9 other life care plans and incorporated other number from other experts which Plaintiff was already
10 charged for and, thus, not approving the double charging and reduces the amount for Ms. Cook to
11 \$13,960.03.

12 Pursuant to NRCP 68, Plaintiffs' request in the amount of \$1,200.00 for the "Day In The
13 Life Video," is not warranted, as Plaintiffs did not utilize this video during the trial in this matter.

14 As to Plaintiffs' request for costs for deposition testimony, the Court finds the video charge
15 portion of these costs is not warranted, as the video portion of the deposition testimony was not
16 utilized during the trial in this matter and, therefore, reduces said deposition testimony costs by
17 \$5,032.02.

18 Pursuant to *Cadle Co. v. Woods & Erickson, LLP*, 345 P.3d 1049 (2015) and *Bobby*
19 *Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352 (1998), Plaintiffs' remaining costs are warranted.

20 THEREFORE, IT IS ORDERED that Plaintiffs' Request for Attorneys' Fees is GRANTED
21 in the amount of Eight Hundred Twenty-One Thousand Four Hundred Sixty-Eight Dollars and
22 Sixty-Six Cents (\$821,468.66).

23 IT IS FURTHER ORDERED that pursuant to NRCP 68(f)(1)(B), Defendants are to pay the
24 applicable interest on the Judgment in the amount of \$6,367,805.52 from the date of the Offer of
25 Judgment on June 5, 2019 to entry of the Judgment on November 14, 2019 in the amount of
26 \$202,269.96;

27 IT IS FURTHER ORDERED that Plaintiffs' Request for Costs and Defendants' Motion to
28 Retax Costs are each GRANTED IN PART AND DENIED IN PART.

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IT IS FURTHER ORDERED that Plaintiffs' Costs request for Experts Dr. Michael Hurwitz, Dr. Justin Willer, Dr. Alex Barchuk, Dawn Cook, R.N. and Dr. Alan Stein are GRANTED in the total amount of \$69,825.03.

IT IS FURTHER ORDERED that Plaintiffs' Costs request for Expert Dr. Alan J. Stein is reduced to \$1,500.00.

IT IS FURTHER ORDERED that Plaintiffs' Costs request for Expert Dawn Cook is reduced to \$13,960.03.

IT IS FURTHER ORDERED that Plaintiffs' Costs request for the "Day In The Life Video," in the amount of \$1,200.00 is DENIED.

IT IS FURTHER ORDERED that Plaintiffs' Costs request for deposition testimony is reduced by \$5,032.02.

IT IS FURTHER ORDERED that Plaintiffs' remaining Costs request in the amount of \$44,851.21 is GRANTED.

IT IS FURTHER ORDERED that the total amount of Plaintiffs' Cost Award in this matter is \$113,186.24.

THEREFORE, IT IS ORDERED that Plaintiffs' Costs are Re-Taxed in the amount of \$113,186.24.

IT IS FURTHER ORDERED that interest on Plaintiffs' costs of \$113,186.24 will accrue from November 14, 2019 (the date of entry of judgment) at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

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IT IS FURTHER ORDERED that interest on Plaintiffs' award of attorneys' fees of \$821,468.66 will accrue from the date of entry of this order at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

DATED this 23 day of March, 2020.


JOANNA S. KISHNER
DISTRICT COURT JUDGE

Respectfully Submitted By:

Approved as to Form and Content:

BIGHORN LAW


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Las Vegas, Nevada 89106

Attorneys for Defendants

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

February 06, 2017

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

**February 06, 2017 1:00 PM Status Check:
Medical/Dental
Malpractice**

HEARD BY: Wiese, Jerry A.

COURTROOM: RJC Courtroom 14A

COURT CLERK: Alice Jacobson
Fernanda Kriese
Denise Duron
Cassidy Wagner

RECORDER:

REPORTER:

PARTIES

PRESENT: Clark-Newberry, Aimee Lea Attorney
Hand, George F. Attorney

JOURNAL ENTRIES

- Court advised the case had been reassigned to another department due to the unavailability of the Judge. COURT ORDERED, trial date 7/9/18; case REASSIGNED to Department 26. Counsel estimated 10 days for trial.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

August 08, 2018

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

**August 08, 2018 1:00 PM Status Check:
Medical/Dental
Malpractice**

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Vanessa Medina
Sharyne Suehiro
Michaela Tapia
Dauriana Simpson

RECORDER:

REPORTER:

PARTIES

PRESENT: Clark Newberry, Aimee Lea Attorney
Hand, George F. Attorney

JOURNAL ENTRIES

- The Med-Mal Status Check was conducted by Judge Jerry A. Wiese II. Mr. Hand advised he had a conflict with the current trial date and requested trial date be vacated and reset. Court stated it would reassign the case and directed Mr. Hand to file a motion with his new trial judge. Mr. Hand advised 5 - 7 days for trial, Ms. Clark Newberry advised 7 - 10 days. **COURT ORDERED**, trial date **STANDS**. Pursuant to EDCR 1.30, due to unavailability of Dept. or counsel, **CHIEF JUDGE ORDERED**, case **REASSIGNED** to Dept. 31.

3/18/19 JURY TRIAL (DEPT 31)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

December 18, 2018

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

December 18, 2018 9:00 AM Status Check

HEARD BY: Kishner, Joanna S.

COURTROOM: RJC Courtroom 12B

COURT CLERK: Tena Jolley

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT: Clark Newberry, Aimee Lea Attorney
 Hand, George F. Attorney

JOURNAL ENTRIES

- Court stated there was a firm trial setting of March 18, 2019 in this case, and also a construction defect trial starting in February, stated more would be known by February 11, 2019, and advised counsel they may reach out to counsel on the construction defect trial for status. Counsel stated they discussed potentially moving the trial due to the document review and experts. Colloquy regarding continuing trial and potential dates. Court stated a telephonic hearing would be set; advised counsel to confer and send a letter with potential dates and times for the telephonic hearing for the week of January 7, 2019; advised counsel to prepare a stipulation regarding extending the 3-year rule to a particular date.

CLERK'S NOTE: Minutes completed using JAVS by Court Clerk Elizabeth Vargas. //ev 12/28/18

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

January 07, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

January 07, 2019 9:30 AM Telephonic Conference

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Tena Jolley

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT: Clark Newberry, Aimee Lea Attorney
 Hand, George F. Attorney

JOURNAL ENTRIES

- Counsel requested the trial be continued to January 2020, with the parties stipulating to a waive of the three year rule. The Court noted under Rule 1.90 it would be more than three years after the case was commenced and inquired if the parties could agree to the Fall of 2019. Ms. Clark Newberry indicated that there were other cases up against their five year rule and with the number of depositions to be completed in this case, that early 2020 is their reasonable estimate to be ready for trial. Court stated it could not push the case to January but with a waive would consider September 2019. Ms. Clark Newberry inquired regarding November 2019. Counsel anticipate 10 days for trial. The Court inquired if the parties could agree to October 14, 2019, otherwise it would be September 18, 2019. Ms. Clark Newberry then contacted her office and returned to the conference call with all parties and indicated that the October 14, 2019 date was their best option. Mr. Hand had no objection. The Court indicated that provided the parties submit a stipulation to the Court waiving the three year rule through October 2019, the Trial Date would be continued to October 14, 2019; with Pre Trial Conference on September 12, 2019; and Calendar Call October 8, 2019; that the Judicial Executive Assistant would set a additional Status Check with the new Trial Order and the Motions In Limine deadline will be tied tot he new trial date, eight weeks prior to trial. Ms. Clark Newberry to prepare the Stipulation, circulate it to Mr. Hand and submit it to the Court by week's end.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

July 16, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

July 16, 2019 9:00 AM Status Check

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT: Clark Newberry, Aimee Lea Attorney
Herbeck, Samantha A. Attorney
Jones, Kimball Attorney

JOURNAL ENTRIES

- Court reminded parties about the upcoming trial date. Mr. Jones stated additional discovery is needing to be done; and requested the trial be extended out a couple of months. Ms. Clark Newberry stated defense is not in the position to move the trial date, and defense is still evaluating Plaintiff's counsel's request. Court DENIED the request; and noted the current waiver on the five year rule is good until November, 2019, therefore the Court cannot grant the request to move the trial date out, and the Court will not change anything unless there is a stipulation submitted by the parties. Court inquired to the parties whether a settlement conference / mediation was done; and stated the parties have a lot of options. Mr. Jones stated it does not appear there is a likelihood the case will settle. Mr. Jones added the remaining depositions will go outside of the discovery date; and requested Court to consider an extension of the deadline date. Court DENIED the request; and stated it cannot allow an extension unless there is an agreement by the parties. Ms. Clark Newberry stated parties can meet and confer to see what can be done, and defense would prefer to submit things in writing. COURT ORDERED, trial date for October 14, 2019 STANDS. Trial handout was provided to counsel in open Court.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

September 20, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

**September 20, 2019 3:15 PM Minute Order Minute Order: Vacate
Plaintiffs' Motion to
Strike set 9-25-19**

HEARD BY: Truman, Erin **COURTROOM:** No Location

COURT CLERK: Jennifer Lott

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Plaintiffs' Motion to Strike was VACATED. (9-25-19 Hearing in Discovery was VACATED in Odyssey on 9-20-19.)

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jennifer Lott, to all registered parties for Odyssey File & Serve. jl

CLERK'S NOTE: Minute Order amended 9-25-19, and electronically served by Courtroom Clerk, Jennifer Lott, to all registered parties for Odyssey File & Serve. jl

10/14/19 9:00 A.M. TRIAL BY JURY (MED MAL #1)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 02, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 02, 2019 10:00 AM Settlement Conference

HEARD BY: Bixler, James **COURTROOM:** No Location

COURT CLERK: Kimberly Estala

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Pursuant to the Sr. Judge Executive Assistant at 11:21 AM. Senior Judge Bixler conducted the settlement conference and a settlement was not reached. The sign in sheet will be left side filed in the case file.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 07, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 07, 2019 8:30 AM All Pending Motions

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Couchot, Chad C.	Attorney
	Doyle, Thomas J.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney
	Rives, Barry, M.D.	Defendant

JOURNAL ENTRIES

- Court addressed the matters on for today; and also addressed the supplemental pleadings filed October 4, 2019 by defense, and non-compliance issues. Mr. Jones requested Court not to consider the supplemental pleadings. Arguments by Mr. Doyle. Court stated findings; and determined the supplemental pleadings are rogue documents, and cannot be considered by the Court. COURT ORDERED, Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Supplemental Opposition to Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and Litigation and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time filed October 4, 2019, and Declaration of Thomas J. Doyle in Support of Supplemental Opposition to Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and Litigation and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time filed October 4, 2019, are STRICKEN.

EVIDENTIARY HEARING...PLAINTIFFS' MOTION FOR SANCTIONS UNDER RULE 37 FOR

DEFENDANTS' INTENTIONAL CONCEALMENT OF DEFENDANT RIVES' HISTORY OF NEGLIGENCE AND LITIGATION AND MOTION FOR LEAVE TO AMEND COMPLAINT TO ADD CLAIM FOR PUNITIVE DAMAGES ON ORDER SHORTENING TIME

Defendant Barry Rives, M.D., sworn and testified. Counsel provided binders of documents to the Court during testimony. After testimony concluded, Court determined it had done what the parties had asked for, in regards to today's hearing. Court noted it will issue its ruling on October 10, 2019; and provided a short version of its analysis on the Motion for sanctions. COURT ORDERED, Motion CONTINUED to October 10, 2019, for remaining matters to be addressed, for sanction components to be discussed, and for Court's ruling to issue.

PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' FOURTH AND FIFTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS ON ORDER SHORTENING TIME...CONTINUED HEARING FROM SEPTEMBER 26, 2019 RE: NON COMPLIANCE (PER ORDER FILED SEPTEMBER 19, 2019)

COURT ORDERED, matters CONTINUED to October 10, 2019 at 1:30 P.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 08, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 08, 2019 9:00 AM Calendar Call

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Clark Newberry, Aimee Lea	Attorney
	Doyle, Thomas J.	Attorney
	Hand, George F.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney

JOURNAL ENTRIES

- Statements by counsel regarding 2.67 conference and supplemental meetings having been done. Discussions as to proposed trial exhibits, including what has and has not been stipulated to for admission. Trial exhibits, demonstrative exhibits, deposition transcripts, proposed voir dire, proposed jury instructions, proposed verdict forms and thumb drives, were provided by both sides. Parties agreed to have 70 jurors ordered for trial. Court provided the general voir dire handouts to both sides.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 10, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 10, 2019 1:30 PM All Pending Motions

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Clark Newberry, Aimee Lea	Attorney
	Couchot, Chad C.	Attorney
	Doyle, Thomas J.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney

JOURNAL ENTRIES

- CONTINUED HEARING FROM September 26, 2019 RE: NON COMPLIANCE (PER ORDER FILED September 19, 2019)...PLAINTIFFS' MOTION FOR SANCTIONS UNDER RULE 37 FOR DEFENDANTS' INTENTIONAL CONCEALMENT OF DEFENDANT RIVES' HISTORY OF NEGLIGENCE AND LITIGATION AND MOTION FOR LEAVE TO AMEND COMPLAINT TO ADD CLAIM FOR PUNITIVE DAMAGES ON ORDER SHORTENING TIME...PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' FOURTH AND FIFTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS ON ORDER SHORTENING TIME

Discussions regarding status of trial exhibits and there having been document confusion by counsel on Exhibit 1. Court determined nothing additional was provided by either side by end of day after Calendar Call. COURT ORDERED, nothing additional can be added to Exhibit 1 and nothing from proposed Exhibit 8 or 9 that was not in the hard bound, can come in; and the exhibit binders as presented in their proposed format at time of Calendar Call are the only things that could be potentially be brought in as proposed trial exhibits.

Plaintiffs' Motion to Strike was addressed. Arguments by counsel. Discussions as to Rule 37 (c) (1). Court stated its findings. COURT ORDERED, Motion to strike GRANTED. The reports of Dr. Juell and Dr. Adornato were addressed. Court stated additional findings.

Court addressed the Motion for sanctions under Rule 37 for Defendants' intentional concealment of Defendant Rives' history of negligence and litigation. Court also addressed Plaintiffs' alternative relief request regarding terminating sanctions and to strike the Answer. Court stated findings; and gave its ruling not to impose punitive damages. Court also issued its ruling including that it would defer on monetary fees being imposed pending trial proceedings, and the Court DENIED the request to strike the Answer.

Court also addressed the Order Denying the Stipulation Regarding Motions in Limine filed September 19, 2019, and Order Denying Defendants' Order Shortening Time filed October 2, 2019. Statements by Mr. Leavitt in support of the Answer being stricken. Mr. Doyle stated the Court should impose a substantial monetary sanction against Defendants to punish and deter, but not strike the Answer. Arguments by counsel. Discussions as to language in two written declarations provided by counsel, voir dire, and trial schedule.

At request of defense counsel, COURT ORDERED, Defendants' Motion to Compel Deposition of Gregg Ripplinger, M.D., and Extend the Close of Discovery (9th Request) on Order Shortening Time scheduled for October 15, 2019 WITHDRAWN.

Counsel made statements to Court regarding Exhibit 1. Court provided EDCR Rule 2.67. Mr. Doyle requested to have additional exhibits marked for record on appeal. Court stated there is no record on appeal. Mr. Doyle requested to submit a written declaration to the Court, to provide an explanation. Discussion as to additional documents not having been provided at Rule 2.67 conference. Court reminded parties on the directive the Court gave at Calendar Call in regards to trial exhibits. Arguments by parties. COURT ORDERED, the exhibits received Tuesday, October 8, 2019 are the only things coming into this case for trial.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 14, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 14, 2019 8:30 AM Jury Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Doyle, Thomas J.	Attorney
	Farris, Patrick	Plaintiff
	Farris, Titina	Plaintiff
	Hand, George F.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney
	Rives, Barry, M.D.	Defendant

JOURNAL ENTRIES

- Robert Eisenberg, present with defense counsel and seated in gallery.

Mr. Hand and Plaintiffs not present.

OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Discussions as to pre-trial matters, including voir dire procedures, number of peremptory challenges for each side, and parties agreeing to have two alternate jurors for this trial. Plaintiff's counsel objected to defense counsel having a juror consultant to assist at trial. Arguments by Mr. Doyle. Court provided the rules for juror consultants; and indicated each side can have individuals accurately identified seated in Court. Court TRAILED and RECALLED matter for the prospective jury panel to be lined up by Jury Services and brought up to Court. Mr. Hand present in Court with the Plaintiffs. Juror consultant Amy Hanegan, present at defense counsel's table with Mr. Doyle. Discussions as to proposed voir dire

and proposed statement by counsel to the jury panel. Court's Exhibit ADMITTED (See Worksheets.).

PROSPECTIVE JURY PANEL PRESENT: Introductory statements by Court. Clerk called roll.
PROSPECTIVE JURY PANEL SWORN. Voir Dire commenced. Introductory statements by counsel.

OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Juror excusals were addressed. Objections were made regarding defense counsel's three trial briefs filed October 14, 2019.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire commenced further.

OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Additional juror excusals were addressed. At request of counsel, Court noted trial will start tomorrow at 1:00 p.m. Mr. Doyle presented an additional deposition to be provided to the Clerk for trial. Objections by Mr. Leavitt. Court noted counsel can let the Court tomorrow as to whether the name of the deponent was previously disclosed.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire commenced further. Court admonished and excused the prospective jury panel for the evening to return to Court by 12:45 P.M.

OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Additional juror excusals were addressed. Parties were directed to arrive to Court tomorrow by 12:40 P.M.

Evening recess. TRIAL CONTINUES.

10/15/19 1:00 P.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 15, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 15, 2019 1:00 PM Jury Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Doyle, Thomas J.	Attorney
	Farris, Patrick	Plaintiff
	Farris, Titina	Plaintiff
	Hand, George F.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney
	Rives, Barry, M.D.	Defendant

JOURNAL ENTRIES

- Robert Eisenberg, present with defense counsel and seated in gallery.

Juror consultant Amy Hanegan, present at defense counsel's table with Mr. Doyle.

OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Discussions as to missing jurors. Defense counsel requested Court to instruct the jurors not to consider anything with regards to various counsel arriving in and out of the courtroom at various times, throughout trial. Discussions as to unavailability of witness Mary Jayne Langan and records review. Objections were made by Plaintiff's counsel. Court stated it will revisit this.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire commenced further.

OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Challenge for cause was addressed; and objections were placed on record. Court deferred ruling. Court addressed proposed jury instruction requirements. Court cautioned counsel not to make inaccurate statements in front of the jury panel. Objections were made by counsel regarding trial briefs submitted by defense counsel; and noted Plaintiff will have briefing prepared with an order shortening time for the Court.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire commenced further.

Evening recess. TRIAL CONTINUES.

10/16/19 9:30 A.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 16, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 16, 2019 9:30 AM Jury Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Doyle, Thomas J.	Attorney
	Hand, George F.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney
	Rives, Barry, M.D.	Defendant

JOURNAL ENTRIES

- Robert Eisenberg, present with defense counsel and seated in gallery.

Juror consultant Amy Hanegan, present in Court.

OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: Objections placed on record as to Mary Jane Langan testifying; which was sustained by Court. Court addressed the general rules regarding objections. Both sides gave a time estimate on their opening statements.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire commenced further.

Lunch recess until 1:15 p.m.

OUTSIDE PRESENCE OF PROSPECTIVE JURY PANEL: No parties were present in Court as required at 1:21 p.m. Thereafter, parties arrived in the courtroom and were admonished by Court

regarding timeliness. Parties confirmed on having completed their peremptory challenges during the lunch hour. Court reviewed peremptory challenges; and verified the names of remaining jurors for the seated jury panel. Discussions as to proposed curative pre-instruction to be read to the Jury by Court.

PROSPECTIVE JURY PANEL PRESENT: JURY SELECTED and SWORN by Clerk. Court instructed Jury.

OUTSIDE PRESENCE OF JURY: Tech checks were done in open Court. Further discussions as to language of the proposed curative pre-instruction. Objections were placed on record. Court stated findings.

JURY PRESENT: Court read pre-instruction to Jury. Court's Exhibit ADMITTED (See Worksheets.). Opening statements by counsel.

Evening recess. TRIAL CONTINUES.

10/17/19 12:30 P.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 17, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 17, 2019 12:30 AM Jury Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Doyle, Thomas J.	Attorney
	Hand, George F.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney
	Rives, Barry, M.D.	Defendant

JOURNAL ENTRIES

- OUTSIDE PRESENCE OF JURY: Colloquy as to witness line up and trial exhibits.

JURY PRESENT: Testimony and Exhibits presented (See Worksheets.). Court admonished and excused the Jury for the evening, to return tomorrow by 9:00 A.M.

OUTSIDE PRESENCE OF JURY: Plaintiff's counsel moved to strike Defendant's Answer. Arguments by counsel. Court deferred the Motion to a later date, to allow parties to talk to reach other about scheduling on having the Motion to strike addressed further.

Evening recess. TRIAL CONTINUES.

10/18/19 9:00 A.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 18, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 18, 2019 9:00 AM Jury Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Alice Jacobson

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Doyle, Thomas J.	Attorney
	Hand, George F.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney
	Rives, Barry, M.D.	Defendant

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Colloquy between the Court and counsel regarding Joint Jury Instructions, Interrogatories, and Verifications 18 and 19 to be used for impeachment purposes.

JURY PRESENT: Barry Rives sworn and testified.

OUTSIDE THE PRESENCE OF THE JURY: Objections put on the record regarding legal conclusion and relevance on ethics question.

JURY PRESENT: Michael Hurwitz sworn and testified.

OUTSIDE THE PRESENCE OF THE JURY: Objections put on the record regarding new opinions and failure to disclose timely. COURT ORDERED, GRANTED IN PART and DENIED IN PART.

JURY PRESENT: Further testimony by Michael Hurwitz. Court excused the jury for the evening.

OUTSIDE THE PRESENCE OF THE JURY: Court admonished Defense counsel for making statements regarding the transcript against the Court's directive and would consider a mistrial for his conduct.

Trial CONTINUED 10/21/19.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 21, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 21, 2019 9:00 AM Jury Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Doyle, Thomas J.	Attorney
	Hand, George F.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney
	Rives, Barry, M.D.	Defendant

JOURNAL ENTRIES

- OUTSIDE PRESENCE OF JURY: Counsel provided courtesy copy of responsive pleadings to Court in regards to Plaintiffs' pending Motion to Strike. Colloquy as to witness line up. Court reminded both sides to follow the rules as to witnesses and witness binders for the witness stand.

JURY PRESENT: Testimony and Exhibits presented (See Worksheets.). Deposition of Alex Barchuk, M.D., was FILED AND PUBLISHED IN OPEN COURT.

OUTSIDE PRESENCE OF JURY: Objections placed on record by Plaintiffs' counsel as to alleged misconduct from opposing counsel during cross examination earlier. Mr. Jones requested a curative instruction be given to the Jury by Court. Arguments by counsel. Discussions as to earlier bench conference and the witness testimony. Court stated findings. Colloquy as to witness line up. Court noted it had received another OST request from counsel this morning, addressing Plaintiffs' renewed Motion to strike. Court inquired whether a date for the Motion was agreed upon by the parties. Statements by counsel as to proposed briefing schedule having been discussed. Court stated this

will be revisited.

JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.).

Lunch recess.

OUTSIDE PRESENCE OF JURY: Court stated it will keep the extra copy of the pleadings that were provided by counsel on Plaintiffs' renewed Motion to strike Defendants' Answer. COURT ORDERED, hearing SET on the Motion for October 23, 2019 at 1:00 P.M. Statements by Mr. Doyle as to status of written opposition to be filed. Order Shortening Time SIGNED IN OPEN COURT.

JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). Deposition of Barry Rives, M.D. SIGNED AND PUBLISHED IN OPEN COURT.

OUTSIDE PRESENCE OF JURY: Defendant Barry Rives, M.D., present on witness stand. Objections placed on record by Plaintiffs' counsel regarding testimony from the witness and insurance information having been allegedly elicited during testimony by Defendant.

JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.).

OUTSIDE PRESENCE OF JURY: Plaintiffs' counsel moved for mistrial, and alternatively requested Court to strike Defendants' Answer. Following arguments by counsel, and discussions as to what was previously discussed before the Court earlier, the matter was deferred to a later date, for both sides to have an opportunity to submit additional briefing on the Motion to strike, including additional briefing on the witness and insurance information issue, and Plaintiffs' renewed Motion to strike Defendants' Answer. Mr. Jones requested Defendant not to discuss insurance information in front of the Jury.

JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). Court admonished and excused the Jury for the evening, to return tomorrow at the time given by Court.

OUTSIDE PRESENCE OF JURY: Court reminded both sides the deadline dates to file pleadings on pending Motions.

Evening recess. TRIAL CONTINUES.

10/22/19 10:30 A.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 22, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 22, 2019 10:30 AM Jury Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Doyle, Thomas J.	Attorney
	Hand, George F.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney
	Rives, Barry, M.D.	Defendant

JOURNAL ENTRIES

- OUTSIDE PRESENCE OF JURY: Mr. Leavitt not present. Juror questions were addressed. Mr. Jones requested juror questions be asked to Defendant Dr. Rives, when he testifies again during Defendant's case in chief. Arguments by Mr. Doyle in support of the questions being asked during current testimony in Plaintiffs' case in chief. Court stated findings; and noted this presents a challenge to have the questions read to the witness at this juncture. Court also stated if there is an agreement by the parties, or a joint request, the Court will consider it. Colloquy as to witness line up.

JURY PRESENT: Mr. Leavitt present in Court. Testimony and Exhibits presented (See Worksheets.).

OUTSIDE PRESENCE OF JURY: Counsel addressed the examination of Plaintiff Titina Farris; and objections were placed on the record. Plaintiffs' Exhibit No. 1 and the Calendar Call proceedings were addressed. Mr. Jones provided the proposed Order on Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplements to NRCP 16.1 Disclosures, to the Court. Colloquy as to witness line

up for the afternoon.

JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.).

OUTSIDE PRESENCE OF JURY: Courtesy copy of pleadings and trial brief were provided to the Court by counsel.

JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). Jury admonished and excused by Court to return tomorrow by 9:45 A.M.

OUTSIDE PRESENCE OF JURY: Upon Court's inquiry, both sides confirmed on the admission to Plaintiffs' Exhibit No. 1 having been done by stipulation. Objections were placed on the record. Following discussions as to specific pages from Exhibit No. 1, earlier bench conference, ERISA plan, discovery, and witness testimony, Court reminded both sides any objections regarding a witness need to be addressed, before the witness takes the Stand. Further discussions as to case law from McCrosky vs. Carson Tahoe Regional Medical Center.

Evening recess. TRIAL CONTINUES.

10/23/19 9:45 A.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 22, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 22, 2019 1:00 PM Motion to Strike

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Doyle, Thomas J.	Attorney
	Hand, George F.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney
	Rives, Barry, M.D.	Defendant

JOURNAL ENTRIES

- Court addressed EDCR 7.27, and stated its findings. Statements by counsel. **COURT ORDERED, Motion DENIED WITHOUT PREJUDICE;** the Court will review briefs under EDCR 7.27, and the Court will look at the trial briefs and treat them as Rule 7.27 briefs.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 23, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 23, 2019 9:45 AM Jury Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Doyle, Thomas J.	Attorney
	Hand, George F.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney
	Rives, Barry, M.D.	Defendant

JOURNAL ENTRIES

- **OUTSIDE PRESENCE OF JURY:** Colloquy regarding witness line up for today, and status of witness scheduled to appear by video conference at 2:00 P.M.

JURY PRESENT: Testimony and Exhibits presented (See Worksheets.).

OUTSIDE PRESENCE OF JURY: Objections were placed on record as to there having been no agreement between the parties as to specific documents, for Dr. Juell's testimony. Discussions as to demonstrative exhibits, films, and deposition testimony. Arguments by counsel. Further discussions as to Exhibit No. 8. Court stated the witness cannot make a reference to the document at issue, until verification is made by the parties about whether the document was previously disclosed. Discussions as to trial schedule for the afternoon and witness line up.

JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.).

OUTSIDE PRESENCE OF JURY: Statements by counsel as to Plaintiffs' Exhibit No. 8. Objections placed on the record. Discussions as to demonstrative exhibits for Dr. Juell's examination. At request of counsel, COURT ORDERED, Plaintiffs' renewed Motion to Strike Defendants' Answer CONTINUED to be addressed outside the presence of the Jury, at a later date.

JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.).

OUTSIDE PRESENCE OF JURY: Objections placed on the record by Plaintiffs' counsel as to defense counsel addressing specific language in regards to a deposition during testimony. Mr. Doyle requested to have a deposition lodged; and argued in support of relief requested. Discussion regarding what was said to the Court by counsel earlier. Counsel was cautioned by Court not to make inadvertently improper or inaccurate statements in front of the Jury.

JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.).

Evening recess. TRIAL CONTINUES.

10/24/19 10:15 A.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 23, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 23, 2019 1:00 PM Motion to Strike

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Doyle, Thomas J.	Attorney
	Hand, George F.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney
	Rives, Barry, M.D.	Defendant

JOURNAL ENTRIES

- COURT ORDERED, Motion CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 24, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 24, 2019 10:15 AM Jury Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Shelley Boyle

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Doyle, Thomas J.	Attorney
	Hand, George F.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney
	Rives, Barry, M.D.	Defendant

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY:

Colloquy regarding scheduling inclusive of when to hold the sanctions hearing, scope of witness testimony, and CONFERENCES AT BENCH.

JURY PANEL PRESENT:

Testimony PRESENTED, Deposition PUBLISHED (see worksheets). CONFERENCES AT BENCH. COURT ORDERED, Trial CONTINUES.

CONTINUED TO: 10/28/19 8:30 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 28, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 28, 2019 8:30 AM Jury Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Doyle, Thomas J.	Attorney
	Hand, George F.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney
	Rives, Barry, M.D.	Defendant

JOURNAL ENTRIES

- Robert Eisenberg, present with defense counsel and seated in the gallery. Defendant Barry Rives not present.

OUTSIDE PRESENCE OF JURY: Colloquy regarding status of what exhibits have been admitted, witness line up and limited testimony with Dr. Juell. Defendant Barry Rives present in Court. Court addressed the medical malpractice issue and 7.27 trial briefs.

JURY PRESENT: Testimony and Exhibits presented (See Worksheets.).

OUTSIDE PRESENCE OF JURY: Court addressed the medical malpractice issue. The 7.27 trial briefs that were submitted to the Court previously, were evaluated. Counsel stated objections and made arguments on the record.

Lunch recess.

OUTSIDE PRESENCE OF JURY: Discussions as to limited testimony of Dr. Juell. Colloquy as to witness line up. Objections were made on the record by Plaintiffs' counsel regarding alleged violation by defense counsel.

JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.).

OUTSIDE PRESENCE OF JURY: Objections were placed on record as to examination of Dr. Juell, and defense seeking to call Dr. Chaney to testify.

Attorney Todd Wise, Esq., present in Court on behalf of witness Naomi Chaney, M.D; and addressed the subpoena issue, and also made statements to the Court regarding Dr. Chaney having canceled appointments with patients to appear to testify in this matter. Arguments by counsel. Colloquy as to there having been no agreement with the parties to have Dr. Chaney appear to testify. Relief was sought by Plaintiffs' counsel. Further discussions as to subpoena issue. Court stated it has no information for Court to rule on. Both sides to meet and confer during afternoon break to get a plan in place on the witness issues. Colloquy as to trial schedule.

JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). Jury was admonished and excused by Court for the evening, to return tomorrow morning at the time given.

OUTSIDE PRESENCE OF JURY: Courtesy copy of additional trial brief was provided to Court. Colloquy as to witness line up for tomorrow, and scheduling on when to address additional expert witness issues.

Evening recess. Plaintiffs' Renewed Motion to Strike CONTINUED.

TRIAL CONTINUES.

10/29/19 9:00 A.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 29, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 29, 2019 9:00 AM Jury Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Doyle, Thomas J.	Attorney
	Hand, George F.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney
	Rives, Barry, M.D.	Defendant

JOURNAL ENTRIES

- Robert Eisenberg, present with defense counsel and seated in the gallery.

OUTSIDE PRESENCE OF JURY: Court addressed trial briefs submitted by counsel, plus the October 14, 2019 proceedings and case law from McCrosky vs. Carson Tahoe Regional Medical Center. Arguments were made by the parties as to alleged continued violations with defense counsel, and collateral source issue. Court stated findings; and noted collateral source will not be mentioned in front of the Jury. Court deferred Plaintiffs' request for sanctions. Discussions as to Hallmark standards and witness line up. Plaintiffs' counsel objected to defense counsel having Dr. Stone appear to testify; and moved to strike. Arguments by Mr. Doyle. Court SUSTAINED Plaintiffs' objection. Mr. Doyle agreed to release Dr. Larson from the subpoena; and Plaintiffs' counsel made no objection. Defense counsel provided courtesy copy of trial brief to the Court in regards to Dr. Chaney.

JURY PRESENT: Testimony presented (See Worksheets.). Plaintiffs' rested.

OUTSIDE PRESENCE OF JURY: Court stated a request from a juror was received to conclude trial for the day before 5:00 P.M. By agreement of both sides, Court stated trial will conclude for the evening at 4:30 P.M., today.

Lunch recess.

OUTSIDE PRESENCE OF JURY: Objections were placed on record. Plaintiffs' counsel moved to strike an additional defense witness; and argued in support of relief requested. Arguments and responses were made by Mr. Doyle. Discussions as to prior disclosure not having been made. Court stated findings; and noted Dr. Adornato's testimony would be limited.

JURY PRESENT: Testimony presented; and deposition was published (See Worksheets.).

OUTSIDE PRESENCE OF JURY: At request of counsel, Dr. Adornato was directed by Court to exit the Courtroom and remain in the ante room, until further order. Dr. Adornato exited the Courtroom. Shortly thereafter, Mr. Leavitt informed the Court Dr. Adornato allegedly brushed up against him while walking out of the Courtroom; and stated he wants to press charges against the witness. Following discussions, Court recessed and all parties left the Courtroom for the afternoon break. CASE RECALLED. Attorney Jacqueline Bittrell, Esq., was present; and made statements to the Court regarding what she observed on the witness contact in the courtroom being alleged by Plaintiffs' counsel. Further colloquy as to prior objection made during testimony. Plaintiffs' counsel requested Court to admonish the witness regarding Court's order on causation and the testimony. Witness was admonished by Court about its prior order; and the witness was also admonished by Court not to review documents at any inappropriate time including during bench conferences, while on the stand.

JURY PRESENT: Further testimony presented (See Worksheets.). Jury was admonished and excused by Court for the evening, to return tomorrow at the given time, being 9:00 A.M.

OUTSIDE PRESENCE OF JURY: Colloquy as to subpoena issue with Dr. Chaney to be addressed further tomorrow at 8:30 A.M.

Evening recess. Plaintiffs' Renewed Motion to Strike CONTINUED. TRIAL CONTINUES.

10/30/19 8:30 A.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 30, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 30, 2019 8:30 AM Jury Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Doyle, Thomas J.	Attorney
	Hand, George F.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney
	Rives, Barry, M.D.	Defendant

JOURNAL ENTRIES

- Mr. Hand and Defendant Barry Rives, not present.

Robert Eisenberg, present with defense counsel and seated in the gallery.

OUTSIDE PRESENCE OF JURY: Colloquy as to witness line up for today. Objections placed on the record in regards to there being a Leavitt vs. Siems issue. Arguments by counsel. Mr. Hand present in Court. Discussions as to service of subpoena issue, defense witness Dr. Chaney, and NRCP 45. Defendant Barry Rives present in Court. Further arguments by counsel as to ex parte communication issue with defense counsel and Plaintiffs' treating provider. Following statements by Court, additional arguments were made by counsel as to there having been no agreement as to some testimony from witness Erik Volk, and calculations not having been disclosed. Arguments by Mr. Doyle. Discussions as to testimony of Erik Volk to be limited.

JURY PRESENT: Testimony and Exhibits presented (See Worksheets.).

OUTSIDE PRESENCE OF JURY: Statements by Mr. Jones as to Defendants' Exhibit A not being resolved. Arguments by counsel. Court stated findings; and ORDERED, Defendants' Motion to introduce Exhibit A DENIED WITHOUT PREJUDICE. Subpoena and service issue as to Dr. Chaney were addressed further. Attorney Todd Wise, Esq., present; and made statements to Court. Arguments by Mr. Jones as to non-compliance by defense counsel, Rule 16.1 issue, and testimony of Dr. Chaney being problematic. Arguments by Mr. Doyle in support of the testimony being given by the witness. Dr. Naomi Chaney present in Court. Court canvassed the witness in regards to the subpoena. Thereafter, the witness was excused by Court after Court's questions were asked. Objections placed on the record. Arguments by defense counsel as to requirements having been satisfied to have the witness appear and testify for trial. Opposition by Plaintiffs' counsel. Mr. Doyle made offer of proof as to what the witness will testify to. Arguments by counsel as to Callister case law. Court stated findings. Discussions as to testimony of Dr. Chaney to be limited.

JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.).

OUTSIDE PRESENCE OF JURY: Colloquy regarding trial schedule, due to tomorrow being Nevada Day and Halloween. Court directed both sides to appear in Court tomorrow at 8:00 a.m., to resolve and finalize jury instructions. Both sides to meet after trial to work out the ongoing issues that were raised to the Court earlier when standard objections were raised, and to also work out the jury instructions.

JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). Jury was admonished and excused for the evening to return tomorrow morning at the time given, being 10:15 A.M.

OUTSIDE PRESENCE OF JURY: Court addressed the scheduling for tomorrow; and reminded both sides of their obligations prior to tomorrow morning.

Evening recess. Plaintiffs' Renewed Motion to Strike CONTINUED. TRIAL CONTINUES.

10/31/19 8:00 A.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

October 31, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

October 31, 2019 8:00 AM Jury Trial

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Clark Newberry, Aimee Lea	Attorney
	Doyle, Thomas J.	Attorney
	Hand, George F.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney
	Rives, Barry, M.D.	Defendant

JOURNAL ENTRIES

- **OUTSIDE PRESENCE OF JURY:** Jury Instructions and proposed Verdict Forms were addressed. Objections were placed on the record. **JURY INSTRUCTIONS SETTLED.**

JURY PRESENT: Testimony and Exhibits presented (See Worksheets.).

Lunch recess.

OUTSIDE PRESENCE OF JURY: Colloquy as to status of finalized jury instructions and verdict forms. Counsel provided the finalized jury instructions to the Court. Colloquy regarding Juror No. 6 having a scheduled training appointment all day tomorrow. By agreement of counsel, **COURT ORDERED**, Juror No. 6 will remain on the panel until end of day today, and Alternate Juror No. 9 will replace Juror No. 6. Amended Jury List FILED IN OPEN COURT.

JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.).

OUTSIDE PRESENCE OF JURY: Discussions as to Plaintiffs' counsel seeking to play a video clip from the Vickie Center civil case to the Jury for impeachment purposes. Following arguments by counsel, Court stated its findings. COURT ORDERED, the audio clip can be played to the Jury, but not the video clip.

JURY PRESENT: Further testimony and Exhibits presented (See Worksheets.). Defense rested. Jury was admonished and excused by the Court for the evening, to return tomorrow at the given time, being 8:30 A.M.

OUTSIDE PRESENCE OF JURY: Both sides moved for direct verdict under Rule 50. Following arguments by parties, Court stated its findings. COURT ORDERED, Plaintiffs' Motion for Direct Verdict GRANTED IN PART as to damages for past medical and related expenses and life care plan; and Motion DENIED IN PART as to remaining portion of Plaintiffs' Motion. FURTHER, Defendants' Motion for Direct Verdict DENIED. A modified proposed verdict form to be provided to the Court. Court directed both sides to appear in the courtroom tomorrow for trial, at 8:20 A.M.

Evening recess. Plaintiffs' Renewed Motion to Strike CONTINUED.

TRIAL CONTINUES.

11/01/19 8:30 A.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

November 01, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

November 01, 2019 8:30 AM All Pending Motions

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Denise Husted

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Doyle, Thomas J.	Attorney
	Hand, George F.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney

JOURNAL ENTRIES

- JURY TRIAL...PLAINTIFF'S RENEWED MOTION TO STRIKE

OUTSIDE THE PRESENCE OF THE JURY. The Court noted it directed counsel to present a new Special Verdict form and since this has not been done, COURT ORDERED, the form presented by the Plaintiff will be used.

IN THE PRESENCE OF THE JURY. The Court instructed jurors on the law of the case. Closing arguments by Mr. Jones. Closing arguments by Mr. Doyle. Rebuttal arguments by Mr. Jones.

At the hour of 12:35 PM the jury retired to deliberate.

At the hour of 2:20 PM the jury returned with a verdict in favor of plaintiff.

Plaintiff's Renewed Motion to Strike CONTINUED and matter SET for a status check regarding judgment.

CONTINUED TO: 11/7/19 9:30 AM

42.021 (1) and NRS 42.021 (2). Arguments by counsel. Court stated its findings; and ORDERED, numeric breakdown as follows: damages for Plaintiff Titina Farris's past physical and mental pain, suffering, anguish, disability and loss of enjoyment of life will be in the amount of \$43,225.00; damages for Plaintiff Titina Farris's future physical and mental pain, suffering, anguish, disability and loss of enjoyment of life will be in the amount of \$131,775.00; damages for Plaintiff Patrick Farris's past loss of companionship, society, comfort, and consortium will be in the amount of \$92,225.00; and, damages for Plaintiff Patrick Farris's future loss of companionship, society, comfort, and consortium will be in the amount of \$82,775.00, for a grand total of \$350,000.00.

Parties agreed on the percentages rate, and the language will be included in the written Judgment which will be submitted to the Court.

Plaintiffs' counsel to prepare the written judgment; and defense counsel to approve form and content.

SHOW CAUSE HEARING

Upon Court's inquiry, both sides confirmed having rested each of their cases in chief at time of trial. Court noted it will have to continue this matter to another day, due to the Court having a scheduled commitment this morning and the Court needing to adjourn. Following discussions as to scheduling, COURT ORDERED, Show Cause Hearing CONTINUED. Court noted this continuance does not impact the filing of the written judgment. Parties acknowledged.

Remaining portion of Plaintiffs' Renewed Motion to Strike CONTINUED.

11/13/19 10:30 A.M. PLAINTIFFS' MOTION FOR SANCTIONS...SHOW CAUSE HEARING...PLAINTIFFS' RENEWED MOTION TO STRIKE

CLERK'S NOTE: Plaintiffs' Renewed Motion to Strike Defendants' Answer was not addressed, and was continued to November 13, 2019 at 10:15 a.m. sb

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

November 13, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

November 13, 2019 10:15 AM All Pending Motions

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT:	Doyle, Thomas J.	Attorney
	Hand, George F.	Attorney
	Jones, Kimball	Attorney
	Leavitt, Jacob G	Attorney

JOURNAL ENTRIES

- Court confirmed the written judgment was signed. Parties acknowledged.

SHOW CAUSE HEARING

Court addressed defense counsel's seven offers of proof that were filed in the case November 1, 2019. Statements by Mr. Doyle in support of these proofs having been filed in the case. Court canvassed counsel the November 1, 2019 filings. Discussions as to trial proceedings. Mr. Doyle objected to the order to show cause; and made arguments. Further discussions as to Court's rulings from trial on October 14, 2019 and October 29, 2019, and EDCR 2.69. COURT ORDERED, matter CONTINUED to November 14, 2019 at 1:30 p.m.

PLAINTIFFS' MOTION FOR SANCTIONS...PLAINTIFFS' RENEWED MOTION TO STRIKE

COURT ORDERED, matters CONTINUED to November 14, 2019 at 1:30 P.M.

2019, Offer of Proof Re: Lance Stone, D.O. filed November 1, 2019, Offer of Proof Re: Erik Volk filed November 1, 2019, and, Offer of Proof Re: Bruce Adornato, M.D.'s Testimony filed November 1, 2019 are ORDERED, STRICKEN as rogue documents.

PLAINTIFFS' MOTION FOR SANCTIONS

COURT ORDERED, Motion CONTINUED to November 20, 2019 at 1:30 P.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

November 20, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

November 20, 2019 1:30 PM Motion for Sanctions

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Michaela Tapia

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT: Doyle, Thomas J. Attorney
 Hand, George F. Attorney
 Leavitt, Jacob G Attorney

JOURNAL ENTRIES

- Court indicated the hearing today was to address counsel submitting multiple inadmissible documents. Court gave a brief history of the case. Mr. Leavitt indicated he was willing to accept a sanction payable to the Law Library or Legal Aid. Mr. Doyle mirrored Mr. Leavitt's comments and did not wish to add anything. Colloquy regarding Court's previous trial order. Court indicated it was not inclined to issue sanctions to Plaintiff counsel. Mr. Leavitt advised he would prefer to give \$500.00 to the Law Library. Colloquy regarding Mr. Doyle continuing to submit impermissible filings. Colloquy regarding electronically signed document used at trial. Mr. Doyle indicated he did not know the specific acts or failures to act that Court is using for basis for sanctions. Court offered to continue the matter; however, Mr. Doyle declined. Upon Court's inquiry, Mr. Doyle indicated the filings were a clerical oversight and a mistake on part of his office. Colloquy regarding Mr. Doyle's readiness for the hearing. Mr. Doyle stated he did not want to look into the issues and wanted to hear the Court's ruling. Colloquy regarding possibly continuing the hearing. Upon Court's inquiry, Mr. Doyle declined to respond individually or globally. Upon Court's inquiry, Mr. Leavitt indicated Ms. Clark Newberry and Mr. Couchot's conduct was egregious in a number of aspects and requested heavy monetary sanctions. Court advised it is not taking this case back to discovery. Court stated its findings and advised it would issue the order at the time of the hearing on fees and costs. Parties to

submit their proposals in Word to the Judicial Executive Assistant and CC opposing counsel.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

January 07, 2020

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

January 07, 2020 10:00 AM All Pending Motions

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Susan Botzenhart

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT: Doyle, Thomas J. Attorney
 Hand, George F. Attorney
 Jones, Kimball Attorney

JOURNAL ENTRIES

- PLAINTIFFS' MOTION FOR FEES AND COSTS

Arguments by Mr. Jones and Mr. Doyle. Discussion as to Capana case law and NRCP 68. Court stated findings; and provided analysis under Beattie, Brunzell, and NRS 7.095. Court also noted it will not impose additional sanctions. COURT ORDERED, attorney fees GRANTED in the amount of \$821,468.66.

DEFENDANTS BARRY J. RIVES, M.D.'S AND LAPAROSCOPIC SURGERY OF NEVADA, LLC'S MOTION TO RE-TAX AND SETTLE PLAINTIFFS' COSTS

Following arguments by counsel as to costs and Dr. Stein, COURT ORDERED, Motion CONTINUED to February 11, 2020 at 9:30 A.M., for supplemental pleadings to be filed. FURTHER, briefing schedule SET as follows: Plaintiffs' supplemental opposition due January 21, 2020, Defendants' supplemental reply due February 3, 2020.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

February 11, 2020

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

February 11, 2020 9:30 AM Motion to Retax

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Michaela Tapia

RECORDER: Sandra Harrell

REPORTER:

PARTIES

PRESENT: Doyle, Thomas J. Attorney
 Hand, George F. Attorney

JOURNAL ENTRIES

- Following arguments by counsel, COURT ORDERED, motion GRANTED IN PART, DENIED IN PART. Other than Stein and Cook, the motion is GRANTED; the Court finds it is appropriate and meets all the Frasier factors. As to Dr. Stein, COURT ORDERED, Dr. Stein's amount is lowered to \$1,500.00. As to Dr. Cook, COURT FURTHER ORDERED, Dr. Cook's amount is reduced to \$13,960.03. ADDITIONALLY, the \$5,032.02 cost is reduced. COURT FINDS, the remaining costs are appropriately supported and GRANTED. Mr. Hand to provide the net figure to Mr. Doyle.

TABLE OF CONTENTS – PLAINTIFFS’ TRIAL EXHIBITS

**TITINA FARRIS AND PATRICK FARRIS VS. BARRY RIVES, M.D. AND
LAPAROSCOPIC SURGERY OF NEVADA, LLC**

CASE NO.: A-16-739464-C

**PLAINTIFFS’ COUNSEL – GEORGE HAND, ESQ.; KIMBALL JONES,
ESQ; AND JACOB LEAVITT, ESQ.**

**DEFENDANTS’ COUNSEL – THOMAS J. DOYLE, ESQ. AND KIM
MANDELBAUM, ESQ.**

NO.	DESCRIPTION	DATE OFFERED	OBJECTION	DATE ACCEPTED
1.	St. Rose Dominican San Martin Hospital Medical Records and Billing	10-14-19	SKIP	10-14-19
2.	St. Rose Dominican Siena Hospital Billing	→		
3.	Bess Chang, M.D. – Medical Neurology Medical Records and Billing			
4.	Elizabeth Hamilton, M.D. Medical Records and Billing			
5.	Desert Valley Therapy Medical Records and Billing			
6.	CareMeridian Medical Records and Billing	10-22-19	YES	10-22-19
7.	Steinberg Diagnostic Medical Imaging Medical Records and Billing Records			
8.	Diagnostic films taken at St. Rose Dominican Hospital			
9.	Photographs of Titina Farris			
10.	Video of Titina Farris taken by Lowell Pender on April 13, 2015	10-28-19	YES	10-28-19
11.	Videos of Titina Farris, Patrick Farris, Addison Durham, Lowell Pender and Sky Prince			
12.	Marriage Certificate			
13.	National Vital Statistics Reports United States Life Tables, 2015			

14.	Bolton, CF, Neuromuscular Manifestations of Critical Illness, Muscle & Nerve 32: 140-163, 2005			
15.	Govindarajan, R, Jones, D, Galvez, N, AANEM Case Study: Critical Illness Polyneuropathy, October 2014			
16.	Lacomis, D, Electrophysiology of Neuromuscular Disorders in critical illness, Muscle & Nerve 47:452-463, 2013			
17.	Koch, S, et. al., Long-term recovery in critical illness myopathy is complete, contrary to polyneuropathy, Muscle & Nerve 50:431-436			
18.	Verena, N., N. Kornmann, Bert van Ramshorst, Anke B.Smits, Thomas L. Bollen, Djamila Boerma, Beware of false-negative CT scan for anastomotic leakage after colonic surgery, International Journal of Colorectal Disease (2014) 29:445-451			

EXHIBIT INDEX

DEFENDANTS' TRIAL EXHIBITS

CASE NO. A-16-739464-C

TITINA FARRIS & PATRICK FARRIS

v.

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

PLAINTIFFS' COUNSEL: *Kimball Jones*
Jacob Leavitt
George Hand

DEFENSE COUNSEL: *Thomas Doyle*

No.	DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
A	Portions of medical records from Laparoscopic Surgery of Nevada Bates: A000001 – A-000042	<i>10-30-19</i>	<i>yes</i>	<i>Not Admitted</i>
B	Medical records from St. Rose Dominican Hospital - San Martin Campus, for the admission on August 7, 2014. Bates: B-000001 – B-000143		DEFENSE COUNSEL	
C	Medical records from Spring Valley Internal Medicine (Dr. Naomi Chaney). Bates: C-000001 – C-000111		DEFENSE COUNSEL	
D	Medical records from Advanced Orthopedics and Sports Medicine (Dr. Randall Yee / Dr. Tomman Kuruvilla) Bates: D-000001 – D-000011			
E	Imaging Study from St. Rose Dominican Hospital - San Martin Campus- July 5, 2015 CT scan of chest, abdomen, and pelvis			
F	Imaging Study from St. Rose Dominican Hospital - San Martin Campus- July 9, 2015 CT scan of chest, abdomen, and pelvis			
G	Imaging Study from St. Rose Dominican Hospital - San Martin Campus- July 15, 2015 CT scan of chest, abdomen, and pelvis		DEFENSE COUNSEL	
H	Imaging Study from St. Rose Dominican Hospital – San Martin Camps – July 4, 2015 (15:51:10) – XR Chest 1 View AP or PA		DEFENSE COUNSEL	

No.	DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
I	Imaging Study from St. Rose Dominican Hospital – San Martin Camps – July 4, 2015 (15:50:31) – XR Abdomen AP			
J	Imaging Study from St. Rose Dominican Hospital – San Martin Campus – July 4, 2015 (20:04:51) – XR Chest 1 View AP or PA			
K	Imaging Study from St. Rose Dominican Hospital – San Martin Campus – July 4, 2015 (20:59:58) – XR Chest 1 View AP or PA			
L	Imaging Study from St. Rose Dominican Hospital – San Martin Campus – July 4, 2015 (20:59:58) – XR Chest 1 View AP or PA			
M	Imaging Study from St. Rose Dominican Hospital – San Martin Campus – July 6, 2015 (04:02:00) – XR Chest 1 View AP or PA			
N	Imaging Study from St. Rose Dominican Hospital – San Martin Campus – July 7, 2015 (03:11:25) – XR Chest 1 View AP or PA			
O	Imaging Study from St. Rose Dominican Hospital – San Martin Campus – July 8, 2015 (03:23:09) – XR Chest 1 View AP or PA			
P	Imaging Study from St. Rose Dominican Hospital – San Martin Campus – July 7, 2015 (03:11:25) – XR Chest 1 View AP or PA			
Q	Imaging Study from St. Rose Dominican Hospital – San Martin Camps – July 9, 2015 (15:50:31) – XR Abdomen AP+DECUB+OR ERECT			
R	Imaging Study from St. Rose Dominican Hospital – San Martin Campus – July 8, 2015 (20:30:56) – XR Chest 1 View AP or PA			
S	Imaging Study from St. Rose Dominican Hospital – San Martin Campus – July 10, 2015 (04:25:01) – XR Chest 1 View AP or PA			
T	Imaging Study from St. Rose Dominican Hospital – San Martin Campus – July 11, 2015 (03:57:39) – XR Chest 1 View AP or PA			

No.	DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
U	Imaging Study from St. Rose Dominican Hospital – San Martin Campus – July 12, 2015 (03:55:06) – XR Chest 1 View AP or PA			
V	Imaging Study from St. Rose Dominican Hospital – San Martin Camps – July 12, 2015 (09:16:42) – XR Abdomen AP+DECUB+OR ERECT			
W	Imaging Study from St. Rose Dominican Hospital – San Martin Campus – July 14, 2015 (03:39:35) – XR Chest 1 View AP or PA			
X	Imaging Study from St. Rose Dominican Hospital – San Martin Camps – July 13, 2015 (11:44:12) – XR Abdomen AP			
Y	Imaging Study from St. Rose Dominican Hospital – San Martin Campus – July 15, 2015 (03:30:33) – XR Chest 1 View AP or PA			
Z	Imaging Study from Steinberg Diagnostic Medical Imaging Centers – June 12, 2015- CT abdomen			
AA	Titina Farris' Responses to Defendants' First Set of Interrogatories Bates: AA-000001 – AA-000012			
BB	Patrick Farris' Responses to Defendants' First Set of Interrogatories Bates: BB-000001 – BB-000009			
CC	Expert reports by Bart Carter, M.D., P.C. Bates: CC-0000001 – CC-000012			
DD	Expert reports by Brian E. Juell, M.D. Bates: DD-000001 – DD-000008			
EE	Expert reports by Lance Stone, D.O. Bates: EE-000001 – EE-000006			
FF	Expert reports by Sarah Larsen, RN Bates: FF-000001 – FF-000020			

NO.	DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
GG	Expert reports by Bruce Adornato, M.D. Bates: GG-000001 – GG-000005			
HH	Expert reports by Kim Erlich, M.D. Bates: HH-000001 – HH-000006			
II	Expert reports by Scott Kush, M.D. Bates: II-000001 – II-000019			
JJ	Expert reports by Erik Volk Bates: JJ-000001 – JJ-000025			
KK	Expert Reports by Michael Hurwitz, M.D. Bates: KK-000001 – KK-000008			
LL	Expert file of Michael Hurwitz, M.D. Bates: LL-000001 – LL-000028			
MM	Expert fee schedule of Michael Hurwitz, M.D.			
NN	Expert case list of Michael Hurwitz, M.D.			
OO	Expert Reports by Justin Willer, M.D. Bates: OO-000001 – OO-000010			
PP	Expert file of Justin Willer, M.D. Bates: PP-000001 – PP-000003			
QQ	Expert fee schedule of Justin Willer, M.D.			
RR	Expert case list of Justin Willer, M.D.			
SS	Expert Reports by Alan J. Stein, M.D. Bates: SS-000001 – SS-000008			
TT	Expert fee schedule of Alan J. Stein, M.D.			
UU	Expert case list of Alan J. Stein, M.D.			

No.	DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
VV	Expert Reports by Dawn Cook, R.N. Bates: VV-000001 – VV-000085			
WW	Expert file of Dawn Cook, R.N. Bates: WW-000001 – WW-000011			
XX	Expert fee schedule of Dawn Cook, R.N.			
YY	Expert case list of Dawn Cook, R.N. Bates: YY-000001 – YY-000003			
ZZ	Expert Reports by Terrence M. Clauretie Bates: ZZ-000001 – ZZ-000018			
AAA	Expert file of Terrence M. Clauretie Bates: AAA-000001 – AAA-000066			
BBB	Expert fee schedule of Terrence M. Clauretie			
CCC	Expert case list of Terrence M. Clauretie Bates: CCC-000001 – CCC-000024			
DDD	Expert Reports by Alex Barchuk, M.D. Bates: DDD-000001 – DDD-000032			
EEE	Expert file of Alex Barchuk, M.D. Bates: EEE-000001 – EEE-000060			
FFF	Expert fee schedule of Alex Barchuk, M.D.			
GGG	Expert case list of Alex Barchuk, M.D. Bates: GGG-000001 – GGG-000010			

EXHIBIT(S) LIST

Case No.: A-16-739464-C

Trial Date: 10/14/19

Dept. No.: XXXI

Judge: JOANNA S. KISHNER

Titina Farris
PLAINTIFF,

Court Clerk: Susan Botzenhart

Recorder: Sandra Harrell

Counsel for Plaintiff: Kandall Jones,

vs.

Jacob Leavitt + George Hand

Barry Kives, M.D.
DEFENDANTS.

Counsel for Defendant: Thomas Doyle

Jury TRIAL BEFORE THE COURT

Court 'S EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted	
1.	Statement to Jury from Counsel	10-14-19	no	10-14-19	AB
2.	Proposed Instruction not given	10-16-19	no	10-16-19	AB
3.	Juror Question	10-17-19	no	10-17-19	AB
4.	Juror Question	10-17-19	no	10-17-19	AB
5.	Juror Question	10-17-19	no	10-17-19	AB
6.	Verification	10-18-19	no	10-18-19	AB
7.	Transcript 10-7-19				AB
8.	Juror Questions	10-21-19	no	10-21-19	AB
9.	Juror Questions	10-21-19	no	10-21-19	AB
10.	Juror Questions	10-21-19	no	10-21-19	AB
11.	Juror Questions	10-21-19	no	10-21-19	AB
12.	Juror Questions	10-21-19	no	10-21-19	AB
13.	Insurance Documents	10-21-19	no	10-21-19	AB
14.	Juror Questions	10-21-19	no	10-21-19	AB
15.	Juror Questions	10-21-19	no	10-21-19	AB
16.	Juror Questions	10-21-19	no	10-21-19	AB
17.	Juror Questions	10-21-19	no	10-21-19	AB

EXHIBIT(S) LIST

A739464

Titina Sims
Court

vs. Barry Sims M.D.

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'S EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted	
18.	Juror Question	10-21-19	no	10-21-19	MS
19.	Juror Question	10-22-19	no	10-22-19	MS
20.	Juror Question	10-22-19	no	10-22-19	MS
21.	Juror Question	10-22-19	no	10-22-19	MS
22.	Juror Question	10-22-19	no	10-22-19	MS
23.	Juror Question	10-23-19	no	10-23-19	MS
24.	Juror Question	10-23-19	no	10-23-19	MS
25.	Juror Question	10-23-19	no	10-23-19	MS
26.	Juror Question	10-23-19	no	10-23-19	MS
27.	Juror Question	10-23-19	no	10-23-19	MS
28.	Juror Question	10-23-19	no	10-23-19	MS
29.	Juror Question	10-23-19	no	10-23-19	MS
30.	Juror Question	10-23-19	no	10-23-19	MS
31.	Juror Question	10-23-19	no	10-23-19	MS
32.	Juror question	10-24-19	no	10-24-19	MS
33.	Juror question	10-24-19	no	10-24-19	MS
34.	Juror question	10-24-19	no	10-24-19	MS
35.	Juror question	10-24-19	no	10-24-19	MS
36.	Juror Question	10-28-19	no	10-28-19	MS
37.	Juror Question	10-28-19	no	10-28-19	MS
38.	Juror Question	10-28-19	no	10-28-19	MS
39.	Juror Question	10-28-19	no	10-28-19	MS
40.	Juror Question	10-30-19	no	10-30-19	MS
41.	Juror Question	10-30-19	no	10-30-19	MS
42.	Juror Question	10-30-19	no	10-30-19	MS

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

SUPPLEMENTAL AND/OR AMENDED NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; JUDGMENT ON VERDICT; NOTICE OF ENTRY OF JUDGMENT; ORDER ON PLAINTIFFS' MOTION FOR FEES AND COSTS AND DEFENDANTS' MOTION TO RE-TAX AND SETTLE PLAINTIFFS' COSTS; NOTICE OF ENTRY OF ORDER ON PLAINTIFFS' MOTION FOR FEES AND COSTS AND DEFENDANTS' MOTION TO RE-TAX AND SETTLE PLAINTIFFS' COSTS; DISTRICT COURT MINUTES; EXHIBITS LIST

TITINA FARRIS; PATRICK FARRIS,

Plaintiff(s),

vs.

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

Defendant(s),

Case No: A-16-739464-C

Dept No: XXXI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 14 day of April 2020.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

