IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRY JAMES RIVES, M.D.; and LAPAROSCOPIC SURGERY OF NEVADA, LLC, Appellants/Cross-Respondents, vs. TITINA FARRIS and PATRICK FARRIS, Respondents/Cross-Appellants.	Case No. 80271
BARRY JAMES RIVES, M.D.; and LAPAROSCOPIC SURGERY OF NEVADA, LLC, Appellants, vs. TITINA FARRIS and PATRICK FARRIS, Respondents.	Case No. 81052

APPELLANTS' APPENDIX
VOLUME 16

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CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX

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

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DISTRICT COURT

CLARK COUNTY, NEVADA

TITINA FARRIS, PATRICK FARRIS, Plaintiffs, vs. BARRY RIVES, M.D., ET AL., Defendants.	CASE#: A-16-739464-C DEPT. XXXI

BEFORE THE HONORABLE JOANNA S. KISHNER
DISTRICT COURT JUDGE
WEDNESDAY, NOVEMBER 13, 2019

RECORDER'S TRANSCRIPT OF PENDING MOTIONS

APPEARANCES:

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

For the Defendants: THOMAS J. DOYLE, ESQ.

RECORDED BY: SANDRA HARRELL, COURT RECORDER

Case Number: A-16-739464-C

Las Vegas, Nevada, November 13, 2019

[Case called at 10:14 a.m.]

THE COURT: Madam Court Reporter, can we go on the record please?

THE COURT RECORDER: On the record.

THE COURT: On the record in Farris v. Rives, 739464. Counsel, can I have your appearances, please?

MR. LEAVITT: Yes, Your Honor. Kimball Jones, George Hand, and Jacob Leavitt for the Plaintiffs.

MR. DOYLE: And Tom Doyle for the Defendants.

THE COURT: Okay. So welcome back, folks. The first thing you should have seen, the Court signed the jointed agreed upon judgment yesterday. It was out in the box. So I'm not sure if you all picked it up or not, but it was out in the box. So did someone pick it up?

MR. HAND: If our runner didn't pick it up, I'll take it. Okay.

THE COURT: Like I said, I know when we got it, within brief moments after we got it, I know I signed it because it said all parties agreed to it. That was correct, Defense counsel, right?

MR. DOYLE: That is correct, Your Honor.

THE COURT: Okay. So that's why the Court signed it because it said everybody agreed to it. So that part got taken care of.

Okay. So then that goes into for today we have set up a couple of different things. Give me just one moment while -- my computer does not want to let me in. Okay. So you all were here last

week. What we stated was going to happen is there is three sets of outstanding issues left from the Court's understanding. One's the order to show cause regarding documents that were filed on November 1st during the time period of when you all were engaged in your closing arguments without the Court's notice, without the Court's consent -- well, actually the order to show cause in a quick second.

Then there is the Plaintiff's renewed motion to strike Defendants' answer for Rule 37 violations, including perjury and discovery violations on order shortening time. The Court's going to need to address that and what is technically left of that or being requested in that. I'm just reading the title as it was filed.

And then also, the Court's additional order setting the hearing regarding the multiple impermissible documents and regarding sanctions that the Court, at the request of the parties, had continued until the conclusion of the trial to give all counsel the -- how did I -- let's see. There's a variety of different times, the same way to give all counsel the benefit of the doubt that hopefully people would come into compliance so that everyone would have the best possible benefit of the doubt and requested that. So that is also the third thing.

So the order I just said it is the order in which both today and tomorrow we're going over them. So that means, first we'd be going to the documents filed on November 1st, which is subject to the order to show cause and so that order to show cause, the Court's just going to re-read it, although the Court read it last week.

It was ordered to show cause to Thomas Doyle, you are

hereby ordered to appear in person. It was originally November 7th, but then by agreement of the parties, because it couldn't be continued, it didn't get completed on the 7th because of all the time you all took with regards to the judgment. I recall, feel free to correct me if I'm incorrect, that Mr. Doyle was not available on the 8th, and so it was continued to this week since you were already coming in prior to -- counsel for the parties are already coming in tomorrow anyways. So we did it today so it would make it the most convenient so that they were back to back and so that people who were flying in or coming in from elsewhere could do it.

So originally set the 7th of November at 9:30, but of course, got continued by agreement of the parties and the Court to today, and show cause why seven separate documents were filed by Defendants on November 1, 2019 during closing arguments without any notice to the Court after all parties had already rested and after the Court confirmed there were no further outstanding issues to be addressed. This order to show cause is being set at the same time the parties are already scheduled to appear before the Court, and that the parties were already scheduled back on November 7th, and then, like I said, by agreement of the parties to accommodate, the parties -- one of the counsel couldn't still be here but we did it today.

On the 7th, the Court had asked a couple of background questions regarding the order to show cause and confirmed that all parties agreed that they had rested, nobody had raised any issues, stated there was any outstanding issues whatsoever. All parties had rested, all

testimony, there was no issues, or anything presented from the Court. The parties rested. When you left on October 31st and in fact all parties on October 31st, even after everybody had rested, each of the parties engaged in Rule 50 motions and the Court again asked after the Rule 50 motions whether or not there was anything else outstanding. All parties stated no. The Court made all of its rulings on those Rule 50 motions and you all left here around 4:30ish. We'd have to check the exact time. The reason I say 4:30ish is because it was around 4:30ish when we went off the record.

The Court also asked the parties the estimate of time that you engaged in various arguments outside the presence of the jury or at bench. I got an estimate from Plaintiffs' counsel and Defense counsel did not provide an estimate of the amount of time and then given where the timing was and the amount of work -- the amount of issues that were outstanding, rescheduled it for today with the three different issues outstanding.

So the Court still has a couple of background questions and then moving onto what Defense counsel explained with regards to the offer of proof. The additional background questions were the Court needed to confirm, and this is for Defense counsel, is I need to know each and every attorney -- I do not know -- want to know any of the content of any communication. I just need to each and every attorney that in any way drafted, edited, participated in the filing or in the consultation or the research with regards to any of the seven documents that were filed on November 1, 2009 (sic) and I'm going to refer to those

documents as they were titled with the Court and utilizing the title in no way says that they are correctly title. I am only utilizing the title on which those documents were listed.

So those seven documents were listed as, let's see, we're going to do them in one, two -- one second. Let's go to -- okay. I'm going to go to them in the order in which it shows -- who's counting? Okay. So it showed that the first one was -- I'm sorry, this is [indiscernible]. Let me -- sorry. It shows that at 10:49 a.m., there was a document filed with the caption of the Thomas Doyle firm and Kim Mandelbaum firm, attorneys for Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada LLC. The document titling says, "Offer of Proof Re: Defendants' Exhibit C." So that says 10:49.

The next document --

[Court and Clerk confer]

THE COURT: The next document says -- okay. The next document says "Brian" -- it was filed at 10:52 according to the file stamp. "Offer of Proof of Brian Juell." Same captioning on behalf of the same Defendants as listed on that first page of the pleading.

The next one's filed -- the file stamp says 11/1 at 10:57 a.m. It says, "Offer of Proof re: Sarah Larson." Same captioning of the Doyle firm and Mandelbaum, attorneys for Defendants Barry Rives and Laparoscopic.

The next one is titled -- I'm sorry, filed at 11:01 a.m. It says "Offer of Proof re: Michael Hurwitz, M.D." And the next document filed 11:04 based on the file stamp. Same captioning as all the others. It says

"Offer of Proof re: Lance Stone, D.O." Once again, I'm just doing the titlings as they were filed. The Court takes no position as to whether they meet that standard.

Next one was filed at 11:08, based on this file stamp. It says, "Offer of Proof re: Eric Volk." Same captioning on behalf of the same Defendants. And then at 11:12, it says "Offer of Proof re: Bruce Adornato, M.D.'s Testimony." Same captioning on behalf of the same Defendants. And that is the seven documents that this Court understood were filed on 11/1 while the parties' counsel were here in the midst of closing argument.

So between the 7th and today, the Court still never received a single courtesy copy of any of those documents. Defense counsel, do you in any way contend that you tried to provide the Court -- even after the Court explained that I had not received anything on 11/7, did you in any way try and attempt to provide anything to the Court? Because the Court got absolutely nothing.

MR. DOYLE: I'm not aware of any courtesy copies having been provided, no.

THE COURT: Okay. Still no. Okay. I guess you understand this is what we have.

Tena, do you have a --

I mean, how many total pages would you say you filed? I mean --

MR. DOYLE: A couple hundred perhaps?

THE COURT: A couple hundred? Well, I know one of them

was over 117. So let's see, I've got a ruler. That's about 3ish inches, so I mean it's -- one of them alone is over 100 some odd pages because I know how long it took my law clerk to print out each of these, so. That was obviously very concerning but that concern, obviously, is going to get addressed in the third of the hearings with regards to the non-compliance with the rules because, of course, that would again be another -- I mean after November 7th being again reminded, would be yet another violation of EDCR. Right there on the counsel's table. It's been taped there for a long time. EDCR. Okay. Two different sections to provide those to the Court and plus the Court even stating it on November 7th and still didn't get anything.

But going back to the Court's question, I need the name of each and every attorney that in any way participated in the decision to prepare these seven documents that the Court just referenced -- in any way prepared them, research them, edited them, reviewed them, or participated in the filing of them.

MR. DOYLE: That would be myself, Robert Eisenberg, and Aimee Clark Newberry.

THE COURT: And Mr. Eisenberg is not an attorney of record in this case here in the district court; is that correct?

MR. DOYLE: He is not currently an attorney of record, correct.

THE COURT: When you say not currently, he never has been? He never filed, correct?

MR. DOYLE: He is not currently, correct.

THE COURT: But never has been in the past either?

MR. DOYLE: Not in the past, no.

THE COURT: Is there any intention that he is going to file as attorney of record here in the district court case?

MR. DOYLE: I believe at some point, he will be making an appearance, yes.

THE COURT: In the district court case?

MR. DOYLE: I don't know the plan.

THE COURT: His name is nowhere on these pleadings.

MR. DOYLE: I understand that, but you asked me --

THE COURT: Okay. I just --

MR. DOYLE: -- who participated --

THE COURT: Sure.

MR. DOYLE: -- and I told you who participated.

THE COURT: Okay. When was the decision made to file, prepare, or to do these documents?

MR. DOYLE: Well, there was running discussion throughout the trial about offers of proof that would be necessary at some point in time. The decision about preparing the offers of proof in the format submitted in writing with the various attachments, that decision was made by me on Thursday after court.

THE COURT: When you say Thursday, can you give me a date, please?

MR. DOYLE: October 31st.

THE COURT: So these were all prepared that evening of the

31st and then filed by 10:00 the following morning?

MR. DOYLE: That is correct.

THE COURT: So these were all researched -- it's your statements that the first indication of any researching in any way for any of these documents or any of the topics of any of these documents were in no way prepared, researched or anything until after you left court on October 31st?

MR. DOYLE: I'm not sure what the Court means by research, but as I indicated, throughout the trial, notes were made and kept about what offers of proof would be necessary to create an adequate record for appeal. But in terms of preparing the written offers of proof, the wording of the written offers of proof, and what they said, and what was and would be attached, yes, that was all done after court on Thursday, October 31st. It did take a substantial amount of time.

THE COURT: Instead of doing a special verdict form?

MR. DOYLE: I'm sorry, what?

THE COURT: Well, you had stated you went to bed early on the 31st, which is why you told the Court you didn't have the special verdict form done. You never indicated when the Court asked you in the morning of November 1st why there was no special verdict form by Defense counsel. Do you recall what you told the Court? You told the Court that you were asleep. You went to bed early. Because then the Court stated to you well, I'm surprised, that you all left here both at 4:30. So you had more than sufficient time. At that juncture, you never told the Court that you were engaged in anything else or doing any offer of

proofs, did you?

MR. DOYLE: With the passage of time, I can't speak to that.

THE COURT: Counsel, you would know if you informed the Court that were about to file any written offers of proof. Did you tell the Court on November 1st that you were filing any offers of proof?

MR. DOYLE: I did not, no.

THE COURT: Okay. Did October 31st, did you ever tell the Court you were going to file any written offers of proof?

MR. DOYLE: No, I did not.

THE COURT: At any point --

MR. DOYLE: I did not believe it was necessary.

THE COURT: At any point during the trial, did you ever tell the Court that you were intending to file any written offers of proof?

MR. DOYLE: There were discussions during the course of trial about offers of proof, and the need for offers --

THE COURT: My question was very specific. My question was very specific. At any point during the trial did you ever tell the Court that you were intending to file any written offers of proof?

MR. DOYLE: I can't answer that question without reviewing the transcript. I don't know if there was a discussion about written offers of proof.

THE COURT: You were here.

MR. DOYLE: I understand. It was a long trial.

THE COURT: As an officer of the court, do you have any recollection of ever telling the Court that you were going to file any

written offers of proof?

MR. DOYLE: I don't have a specific recollection of making that statement.

THE COURT: Okay. As an officer of the court, are you going to say that at any point -- let's see, from prior -- I suppose from October -- before Defense counsel rested to the end of the day when Defendants' Defense counsel left after the jury was already out in the hallway and already came back with a verdict, are you doing to contend that you ever told the Court that you were intending to file any written offers of proof, had filed any written offers of proof, or in any way indicated to the Court any need to file any written offers of proof or any offers of proof?

MR. DOYLE: I did not state those words on November 1st, but the written offers of proof had been filed by the time the jury returned with its verdict.

THE COURT: My question was very different. Did you ever notify the Court in any manner that there were any written offers of proof that were going to be -- okay, let's break it down, okay? Counsel, you rested Defense's case on what date?

MR. DOYLE: October 31st, as I recall.

THE COURT: Okay. At any time -- we'll go back to October 30th. October 30th or October 31st, at any time did you in any way notify the Court that you were going to be filing any written offers of proof?

MR. DOYLE: On October 30th?

THE COURT: Or 31st.

MR. DOYLE: No. At the time, I was uncertain whether that was going to occur or not.

THE COURT: Okay. At any time on October 30th or October 31st, did you notify the Court prior to resting that there was any issues that you needed, or you requested to do any offer of proof on in any manner? Because the Court has had an opportunity to listen to the entire transcripts of October 30th and 31st. The Court wants to have your understanding. You, as you know, since you stated that you have ordered discs as well as have Litigation Services it appears provide your own documentation, which you were specifically told not to cull transcripts in any manner whatsoever, official or unofficial, which we'll get to in a moment.

Are you intending in any manner that you had any requested before you rested October 30th or October 31st, that you had any outstanding offers of proof that you needed the Court to address?

MR. DOYLE: I did not indicate orally that I had any written offers or proof --

THE COURT: Not only --

MR. DOYLE: -- because I did not consider those to be outstanding issues that the Court or anyone else would need to address. They're simple administrative filings to preserve the record on appeal.

THE COURT: Okay.

MR. DOYLE: They're not trial briefs. They're not motions. They didn't ask the Court to do anything, to take any actions. They were

simply filings to -- for appellate purposes. And I looked and I cannot find in Nevada a statute, a rule, or a case that addresses when offers of proof need to be filed, how they need to be filed, their formats, et cetera.

THE COURT: So the Court's question really was very specific, and I think you answered it in the negative. The Court just wants to ensure at any point before you rested, and I was just focusing since you said that the trial was a long trial, okay. This Court has listened to pretty much a whole bunch of this trial and this Court cannot find in any manner whatsoever there is any instance where you, Defense counsel, ever asked this Court to do an offer of proof and the --

MR. DOYLE: Ever? During the entire course of the trial?

THE COURT: The trial -- that the Court did not allow argument on topics.

MR. DOYLE: Argument is different than offer of proof and I can't speak to without -- I did not go back and review the entire trial transcript as apparently the Court has, so I cannot make a representation to you about when and to what extent we had any discussion about offers of proof or to what extent I did make offers of proof that were done orally.

THE COURT: How about the words offer of proof? If you did a word search on every single one of the transcripts that you had -- you called them transcripts impermissibly in one of these documents, which we'll get to in a moment, because the Court did specifically ask you not to use the term transcript because of the confusion of it, and the Court never authorized any quote unauthorized transcripts or anything else.

But you used that term and we'll get there in a moment.

But are you asserting that at any point you even used the terms offer of proof?

MR. DOYLE: I haven't done --

THE COURT: Mr. Kimball Jones did it one time, but --

MR. DOYLE: I haven't done a word search of the entire trial transcript so I can't answer that question.

THE COURT: Do you have any recollection as an officer of the court of ever asking the Court that you wanted to do any offer of proof on any of these seven topic areas that you filed these documents on?

MR. DOYLE: I can't say yes or no based upon my memory standing here today.

THE COURT: Do you have any recollection whatsoever of ever doing it? I'm just trying to --

MR. DOYLE: I have no recollection yay or nay. I didn't go back and read the trial transcript.

THE COURT: As a sophisticated litigator, I'm just really asking you if you have any recollection that at any point you said anything like, judge, I want to do an offer of proof on any of these seven topics and you're asserting that the Court said no?

MR. DOYLE: I don't know.

THE COURT: Okay. So next the question becomes you're phrasing on -- it's administrative filings not asking the Court to do anything. They're for purposes of an appeal. Can you provide this

Court, because this is an order to show cause, any basis whatsoever that allowed you to file these seven documents in any -- anything that allowed them to be filed in a district court proceeding after you had rested without notifying the Court that they were being filed?

MR. DOYLE: I can't. I looked and I could not find a statute, a rule, or a case that says or discusses offers of proof and how they must be made, when they must be made. So there isn't anything that says I couldn't proceed in the manner that I did, there isn't anything that says I could proceed in the manner that I did, and I proceeded in the manner as I did in order to preserve the record on appeal in order for my client to have a full and fair opportunity on the appeal.

THE COURT: The reason why the Court is asking the question, as I'm sure you can appreciate, right, is, NRCP 11, right, signing of pleadings, right? "Every pleading, written motion, or other paper shall be signed by at least one attorney of record in the attorney's individual name or if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address, telephone number, if any, except when otherwise specifically provided by rule or statute. These need not be verified or accompanied by affidavit" -- actually let me get the -- although that one didn't change. I will read directly from the newest version, but that part didn't change, but let me go to --

I'm going to start over, even though there's not changes in what I've already read from the 2019. But I'm now going to specifically read from the 2019 version. So I'll start over.

Rule 11. Signing pleadings, motions, or other papers, represents to the Court, sanctions.

(A) -- -- bless you -- -- Signature. Every pleading, written motion, or other paper must be signed by at least one attorney of record in the attorney's name or by a party personally if the party is unrepresented. The paper must state the signer's address, email address -- so actually there was a change with the email address -- and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(B) Representations to the court. By presenting to the court a pleading, written motion, or other paper - whether by signing, filing, submitting, or later advocating it - an attorney or unrepresented party certifies to the best of that person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, or other legal contentions are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Okay. And then it goes into the sanctions section, right, and without going into the sanctions section right now, that is a necessary aspect. So under Rule 11, before any documents at all can be filed it has to meet those standards. And so the Court is asking what research, or anything was done before those documents were filed to say that that in any way met those standards. Was there any research done at all of capable case law in Nevada?

MR. DOYLE: I had various conversations with Mr. Eisenberg.

THE COURT: So I'm trying to without asking you to divulge the conversation, when you're saying you had various conversations with Mr. Eisenberg, the Court's specific question was did you, Mr. Doyle, who signed your name to each and every one of those document do any research to ensure that you met Rule 11 standards before you filed any or all of those seven documents?

MR. DOYLE: And the answer is yes.

THE COURT: And what did you do? What research did you do? What case law? What research? What research did you do?

MR. DOYLE: I relied on Mr. Eisenberg and his advice and opinions in terms of the need for the offers of judgment, doing them in writing, as well as the contents of those offers of judgment and the attachments to the offers of judgment.

THE COURT: Counsel, as an independent litigator whose

been licensed for 30 plus years, is that fair?

MR. DOYLE: 1985, the first year an out of state attorney could take the Nevada state bar.

THE COURT: Okay. So 30 plus years is an appropriate estimate, right?

MR. DOYLE: Sure.

THE COURT: Okay. So I'm asking you what research you did, right, because the attorney signing it has the obligation to do the research, correct?

MR. DOYLE: Well, let's see, on October 31st, we had finished evidence. We had to settle the jury instructions. We had to settle the verdict form. We had to do closing arguments and I needed to prepare these offers of proof. I believe my conversations with Mr. Eisenberg and his input and advice constitute research. I don't --

THE COURT: Excuse me. So is the answer you did no independent research?

MR. DOYLE: The independent research that I did was I looked, and I couldn't find anything Thursday evening in a statute or a case or a rule about offers of proof and when they could or could not be filed.

THE COURT: I'm trying to get an understanding here. You left here at 4:30 in the afternoon, right? And you're saying all seven of these documents were created between when you left at 7:30 [sic] in the afternoon, okay, and you personally reviewed each and every one of them before they were actually physically filed? You reviewed the final

product --

MR. DOYLE: I didn't --

THE COURT: -- even though you were physically here in court, correct?

MR. DOYLE: No. They -- I prepared them word for word. The only thing that Ms. Clark Newberry did is she took what I typed and put it into the pleading format and attached the documents.

THE COURT: Did you ensure before they were physically filed that the format in which it was filed met -- did you sign your name to it because you actually have to sign your name?

MR. DOYLE: Yes, I did, and I approved -- when I woke up in the morning, before I came to court, I did look at them and approved them in their final format as prepared by Ms. Clark Newberry. And yes, I did do all of that --

THE COURT: So you did --

MR. DOYLE: -- between leaving court on Thursday and coming back Friday morning.

THE COURT: And you saying you did research? You researched Nevada case law?

MR. DOYLE: I couldn't -- yes. I -- that limited topic of looking for something that addresses offers of proof.

THE COURT: Really?

MR. DOYLE: Otherwise -- yes.

THE COURT: Okay.

MR. DOYLE: Otherwise, I relied on the advice and opinions

of Mr. Eisenberg.

THE COURT: And it's your statement that Mr. Eisenberg told you you could affirmatively file written offers of proof after you had rested, in the middle of closing argument without notifying the Court whatsoever?

MR. DOYLE: No, that was my decision, the timing, as to when these would be filed. That was my decision, not Mr. Eisenberg's decision.

THE COURT: And did Mr. Eisenberg also advise you not to tell the Court that you were planning on filing these and so to give the Court no opportunity whatsoever to address any of the issues raised in those seven offers of proof?

MR. DOYLE: No. The offers of proof don't raise any issues. They are simply an administrative filing to preserve the record on appeal.

THE COURT: Counsel, are you familiar with the definition of what an offer of proof is?

MR. DOYLE: Yes.

THE COURT: And what's your understanding of the definition of an offer of prof?

MR. DOYLE: When evidence is excluded, an offer of proof is made to preserve the record on appeal as to what a witness would or would not have said if that witness had been allowed to testify, as well as other evidence and documents, if they had been admitted.

THE COURT: And isn't an offer of proof supposed to provide

the Court an opportunity to hear so that the Court can make a ruling as to what that evidence would be so that the Court can consider what the offer of proof is and determine whether the evidence should or should not come in?

MR. DOYLE: No, because the evidence had already been excluded. Each of these items dealt with in the offer of proof, the Court had already after some argument to some extent, had excluded everything that is included in the offer of proof. So there is no -- there is nothing more to discuss.

THE COURT: Counsel, isn't an offer of proof's purpose -- offers of proof are intended to fully disclose to the Court and opposing counsel the nature of evidence offered for admission but rejected so that the Court can evaluate the information and determine whether or not it should revisit its ruling? Isn't it, in a timely manner it's supposed to be provided to the Court so that it can revisit a ruling in a timely manner while the witness is still on the stand if it involves a witness on the stand and revisit a ruling so as to ensure what the information could be provided so that the Court can make a ruling? Is that not right?

MR. DOYLE: That was not my understanding, no.

THE COURT: Really? That's not *Las Vegas Convention and Visitors Authority v. Miller,* 124 Nevada 699, a 2008 published case?

MR. DOYLE: That was not my understanding.

THE COURT: Did you -- that's why the Court was asking did you research. Is it also not true that an offer of proof is obviously not a

proper substitute for the tender of evidence which has never been presented or ruled upon?

MR. DOYLE: Each of these items the Court had ruled upon and excluded.

THE COURT: Okay. Well, let's walk through each of those then if you say.

MR. DOYLE: Okay.

THE COURT: So let's figure out why though you never told the Court you were going to file these offers of proof to give the Court any time while the testimony, before you rested your case, to give the Court any opportunity to revisit any of those rulings. Why was that decision made?

MR. DOYLE: Because by that in time, by Thursday or even Wednesday, all of the witnesses were gone, and it would not have been possible to bring any of these witnesses back.

THE COURT: How did you know that when you didn't ask?

MR. DOYLE: Based upon how the trial seemed to have gone and how the Court treated me throughout the course of the trial, I think that's a fair assumption.

THE COURT: Counsel --

MR. DOYLE: That I was not going to be able to bring back any of those witnesses from the Court's point of view, my assumption, and from a practical point of view having had such difficulty getting them here and testifying in the first place.

THE COURT: Okay. Well, let's walk through. There's not

only witnesses, right? There's exhibits.

MR. DOYLE: Right.

THE COURT: So --

MR. DOYLE: The exhibits had to do with the -- well, let's walk through them.

THE COURT: Okay. So let's go back to where the issue is. Why was it never presented to the Court when any of the witnesses involved in five of the seven offers of proof were physically -- and I'm not even going to say witnesses, because it's different obviously with Ms. Larson, which we'll get to in a moment, but four of the individuals, okay -- actually three? Okay, three testified, correct?

MR. DOYLE: Correct.

THE COURT: At any time that those individuals were on the stand multiple days for several of them, there was no offer of proofs in any way presented to this Court or any request for any offer of proof for any reconsideration of any the Court's rulings that this Court could find. Are you going -- are you contending otherwise?

MR. DOYLE: Well, for example, I do recall with respect to Dr. Juell and the ligature device that I was going to ask him the question and follow up questions that are outlined in the offer of proof as to Dr. Juell and the Court ruled that he could not offer those opinions because they were not opinions that had been previously disclosed. So that's an example that comes to mind.

THE COURT: Sure. And was there any at that juncture, taking -- if you want Dr. Juell. We can go with anyone you want. Let's

go with Dr. Juell. Dr. Juell. Can you state at any time that you requested at that juncture to do an offer of proof for those questions at any time? He testified multiple days. At any time that you requested any offer of proof with regards to Dr. Juell?

MR. DOYLE: Well, I don't recall the specific details, but I think a reasonable person would infer from my request to ask him these questions that his answers to those questions would have been no, the ligature device did not cause the two holes that were seen and repaired by Dr. Rives. So I mean, I guess, you could call that an offer of proof.

THE COURT: But counsel, you can't call that an offer of proof, can you, because an offer of proof has to come from the attorney, correct? Is that a correct statement?

MR. DOYLE: I call that an offer of proof.

THE COURT: The Court --

MR. DOYLE: But my --

THE COURT: The Court's supposed -- I'm just trying to get an understanding and then maybe I should back up for a second and ask Plaintiff's counsel their recollection as well. How many times would you say that this Court said a phrase similar to this Court doesn't have a crystal ball, it's not a fly on the wall, that I need the attorneys to let me know if they're going to raise an objection. The attorneys need to let me know if they wish an issue to be discussed. The attorneys need to let me know what's going on because I wasn't present at different things. Would you ballpark how many times I said that throughout the trial?

MR. DOYLE: I think that was a common phrase you used. I

can't give you an estimate.

THE COURT: Okay. Plaintiff's counsel, any ballpark or any general statement?

MR. LEAVITT: Yes, Your Honor. Daily if not twice.

THE COURT: So the reason why the Court was asking that question is of course each and every day multiple times a day each of the parties raised numerous issues and revisited issues over a variety of different times. This Court couldn't find any time during regular business hours, okay, that this Court didn't address the parties issue and in fact, gosh, oh, gollies, I could even have an example from Friday 10/18 at 9:17 a.m. approximately, where there was -- the Court reminded the parties over again that when you all were having the discussion, Defense counsel raised the objection with regards to Vicky Center and the Court said to the parties again, the Court says just asking you all that if you're going to provide the Court information, okay, are you providing information or are you just going to argue things orally. When do you want things heard? I asked twice, bless you, on that one. When would you like these addressed?

Reminded the parties again that you need to let the Court know at the various times you want things addressed. I could do it the current time, I could do it later, when would you like it, in that particular discussion. It was, Mr. Doyle said Monday and Mr. Leavitt initially said he would agree to Monday, although Mr. Jones initially said something different. And then I asked that reminder that anytime you all argue in anticipation can you please provide me information about whether or

not you're going to provide me written documentation or whether or not you're going to argue it orally so the Court can be fully prepared. And on that particular one, I believe, Mr. Doyle, you said initially you were going to provide, you just didn't know, and the Court was saying that it just asked for a simple yes or no because it was trying to have an understanding of whether it was going to come into court at 5:00 in the morning, 6:00 in the morning, and then talked a little bit about the length of its docket.

So it was inquiring just so it could fully be prepared for this and every other case and if things could be addressed that the Court could be fully prepared. And the Court was fine to address the issues but once again reminding the parties that they need to let the Court know when they wish issues to be addressed and it was the parties' obligation. And then the Court reiterated and reminded the parties that it -- let the parties know that not only at the calendar call, but the first day of trial and several other times that it was you all's obligations to bring your issues to the Court's attention at the time you wanted them raised. If you failed to do so, they would be waived. That's not during -- that's 9:20 excerpt. That's also coming from other aspects.

And then going back to around 9:22 on 10/18, going back now to that date, the Court even said that it wants to ensure just so that the Court isn't surprised if documents came in. Asked to make sure that you all let me know so the Court was never surprised that documents just came in so the Court could ensure that it read everything so it could rule on everything so it could have the, I used the term heads up, so it

could be fully prepared. And then you went onto a discussion about the verification and demonstrative exhibits.

So what this Court's trying to get an understanding is how there could be any basis, right, because the Court has to look for an order to show cause, right? Why there's any good cause whatsoever for while any of these witnesses, take the three witness that testified, right? So you could take Volk, Hurwitz, and Juell in that regard why at any time, and Hurwitz and Juell testified for more than one day, and with timespans in between, and when I say timespans, there was at least an intervening weekend, multiple different days. In fact, if you recall, Hurwitz if you recall came back on video because of timing issues.

At no point could this Court find anywhere in the record that Defense counsel at any point asked this Court to reconsider any of the rulings it made, and it made each of those rulings after allowing you extensive arguments, and I'm going to walk through a whole bunch of briefs that everyone provided me that set forth all of the arguments that presumably you wanted this Court to address and I can't find in these briefs any issues raised in these potential documents that were filed on 11/1.

So I'm asking Defense counsel, if I'm incorrect, can you point me to any day, any time, on any of these witnesses that you ever asked this Court to reconsider a ruling? Affirmatively asked, I mean, not that I'm supposed to guess that somehow you might want me to reconsider a ruling after I've told the parties over and over that you have to let me know. I mean common sense would say you have to let me know, but I

kept on reminding the parties over and over, which is why I use the crystal ball and that I'm not a fly on the wall to remind the parties that you have to let know and that you can't do standing objections. You have to do individualized objections. You have to articulate your basis, and if you want issues addressed, you have to let the Court know, reminded you if you wanted to let me know at bench, that you have to let me know you wanted it outside the presence, which is why we did so many outside the presence of the jury to ensure everyone could fully argue everything at counsel table.

I couldn't find anything anywhere where there was ever a request for any offers of proof, reconsiderations of rulings, and counsel for Defense, I mean correct -- please point me to any day and I'll be glad to re-listen to that part of that hearing of the trial.

MR. DOYLE: Well, I can't cite you to anything. All I can tell you is each of these offers of proof was based on the Court's ruling excluding certain evidence or certain testimony. Each instance, each ruling, the Court explained at some length the basis for the ruling and why it was making the ruling. Some of these topics probably came up more than one time and frankly, it was my judgment that to ask for reconsideration would have been an exercise in futility based upon the Court's rulings and the rationale and basis for those rulings. And so no, I did not ask for an offer of proof for some of these while the witness was still here to cause you to change your mind because I don't think there would have been any benefit to doing that.

THE COURT: At any time after the witnesses left, are you

saying that you ever asked for any offer of proof with regard to those witnesses?

MR. DOYLE: Same answer.

THE COURT: I just once again, the Court's trying to have an understanding here. Okay. So let's go through these one by one. So what was the rationale of not notifying the Court that you filed them on November 1st when you knew you were here physically in court? Why not tell the Court, judge, I'm filing these documents while we're here in court so that the Court at least could have stopped closing argument to see if things could have been reconsidered and readdressed or give Plaintiff's counsel an opportunity if they chose to say look, we should stop closing arguments. We shouldn't do closing arguments? I mean --

MR. DOYLE: The Court was not going to stop closing argument if I had -- no. I did not mention to the Court that I was going to be filing these. Perhaps with the benefit of hindsight, that was an oversight on my part. But I sincerely doubt the Court was going to -- after both parties had rested, that the Court was going to entertain new arguments, motions for reconsideration, and allowing me to recall more -- recall certain witnesses or go back and now introduce into evidence certain exhibits. I hear what the Court is saying, but given my experience with this trial, I see the odds of that actually happening would have been zero.

THE COURT: Did you notify Plaintiff's counsel of any of these topic areas to give -- at any time during the trial to give Plaintiff's counsel an opportunity that they could address any of these issues as

well and to argue their position?

MR. DOYLE: These are administrative filings to preserve the record on appeal. That's all.

THE COURT: Counsel --

MR. DOYLE: I didn't --

THE COURT: -- you still haven't provided me any support for that proposition.

MR. DOYLE: It's based upon the advice and opinions that I received from Mr. Eisenberg.

THE COURT: Mr. -- and that's why I'm trying to get an understanding. You told me that Mr. Eisenberg -- it was your decision alone to file them on Friday at the times they got filed; is that correct?

MR. DOYLE: Correct.

THE COURT: Okay. I understand you told me it was your decision alone not to inform the Court at any point that you were going to file them; is that correct?

MR. DOYLE: Right, and in hindsight, that's an oversight I see.

THE COURT: How is it an oversight? Okay. So it --

MR. DOYLE: Well, Friday was kind of a busy day, getting the verdict form settled and preparing for arguments.

THE COURT: The verdict --

MR. DOYLE: The verdict form was not settled when we arrived her at 8:30 on Friday.

THE COURT: Counsel, you chose not to submit a verdict

form, which was your choice. Each party --

MR. DOYLE: The Court spent 15 or 20 minutes going over the issue of the verdict forms. So it was not settled.

THE COURT: Counsel, and did the Court not again before the jury came in ensure with the parties were there any other outstanding issues that anyone needed the Court to address before the jury came in?

MR. DOYLE: In my judgment, and based upon my conversations, the offers of proof were simply administrative filing. They were not issues that needed to be addressed. They did not ask the Court to do anything. They did not ask Plaintiffs to do anything. So no, they are not in my opinion and judgment issues that needed to be taken up and addressed.

THE COURT: But you understood and had been admonished several times about your obligations to provide courtesy copies to the Court. So you knew at the time that you filed anything you had to provide the Court courtesy copies. And on that day --

MR. DOYLE: Again, an --

THE COURT: -- on November 1st, you never provided the Court any courtesy copies, did you?

MR. DOYLE: That's correct, and you've already pointed that out and I've already agreed with you.

THE COURT: Okay. So don't you think it would have been fair to allow Plaintiff's the opportunity to let them know before the jury came in and you started closing arguments that you were going to be filing documents that you felt had any matter -- anything to do with the

trial so they could state their position and then you could decide whether you wished to address that with the Court?

MR. DOYLE: I didn't think that was necessary. These were simply administrative pleadings to preserve the record on appeal. They require no action on the part of the Court or Plaintiff.

THE COURT: Okay. But if you're -- so you're not claiming errors in any rulings in any of those offers -- those documents that you filed.

MR. DOYLE: We will be claiming multiple errors throughout this trial.

THE COURT: So if you're claiming error in a ruling --

MR. DOYLE: Each -- each --

THE COURT: Counsel. So if you're claiming error in a ruling, then you would need to provide the Court an opportunity to address that error in a timely manner. It's why the Court's asking you these questions because if you felt that there was an error, at any point -- you said you took notes during the trial. At any point you felt there was an error, you had the full opportunity to bring that to the attention of the Court.

Now, the Court's going to go over some of these because there's, unfortunately, appears to be misrepresentation in them, but we're not even there yet, and things that you didn't even offer, which I'm going to ask how you offered them anyway, but we're not even there yet.

But any ones that you felt were errors, right, wouldn't the appropriate thing to have been done in accordance with the rules and in fairness to both the Plaintiff and to give the Court if you felt there was an

error is to bring it to the Court's attention in a timely manner so that you haven't waived it because you did not bring it to the Court's attention?

MR. DOYLE: Absolutely, I disagree. I'm not -- I don't feel I have any obligation each time I feel or someone else felt that the Court made an error on one of its ruling. I'm not aware of any obligation on my part to bring that to the Court's attention or Plaintiff's attention and delay the trial. That's what an appeal is for.

THE COURT: Okay. So and you chose not to read *Las Vegas Convention and Visitors Authority v. Miller*, 124 Nevada 669 (2008) case or the other case I cited, just published cases which talked about -- *Southern Pacific Transportation v. Fitzgerald*, 94 Nevada 245 (1978)?

MR. DOYLE: You're misstating what I said, Your Honor, and that's a misrepresentation.

THE COURT: I'm asking did you read those?

MR. DOYLE: You suggested that I was aware of those cases --

THE COURT: Did you read those?

MR. DOYLE: -- and I chose not to read them. What I told the Court was I did some research Thursday evening amongst all the other things that I was doing, and I did not find a statute, a case, or a rule that talked about offers of proof, what their content must be, and when they must be presented or filed.

THE COURT: Okay.

MR. DOYLE: What you just stated is not accurate.

THE COURT: Counsel, I'm asking you whether you read those cases. Did you read either of those cases?

MR. DOYLE: I did not read those cases and to suggest I was aware of them and chose not to is not fair.

THE COURT: Counsel, I'm not suggesting in any manner that you were aware of those cases and chose not to read that. I'm asking --

MR. DOYLE: You just said that.

THE COURT: Counsel, please, if you'd actually let me finish a sentence instead of interrupting me, maybe then you can actually hear the question. If that's the interpretation that you got, that was in no way this Court's interpretation, but when you keep interrupting me, and I can't finish a sentence, then some -- maybe the questions not coming out exactly the way it's intended, but let me be 100 percent clear. I cited two cases. I was asking if you're aware of those cases. I understood you're not aware of those two cases. I was confirming that you had not read them; is that correct?

MR. DOYLE: That's correct.

THE COURT: Okay.

MR. DOYLE: But you said I said chose not to read them and that's what I take exception to.

THE COURT: Counsel, there was no intention of any word choice with regards to that. These are published decisions that use key terms offer of proof, so --

MR. DOYLE: Well, I didn't find them, and Mr. Eisenberg didn't bring them to my attention.

THE COURT: Mr. Eisenberg is not counsel of record in this case. That's --

MR. DOYLE: I don't know why that's important. He's a resource, just like lots of other resources I have available to me.

THE COURT: The Court's only question was whether or not you did the research. You signed your name to the pleadings. That's what the Court needs to have an understanding, okay? And the Court has some understanding when you're saying that based on discussions with another attorney, to have an understanding which it was your decisions versus the decisions of somebody else. Because if you're making representations that somebody else did it, the Court just needs to have an understanding of what you're saying you made the decision on versus other individuals so that the Court can fully and fairly evaluate the situation. The order to show cause was with respect to you because your name was on each and every one of the pleadings. Okay. That's why. It had your name on it.

Are you also familiar with regards to -- there's federal rules of evidence. You know, Nevada often times relies on the federal rules. Did you look at all at the federal rules or any of the federal cases?

MR. DOYLE: As I stated three times, perhaps four times now, I looked for a Nevada statute, a Nevada rule, or a Nevada case.

THE COURT: Okay. So at this juncture, let's walk through each of these because at this juncture -- okay. Let's go to the first one. The first one is you filed a document where you asserted that you did an offer of proof for Exhibit C. Can you please notify the Court on any day

which you in any way offered Exhibit C into evidence at any point?

MR. DOYLE: Yes. Exhibit C is Dr. Chaney's records and as the Court will recall, Dr. -- the Court would not allow Dr. Chaney to look at her notes to assist her in answering questions on direct examination. The Court would not allow her to use her notes to refresh her recollection because they had not been admitted.

So there -- I then went through the first visit, which was I believe pages 1 and 2 of Exhibit C. I asked Dr. Chaney the questions to lay the foundation for the business record exception to the hearsay rule. I then asked to admit pages 1 and 2. There was an objection by Plaintiffs that it was hearsay. There was also an objection not previously raised to those records as to authenticity and I don't recall if we were on the record or if we were at sidebar, but the Court -- what the Court told me was the Court would not allow the admission of that note. So then I moved on.

THE COURT: Counsel, the Court's question was a little bit more specific, okay. Let's walk through that. At any point do you assert that you tried to move for the admission of Exhibit C in its totality? The Court doesn't show it anywhere in the record. So if you did, can you please -- because it does -- your purported --

MR. DOYLE: I started my --

THE COURT: Your purported offer of proof, as you know, is only a few sentences. Okay? And it doesn't in anywhere state that on any date, right, that you tried to move in Exhibit C. So if you did, the Court's asking you the date that you tried to move in Exhibit C in its

entirety because the Court doesn't show any record. The clerk's records don't show that you in any way tried to move in Exhibit C in its entirety or that there was any discussion or ruling on Exhibit C in its entirety so that there was no movement of it.

And remember, any time that there's an individual objection, the objection, right? If you don't admit something, it's without prejudice, and then you can move on and you can try and lay more of a foundation or different issues and then seek to readmit it. There was no ruling at all that this Court can see anywhere with Exhibit C because it doesn't show that you even offered it. So can you please let the Court know if you ever state that you tried to move in Exhibit C in its entirety?

MR. DOYLE: The Court is splitting hairs. As I said a moment ago, I tried to offer into evidence pages 1 and 2 of Exhibit C, having laid I believe the necessary foundation to do that and the Court said no. Over Plaintiff's objections, the Court said no. So I thought it would have been an exercise in futility to have gone through each and every page of Exhibit C, to go through the same exercise to get the same ruling. So no I didn't offer it in its entirety, but I did offer pages 1 and 2, which was her very first note. That was Dr. Chaney on the day she testified. I can't tell you the date.

THE COURT: Okay. So it would be accurate to say you never sought the admission of Exhibit C; is that correct?

MR. DOYLE: I did offer Exhibit C as an exhibit at the 2.67 conference and --

THE COURT: Counsel, you can only seek to admit exhibits,

as you know as an experienced litigator, at the time of a trial. They can be pro-offered. Okay? But you can't say the Court made a ruling. I wasn't at the 2.67, so. At the time of trial, the entirety of the time of trial, is it a correct statement that you never sought the complete admission of Exhibit C?

MR. DOYLE: I offered pages 1 and 2 as a test. The Court said no and then I moved on.

THE COURT: Okay. So the answer is you never sought the entire admission of Exhibit C; is that correct?

MR. DOYLE: No. I'd have to go back and review the entire transcript then to make that statement. I'm not going to make that -- I'm not going to agree or disagree with you. We'll let the record speak for itself.

THE COURT: So there's no basis --

MR. DOYLE: This is simply an offer a truth.

THE COURT: But counsel, that -- under Rule 11, in order to file this document -- you say in this document, if the Court had allowed the admission of Exhibit C, okay? In order to allow the admission of Exhibit C, it has to be offered. That's why the Court's asking you the question about whether you sought the admission of Exhibit C. If you say you did, I'll be glad to go back and listen to it. I didn't see it. It's your obligation at the time you filed this document, under Rule 11, to have the basis to have filed this document that you filed at 10:49 a.m. on 11/1. It's under your name. You said you did the research. You did it which is why I'm asking you.

So I haven't heard that you tried -- sought the admission of Exhibit C in its entirety, so.

MR. DOYLE: In my mind, I -- my intent was to offer all of Exhibit C. We began with pages 1 and 2. After I had laid the necessary foundation for authenticity and the business record exception for the hearsay rule, the Court would not allow the admission of those pages, and so the issue became moot and futile to pursue it further.

THE COURT: Okay. So is it clear that you did not offer any of the other pages referenced? You did not offer 7 and 8, 14 through 29, 37 through 42, 50 through 59, 66 through 73, 81, 82, 90 through 93, 101 through 104, and 106 through 108? Did you offer any of those?

MR. DOYLE: I'm not going to say yes or no. I'm going to let the record speak for itself when we --

THE COURT: Counsel, as an officer of the court. You said you had notes --

MR. DOYLE: I can't --

THE COURT: -- and you put this in a pleading. So in order to put it in a pleading, you have to have some basis to have put it into a pleading under Rule 11. That's why the Court's asking you the question, counsel. If you're saying that you did, the Court's just trying to get your word. All right? That's why. It's an order to show cause. Is there any good cause for filing this.

This document says that if the Court had allowed the admission. The Court doesn't see -- you've got all the typing. You had Litigation Services do typing for you each and every day. You did not

attach anything to this document that there was any -- although you did do it to others, which you called unofficial transcripts, which is not a correct phrase because there is no unofficial transcript. There was none requested, none asked. The Court didn't even know you were doing it when you said you did. I just said please don't use the word transcript, so we didn't have a confusion in the record.

So since there was nothing attached to this that in any way showed that you sought the admission of Exhibit C, or any of the pages referenced, that's why the Court's asking the question. If you're saying that you only sought pages 1 and 2, and of course that would -- if you're assertion is that that was denied without prejudice, you didn't even get the basis because you can't offer part of a document. You have to offer an entire document, that wasn't even asked of the Court, but then without prejudice, you could lay further foundation. You had a full opportunity to try and get it back in.

You know as an experienced litigator. You've done it in past trials and even in front of this Court something and you even had Plaintiff's counsel. They sought to admit things in this particular trial, and they sought, and they then asked additional questions and then re-sought the admission. That's standard trial practice.

So when the Court -- assuming what you're stating is accurate that the Court said to pages 1 and 2, sustained an objection timely made by Plaintiff's counsel as to a partial couple of pages to a record, then when it is an entire record which was sought to be the exception to the business record, it wouldn't be to just two pages, the

entire business record would be to the entirety of the file. If you recall this file did not have any custodian of records, et cetera and so it did not have that basis, but two pages would not be quote the business record and whatever that analysis provided after full oral argument, you had a full opportunity while Dr. Chaney was on the stand to introduce additional pages, the entirety of the record. The Court didn't see it and that's why I was asking you if you did Exhibit C.

Okay. So at this juncture, the Court has nothing to show that even the voracity that someone the Court denied the admission of Exhibit C or any of the other pages other than 1 and 2, and 1 and 2 would have been without prejudice at the time it was offered with a full opportunity to try and seek it in the future. Now, let's go to the next one.

MR. DOYLE: I do recall asking Dr. Chaney general questions about her entire chart to lay a foundation --

THE COURT: Did you --

MR. DOYLE: -- but again, it would have been futile.

THE COURT: Counsel, you can appreciate there's a plethora of supreme court case law that you have to seek to admit something in order to raise it as any challenge. The Court can't get into your mind and you've both acknowledged that this -- well, you know it from common sense I can't read your mind. You know I don't have a crystal ball from the common sense standpoint, but I also reminded you all at a minimum multiple times during the week, more likely multiple times during a day that you need to bring everything and every issue to the Court and that just because a ruling is one time, that is not a ruling prospectively and

you know this Court said it to both counsel multiple times because the Court was saying it doesn't make advance rulings. It does not make advisory rulings.

If I were to ask you all have many times I said that during the course of the trial, you know I said it multiple times as well. I said I am not making any prospective ruling. The ruling is objection by objection. I said that at bench. I said that in open court. I said that before the jury was here. I said it multiple, multiple times. It's clearly on the record, which you have both in a verbal, in a disc form, and whatever typing you got done.

Okay. It was -- the file was referenced with regard to Dr. Chaney and actually you even had discussion and the Exhibit C was not even offered in any manner or discussed even though -- didn't you all have a -- you had a 7.27 brief, right, which you filed on October 29th, counsel for Defense, right?

MR. DOYLE: I'll take your word for it.

THE COURT: On Dr. Chaney, and in that one you didn't even seek to admit Exhibit C, did you? In your own written brief.

MR. DOYLE: I haven't memorized every pleading and every fact in this case, Your Honor.

THE COURT: Well, counsel, the reason why I'm asking these questions is you have to realize when the Court saw each and every one of these, right, the Court was -- wanted to ensure because this Court knows morning, noon, and night and multiple times during the day kept asking you all is there any other issues? It's the Court's standard

practice at the breaks. Is there any other issues that you need addressed outside the presence of the jury? Are you sure there's no other issues before we bring the jury in -- bless you. Are you now ready for the jury? Is there any other issues?

And then sometimes when the issues were taking an extended period of time, marshal, could you please let the jury know, it's taking additional time. If you recall, I ended up baking cookies at 4:00 in the morning on Nevada day so the jury had it. We brought -- I brought in donuts, lots of candy, and lots of things because the jury was out in the hallway so much to try and help make up for that.

But so when I saw these briefs, not only was the Court concerned that I had asked so many times and it is required that the Court be notified if there is anything that's going to be filed so that the Court can fully address it, the Court then -- so that's procedurally, right, and that you were here in court when they got filed, and still no one told the Court or opposing counsel so it could be addressed. But they weren't addressed in a timely manner at the time the witnesses were there before anyone rested, and even when you all did your Rule 50 motions on the 31st, the Court -- after the jury left and before -- the Court made sure, is there absolutely anything else? And when you all did your Rule 50 motions, the Court even said, okay, now you've done these, make sure before we bring the jury back in, I want to make sure that we don't have the jury, that you have anything else. Is there anything else?

And the Court even at that juncture went over a different issue with regard to Dr. Hurwitz and it was the extremely whatever that

the Court even said, Defense counsel, do you still need that raised? You haven't raised that. I asked you over and over and over. You haven't done it so by this juncture I now find it waived because I kept saying over and over. I even had my little checklist and asked you on a daily basis. I have these outstanding issues. Remember, it's not the Court's obligation to remind you on a daily basis of the outstanding issues. It's the attorneys' obligations. You probably maybe got tired of me saying that over and over, but I do that to avoid these type of issues and to ensure your clients get a full and fair trial. I keep reminding you, realizing that sometimes you might be busy in trial. I keep reminding you of the outstanding issues that need to be taken care of and then do my little checklist, ask you and make sure we go over each of those and circle back to them, which is over -- et cetera, et cetera.

Going back to the 10/29 brief, the 7.27 brief. The Court even went and reviewed that to see if there was any way that, if there was any issue there. When the Court looked, there was a brief filed by Defendant Barry Rives and Laparoscopic Surgery on 10/29 at 9:55 a.m. It says, "Defendant Barry Rives, M.D. and Laparoscopic Surgery of Nevada LLC's Trial Brief Regarding the Propriety of Disclosure of Naomi Chaney, M.D. as a Non-Retained Expert Witness," and that would be in addition to the e-filed and served Plaintiff's Motion to Quash the Trial Subpoena of Dr. Naomi Chaney on OST. The various arguments that happened with regards to Dr. Chaney on multiple days including the 28th, 29th. You'll recall the additional argument all about whether she truly was subpoenaed, whether she was appearing voluntarily when she came on

the stand.

During all of that outside the presence of the jury, including this brief by Defendants, I looked through this, and I didn't see, and please correct me if I'm wrong -- well, I didn't see any request or anything in this brief that you decided to prepare about Exhibit C and that that should be admitted. So if that was an issue for the Court to address, it could have easily been put in the brief regarding Dr. Chaney filed on 10/29 by Defendants. In addition to all of the oral arguments on Dr. Chaney, at any of those times, the Court didn't see Defense at any point saying any offer of proof with regards to Exhibit C, asking that Exhibit C be in its entirety, and Exhibit C had been objected to in various aspects I'm not going over in the pretrial memorandum.

So that's why the Court had those concerns, which is why that -- the Court's asking those questions because the Court's concerned not only under Rule 11, but under why this document was filed on that date. The issue was discussed at least three times including extensive arguments on October 28th when her personal counsel was present as also on October 30th prior to her testimony and she was even up on the stand. So there could have easily been if requested an offer of proof done at that time. Any questions about her documents, she had her own personal counsel here both on the 28th and the 30th. There was no request for a voir dire outside the presence. There was no issues about Exhibit C that anyone's telling me that there was.

And the whole issue with regards to Dr. Chaney was, remember, it was how you disclosed Dr. Chaney. It was your choice on

how you disclosed. When I say your choice, Defense counsel's choice in the 16.1 disclosures that were never supplemented, how you chose to disclose Dr. Chaney. Since you did it in a non-compliant manner with the Nevada Rules of Civil Procedure, you were limited to her testimony -- well, sorry. It's not even an issue regarding her testimony. There was no ruling on Exhibit C because it was never presented. But the issues with Dr. Chaney were because of how she was designated by Defense counsel.

Okay. So that was the concern with that one and the Court doesn't find that you met your order to show cause burden with regard to Exhibit C because you've not shown that you ever sought to admit Exhibit C in its entirety, nor sought to admit page references other than page 1 and 2 and page 1 and 2 would have been denied without prejudice. You never sought to be admitted again.

So now, let's go to the next one. The next one would be --

MR. DOYLE: I understand the Court is making its record for the appeal and we'll just stand on the record for appeal as well.

THE COURT: The Court's not making any record for appeal. The Court has an order to show cause. I'm trying to give counsel for Defense a full opportunity because there's two -- there's three things out here. There's the order to show cause because of these documents being filed after all the cautions, warnings and with the pending sanction hearing and the Court's own pending sanction hearing. I'm trying to give you the benefit of the doubt, but these have -- and these really looked per se like they were Rule 11 violations, okay, with not even

giving the Court any notice. And I gave you an order to show cause to try and give you an opportunity to explain if there was any basis for these because you didn't have any points of authorities, et cetera. I then gave you extra time to this week to do that. That's what this Court's trying to do and that's why I keep asking you questions.

So then let's go to Sarah Larson. Sarah Larson --

MR. DOYLE: Well, then on that point, Your Honor, I would object to the order to show cause as being vague because the Court did not give me any notice as to what rule or order had been violated. The Court gave me no notice of what the consequences might be. All the order to show cause said was there's no notice to the court after parties rested and conferred -- and confirmed no further outstanding issues to be addressed.

So based upon your order to show cause, I had no reason to believe or anticipate that we were going to go through each offer of proof and go through citations to the record and citations to the law and require me to address each one individually.

THE COURT: What did you think you were going to do on an order to show cause?

MR. DOYLE: I didn't really know because it was a rather vague order to show cause.

THE COURT: Counsel, you were here on the 7th and you never raised these issues or asked these questions and the Court --

MR. DOYLE: We didn't get there.

THE COURT: Yes, we did, counsel. We got to the beginning

of it and then the Court said because the time is going to only be a half hour and to give you a full opportunity to explain everything, the Court didn't find that the half hour was going to be enough. To give you a full opportunity, the Court was going to continue it to the following day, the 8th. But then you weren't available, it's the Court recollection, if that's incorrect, I believe it was you who was unavailable on the 8th, that it was going to be reset to a different date in order to make sure it accommodated your schedule as well.

So the whole -- it says to show cause why seven separate documents were filed by Defendants on November 1 during closing arguments without any notice to the court. So that's explaining to give any notice to the Court. After all parties have rested and after the Court confirmed there was no further outstanding issues. So that is to explain why all of these were done on these dates without any notice and after everyone has rested. That's why the Court's going through each and every one of these, to see if there's any good cause why they were done, right?

So -- and that's why if you'd raised these on the 7th, I would have been glad to explain the same thing and as far as -- there's not any additional, okay? The sanction hearing already exists. The sanction hearing is already there. This is an additional opportunity to explain these issues separate and apart because -- from the other issues that happened prior to the trial to give you yet another opportunity and then continuing it and fully letting you know in advance that these were done, okay? And the issues and concerns about these filings so that you could

be fully prepared, not only on the 7th but then for the continued date for today.

So now let's go to Sarah Larson. Sarah Larson, are you contending in any manner that the Court made any ruling precluding Sarah Larson? Because if you recall, you withdrew Sarah Larson.

MR. DOYLE: No.

THE COURT: She was out in the hallway. You withdrew her.

MR. DOYLE: No. Sarah Larson, when the Court would not allow Dr. Lance Stone to testify in any form or fashion about the life care plan, then Sarah Larson became moot because her role was pricing the life care plan like Dawn Cook did with Dr. Barchuk. I did not voluntarily withdraw her. I did not call her as a witness because the Court had ruled and it was everyone's understanding that having prohibited me from calling Dr. Stone, then necessarily that applied to Sarah Larson.

THE COURT: Counsel, is it not accurate -- do you have your transcript from 10/29 around 11:00, your typed transcript by chance?

MR. DOYLE: No.

THE COURT: Okay. You also have the discs. Well, do you want me to ask Plaintiffs their recollection of how many times this Court said it is not ruling on Sarah Larson?

Well, counsel for Plaintiff, do you have a recollection of what happened on around 11:29 --

MR. LEAVITT: Yes, Your Honor. I do, Your Honor. He withdrew. This Court even stated, look, I'm not making a ruling on Sarah Larson. If you want to discuss it, and he said no, I'm just dismissing her.

He, as far as I'm concerned, he waived any argument to that.

THE COURT: Counsel?

MR. DOYLE: I didn't voluntarily withdraw her. I didn't call her based upon the Court's ruling that our damage expert witnesses, Larson, Volk, and Stone, were not properly disclosed as rebuttal expert witnesses. The motion to exclude our damage experts as being improper rebuttal expert witnesses went to Sarah Larson, Eric Volk, and Dr. Stone. The Court ruled that they were improperly disclosed as rebuttal expert witnesses and would not be able to testify, with the exception of Eric Volk, for the limited purpose of speaking about his methodology versus Dr. Clauretie's methodology.

THE COURT: Counsel, I would direct you to reread or re-listen because Plaintiffs' paraphrasing was consistent with -- this Court was very clear.

[Court and Clerk Confer]

THE COURT: It's actually paraphrased, although not completely paraphrased, on the October 29th published minutes. It's also elsewhere in listening to it because the Court was very clear since Plaintiff's counsel had the objection and the argument was with regards to Dr. Stone, and so Dr. Stone -- after that argument, the Court made a ruling with regards to Dr. Stone and sustained the objection for all the reasons stated and then Mr. Doyle released Dr. Larson from the subpoena. The Court was very clear and reiterated it. I've got it clipped out if you'd like to listen to yourself.

MR. DOYLE: I don't need to listen to it, Your Honor. They

made a motion. You ruled that my damage expert witnesses Volk, Larson, and Stone, were not properly disclosed as rebuttal expert witnesses, that we should have had a crystal ball to know what was coming. I don't care what the record says. I do recall their motion and your ruling striking my expert witnesses on damages. I mean that's -- so what comes after your ruling really is irrelevant because not allowing any of them to testify, well, I'm not going to call them and put them on the stand.

THE COURT: Counsel, the Court's very specific question was you put in your document filed at 10:57 that if Sarah Larson had been allowed to have testify, she would have testified, okay. In keeping with her curriculum vitae, life care plan, et cetera. The Court's very specific question was are you asserting that the Court made a ruling that Sarah Larson -- as an officer of the court, are you contending that the Court made a ruling that Sarah Larson could not testify? That the Court made an affirmative ruling to that effect, versus the fact that you stated that you were withdrawing Sarah Larson and you were dismissing her?

MR. DOYLE: The Court made a ruling that my damage expert witnesses were not properly disclosed as rebuttal expert witness and I could not call them, including Sarah Larson.

THE COURT: Counsel.

MR. DOYLE: I'm going to go with what the record says, in its entirety, and not cherry picking things out of context.

THE COURT: Counsel. The motion to strike ruling was on Dr. Stone. Dr. Stone was the witness that was coming up next. Just one

moment.

[Court and Clerk Confer]

THE COURT: We'll do that tomorrow. We'll play the section tomorrow from 10/29 --

MR. DOYLE: You're welcome to. But it's -- I mean, I'm happy just to take your rulings, Your Honor. I mean I know -- my -- I suspect you're going to strike each and every one of these, and like I said, you're creating your record and we'll rely on the record as it exists as well, so.

THE COURT: The Court's not creating any record, counsel. The Court for the first time since I have been on the bench has had someone file documents while in the midst of closing arguments without any notice to the Court or opposing counsel that these documents -- not only was the Court not notified in any manner that the Court could address any of the potential rulings during the time of trial, okay? So the Court would have gladly -- as I revisited so many of your issues.

Think of how many different times you discussed Dr. Chaney and your phrase of the sands of time in your arguments with regards to Dr. Chaney. Okay? With regards to whether there was two subpoenas, whether there was one subpoena, whether she came voluntarily until she cleared that up on the stand when she said she wasn't. The issue -- how many times with regards to whether or not she was compensated. That's just one of many examples.

This Court revisited things numerous times regardless of who brought it up throughout this trial and this Court would have easily and gladly done so on other issues if it had been brought to its attention

which is why this Court said it so many different times, kept asking the parties the question and instead, these seven documents appeared while you all were in the midst of closing arguments with no notice to the Court. Of course, the Court didn't even see it or know about them on 11/1, they didn't pop up on the system that the Court even saw them until Monday after the jury verdict was in because even as you left, even as the Court was in -- agreed to either do the hearing that afternoon on the sanction issues or agreed to put it off so you all could talk to the jury. You all wanted to talk to the jury after they had deliberated. So that's another reason why we didn't have the Rule 37, the other hearing that day.

Still nothing about these documents being filed or any courtesy copies which is concerning because you all were here in court. Ms. Clark Newberry came in at different times on the 31st, and I believe came one time on the 1st also. I'd have to double check. I'm not -- I have a faint recollection that she came in on the 1st. I'd have to double check it, but I have a faint recollection that she came one time during the 1st. So there was documents being delivered by both parties on the 1st. Easily, this Court could have gotten courtesy copies of it.

It could have stopped everything. It could have taken care of everything. It could have addressed these issues instead of them being filed without letting the Court know either timely at the time the issues happened or any time before the parties rested their case, or even if there was -- felt there was an issue on the 1st that the Court could have addressed any of these. And that's why the Court is taking all the time to

go through these to see if there's any good cause whatsoever.

So Sarah Larson, the Court's record clearly shows she was -- there was no ruling by the Court specifically on Sarah Larson. The language by counsel was she was being withdrawn and dismissed and the Court said what it said on that date. Let's go to the next one.

Let's go to -- oh, thank you so much. And make sure I addressed everything -- yeah. 10/29. Okay. 10:07 to 11:20, okay. That would be 10/29, 10:07 to 11:20ish give or take.

Then we go to, well, Hurwitz. With regards to Hurwitz -- with regard to Dr. Hurwitz, oops, okay. Dr. Hurwitz raised some different concerns because Dr. Hurwitz, that's the 11/1 at 11:01, and that says, "attached are pages 180 to 182, the unofficial transcription" --

Thanks, Al.

UNIDENTIFIED SPEAKER: Okay.

THE COURT: Thanks. I'll do five more minutes.

UNIDENTIFIED SPEAKER: Okay.

THE COURT: So I can get through Hurwitz -- "the unofficial transcription for October 18th showing the question asked and Dr. Hurwitz' answer at 180, 23 to 182, 5. If Defendants had been allowed to open and publish the original deposition transcript, they would have been able to impeach him with his deposition testimony at page 515, 24, page 7, 4 through 14. Attached are the pages from the unofficial transcription."

So counsel, my first question is, you heard the Court say -- ask you please not to use the fact that you had something typed up

by a private service, which I guess it's Litigation Service by what you attached, please not call that a transcript in any manner because that could really confusing and that --

MR. DOYLE: I didn't call it a transcript.

THE COURT: Well, you called it an unofficial transcript. That's the same thing --

MR. DOYLE: I called it an unofficial transcription. I don't know how anyone could be confused by that.

THE COURT: Well, it said -- the concern here is is sometimes, as you know, parties ask to have court -- an additional court transcriber or something present in the court. That's never happened. In this case, nobody ever asked so the Court never even knew that anybody wanted it because nobody ever asked and so sometimes there's an issue where people provide documentation.

But what you've done by attaching this to this documentation, it can be very confusing because the way it says, it says, "Transcript of video recorded testimony in the matter of *Farris v. Rives*." It never says anywhere on this document itself that this is just something that was prepared for Defense counsel's use only.

So that in and of itself is a very large concern for this Court because I tried to explain that to you when you referenced it earlier on so that there's no concern or confusion with regards to -- this document is something that you got personally done. It has no imputer from this Court. No one ever requested for anything unofficial to be done. No one has reviewed this. No one has even looked at this. It has nothing to

do -- and I in no way take anything negative about who did it. I've no position whatsoever, but the fact that it gets attached to this document per se violates this Court's specific directive that these -- your own personal, getting something provided to you personally, can in no way be utilized in anything officially, and then to file it attached to a document and have hit say, "Transcript of video recorded testimony"?

That in and of itself makes it look like it is the actual official record and even the fact that you call it unofficial transcription on your first page, if you go to the Exhibit A, it says, "Transcript of video recorded testimony," and then it has at the end, okay -- it says, "under sworn penalty of perjury." That in and of itself is a concern. It's a violation of a specific court directive in the midst of trial.

Separate and apart from that, counsel, you know the Michael Hurwitz issue specifically, right, at the time on October 7th, right? At the time of the evidentiary hearing, which was day two of a three-day hearing regarding the sanctions. Day two on the 7th, the Court reminded all parties that they needed to have everything that was required, the EDCRs, right? 2.67 through 2.69 needed to be provided at the time of the calendar call. There was nothing stated on October 7th anything about Dr. Hurwitz' deposition, October 8th, nothing stated about Dr. Hurwitz' deposition.

Then, counsel, if you recall, okay, at the calendar call on October 8th, and you have the transcript, everybody has the transcript, the Court had each of the parties list each and every deposition transcript everyone was lodging. No one mentioned Dr. Hurwitz at that juncture in

any manner whatsoever. No one requested any additional deposition transcripts to be lodged in any manner whatsoever. Dr. Hurwitz, later the Court was told, whose deposition was taken in September so that his deposition could have easily been provided in a timely manner at the calendar call on October 8th, but it wasn't.

Then on October 14th, at 1:16 p.m., Mr. Doyle, if you recall, you provided some 7.27 briefs because you said your office was closed and so they didn't have file stamps and said you were going to provide them later. At that juncture, you didn't talk about Dr. Hurwitz' deposition, even though you were talking about other documents and things you wanted to provide that first day. Then, even though the Court in the morning had made sure when you first came in on the 14th before the jury came in, I asked you if you all had any issues in anything. Nothing was brought to the Court's attention.

However, later that day on the 14th, if you recall, I think it was around the 3:00 hour, you then said that you wanted to lodge the deposition of Dr. Hurwitz. Counsel, don't you recall on the 14th? Then the Court asked you how you would have the ability to lodge the deposition of Dr. Hurwitz based on everything that was specifically set forth in EDCR 2.67 through 2.69 that clearly says when depos have to be lodged and everything. The court rules specifically stated that. The Court's reminder on October 7th, the day before, plus the Court's reminder back from the pretrial conference and plus the Court's reminder back on September 26th but even in addition to those, then on the 8th.

And then do you recall that you stated that you thought you might have asked on the 8th and do you recall that the Court specifically on the 14th told you that if you did it, then the Court would do a carve out for Dr. Hurwitz, but you needed to bring it to the Court's attention the following day on the 15th because you told the Court on the 14th that you had just gotten the transcript from the 8th that morning and so you needed to review the transcript? Do you recall all of that, counsel for Defense?

MR. DOYLE: Your Honor, I think we've discussed this in great detail multiple times. I'm not sure why we're doing it again. But I'm going to stand with what the record says, not my memory of something three or four weeks ago.

THE COURT: Well, because, counsel, in looking through everything on the 15th, are you -- as an officer of the court, are you going to contend that you brought to the Court's attention on the 15th at any juncture that you had requested to lodge Dr. Hurwitz' deposition late on the 8th?

MR. DOYLE: Well, I don't -- I think once I had a chance to look at the transcript, I think your statement is correct. I think I also commented that nowhere in your goldenrod handout or any rule or statute which I think lodging deposition transcripts or original deposition transcripts is an administrative or procedural function. I believe the Court has turned a procedural rule into something substantive and used it as a club against us.

THE COURT: Excuse me, counsel? Feel free --

MR. DOYLE: And I believe I made that --

THE COURT: EDCR 2.69. Please look at EDCR 2.69, specifically in the Eighth Judicial District Court Rules, which the Court reminded you of, EDCR 2.69, right? It says specifically, "Unless otherwise directed by the court, trial counsel must" -- must, right, must bring to calendar call." And it has 1, 2, 3, 4, and number 5 is original depositions. That's not a court department 31 rule. That is straight from EDCR 2.69. It's not an administrative rule --

MR. DOYLE: It's an administrative rule that doesn't say anything about prejudicing an party during trial and preventing --

THE COURT: Really --

MR. DOYLE: -- effective impeachment by not having lodge it. Yes.

THE COURT: Counsel, would you --

MR. DOYLE: Well, again, we'll take -- this will be -- we'll take this up on appeal. We don't really need to deal with this right now. It's really not important.

THE COURT: Counsel, I appreciate what you're saying but remember the Court asked you to please read 2.69? Because if you go down to 2.69(c), okay? "Failure of trial counsel to attend the calendar call and/or failure to submit the required materials shall result in any of the following which are to be ordered within the discretion of the court." Right? Must bring, shall, and one of those is -- the first one, dismissal of the action. So even the failure to bring a deposition transcript pursuant to EDCR 2.69 could have resulted in the dismissal of the action.

Continuing --

MR. DOYLE: Which would have been --

THE COURT: Counsel --

MR. DOYLE: -- a plain error, certainly.

THE COURT: Counsel, can I -- please give the courtesy to the Court. Let me finish a sentence.

MR. DOYLE: Well, not -- you're just haranguing and badgering me with materials that we've gone over multiple times. What's the reason for this?

THE COURT: Counsel, the Court is not -- you stated that it was nowhere in the Court's goldenrod or in the rules. The Court not only told you then it was. The Court was reminding you that I already pointed it out to you it was back then but showing you again that it's here because you're saying that it's not here. So I'm reading the rule.

MR. DOYLE: Not lodging an original deposition transcript would not give rise to any of the things that you're going to mention, including striking an answer for not having an original transcript. That's absurd.

THE COURT: ECDR continues with the other alternatives, including default judgment, monetary sanctions, vacation of the trial date, any other appropriate remedy or sanctions. So it's straight out of the EDCR.

Defense counsel's decision not to bring that deposition transcript and lodge it at the time with all the others, and then the Court still gave Defense counsel the additional day to the 15th to say whether

or not there should be a carve out if you had made that request on the 8th. And counsel on the 15th, do you say that you brought that to the Court's attention that you had made the carve out or brought up the Hurwitz deposition in any manner whatsoever, that you wanted to lodge it?

MR. DOYLE: I'm going to stand by the record, and we've discussed this multiple times and I don't understand the Court's rationale for going over this again. I will stand by what I said earlier.

THE COURT: Okay. So then as you know, what happened is after the -- you never brought it forward on the 15th. So then what happened is at the time of Dr. Hurwitz' testimony, while you were in cross-examination, at approximately 4:45, at the end of the day, right, you started reading from his deposition and then you asked him questions. You asked him if his recollection of things reading from his deposition, and you read about from the [indiscernible] of the case. Then you asked him another question which raised an objection from Plaintiff's counsel, and your response was, paraphrasing, I can lodge the originals and I have copies, and you point to documents behind you. This was done in the presence of the jury after you knew that you were not able to, by EDCR 2.69, to lodge that deposition.

And you had never taken advantage of the opportunity to bring it to the Court's attention in any manner while the Court specifically told you on the 14th, please bring it back to me on the 15th, whatever your position is. You chose not to do it on the 15th. You chose not to do it on the 16th. You chose not to do it on the 17th, and instead,

you waited until the middle of the cross-examination of Dr. Hurwitz, and then you brought it in front of the jury.

So the Court, when you say that you could have lodge this deposition, you never brought it to the Court's attention when the Court gave you the opportunity on the 14th to bring it back to the Court's attention and you can't -- the only thing that the Court saw is that during the -- you did it in front of the jury. So are you contending that the fact that you tried to do it in front of the jury after you knew it would be impermissible to try and lodge something by stating it in front of the jury, that's your basis of filing this offer of proof?

MR. DOYLE: I disagree with the Court's characterization of my behavior and actions and the fact that I never brought to the Court's attention --

THE COURT: Sure. What date did you --

MR. DOYLE: -- my request --

THE COURT: What date did you do that please? I'll go back and look.

MR. DOYLE: I believe on the date I asked, on October 14th, when I indicated that I wanted to lodge the deposition transcript.

THE COURT: Sure.

MR. DOYLE: Again, unlike you, I have not committed the entire trial to memory, but my recollection is that the Court would not allow me to lodge the deposition transcript and I may be mixing up my arguments, but my ability to explain on the record my argument was truncated.

THE COURT: Counsel, feel free, since this is continuing tomorrow, because I have to stop, and I have to go to the bench bar for construction defects, since this is continuing tomorrow anyway, since you have all the typed things, feel free to look at the -- on the 14th and feel free to look from the 3:00ish hour and you'll see where the Court does specifically tell you it can be a carve out and that you needed to bring it to my attention on the 15th and then feel free --

MR. DOYLE: If I had brought it up on the 8th, and then as we talked about it on the 15th after I had a chance to look at the record, I told you no, I was not aware we didn't have it on the 14th. So again I'm not sure where we're going with this, but there was argument about my ability to lodge the transcript and I was not allowed a full and fair opportunity to state my reasons as I recall, but as I said, I may be mixing it up with another argument.

THE COURT: Counsel, that's why I was trying to get this clarification because on the 14th in the late afternoon, you brought up the Hurwitz deposition transcript and you said you thought you'd asked for an exception on the 8th. The Court at that time said to you, paraphrasing what I said to you that if you did bring it back to my attention the following day, the 15th, because you wanted to look at the transcript that you had just gotten that morning on the 14th of the 8th, I said if you could find anywhere in the 8th that you asked for a carve out for Dr. Hurwitz, bring it to my attention on the 15th and see if -- then we could do a carve out for that. At that juncture, you then waived it because you never brought it back to the Court's attention on the 15th.

Now albeit the Court independently looked on the 8th and there was no carve out requested for Dr. Hurwitz on the 8th, and maybe that's the reason why you didn't bring it back to the Court's attention on the 15th, but then you -- to this Court -- and feel free but there is nothing that this Court saw after the Court offered you the opportunity on the 14th to bring it back to the Court's attention your position on Dr. Hurwitz after you had a chance to read the transcript for the 8th to see if you'd asked for the carve out, you failed to bring it back to the Court's attention.

Instead what you did is you just said it in front of the jury during the cross-examination of Dr. Hurwitz at around 4:45. When you were doing his cross-examination, you were referencing questions after there was the objection. I believe it was Mr. Leavitt. I may be incorrect, but I believe it was Mr. Leavitt. That's what the Court is asking you because if you're saying -- if that's what you're basing it on, that the Court -- because you blurted -- because you said it in front of the jury that you could lodge it after you had been told the proper procedure, that it needed to be brought to the Court on the 15th if you felt there was any basis, and you chose not to do it on the 15th? That's what the Court was asking. Are you saying that the fact that you said it in front of the jury on the 18th is the basis where the Court then made a ruling? Or are you saying that you brought it to the Court's attention sometime before the 18th?

MR. DOYLE: I'm going to stand on the record on appeal.

THE COURT: There's no record on appeal.

MR. DOYLE: I'm not going to engage in minutia.

THE COURT: Counsel, there's no record on appeal. I'm trying to -- you have to realize, I have to look at it two different ways, right? I have to look at it from candor to the court, right? I have to look at the *Valley Health Systems* case, I have to look at Rules of Professional Conduct 3.3, and I also have to look at it, right, whether these are rogue documents that have any basis, okay? And I also have to --

MR. DOYLE: Well, I thought we were talking about the offers of proof, not the sanctions issue?

THE COURT: Well, remember, that fact that you're filing -- if you're filing these with no basis whatsoever to file these, I have to consider these as part of the sanctions, counsel, that's what I was trying to explain to you.

MR. DOYLE: Well --

THE COURT: And that's why even independently of these, right? You have to -- every document you have to file under Rule 11. Right? And so that's why the Court was trying to see if there's any basis whatsoever for this because from everything this Court looked at, it looked like this Court gave you the opportunity on the 14th to provide the information to the Court on the 15th.

You didn't provide anything to the Court on the 15th and instead, the next time Hurwitz' deposition appears to come up, and if you think it's inaccurate, let me know -- the next time it appears to come up is when you say it in front of the jury, impermissibly, that you were going to lodge that when you can't do that in front of a jury no matter what and

you know that as an experienced litigator.

So of course the Court had to sustain Mr. Leavitt's objection because that would be completely impermissible to say that you were going to lodge depositions for the first time in front of a jury because you know you can't say something like that in front of the jury. If you wanted to lodge the deposition, it could have been before the jury came in and then addressed it with the Court. But you didn't do it -- that. You did it in the middle of Dr. Hurwitz' cross-examination in front of the jury. The method by which that was done was impermissible no matter what regardless of the date.

That's why the Court was asking if that was your basis of saying that you tried to introduce that document, which you never even referenced these particular pages even in that regard. But that's why the Court was concerned about the Dr. Hurwitz is that it didn't look substantively or procedurally like you had any merit. Plus you filed briefs regarding Dr. Hurwitz. You filed 7.27 briefs and you did not address this in your 7.27 briefs either.

So the Court doesn't see how in any way you brought this issue to the attention to the Court that in any way would merit any offer of proof, which is why I was asking you with regards to the order to show cause whether there's any basis of these or whether these are just a whole bunch of documents on things that in the words of the supreme court in the *Southern Pacific Transportation v. Fitzgerald* case is -- whether it's just something trying to raise things for the first time by filing documents without giving the Court any notice or Plaintiff any

notice, raising things for the first time by filing these documents on November 1st that were never addressed by the Court because you never gave the Court an opportunity to address them. You never gave Plaintiff an opportunity to respond to them, and therefore they would never be a proper part of the case.

And that presents a challenge under the duty of candor 3.3, right? It presents challenges for after the Court cautioned you about filing pleadings without Court leave. We already talked about that. The supplements and everything that were filed, going back to September 18th order, September 19th order. Discussion about what happened on September -- it may have been September 27th. I may be wrong. It may have been September 30th. It was the supplemental pleading that you filed with regards to the conversation with Mr. Dubinski [phonetic] without the Court's permission.

So going over all of that raises an additional concern to continue to file these documents after the Court asked you please don't file documents without letting the Court know. They are not permissibly filed without court knowledge. Then if you are going to file documents, make sure you timely give the Court courtesy copies, which would have been contemporaneously done thereon, which is why the Court has to issue this order to show cause, but mostly these documents appear to be things that were never presented to the Court for the Court to resolve in the first place and so they couldn't even fall within any aspect of any potential offer of proof, which raises the additional Rule 11 challenges.

At this juncture, the Court needs to be at the bench bar. I

apologize to parties, but it's 12:00. I'm going to say we'll see you tomorrow at the continuation of this hearing. Thank you so very much for your time. The Court needs to be in recess.

MR. LEAVITT: Thank you, Your Honor.

THE COURT: Thank you so very much.

THE MARSHAL: The court's in recess.

MR. JONES: Thank you, Your Honor.

[Proceedings concluded at 12:00 p.m.]

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

Jessica B. Cahill

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

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DISTRICT COURT

CLARK COUNTY, NEVADA

TITINA FARRIS, PATRICK FARRIS, Plaintiffs, vs. BARRY RIVES, M.D., ET AL., Defendants.	CASE#: A-16-739464-C DEPT. XXXI

BEFORE THE HONORABLE JOANNA S. KISHNER
DISTRICT COURT JUDGE
THURSDAY, NOVEMBER 14, 2019

RECORDER'S TRANSCRIPT OF PENDING MOTIONS

APPEARANCES:

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

For the Defendants: THOMAS J. DOYLE, ESQ.

RECORDED BY: SANDRA HARRELL, COURT RECORDER

Case Number: A-16-739464-C

Las Vegas, Nevada, Thursday, November 14, 2019

[Case called at 1:32 PM]

THE COURT RECORDER: On the record.

THE COURT: Okay. We're on the record in case number 739464, Farris vs. Barry Rives and Laparoscopic Surgery of Nevada. Can counsel please make their appearances, please?

MR. LEAVITT: Yes, Your Honor. Jacob Leavitt.

MR. JONES: Kimball Jones.

MR. HAND: George Hand, on behalf of the Plaintiffs.

MR. DOYLE: Tom Doyle for the Defendants, Your Honor.

THE COURT: Okay. We've got other individuals who are newer faces in here. This is, of course, an open courtroom. People are more than welcome, but I just want to make sure nobody thinks that we have anything else on schedule for today other than this case. Because this is a special setting that we set aside to make sure we had a full opportunity for the afternoon. So, any other counsel here for any other matter, or are you just here to observe with regards to the Farris matter, is that right?

Okay. So, counsel I appreciate it, I've got insurance. But I just want to make sure because I see some other counsel. No worries. Anyone else need to make an appearance, or are you just here in an observational capacity? Anybody else want else, counsel, want to make an appearance, I don't want anyone to feel left out. No. Just here for observational. Okay. Can you hear okay, left hand side; are you good to

go. You can hear, as well?

UNIDENTIFIED SPEAKER: I can hear you just fine, Your Honor.

THE COURT: Everyone can hear on the right hand side. Does anyone need any hearing assisted devices; any of the three of you all? No. Okay. That's a no from all three? I only saw two. Okay. No worries. I want to make sure everyone gets taken care of.

Okay. So, where we left off yesterday, we were in the midst of questions regarding the order to show cause. But here's the question for you all is, the Court, as it said the other day, is perfectly fine doing these in any order. So, I guess I need to ask. We had Plaintiff's renewed motion to strike Defendant's answer for Rule 37 violations, including perjury and discovery violations that you all requested to be continued to today, despite the Court's offering multiple times to hear it earlier.

So, is there going to be any witnesses at all for that, that we should be waiting for? I'm going to ask first on behalf of Plaintiffs, then on behalf of Defendants, or can this be heard whichever order. Because I want to make sure if there are going to be witnesses, et cetera, that we make sure we wait for those witnesses and make sure everyone gets a full opportunity. Plaintiff's counsel, you all have any witnesses?

MR. LEAVITT: No, Your Honor, we do not.

THE COURT: Defense.

MR. DOYLE: No, Your Honor, we don't.

THE COURT: Is your client going to be here at all because part of the questions are regarding his testimony or have you chose not

to have him here? Whichever is fine, I just need to know if we're waiting for anyone.

MR. DOYLE: No, he's not going to be here.

THE COURT: Okay. Court is inclined to move forward then if we're not waiting for anyone on that one, to make sure because I know you all have multiple people that might be here in their observational capacity, potentially with this one, is that correct? So, I should do this one first so that if people want, or there are various observers that are sitting in the courtroom, that they don't need to, that they can come and go as they please. Of course, people are more than welcome to stay the entire afternoon. I just didn't know if it was any easier for people's expense or whatever, I'd be glad to do these in any particular order if that makes a difference. Anyone requesting?

MR. LEAVITT: No, Your Honor.

MR. DOYLE: I don't have a preference for the order.

MR. LEAVITT: No preference, Your Honor.

THE COURT: Okay. I think I'll probably do this. Because that way if -- circle back so the offer of proofs can be -- we'll [indiscernible] first. So, we're going to do Plaintiff's renewed motion. Okay. So, then that way, if anyone who is here in their observational capacity can -- like I said, people are more than welcome to stay the entire afternoon, but in case people were here for this one, I will do this one first to let people be wherever they need to be.

Okay. So, Plaintiff's renewed motion to strike Defendant's answer for Rule 37 violations, including perjury and discovery violations

on order shortening time. As you know, that was filed and it was initially set to be heard and then at the request of counsel throughout the trial, you asked the Court to continue not to hear it. And then I offered you multiple times, including November 1st, but on November 1st, you all said you wanted to talk to the jury and asked me to continue it to this week so that all the parties and their counsel and whoever else you were having in your observational capacity, whoever, could be here.

So, I have the motion, I have the opposition, I have the reply. And before we get to that, just to let you know, you all had submitted on the original motion, things that were very different. Does anyone wish that the Court needs to sign one of those? I hadn't because you all had this as a pending renewed motion. And when I asked earlier, no one wanted me to sign because you had those so different.

So, if anyone is taking a different position, I'd like to know about it now before I move forward with this renewed motion. Because I didn't sign the orders on the first one because the order on the pre-instruction was the agreed upon pre-instruction after you all had your full oral argument on it, and everyone wanted to move forward that pre-instruction because you all hadn't even submitted your proposed orders by that time. And you all specifically requested the Court move forward.

If somebody has a different position today because I can appreciate people have changed their positions on different days and different moments. So, I'd like to know about it now so that I don't move forward with something and then somebody tells me they had a different position. So, what's the position of Plaintiffs?

MR. JONES: Your Honor, just as a quick background on that, we were not able to reach an agreement. We did meet and confer on those two orders and we submitted our version of the order that we thought better reflected what had occurred. I know the Defense believes that they submitted the version of the order that they also felt better reflected what had occurred.

In any event, I do think that many of the critical points of your decision are found in both orders, although we do have a preference for ours or we would have agreed with the Defense. So, our request would be that you'd sign Plaintiff's version of the order, of course. But there are the differences.

THE COURT: The Court's question actually was just a little bit different. The Court's question was, is anyone saying that they need the Court to sign one of these two orders before moving forward with the renewed motion. Previously throughout the trial, you all because A, you specifically asked me not to because you hadn't even submitted your proposed orders and you wanted to go forward with your pre-instruction, et cetera. Throughout the trial, the Court kept on asking, no one wanted me to do it, so I haven't signed either of them yet. But because they are -- well, they are what they are.

MR. JONES: Absolutely.

THE COURT: So, the Court just needs to know if either party -- as of yesterday, no one had made that request. But I am appreciative that in the middle of a lot of different hearings, I all of a sudden, am getting new requests. So, I want to make sure before I move forward

with the renewed motion, if anyone is wishing something different. I keep asking. So, I want to make sure I have the up to date position of each of the parties.

MR. JONES: Thank you, Your Honor. And I apologize for my misunderstanding.

THE COURT: No worries.

MR. JONES: No. We don't have a need for that to be signed prior to the hearing on the additional sanctions, Your Honor.

THE COURT: Okay. Counsel for Defense, do you have a different position today, or what's your position?

MR. DOYLE: Same position as Plaintiff's. I don't have a need for that order to be signed.

THE COURT: Does anyone feel that this in any way impacts the Court's ability to move forward on the renewed motion by not signing this because no one's had me sign it yet?

MR. JONES: No, Your Honor.

MR. DOYLE: No, Your Honor.

THE COURT: Okay. So, I want to make sure everyone gets fully taken care of before I move onto the next thing. Because I'm glad to do this, if you needed argument on this, I'm glad to have done argument on this -- on the order. Okay. That goes to be addressed later.

So then, that means we're going into substance. The substance is, Plaintiff's counsel, it's your motion, you have an opportunity to argue first on your renewed motion, and then let Defense respond. And then you get the final word because this was done in the

motion context. Thank you. Go ahead, counsel.

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

As this Court is aware, this case has been ongoing and so, out of brevity, at times I will refer to what happened during trial.

To begin, Your Honor, there have been many outright violations of ethics rules orders, not only to this Court, but to the jury. Under *Valley Health Systems* and *Rivera* this Court needs to take into account the totality of the circumstances that are brought before it. The Nevada Rules of Professional Conduct specifically have been violated in this case.

Failure to comply with any obligation or prohibition imposed by a rule or basis for invoking disciplinary process, the rules presuppose, and this comes directly out of the RPC's rules for professional conduct, presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of facts and circumstances as they existed at the time of the conduct in question. And in recognition of the fact that the lawyer often has to act upon uncertain or complete evidence in a situation.

Why do I cite to that? I cite to that because there have been numerous violations in discovery by Mr. Couchot himself. So, the rules go on and state that whether or not discipline should be imposed for a violation are several things.

One, the severity of the sanction, depending upon all circumstances, the willfulness, the seriousness of the violation and extenuating circumstances, whether these have been -- and whether there have been previous violations. The reason I raise that is because

there have been numerous violations by Mr. Couchot himself.

So, let me -- to begin, let's state -- I need to set the stage. As officers of the Court, we took an oath and agreed and know to follow the rules of ethics. This --

THE COURT: Counsel, can I stop -- I'm going to stop you for one quick second. Because you mentioned a particular attorney, so the motion, is it directed at a particular attorney at the firm. Because the motion -- I just want to make sure this Court's --

MR. LEAVITT: Yes.

THE COURT: -- clear on -- maybe I'll just finish listening, but when you mention a particular attorney, is the concern just on a particular attorney. Because the pleadings were a little bit different. So, the Court wants to make sure it's fully up to speed on what the contention is.

MR. LEAVITT: Sure. Your Honor, it's with the firm. It is with Mr. Doyle, it's with Mr. Couchot, and it's with Ms. Clark-Newberry. Which are entangled with Dr. Rives, which is the -- which is the larger portion or substance of this issue. Because in this -- here, we have an intertwined violation. We have Dr. Rives, in brevity, he's violated --

THE COURT: And counsel, I wasn't trying to stop you in your half of argument. I just need that one point of clarification, just for my own mind. So, please feel free with however you've got yourself organized. I just wanted that one point of clarification. Sorry about that. Thank you.

MR. LEAVITT: Thank you, Your Honor.

So, to begin, back in -- this trial was set back in January. As this Court knows, myself and Mr. Jones came into this case in July. Why is this important. Because at that hearing, while I was seated in the gallery in July, the July hearing, I'll state, I was in the gallery, Mr. Jones was present, Ms. Clark-Newberry was here, and she stated to this Court, she did not have authority to move the trial.

Well, later there's an affidavit that says otherwise. Not just her affidavit, but Mr. Couchot's affidavit, as well. And in that affidavit, it states that this trial had been moved. That's an NRC -- or RPC 3.3 lack of candor to the Court. A, a lawyer shall not knowingly -- knowingly is defined in the Rules of Professional Conduct, a person's knowledge may be inferred from the circumstances. She was there on the July 20, '19 hearing. She knew what transpired. She spoke with her own words and says look, I don't have authority to do it.

Yet, in her affidavit later, cited she made a false representation to this Court, and later on, which was unknown to Plaintiff's counsel, that they made the same affidavit to the discovery commissioner, which again, Plaintiff's counsel's never seen that. It was brought up in the evidentiary hearing. So, with Ms. Newberry, we had the violation of misrepresentation, not only to this Court, but also to the discovery commissioner.

That when her -- Ms. Clark-Newbury, Mr. Couchot and Mr. Doyle were here during that evidentiary hearing, they had an opportunity to correct the affidavit and frankly, I don't think it was done to a satisfactory degree. They are not here. They had opportunity to be

here. They had opportunities to correct their affidavits. They have not done so. She knew what she was doing.

Well, that goes even further. I'd like to discuss Mr. Couchot because he seems to be a part and parcel of Dr. Rives because Mr. Couchot's name is on every -- just about every discovery document there is. And Mr. Couchot was present during two of the depositions where they hid information, the *Vickie Center* case, which Mr. Couchot and Mr. Doyle's firm, were both part of the *Vickie Center* case, they knew about it.

The same analysis goes with the affidavit. He wasn't present for the July 20, '19 hearing whatsoever. However, he puts forth in his affidavit that he had personal knowledge of it. It was a cut and paste from Ms. Clark-Newberry's, from what I could tell, affidavit. He wasn't there. Yet it stated that it was moved, he had personal knowledge that it was moved. He did not.

And then we go further. Let's discuss his numerous violations and duty as an attorney to provide candor, not only to this Court, but candor to the opposing counsel. RPC 3.3(a)3, states affidavits, withholding information, failing to review depositions to correct them. I'm sorry, I wasn't citing to the statute, or the RPC at that time. What we have here is Mr. Couchot's affidavit. He withheld the *Vickie Center* case. Let's count the times. There were two sets of interrogatories. One was to the laparoscopic company, owned by Dr. Rives, the *Vickie Center* case was not presented in there. There were the individual interrogatories sent to Dr. Rives. It was not in there.

In fact, then we even go further than that. Dr. Rives was later

deposed. He had full blown opportunity at that time to provide candor to opposing counsel. He did not. And then on top of that, Mr. Couchot stood in this courtroom, and I'm going to paraphrase, because I don't have the transcript in front of me, and stated to this Court, those are not Dr. Rives' answers in those interrogatories, those are mine. As far as I know, the interrogatories were not to -- directed to Mr. Couchot. Although Mr. Couchot had the information available to him, he did not provide it to opposing counsel in two sets of interrogatories.

Then let's move on. When we're looking at a violation under the RPCs, we look at the severity. One, you're withholding pertinent information to the trial -- to opposing counsel. I'll get into the NRCPs in just a moment. Not only that, not only did he violate opposing to us -- to opposing party, he violated to the Court. Interrogatories are sworn testimony. Later, come to find out, he had an affidavit signed by Dr. Rives, who during the evidentiary hearing, stated, yes, I know this person who did it, she works at the hospital I worked at. That's a problem. Because we got a -- we received -- in late September, we received the affidavit for the interrogatories. Well, that's a problem. Those were never presented or served or filed with -- to the Court even to this day. They were never corrected. They had ample opportunity. Why are they withholding a signed verification page.

You are an attorney. You have a duty. Is it sloppiness, I don't know. Is it that they -- Mr. Couchot's not here to defend himself on this. This was brought up to him. He chose not to be here. So, with Mr. Couchot, it goes further. Not until Mr. Jones and I got involved and we

saw, look, hey, where's the Vickie Centers case, it's not here. Then, upon motion to the Court, when we filed our initial NRCP 37 violation and requested sanctions, not until then, did Mr. Couchot and Dr. Rives correct their mistake. That is gravely concerning. Because even then there was no verification page until, I believe -- I believe it was the third set that came out. It may have been the second. Yet, not until something was moved to the Court did they correct their behavior.

Had Mr. Jones and I not looked at that and called them out on that, just as Dr. Rives claims he takes pictures, which was, again, another topic I'll get into, that may have not come out until trial. The violation of both attorney and client in this case is some of the most egregious that I personally have ever seen. There's things that slip through the cracks, get it. I've seen that. However, in this case, nothing has done -- even through trial, Your Honor, nothing has done until the Plaintiff's counsel calls the Defense counsel on the carpet.

So, let's get into the deposition. During Dr. Rives deposition, Mr. Couchot doesn't correct the record. He had an ongoing duty under NRCP 26 to look -- the duty isn't just simply look at the interrogatories, review them, make changes if need be, update them, it's you have to look at your file to make sure you have given opposing counsel everything that is within there. It's not my duty. I don't have that privilege. I don't have the privilege of looking at everything Dr. Rives -- in Dr. Rives' file to determine what I'm entitled to and what I'm not. That is their duty.

And it's not just Dr. Rives' duty. Dr. Rives is a doctor. Mr.

Couchot, he's the attorney. There's the violation. It's his duty. Now, Dr. Rives, when he was finally questioned about it, says yes, I was in the Vickie Centers case, got it.

But let's go the next deposition. We have another deposition where that information of one of their experts, they didn't provide that that expert, I believe, Dr. Stone, he was involved in the Vickie Centers case, as well. Why wasn't -- this Court knows, under NRCP 16.1, the 2019 or before, it is required that you give a testimony list. I use them all the -- in just about every trial I've done to show bias. Not only that, I look these doctors up. I go as far as trying to call the attorneys, hey, what happened. That is my -- what I do as a plaintiff's attorney. They took that away from us.

Well, this is the issue. Now we have two sets of interrogatories hiding it, a deposition, another deposition, and a failure to disclose Dr. Stone's testimony list, which is in the trial in April of this year.

So, Your Honor, we have to look at this. Is this a pattern behavior. So, when determining the sanction, as I noted earlier, you have to look at number one, the severity of the sanction. Is this going to happen again. Then you have to look at how many times has this happened. I just listed them off. And those aren't the orders that have been violated, those are the discovery process. What is the point in having discovery if Defense is going to hide all of this information. They, Defense, the only thing I can come up with is Defense intentionally tried to handicap this case. And when they finally got called out on it, they

say mea culpa, hoping for a slap on the hand, and that's it.

But the problem is, is you don't have just one attorney doing this, Your Honor, there are three. Ms. Clark-Newberry's affidavit, inappropriate. Mr. Couchot's affidavit, inappropriate. Mr. Couchot's discovery violations, beyond inappropriate. In fact, now what do I do if I get another case from this firm, do I -- during 16.1 do I file a motion saying look, they've done this in the past. Just as we do with other attorneys when we watch their videos, hey this is what they do, I need motions in limine on this, this and this. That's the trouble.

Mr. Couchot's actions are concerning. Do I file a motion saying, hey, in the past Mr. Couchot has hid all this evidence, he doesn't review deposition transcripts, obviously, I don't know if he communicates with his client or not, but I need all this information. That's the trouble. This is supposed to be a give me in this type of case. This is the information, here you go. He did not do that.

Let's get into Dr. Rives. Dr. Rives is under the same obligation. One, to be truthful. He has the same duty. I don't know what the attorney client privilege is. This Court went over, said hey is there Hansen counsel, is there Hansen counsel. Well, maybe it I used the term Cumis counsel, which is the California case, the parties would understand. Typically, in this type of case, if I knew this was going on sooner, I would have filed a motion for Cumis counsel, or Hansen counsel, I've done it in the past. Typically on car accidents after a deposition. Here, we don't have that. So, we have the same attorneys and the same Defendant with, what I can tell, potentially, are conflicting

interests. And that's in the RPCs, as well.

Now, Mr. Couchot, with his is RCP 3.4(b), falsify evidence. Counsel or assist a witness to testify falsely or offer an inducement to a witness is prohibited by law. Falsify evidence, counsel a witness or assist. I don't know if that happened. However, we never got the full accounting of what happened.

So, during trial, we get another violation. So, going into Dr. Rives' testimony. When Mr. Jones had Dr. Rives up, one of the issues came up. Dr. Rives says in the Vickie Centers case, which we listened to, wasn't played for the jury, so they couldn't see that he was in another trial, said yes, I take pictures in every one of my surgeries. During his evidentiary hearing he said, look, I show them, this is what -- or during his testimony, I show them. I said where are those pictures. When they answered their interrogatories and their RPDs, they didn't say, look, hey, yeah pictures are taken, oftentimes they're saved on this unit, try and find them. That wasn't given.

For example, an RPD, request to produce, oftentimes I don't have the documents that they're looking for. So, what does a request to produce require. It requires this. Hey, here's where the source is with that information, I don't have it, you can go get it. For example, I do that when I have a lost wages claim. They want my client's tax information. My clients typically don't have it.

So, what do I do, I give them an authorization. I say, in my responses, here's an authorization, here it is. Typically, the IRS will continue to have that information. In this case, we didn't know until trial,

until we're digging through the Vickie Centers case while in trial because Dr. Rives has a problem with the truth. We don't trust him as the Plaintiffs' attorneys because why, there's a pattern. He hid so much information in discovery that didn't come out until the eve of trial, until they were pressed for it. Why would we trust him. So, Mr. Jones and I took a lot of time, pulled the Vickie Centers case, we watched testimony of Dr. Rives, as this Court knows, because we used it to impeach him.

Lance Stone, that's their expert. Why would Defense counsel not disclose that Lance Stone was an expert in the Vickie Centers case. He was present, Mr. Couchot was present at the Vickie Centers case, he was also present, not during trial, I didn't see him in the video, but he was part of the counsel there. Mr. Couchot was counsel here. Mr. Couchot hid the Vickie Centers case in Dr. Rives' deposition. He did not disclose any of that, he could have.

Dr. Rives. Your Honor, let's get into Dr. Rives. This Court was assured on many occasions that Dr. Rives was advised of his interest for Hansen counsel. So, I don't need to go there. Mr. Doyle, from my recollection, said no, there's no Hansen issue, we're good to go. Dr. Rives is not here today to defend what I'm about ready to present to this Court that was -- and I'll read from Mr. Jones' declaration, he's not here to rebut any of that.

There's a question of when Dr. Rives was on the stand. Mr. Jones asked him, Dr. Rives, did anybody -- did Ms. Hannigan help you with your testimony? The answer, he says no. But before that, there was a sidebar. I was present after that because this Court heard open

argument, not just at the bench. From my recollection, and I'll paraphrase, Mr. Doyle objected under attorney client privilege. Now, that's -- that presents an issue of itself. Why is it attorney client privilege if Ms. Hannigan did not assist Dr. Rives, as Dr. Rives stated. However, that doesn't seem to be the case. So, I'll let Mr. Doyle speak to that. But it doesn't -- it doesn't pass the smell test, to be frank.

Now, Dr. Rives can't be trusted, as this Court can make its own determination on. Because during his evidentiary hearing, he knew all the answers, all the answers to Mr. Doyle's questions. In fact, they were all leading, the majority of them. He led his client through. To me, his client was very well prepared for Mr. Doyle's questions. However, when Mr. Jones got up, he wasn't quite so prepared. He had forgotten many things that he -- but yet he knew certain things that Mr. Doyle asked him. That questionably, the only way he would have known them if he was in the hearing prior to setting the evidentiary hearing about the documents. We all prepare our clients. There's no problem with preparing your client. However, there is a problem with veracity in this case. It's been ongoing. From discovery through the evidentiary hearing and trial.

Dr. Rives is not new to litigation. That's something this Court has to take into consideration in weighing what type of sanction to provide of relief to the Plaintiffs. Dr. Rives has been sued, I believe he said he answered six or seven sets of interrogatories before. I don't know. He missed another case when he was disclosing the cases. It was the *Brown vs. Rives* case. That wasn't provided to us until later.

But here's the problem. Dr. Rives not being new knows that he has to be truthful. Dr. Rives continued to perjure himself. I'm going to turn to page 8 of 18 of Plaintiff's brief. Dr. Rives commits perjury in trial. At trial on October 17th, 2019, Dr. Rives was questioned about the woman sitting next to him and that's when this Court -- Mr. Doyle objected under attorney client privilege. Again, where's the privilege. One, if she did not -- if she did not prepare him, there's no point to object, you let it roll. Then Dr. Rives says no, I wasn't. Well, there's a question with that because, from what Mr. Jones recalls at the bench, he says yes, she prepared him. That's a question that Mr. Doyle's going to have to answer because apparently at the bench, there was a dispute. But again, this Court has to look at why the objection of attorney client privilege if that didn't happen.

Moving on. Page 9 of 18. Dr. Rives expressed hesitation so on and so forth.

"Q And you've answered interrogatories in numerous cases, and you would know that you -- that those are under penalty of perjury, as well, correct, and then you answered those."

"A My counsel answered those interrogatories for me. Yes."

Again, that is an RPC violation, a Rule 11 violation, a Rule 26, 33. The list goes on. Because they are not to the attorney.

In fact, let me touch on this real quick. When I can't get in touch with a client and I can't find anything, I state that in my interrogatory responses. I put unverified and I send a letter to counsel and say look, I'm having trouble getting with my client, these are the

best I can do for now, here's my objections to preserve them. But I tell counsel these are unverified. I've received those. That is a courtesy to counsel. That is what we have to do. We have an obligation to be truthful.

We have an obligation to be truthful. We all get that sometimes clients go missing, for one reason or another. But that didn't happen in this case. They didn't say, hey, unverified. They said, verification to come. They had the verification in their office, but the only person that could get it to us was the secretary, not the counsel. So I move on.

Again, page 9 of 18 in Plaintiff's motion.

"Q But you knew. You signed the verifications for those interrogatories, correct?"

"A I believe so, yes."

"I believe so." He is very -- Dr. Rives clearly knows what he's doing in litigation. Instead of giving a straight-out answer, he tries to give himself wiggle room. "I believe" -- well, 10 days later the doctor was in here and we showed him the verification. Yet, in front of the jury, he has, I want to say, "wiggle room".

"Q And the verification to those interrogatories are sworn, under penalty of perjury?"

"A I believe so, yes."

Dr. Rives put on a different show in front of the jury. He gives himself all this wiggle room about things he knew from 10 days before.

Then, let's get into his testimony where all of a sudden there's these pictures. We can't believe Dr. Rives. Nobody can. The jury ultimately determined that question a fact. However, why weren't the pictures, or the ability, or that he takes pictures, presented in discovery? Frankly, when that happens -- for example, I'll go to the easiest example. In a slip-and-fall case, we ask for the video. The now Honorable Bulla in the appellate level, when she was Discovery Commissioner, we got two hours of video.

If that didn't happen, we make a motion for spoliation and we're typically granted a Bass Davis adverse inference. Here, we didn't know until trial that this doctor does that. There was a surprise at every turn in this trial. And again, why is it that we just find that out during trial? We relied on their request to produce responses and their interrogatories. Unfortunately, we can't do that in this case. They were never reliable, to this day.

Let's get into, Your Honor, the trial itself with Mr. Doyle. Mr. Doyle's well aware of what went on in this case. He was here for the evidentiary hearing and the trial. He wasn't here for the July 23rd hearing. I believe he was here for the September. I may be wrong -- no, he was here for the September hearing as well, so he knows what's going on. I won't get into what the Court is going to get into with the filing violations of rogue documents, so on and so forth.

Well, what I'm going to do is, when he questioned Dr. Hurwitz, he mentioned to the jury, he says, now, Dr. Hurwitz, did you see the -- oh, no, it was Dr. Hurwitz and Doctor -- I can't believe the name is

escaping me. I can picture him, a neurologist. He says, did you review Dr. Chaney's records from 2012?

UNIDENTIFIED SPEAKER: Willer.

MR. MR. LEAVITT: Willer. Thank you, yeah.

Dr. Willer, did you review those from 2012? We objected. The problem is, is the jury, at that time, that's a misrepresentation, again, to the jury. There were no documents from 2012. He knew that. We knew that. When he tried to get in Dr. Chaney's records, there was nothing from 2012, so why state that to the jury? That's the issue. The fact finder in this case was led to believe that there were documents that existed with Dr. Chaney in 2012. Dr. Chaney was deposed. In her deposition, there are no 2012 records. Yet he continued to reference 2012 until Dr. Chaney came in and he was able to question her.

This Court allowed Mr. Doyle, because I was up at the bench, to provide evidence that there were documents of 2012. To date, those aren't here because they don't exist. However, he led the jury to believe that they existed, because we are officers of the court. We use our questions in many fashions and forms. And honestly, that question was to lead the jury astray, to think that there were records from 2012, when there were not. He knew that.

Now, that's an issue, and that issue is RPC 3.3(e) (sic), a trial, to allude in any manner "that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence" -- so to tell the jury that something exists that does not exist is in RPC 3.3(e) (sic). Now, a slip here, a slip there; that's one thing, but now we have this

pattern, and that's why I began this unfortunate motion, and I sincerely believe that we have this pattern from discovery, and it continued on through trial.

Then we can get into Dr. Hurwitz. Dr. Hurwitz' counsel was told not to reference Dr. Hurwitz' deposition because he did not bring it in time. I won't get into that. It was objected to because it wasn't at calendar call, as 269 requires; wasn't there. Yet, how many times I had to object? A minimum of three times in front of the jury, Your Honor. And I tried my best to not call him out in front of the jury. I said, Your Honor, may we approach? I think there's something we need to handle; I'm paraphrasing what I said. I did not want to do that. The requirement that he was giving me, to object in front of a jury? I don't like to object for many reasons. One, is I shouldn't have to, if we're following what we've been ordered to follow. But the second is, is it keeps the trial going. And I don't need the jury to think that I'm just trying to stop things.

However, this Court gave an instruction. Now, whether Mr. Doyle understood it or not, I don't know. However, he required that I got up and objected a minimum of three times, to deal with this specific issue that this Court told him, instructed him, do not go into that. So we have that. And then this Court had to admonish Mr. Doyle outside the presence of the jury, on a Friday, from what I recall, with Dr. Hurwitz; said, you did not do that. Now, the objections that had to be brought with Dr. Hurwitz, caused the Plaintiffs to have to recall Dr. Hurwitz later in time, later in the week, which was a cost to the Plaintiffs.

The amount of objections and the amount of time it took to get through Dr. Hurwitz' testimony needs to be compensated for by Mr. Doyle. That's one of the things that I'll be requesting at the end, because his objections were nothing more than to take time. And had he followed this Court's order and instructions on Dr. Hurwitz, we wouldn't be here. We could've gotten through his testimony. When I played his testimony, his testimony was not that long. Now, the objections during trial. The objections during trial, by Mr. Doyle, were many times speaking objections despite the numerous times that he was instructed not to. Now, a speaking objection here, a speaking objection there is one thing, but they were constant.

In fact, I tallied up how many times I objected, one time, to leading questions; I had 25 leading questions with Mr. Doyle, on Dr. Chaney -- 25. Her testimony was 40 minutes. Sometimes it's hard to get a question through. I get that, believe me. I don't have the experience that Mr. Doyle does. Sometimes I struggle with questions. However, it should not be incumbent upon me to do 25 objections for leading. That's not how this should go.

So I looked at Young v. Ribeiro. This Court is very familiar with 106 Nev. 88. The Court found a willful fabrication of evidence in that case. This Court's very familiar with the facts. There was an issue with, I term it "cooking the books". I think that's a little too-loose of a term. There were problems with documentation. So what happened is, similar in this case, we had an obligation from a client and his attorney to be truthful. That didn't happen. So, got the instruction, a pre-trial

instruction. Apparently, that wasn't enough to quell the behavior in this case, not only the behavior, but the truthfulness of Dr. Rives.

In the Ribeiro Young, it was found that the business diaries were found to be fabricated. The Court looked at the failure to recant, in Ribeiro's case, of Mr. Young, to be patently misleading testimony. Here, the fact that Vicky Center was never disclosed until a motion was made -- not even required. It was required under 16.1. It was required under NRCP 26. It wasn't done. And nor was it recanted here either, not until we had to bring it.

Valley Health Systems, we have a lot of similarities in this case. We have further violations, disclosure of expert testimony. Dr. Juell testified. He testified a long time. One thing he never did is, he never provided his billing statement. That was brought up in his cross-examination, very effectively, I might say, by Mr. Jones. Dr. Stone never published his. His trial testimony. When is this going to end? This pattern of behavior, it didn't stop. It's never been corrected.

This Court, yesterday, went through NRCP Rule 11. We've got many instances and violations on Rule 11. While we are sitting here doing closing arguments, we get served upon us offers of proof. I went and looked in EDCRs, NRCP. There is no, from what I can tell, and I'll stand corrected, there's no such thing as an administrative filing. I've never seen anybody file something like that, especially during closing arguments, and I have the case law up here that I was going to save for that.

But the case law in Nevada says, once you rest your case,

you do not get to file offers of proof. Those are rogue documents. You don't get to do that. In fact, I didn't seem them until the Monday following. We went out, spoke to the jury. Not one thing. Not once was it even mentioned. In fact, the Friday of closing arguments, November 1st, I received an email from Mr. Doyle. It says, you know, I don't like -- I'm paraphrasing -- I disagree with your special verdict form. Okay, so I brought mine. I typed it up -- or I printed it up. It was in Word. I sent in Word. There was no mention that, hey, you know what? We're going to file offers of proof, nothing. Not so much as a glimpse.

We come, we're ready to go. This Court said, okay, are there any other issues? No, Your Honor. We want to get through it. We want to get closings done. Apparently, those were filed, and this Court went over them, yesterday, all of them, seven of them. Those are completely rogue. How do I deal with those? I shouldn't have to deal with those as Plaintiff's counsel. This case was rested. He's making a record that doesn't exist. Those are weight, gone. You don't do an offer of proof -- I've never seen anybody -- I do administrative law. I do workers' comp. I've seen offers of proof in there, but they're valid. They're done at the time, and they're typically by the attorney. And that's administrative law. I've never seen anybody file -- and when you file something, the EDCRs require that you state the rule. Here, this is why I'm filing this. This is the rule that I'm relying upon. Here we go. I'm presenting it, and this is what allows me to present it. That wasn't done.

Yesterday, Mr. Doyle made the comment that the order to show cause was vague and ambiguous. No, the offers of proof were

vague and ambiguous. Not only are they rogue documents -- that I understand this Court will get to those that need to be struck in their entirety -- they have no bearing in this case. There was no rule to allow it. There's no end wrap. I looked at end wrap last night. I've done appeals to the Nevada State Supreme Court, several -- many of them, in fact. There is nothing in there to support it. You don't get to end your case and come back and say, wait, wait, I've got more. That's not fair to the Plaintiffs and it wouldn't be fair if I did it to them.

So here are the factors that this Court can look at in Young v. Ribeiro, degree of willfulness, prejudice to the non-offending party. So let's look at the prejudice. This was supposed to be a 14-day trial. It turned into a lot longer than that. The continuous objections, the continuous issues, both by the attorney handling the case, and his client, as a matter of fact, delayed this case. Let's look at why. We had a pre-trial jury instruction that was a good sanction, a fair sanction. And it did not stop the behavior. Of who? Of Dr. Rives. He was in here. He understood, I'm assuming. He's not here to say, hey, Your Honor, I hear what Mr. Leavitt's saying, but that's not true. I didn't understand what was going on. Nor was it raised at the time. So you look at the prejudice of the non-offending party.

You've got the continuous objections. We had to delay the trial. The jury had to be delayed in this case. You had a continuous "loss of memory". Dr. Rives, every time we got up to do his testimony, man, he had a loss of memory. But when he was directed by Mr. Doyle, he was on point. He knew what he was doing. Then he blurts out

"insurance". Okay, granted our client said "copay" at one point. I actually looked up that word and did a search on it and there was one case that said, hey, it's not enough for a mistrial, but you've got Dr. Rives who's been through this system. And then he brings supplement Desobi [phonetic] after being instructed, hey, look, you can talk about fluids and all this, but, you know, if you guys keep hammering diabetes, and you bring up this Desobi; he brings it up. He blurts it out. There was no reason. There was not even a question about it.

So let me go on to Valley Health Systems. Valley Health Systems goes to RPC 3.3(a)(1), making false statements of fact or law to a district court, right? That's on page 637 of 134 Nev. 634. Page 638 of Valley Health Systems talks about 3.3, violating and stating information, which is akin to false affidavits. 3.3(a)(1) is on page 638 of Valley Health Systems, misrepresentations to the Court. For example, this is what we have in the 16.1 disclosures. They never updated it sufficiently. So what we have here in Valley Health Systems on page 641, the Supreme Court says, look, you've got to look at not only the attorney's behavior, but the client's behavior. And here, we're looking at the totality of the conduct.

643 of Valley Health Systems cites to *U.S. v. Talao*, 222 F.3d. 11 -- I can't read my own handwriting -- I think it's 33. Knowingly and willfully violating professional rules of conduct. Dr. Rives' testimony should have been correct. I don't know if Dr. Rives was instructed how he was. That's an attorney-client privilege, but it is curious, to say the least, why he testified the way he did when his attorney was up here, and his lapse of memory. So here, they didn't disclose the Vicky Center

case, repeatedly. But what this Court needs to look at in the totality is, you have the same defendant and you have the same attorney. Why wasn't this done? That's the part that the Plaintiffs can't wrap our head around, right? So you have that. You have misrepresentations to the jury.

Let's get into Dr. Chaney. Dr. Chaney was, quote, unquote -- and I'm going to paraphrase this -- voluntarily showing up to Court. I didn't know if she was voluntary, or whether or not it was represented to this Court that she was voluntarily showing up. There is still one missing subpoena. I thought there were two from Defense, and then there were three, and so I'm confused at this point. But Dr. Chaney came in and testified, stated to this Court, again, paraphrasing what she said, no, I did not feel that I could just show up. I felt obligated to. She received an email, and it was a subpoena to show up or pay a fine. That's what the subpoena is. From Dr. Chaney and her counsel, there was no agreement that she was just going to show up.

And let's get to something that's a little worse than that. This is another concern. Mr. Jones, if this Court recalls, sent a text to Dr. Chaney's counsel. They had a phone call, and he said, look, it was promised that she would be paid three days if she comes and testifies tomorrow. Why wasn't that disclosed? Is that a violation? We looked up -- it was the -- oh, his name's on the sign over there. I forget the case at this moment. It was, he was suspended for 30 days.

But anyway, the Court looked at it. There was nothing really on point. But again, that's candor to opposing counsel and to this Court.

They knew. And then the timeline of when she knew she was going to come testify became a moving target. If I'm going to pay somebody to show up and testify, that should be disclosed 100 percent. I pay my experts, they get the fee. They get everything. You know, they get the fee schedule, and I even ask them in trial, Doctor, how much are you paid? Biomechanical Engineer, how much are you paid? So the jury knows.

But Defense counsel knows this beforehand. They never disclosed that to us. Again, we stumble across information and then it's disclosed. That's the problem. So we have to look at the totality of the circumstances here. I mean, this behavior started with Mr. Couchot and now it's bleeding into court. It didn't stop. Where's the trauma here? Why can't the bleeding stop? It didn't. So this Court took more time to hear. We took at least an hour to figure out the whole Chaney situation. It took a couple days. She showed up in our case in chief, and we said, no, we've got to get through our case in chief. Then she shows up again with her attorney, and this Court had to ask her questions outside.

So here's what this Court needs to take into consideration. You have false affidavits, false discovery, false statements to the Court, false statements to the jury, false representation of evidence to the jury, false representation in two depositions -- who knows, maybe if we dug further there'd be more -- false quotations of this Court. Nothing had stopped during trial.

So the Plaintiffs are prepared to ask for relief on this. Striking of the answer, at this point, does not seem to be the proper

remedy. The proper remedy from Plaintiffs would be a minimum of four days of three attorneys' time, Mr. Jones, myself, and George Hand. Mr. Jones and I are partners at a law firm. We are experienced, we're skilled, and if this Court would entertain, we can provide an analysis for that, but we would like to hear what the Court has to say about a proper sanction. We believe that four days of our time, and we worked a minimum of 16 hours a day, would be a fair and proper sanction levied against the Defendant and paid to the Plaintiffs for that. I have nothing further, unless this Court has any questions of myself.

THE COURT: I do not at this juncture.

Go ahead, Defense Counsel. Go ahead, Defense Counsel.

MR. DOYLE: Thank you. Just to respond or address a couple of comments made by Counsel. And just perhaps to remind Counsel, when we were here on October 10th, Ms. Clark-Newberry did make an effort to explain the contents of the declaration. Whether that was satisfactory to Plaintiffs and the Court, would be another issue, but she did make that effort.

I would also point out that Mr. Couchot, during Dr. Rives' deposition in the Farris case -- which, if I recall correctly, was in October of 2018 -- did bring up the Center case. And Dr. Rives, at the time of his deposition in the Farris case, was asked questions about the Center case.

And Counsel mentions Rule 26, and I would simply refer to 26(e)(1) which pertains to the duty to supplement 16.1 disclosures, or (e)(2) which pertains to supplementing discovery responses, that both of these subparagraphs contain the same language. Just using

subparagraph (1), 16.1 disclosures, "A party is under a duty to supplement at appropriate intervals its disclosures under" 16.1(a) or 16.2(a) "if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing." And I believe I brought this up at one of the earlier hearings, that certainly one could reasonably argue that Mr. Couchot's disclosure of the Center case, during Dr. Rives' deposition in the Farris case, does satisfy those supplemental disclosure requirements under 26 (e)(1) and (2).

THE COURT: Since I asked a question during Plaintiffs, I'm going to ask a question during yours.

MR. DOYLE: Of course.

THE COURT: Are you asserting that Mr. Couchot actually used the words "Vickie Center" during Dr. Rives' deposition?

MR. DOYLE: Yes. he did. The court reporter misunderstood or misinterpreted and put down Sinter [phonetic] -- Sinner [phonetic], but the words he used were "Center". And if one were to look at Dr. Rives' transcript in that case, I don't know who the court reporter was, but it was rife with grammatical errors. And so, yes, the *Center* case was disclosed and there were questions and answers about it.

THE COURT: And since it was your client, did you correct any of those errors in the deposition?

MR. DOYLE: In the deposition, no. And under Rule 30, there was no request by the deponent or party before completion of the

deposition to do so. And as the Court is well aware, the deposition transcript was not provided to Dr. Rives, until shortly before trial, in order to prepare for trial.

THE COURT: By his Counsel, though?

MR. DOYLE: Right.

THE COURT: Counsel had it the whole time, correct?

MR. DOYLE: Yes.

THE COURT: Okay.

MR. DOYLE: Of course.

THE COURT: No worries.

MR. DOYLE: All right.

THE COURT: I guess that was my question. I appreciate it. Please continue.

MR. DOYLE: Yes. And then so just addressing Plaintiff's renewed motion to strike Defendant's answer, which I thought is what we were going to deal with first, I would simply point out that the relief sought in this motion is to strike the answer. There's nothing in this motion about Dr. Hurwitz. There's nothing in this motion about Dr. Chaney, Dr. Juell, Dr. Stone. There's nothing about Defense Counsel objections. There's nothing about Defense Counsel delays.

There's no request in here for reimbursement of attorneys' fees. The only relief requested, if you go to -- I was scanning it while Counsel was arguing, but if you go to page 17 of 18 it says, based on the above, Plaintiffs respectfully request that this Court grant Plaintiff's motion, and strike Defendant's answer.

And I think, based upon the motion -- which I thought this was what we were just going to argue -- there is nothing in this motion, as I said, about Hurwitz, Chaney, Juell, Stone, delays, or there's no other relief sought by Plaintiff's Counsel. So the extent that now they are asking for additional relief, well, there's been no notice or opportunity -- or there's been no appropriate notice or appropriate opportunity for me to respond to any of that. And then, going to the relief sought in the motion to strike the answer, given the Plaintiff's verdict in this case, the relief sought appears to be moot and that the motion should be denied for that reason because of the Plaintiff's verdict.

THE COURT: Anything else, Counsel?

MR. DOYLE: No, Your Honor.

THE COURT: You had a full opportunity to be heard?

MR. LEAVITT: Yes.

THE COURT: Okay. Counsel, you get the last word. It's your motion.

MR. LEAVITT: Yes, Your Honor. Just very briefly.

I do mention Hurwitz in the motion. And it's also Plaintiff's understanding -- if my understanding is incorrect, I'll stand corrected -- however, we all knew this was ongoing. And any issues I presented are relevant, especially when taking into account *Valley Health Systems* and *Ribeiro*, the totality of the circumstances, and the failure to correct the behavior in the issues in this case. Despite the Court's rulings and orders, it was never complied with. And under 37, this Court has

opportunity to provide sanctions as it sees fit. Thank you, Your Honor.

THE COURT: Okay.

MR. DOYLE: And we did do an opposition, at the time of trial, to this motion. So I assume -- I didn't mention that, but I assume that's --

THE COURT: Which is why --

MR. DOYLE: Again.

THE COURT: -- the Court said, at the beginning, the Court said it had the motion in opposition to reply.

MR. DOYLE: Right. Okay.

THE COURT: Okay. Well, so here's a question I need to ask both the parties for your response, because neither addressed it.

Counsel for Plaintiff, you had the last word. Did you wish to say anything else? I said you had the last word, if you wished it, and then you didn't say anything other than you mentioned Hurwitz. So were you done? You had a full opportunity to be heard?

MR. LEAVITT: I did, Your Honor.

THE COURT: Okay.

MR. LEAVITT: Thank you.

THE COURT: No worries. I want to make sure both parties had a full opportunity to be heard. Okay.

So the Court does have a couple of questions. I guess the first is a statement. I mean, the Court sees Dr. Hurwitz mentioned on pages 16 of the motion, also sees it mentioned in the reply, and also addressed in the opposition, is Dr. Hurwitz, specifically IV, the attempt to

impeach Dr. Hurwitz is not grounds to strike Defendant's answer. You have a whole section on it.

MR. DOYLE: But --

THE COURT: So it's in the opposition.

MR. DOYLE: Well, I --

THE COURT: So --

MR. DOYLE: I was referring to the request for his fee. I'm sorry if I wasn't clear. No, clearly, Dr. Hurwitz was discussed in the pleadings.

THE COURT: Okay.

MR. DOYLE: But not a request that there be some reimbursement for his fee.

THE COURT: No. I see subsection (c). It says, past medical expenses are properly awarded, and there's an analysis thereon. And then alternative admonition and jury instructions are necessarily given, as well as the striking of the answer, as a variety of different aspects for relief.

And there's monetary sanctions mentioned in there. As well as the analysis, under [indiscernible] mentioned in the legal argument, that the Court can fashion different remedies at its own discretion. So it's -- the Court saw. Okay, so here's the question that the Court had. One question is, should this Court be looking at the motion as of the day it was originally to be heard, or should the Court be looking at it with the eyes of what has happened and transpired with today's eyes? And I mean that from a date standpoint, purely, obviously, from my eyes on

this day.

But what I mean, that is from a date standpoint. I mean, the day that this motion was originally to be heard. Although, you all did specifically ask, because this motion was initially scheduled, with both parties' consent, to be heard on a particular day with the notation, specifically in the OSD, that that date could change based on the parties' request. And then you all requested it over and over and over again, so the Court kept accommodating your requests and is now hearing it today at your continued joint request.

So I'd like to hear each party's position on whether I should be looking at it from a perspective of when this was initially supposed to be heard, or taking into account things that happened after the date it was initially to be heard, based on the fact that you all had asked me to continue it, based on the fact that you knew it would be continued if you all requested due to witnesses and other things.

So, each party's position, please?

MR. LEAVITT: Yeah. Your Honor, from the date on, is the understanding. That's why we continued to move it, because -- before that. So to take into account everything up. And to my understanding yesterday was, it was going to take into account, as well, the "offers of proof" as well. We have quote on quote offers of proof, as well.

THE COURT: Defense counsel, any position?

MR. DOYLE: Well, it's my understanding we have Plaintiff's renewed motion, and then we have the Court's own thoughts and feelings and what the Court is going to do on its own motion. I don't see

how the two can be blended. But I would've checked that based upon --

THE COURT: The Court --

MR. DOYLE: -- due --

THE COURT: Stopping you. The Court wasn't asking about blending though this motion. And I'm trying to be very distinct and clear.

MR. DOYLE: Right.

THE COURT: As you all know, the renewed motion was set on a specific date initially at the parties' request, and it was going to be moved -- it even had a notation it could be moved to different dates based on what was available, et cetera. The Court continued to ask the parties throughout the trial, do you want this heard, do you want this heard, do you want this heard. Both parties continued to say no. You wanted to have witness testimony throughout the trial. So the Court kept on saying okay, based on your parties' joint request, I will continue and not hear this motion.

Then the Court -- again, we were supposed to hear it at 2:15 on November 1st. First I was going to hear it on October 31st, but then you all requested that it get moved from that date because then you all decided both to do Rule 50 motions without letting the Court know. And so then after that, you wanted to leave. So left at that juncture, then on November 1st, again, I asked if it wanted to be heard before closing. Didn't want that. You wanted to have your closing.

Then we were going to come back at 2:15, if you recall, to do it so everyone could be prepared. You didn't want it at 2:15 because the

jury was back with the verdict. You wanted to do the verdict. And the Court offered after the verdict was read to hear the motion, again. You both said that you wanted to talk to members of the jury since they had already reached their verdict, so the Court agreed again to move the hearing from that date since people were not available on particular dates. We picked the date that you wanted it heard. The Court then put it on the date it was going to be heard. It got continued to where it is.

So the Court's not saying combining the Court's independent motion and order pursuant -- not the Court's motion, it was the Court's order pursuant to the order denying Defendants' order shortening time. This is the 10/2 order, which is a different order because that is a court order. That is the order denying Defendants' order shortening time request of Defendants Barry Rives, MD and Laparoscopic Surgery, LLC's motion to extend discovery, ninth request, and order setting hearing at 8:30 a.m. to address counsel's continued submission impermissible plea proposed orders even after receiving notification of the Court setting a prior hearing.

There are multiple impermissible documents that are not compliant with the rules and orders. And then the additional conduct thereon, which the Court said that it was deferring until the end of the trial in order to give the parties -- it was both that order as well as the prior order of 9/19, which was the order denying the stipulation regarding motions in limine, and order setting hearing for September 26th at 10 a.m. to address counsel submitting multiple impermissible documents that are not compliant with the rules and orders. It was both

of those orders setting those hearings that the Court based on the parties' request said it would do it at the end of the trial to give all counsel an opportunity to become compliant, or as compliant as possible after what had already happened by that date. And the Court even read an excerpt of the Court reiterating that yesterday.

At yesterday's hearing, you recall the Court specifically read an excerpt of the Court reminding the parties and asking the parties when you wanted that. That got continued to the end of the trial. That also was going to be done at 2:15 on November 1. But at the parties' joint request that that also be continued, that also was continued to today's date at your all's request. Two separate hearings, one generated from Plaintiff's motion, the other generated by the two court orders that this Court set.

The Court's not talking about combining them.

MR. DOYLE: Okay.

THE COURT: The Court is just asking since the Rule 37 renewed motion was set on OST to be heard on a particular date, and then at the parties' request it kept on being continued. The Court's really simple question is should the Court be taking into conduct only to the date that it was originally to be heard, or should the Court be taking into account conduct which is asserted after the date it was originally to be heard because it was continued at the joint request of the parties until today's date. I just wanted each party's position on that. Plaintiff gave their position. So I was asking Defense counsel, your position, if you'd like to give it.

MR. DOYLE: Our position is that due process, and the appropriate notice and opportunity to be heard and respond requires that the motion be considered as of the date it was served, October 19th, or perhaps on the date that it was scheduled to be heard, but not carrying forward to today.

THE COURT: Well, how could it be on the date served because you hadn't yet even gotten an opportunity to do an opposition? And there was a reply, right? So --

MR. DOYLE: Right.

THE COURT: -- wouldn't you all have had the opportunity at the time it originally was going to be heard to be able to argue it, so --

MR. DOYLE: Well, but the argument -- on the date it was originally set for argument, the argument I assume would've been as to the motion as it existed and the opposition as it existed, and not adding to or piling on things that had occurred in the interim, whatever that interim period of time was.

My position is due process requires that the motion be considered as of the date it was served, and the arguments made, as well as the arguments made in the opposition filed on October 22, but not certainly rolling forward to today.

THE COURT: So as of what date just so I have a clear understanding because you've, kind of, said it, kind of, a couple different ways because one, you've included your opposition date when you haven't. So as of what date do you think that this Court should be considering? Please give me the date certain that you feel that the Court

shall only be taking conduct into account as of X date. What's the X date, please?

MR. DOYLE: October 22nd. And limiting the -- and considering the motion and opposition as they existed as of the date of the opposition, October 22.

THE COURT: So not taking into account the reply and how they responded to your opposition? Are you saying the Court shouldn't be taking into account the reply?

MR. DOYLE: Was there a reply? Frankly, I don't remember.

THE COURT: Yes. Right.

MR. DOYLE: Well --

THE COURT: The Court said at the beginning, I had a motion, opposition, and reply. So --

MR. DOYLE: Well, again, the due process and the notice and opportunity to be heard and respond would be based upon the contents of the motion filed on October 19. I would think it would be inappropriate, and I would object to any additional conduct, or behavior, or violations, or however you want to characterize them, that occurred after October 19th, whether they be before or after the opposition, or whether they be before the reply. Otherwise, I do not have an opportunity to respond appropriately.

THE COURT: So then you'd be asking the Court not to take into consideration any of your arguments in the opposition that in any way involves any conduct which you say mitigate or explains anything that happened after they filed their motion? That's what I'm trying to ask

because basically, you just said I couldn't be taking into account arguments in your opposition that would take into account any examples that you're trying to give in response. That's why I was really trying to just ask.

MR. DOYLE: I thought our opposition simply responded to and opposed their motion. We addressed the issue whether Dr. Rives committed perjury. We addressed the issue of Dr. Horowitz in his deposition. And then the last -- the second to last section of our opposition says the remaining issues raised on Plaintiff's motion were previously addressed in the initial motion for sanctions. So our opposition was simply that, an opposition to the motion.

THE COURT: One moment, please.

MR. DOYLE: And I misspoke. The reply was filed on October 22. I don't have the date that the opposition was filed.

THE COURT: As with any other motion that gets filed, including motions on order shortening time, the Court, as long as timely filed, considers motions, oppositions, and replies. No one's contending that the motion -- the opposition or reply was untimely filed. So the Court needs to take all of those into account. There was no pleading filed afterwards that anything was raised that was a new -- anything was containing any new arguments set forth in the reply.

So since the Court will view that as waived because if anyone felt that, and you've had since October 22nd prior to today to have done so and nobody did so. So the Court would find it would be fully waived because no one even brought that up until -- and the Court finally had to

ask a question about where people consider -- these should be considered. No one raised that even in their oral arguments. It waited until after everyone had rested and had said they had a full opportunity to be heard. So of course, the Court will do as is ordinary course. The motion, opposition, reply gets taken into consideration.

In doing so, the Court has to take it -- conduct consistent therewith. It doesn't take into account any conduct that occurred after that date. Nor does the Court, because there's an objection from Defendants since the Court can't take the conduct into account, the Court couldn't take any mitigating factors or circumstances, or anything said by Plaintiff that would've occurred after that date, as well, because that would've been outside the scope and not addressed in the Plaintiff -- the motion, opposition, and reply.

So that means the Court is going to consider contained therein the motion, opposition, and reply, because that would be appropriate and consistent with everyone having notice. And nobody's raised anybody would waive anything that was not set forth therein, or nobody asked for any supplemental pleadings, or anything else. And you all asked for this to be continued until today, and nobody's asked for anything else.

So taking into account the motion, opposition, and reply, the Court now has to make a determination. And obviously, since the pleadings also take into account that the Court has discretion under Johnny Ribeiro in regards to what is the appropriate remedy, and there's a variety of different remedies set forth herein. So what becomes the

appropriate remedy?

Let's walk through some of the issues in the Court's analysis there are. First issue is the Court has a challenge here because with Defense counsel not bringing Dr. Rives here -- and the challenge is because this motion was going to be heard in the midst of trial when Dr. Rives was going to be present. But yet, both parties agreed to have it heard today.

This Court, I guess, thought when continuing the motion that it still would've had all of the individuals here as if they were here at the time of trial because that would've given the Court the same opportunity to ask questions of anyone, and for anything -- people to respond to those questions as if I heard it at the time of trial. So this Court somewhat has the challenge because Dr. Rives is not here, but yet he was here throughout the trial.

So by complying with the parties' joint request to hear it today, and now not having Dr. Rives here, the Court is not able to ask some questions. But yet, there are issues that talk specifically about his testimony, and that presents a challenge. And I don't -- that challenge is not to the detriment of the Plaintiffs because Plaintiffs have all three of their Plaintiffs' counsel here today, and it's the same scenario as if the Court would have heard this during trial.

It was Defense counsel's choice that he -- is there any reason that Dr. Rives is ill -- is not here for any reason that I should be continuing today's hearing, or is it just counsel's choice not to have him here?

MR. DOYLE: Counsel's choice. I saw no reason for him to be here.

THE COURT: Just making sure it wasn't anything outside of his control. Okay. So that presents the challenge for -- the Court has to take what is presented in these documents and the arguments thereof because -- this Court will continue to say it, has -- it's been told over and over that Dr. Rives was provided all the appropriate information, discussions with regards to *State Farm v. Hansen*. But yet, he's not here to even have an opportunity to speak on his own behalf, or have his own independent counsel it appears, or yet he's being asked to have this Court discuss perjury on him, which this Court is concerned about that. But I have the counsel for him saying that -- he's told this Court multiple times -- is that still your position, you fully discussed with Dr. Rives *State Farm v. Hansen* and the opportunities for him to have individual counsel, et cetera?

MR. DOYLE: Assuming my comments don't constitute a waiver of any attorney client privilege --

THE COURT: I'm only asking if he's fully advised of *State Farm v. Hansen* so that this Court has no issues in making any ruling that can directly affect Dr. Rives. That's really -- the Court asks no content of any communications whatsoever. This Court is just trying to make sure it's doing its judicially duty. Even though I've asked several times, I just -- it's concerning to this Court when there's a motion which includes a statement regarding asking the Court to make an assertion that Dr. Rives committed perjury, and that Dr. Rives doesn't have his own -- is not here

to be able to explain it if he chooses to explain it.

And so the Court has to ask the only person that is here on behalf of Dr. Rives, which stated is you, is that that has been explained to him the distinction. And that's the question. I'm not asking for any content of any communications. This Court just wants to make sure that it's not making a ruling in any way that would be unfair to any individual in the entity, as in any other case. It's really as simple as that.

And so you don't need to answer the question. The Court's just asking it so that the Court ensures that it's making sure everyone's rights are fully taken into account. So if you choose not to answer, that's perfectly fine. The Court's not going to take any position whether you choose to answer it or not.

MR. DOYLE: I can't answer it without disclosing attorney client privilege.

THE COURT: Okay. Is there any reason that you're asking this Court not to rule because Dr. Rives is not here?

MR. DOYLE: No.

THE COURT: Okay. Then the Court has to take from that that he's been fully informed and -- is there any other attorney I should be waiting for?

MR. DOYLE: No.

THE COURT: Okay. So I'm going to have to go to the different issues raised in the motion. The first issue raised in the motion is with regards to communications and statements regarding who prepped or did not prep Dr. Rives. And I'm dealing with that first before I

go backwards to the discovery issue because the Court is aware of what was said at bench. The Court's fully aware of what was said at bench. The thing is, the Court's also aware of what Dr. Rives testified to. But what the Court doesn't have is a nexus that Dr. Rives was ever informed what his counsel said at bench on his behalf, which is one of the reasons why this Court was asking the question about *State Farm v. Hansen*.

So I can't hold Dr. Rives accountable for perjury based on the statements by his counsel at a bench conference that I don't have the benefit of knowing whether it was ever communicated to him before his testimony. It really becomes as simple as that. And so the Court takes no position whether he did or did not because the Court doesn't have adequate information to be able to make that determination. That in no way excuses -- the Court doesn't excuse anything. The Court just doesn't have the information to be able to make that determination.

So now let's go back to the discovery issues. With regards to the discovery issues which are raised in the motion, so it had an opportunity to fully be addressed. And the discovery issues are a strong concern to the Court because as accurately stated by Plaintiff's counsel, including the issue with regards to representations in discovery with the verification and the fact that version one of the verification issue was that there was no verification.

And then version two that got fleshed out later at the hearings was that there was a verification provided at some point. And it was stated different ways at different times, so I'll just say at some point in early September. It's been phrased a variety of different ways at

different times at different hearings. But to make it in the most generalized sense, that that was not provided until some point short of the 2.67 conference. So that is a strong concern because the testimony provided was that that should have been. And there is a duty to supplement. There's definitely a duty to supplement in this regard.

The Court does not find that there could even be any conceptual idea on how this would not fall within a duty to supplement because it is a clear question that was asked and needed to be disclosed. And the attorneys' obligation in reading from -- I could either read from the motion, I could read from various pleadings presented, or I could read from Mr. Couchot's statements at the hearing, which you all have copies of because you all ordered copies of the September 26th, the first day of the additional sanction hearing. It was inquired about whether -- who prepared the interrogatory actual answers, not the objections thereto, but the answers themselves.

And so it was stated that okay -- I mean, Mr. Couchot said even on page 4, the Court asked -- well, first, let me go back a second. I need a couple points of clarification before I get an inclination because in the pleadings the way I read them, I thought it was clear one way. But I wanted to make sure I was reading them correctly. So do you mind if I ask Defense counsel a couple of questions for point of clarification before I give you my inclination. They both say it's fine. So the Court asks a couple points of clarification.

So one says Dr. Rives -- first I say, thank you very much. Was he ever provided the interrogatories for his review? Mr. Couchot

says, Your Honor, I don't know that, my under... I don't know the question... answer off the top of my head. I know we received verifications from the laparoscopic surgery interrogatories. We do not have the verification to the interrogatories for Dr. Rives himself. And since this is September 26th at this point, everybody always knew the change from the no verification that had previously been stated to the verification because that had come up in earlier hearings.

Okay. So then the Court says, "Because in reading your declaration, it didn't appear that you ever had because part of your analysis, both in the pleadings and in your declaration was that you drafted them and that you did not include the Center case. So that's why the Court's question --" Mr. Couchot interrupts and says, "Absolutely. That is absolutely correct, Your Honor." And then I try and finish, "Because -- so I never saw a verification."

So Mr. Couchot then interrupts. "There was no verification. They have since supplemented and verified." The Court said, "I did not -- that's another question the Court was going to ask because I never saw it and I said I never saw a verification. I was -- my question was, are they going to be broken down to three points in time? I never saw the verification from 2017 up until the deposition in 2018. That's why my first question was did Dr. Rives ever see the interrogatories. I would ask it in a big picture globally, did he ever see them because your declaration says you supplement -- you wrote them and then you supplemented them. But it never mentioned Dr. Rives at any time."

Mr. Couchot responds, "They were sent to Dr. Rives after

they were supplemented."

Then the Court says, "So in September 2019?"

Mr. Couchot responds, "Yes, Your Honor. And --" Someone sneezed, so I said bless you, but that's not really pertinent to what I'm about to say. Then it goes on. Mr. Couchot says, "And Dr. Rives subsequently pointed out that his -- we made a couple additional changes based on Dr. Rives' verifications."

The Court, "Okay. This Court will -- let me start over. Okay. So in 2017, no verification. You're not sure if Dr. Rives ever saw them?"

Mr. Couchot, "Correct. My suspicion is he did not, but I don't know that to be a fact." T

he Court, "Okay. 2018, the deposition. And specifically, the interrogatory questions are asked of him by Dr. -- and then I say oops, Mr. Hand, right? Okay."

Mr. Couchot goes, "Correct."

The Court said, "You were there at the deposition. I -- this Court did not see anywhere in the pleadings any supplement on the duty to supplement, right?"

Mr. Couchot says, "Correct."

"Did not see any supplemental interrogatories in 2018, pre-September 13th, 2019; is that correct?"

Mr. Couchot says, "Correct."

The Court then says, "Okay. Did not see any verification at that time. So even after Dr. Rives is asked about those interrogatories in his deposition?"

Mr. Couchot says, "That is correct."

The Court says, "Okay. Clearly, I did not see attached to any pleading provided to this Court, or in any of these pleadings for purposes of today any verification of Dr. Rives whatsoever. Are you saying there was one provided to Plaintiff's counsel and neither of you attached it to your pleadings, or are you saying it's inadvertently not attached to the courtesy copies and not attached to the electronic filings, or --"

And Mr. Couchot interrupts and says, "The former."

The Court says, "Do I need to double check my reading glasses. Okay."

Mr. Couchot says, "The verifications were not completed at the time I filed my opposition, so they were not attached to the opposition."

Then the Court says, "Have they -- not even to your opposition? Have they ever been provided to the Court? I didn't see a supplement to the Court."

Mr. Couchot says, "No, not to the Court."

The Court says, "Okay."

And then Mr. Couchot says, "They have served."

The Court says, "They have been served when?" "They were served. I don't have that in front of me, Your Honor. To the best of my recollection, they were served -- it may have been yesterday morning."

The Court then says, "Okay. And my other question was I did not see anywhere in the pleadings provided to the Court that there was

anything stated in either the declaration or anywhere in the pleadings about whether Dr. Rives was provided his deposition to review -- his 2018 deposition, was he provided it to review it?"

Mr. Couchot says, "I don't know the answer to that question. I do know he did not complete an errata."

Okay. So I go on, "I do not see anywhere in the declaration or anywhere in the pleadings any statement about whether counsel, or anyone from counsel's office doing the global paralegal's whole kit and kaboodle review of the doctor's deposition any time prior to this motion prior to September 13th?"

Mr. Couchot says, well, I never -- not until this motion was filed. And I can tell you that based on our custom and practice, it would not have been reviewed until after the matter until trial preparation began because we -- after a deposition we complete a deposition summary based on our written --"

The Court says, "What? But a depo -- nobody looks at a depo to see if it's accurate?"

Mr. Couchot says, "No. We do not do that as part of our custom and practice. We do not review the deposition for accuracy."

The Court says, "And you don't know if you sent it to the client?"

Mr. Couchot, "No. I can certainly find the answer to that question, but I can tell you we do not review depositions for accuracy. And --"

The Court says, "Okay. That's -- those are the reasons why

the Court needed to ask those questions is because it's clear that I have to look at the sanctions, ask, request. They're asserting intentional conduct and I need to have an understanding. I always directly say forthright what I'm looking at. And what I'm looking at is district court and appellate court, so the law is a little bit different.

Okay. So there is a Supreme Court case pointing out the difference. I think -- okay. Whether the conduct is Dr. Rives' conduct or counsel's conduct when you're looking at and evaluating the sanctions potentiality. Okay. The Court also --" I am reading from the September 26th transcript.

UNIDENTIFIED SPEAKER: Thank you.

THE COURT: I am now on page 9 of the September 26th transcript at lines around 16, I was about to read.

"Okay? And the Court also has to look at the per se violations of 30 NRCP 33, 26, 37. I could keep going. That's why I'm asking those questions because there's affirmative duties to supplement. There is 26 affirmative duties to do reasonable. The affirmative duties for things to be discovery under oath. And so EDCR -- we don't even have to get to the EDCR. I mean, I've got the NRCPs, but then there's EDCR. And the Court explains it has the understanding. But I mean, now that Plaintiff argued, I have a rubric of understanding whether -- because you were asserting it was Plaintiff, I need to understand if it was Plaintiff or Plaintiff's counsel."

Actually, I think there's a typo there because it was Defense or Defense counsel, but I'm reading it as the transcript. But it appears

like there's a typo because it should've been Defense or Defense counsel. "-- or a combination thereof. So without having inclination, I'm going to let you argue it." "Thank you." And then Mr. Jones starts his argument.

So that's what the Court had the benefit of back on September 26th. So moving forward, there's clearly statement by the Doyle Law Firm that they prepared and did those interrogatories, which is not permissible under the rules. Those interrogatories do need to be viewed by the client, prepared in conjunction with the client. The clients are supposed to give the answers to the interrogatories. The attorneys are supposed to prepare the objections.

And that presents a challenge in discovery. It also presents a challenge because Mr. Couchot says that there's a depo summary that was done at the deposition. At least that's what he said on September 26th. So if somebody thought that there was an error between the Sinner case and the Center case -- I'm not sure when that deposition summary, because I don't think that was fleshed out at that hearing date. But that affirmatively should have been presented to Plaintiffs. And nobody said that that was supplemented in any manner, as well.

And that presents something additional. And it presents clearly, as discussed at the September 26th hearing, that everybody knew that as of the deposition of Dr. Rives in 2018, he had not disclosed the Vicky Center case. No one presented to this Court whether or not Sinner or Center was said. Nobody provided anything from the underlying actual dictation, so the Court doesn't know. I have different

perceptions provided by different counsel, but no one's gone back to the original case to see whether it was Sinner or Center, or whether there was even a videotape deposition that would enlighten it in that regard. The Court doesn't know.

So the Court doesn't make an opinion on something the Court has not been provided information, at least on the Sinner v. Center, whether that was a typographical error of the court reporter or whether that's what was said. The Court doesn't know. No one's provided me clear guidance in that regard. However, what has been provided is that everybody knew there was duty to supplement. And there was no supplementation done, even as of the deposition, et cetera.

So then we have the issues with regards to the failure. So it's really by clear and convincing evidence this Court has been provided that there is clear discovery conduct which is sanctionable conduct. And the Court is looking at obviously the standards that you look at. It is clear and convincing under -- I can read you straight from *Valley Health Systems*, NRCP 37(b)(2)(c), "When a party fails to make a discovery disclosure pursuant to NRCP 16.1, the Court may make "an order striking out the pleadings or parts thereof...or dismissing the action or proceeding, or any part thereof, or rendering a judgment by default against the disobedient party".

In *Young*, we articulated the abuse of discretion standard with regards to discovery sanctions." And then it goes into discussions about whether Centennial's conduct was willful and talks about whether the Court determined that the clear and convincing evidence standard

was demonstrated.

Here the Court does see that the conduct was willful and intentionally concealed. And a couple of the points where the Court finds it's important in this regard is the *Vickie Center* case, without going into specific dates that you all had previously mentioned, was ongoing at the time. You all referenced this Court previously prior to the date set for the hearing on this motion that the -- there had been significant aspects of things going on in the *Center* case within a short timeframe from when the interrogatories were ongoing, the issues that had come up and paralleled it with regards to things that were not disclosed in the *Center* case, the Brown and the Farris case not being disclosed in the *Center* case, and how Dr. Rives was aware of that, and his counsel was aware of that.

And he had the same counsel, Mr. Couchot, at both of those depositions. But yet to then have subsequently the *Center* case not brought up in the *Farris* case really has it appear by clear and convincing standards that it was willful and intentional. The failure to then -- the fact that the interrogatories themselves were prepared by counsel and counsel said that he utilized the Center interrogatories and then just did not include the *Center* case, also has it appear that it is willful and intentional because if you're dealing with a particular case that you know is ongoing, and then you're preparing the interrogatories that discusses other cases, the very case you're dealing with that you're taking the information from, in addition to the fact that you prohibitedly should not have been doing that.

Now, you do it in conjunction. The Court realizes the practical aspects of how attorneys work with their clients to get interrogatories done. And the Court in no way is minimizing the practical aspect. But you have to ensure that your client is fully aware of what is in those interrogatories and fully aware of what needs to be evaluated. And if the idea is to send an email, as was stated by Dr. Rives on the stand on October 7th, during the second day of the evidentiary hearing, that he saw six-some odd attachments, which was interesting because Mr. Couchot on September 26th didn't even think that Dr. Rives had even gotten them.

And then all of a sudden on October 7th, Dr. Rives had a clear memory of getting them and going to the document that was one of the two verifications, although it was never really made clear whether there was two verifications attached or one. But since it was the Laparoscopic one, that he got that one done and signed. But yet no one followed up with the client to get the other verification, which was known by counsel was needed to be provided to Plaintiffs.

So even the fact that only one verification got provided back to counsel and then did not follow-up to get a second one when they knew they had two clients, and then did not provide either of those, and the either of those did not get provided and they're utilized as a basis on why nothing should happen because it was not verified responses, really has to this Court make it really look like it was by clear and convincing intentional and willful conduct by counsel, counsel being the Doyle Law Firm and the attorneys thereon.

And with regards to the underlying client, well, the Court -- therein lies -- I don't -- the challenge with the client there is the full explanation of his practice because he previously had had cases with the Doyle Law Firm and had done interrogatories. And since that's why he looked for the verification -- I'm paraphrasing -- and just sent back that one. And then he didn't hear back from the law firm. That is challenging, but the Court can't see that that would be clear and convincing that he engaged in intentional willful conduct because to rely on his counsel, and he provided back one verification, if that wasn't enough, his attorneys had an obligation to tell him. And he -- you know, he provided back the verification. He did at least part of what he needed to do. And so that's why the Court sees a distinction there between counsel's conduct and the client's conduct.

So then we go through the verification aspect and reading the verification, and that they're true and correct. And Dr. Rives gets held accountable if he chooses not to open them. He gets held accountable for the fact that it did not have the information. He does have an obligation as the underlying defendant and as the underlying defendant representative for Laparoscopic to actually open up information that's sent before he sends back a verification. And that's distinct from what I just said a moment ago because he does have an independent obligation to open up those documents, to review the documents. And so he can't say that he can't be held accountable because he chose not to open up the email.

Now, the willful intentional I do not see because there was

no follow-up by his counsel. And I see that that's counsel's conduct because counsel knew their obligation was to provide those verifications to Plaintiff's counsel. And there still has not been provided any reason to this Court why there was verification that was provided by Dr. Rives was not provided timely to counsel. There's no explanation whatsoever why it took until September 2019 to provide verifications from 2017. And there is a duty to supplement.

Defense counsel -- the Court does not find it the least bit availing that Defense counsel somehow says that there's not a reasonable basis to supplement because by definition, the information would be necessary. Prior lawsuits, whether they ultimately would or would not come into a case not the issue. The issue was the discovery standard. And the discovery standard clearly would've had that been discoverable information.

The fact that it was so close in proximity for time, the fact that it was not provided and had not been provided in two different cases but yet had already been brought to the intention of the same law firm at a different deposition, and then it's now happening the flip really goes to the intentional withholding of information by clear and convincing standard. So the Court does find that that is willful, and does find that the willful failed to supplement, in clear violation of the rules.

So then -- the Court has now addressed the first two issues in the motion. I actually reversed the two ways that they were done. So then you go through the additional conduct that's mentioned. So then you have the conduct with regards to the deposition of Dr. Horowitz,

what happened there. The Court's going to find by clear and convincing evidence that that was willful and intentional conduct. And I'm not sure if we might need to take a brief break before we do it, but the Court was going to have the Court reporter actually play the clip, because in this one, the Court was looking at all this trying to give the full benefit of the doubt to Defense counsel and his client, the Court actually looked at the video because I have two very different perspectives of what happened on October 18th between the motion and the opposition.

So the Court went back to the video to -- video of that date to clearly see and hear everything so to give full benefit of the doubt to Defense and Defense counsel. Unfortunately, the video clearly shows in addition to the words, it shows how and what was actually done on October 18th.

So I think now might be a good time for a break because my team needs a brief break because it is 3:25. And it's going to take us a moment or two so that that clip can get teed up. Thank you so much.

MR. LEAVITT: Thank you, Your Honor.

THE MARSHAL: The Court is in recess.

[Recess taken from 3:26 p.m. to 3:41 p.m.]

THE CLERK: On the record.

THE COURT: Okay. So back on the record. And right before we went off the record with the Court, stated is it after our receiving this motion and reading the opposition and everything is that there was two very different positions taken by the parties, so the Court, in order to determine positions of the parties went back and looked at the video of

the day. And so I'm going to ask Madam Court Recorder. She's going to do it from a question beforehand and to -- this is on -- Madam Court Recorder, can you confirm that this is October 18th, right? It shows what it is; is that correct?

THE COURT RECORDER: Yes, Your Honor.

THE COURT: So it's going to play from October 18th. Is it -- the timestamp on that, please, Madam Court Recorder?

THE COURT RECORDER: 4:40 -- 4:44:54.

THE COURT: 4:44:54. So it's a question before. So that everyone can see what the Court had the benefit of is one of the things that it was looking at in light of to give everyone a full and fair opportunity. Actually, we did the actual dep -- the court proceeding from this time period. So go ahead, Madam Court Recorder, can you play this?

(Whereupon, a video recording, was played in open court at 3:42 p.m. and transcribed as follows:)

THE COURT: Can everyone see that okay? Yes?

MR. DOYLE: Yeah.

THE COURT: Okay.

(Video ended at 3:44 p.m..)

THE COURT: Okay. Madam Court Recorder, does it end there?

THE COURT RECORDER: Yes, Judge.

THE COURT: Okay. So it ends and then you have the white noise of the bench conference. Okay. And the reason why the Court

thought it was very important to show that clip is because when the Court reviewed that and after, like I said, looking at the pleadings for this motion is, one, to have an idea of the -- what actually happened. Go back and see because it's been a little bit of time. And what the Court -- what you all saw is, and let's get a little bit of background why the Court is going to make the determination that the Court's going to make.

As you all are aware, EDCR 2.69 requires that the deposition -- original depositions must be lodged. That was already discussed multiple times. Also provided not only in EDCR 2.69 but also in the Court's court rules. The parties know that the requirements of what is required at a calendar call is not only in the trial orders mentioned by the Court. Obviously, at the pretrial conference was specifically, again, mentioned this particular case, specifically, on October 7th, the day before the calendar call reminding all the parties that they needed to have everything present at the calendar call. You easily got the transcripts. You can see what it says there.

Then on October 8th, at the time of the calendar call, the Court had each of the parties went through each of the things that they had, including the depositions, and the Court allowed each of the parties to read each of the depositions that they were lodging on that date. On that date, there was no request at all for any additional depositions to be lodged. There was an issue with regards to a couple other things that were mentioned and so the Court on that date didn't submit a transcript. Gave the parties to the end of the day on the 8th to get things in equally to each side. So there was an additional extension. What got in, got in.

There was no deposition of Dr. Hurwitz mentioned or provided to the Court by that end of the day on the 8th. Instead, then you know that on October 14th, and we went over this yesterday but I'm just repeating it because you got some people here in the gallery. Just so that they understand what was discussed yesterday so for just clarity. Is -- and I don't -- on time I believe it was sometime 3ish in the afternoon on the 14th the first time it was raised that the doctor -- Defense counsel raised they had the Dr. Hurwitz deposition. And I went through this specifically with the language with regards to that yesterday. Is in that juncture that there was a thought potentially by Defense counsel that may have mentioned it at the calendar call. So the Court did specifically say on October 14th.

Once again, you all have gotten the discs and I know Defense counsel stated they've gotten their own -- had litigation services transcribe it for him. I don't know if he did this day or not but apparently. So said that the Court specifically said that it would do a carve-out. Gave Defense counsel the opportunity to see. To go back and review the October 8th transcript that had been provided, because it had been purchased, to Defense counsel to review it and gave to the 15th and said that it needed to be presented to the Court on the 15th if Defense counsel felt that there needed to be a carve-out with regards to Dr. Hurwitz.

There were some additional questions about whether or not it had been done on an expedited basis versus a regular basis, et cetera, but the Court did specifically give in addition to the extension that had

already been given on the 8th. Nothing had happened with Hurwitz or even mention of Hurwitz but then gave the specific deadline of the 15th to bring to the Court's attention the Hurwitz deposition if in any way it was wanting to be utilized in any manner whatsoever.

Court's not yet getting to NRCP 32, but we'll get there in a moment. So there -- after 15th came and went, it was not mentioned in any manner. There was no request made of the Court with regards to the Hurwitz deposition. You had the 15th. You had the 16th. You had the 17th and you had literally all day on the 18th. All of you see from the timestamp of when this question was asked it was late in the afternoon around the 4:44 or 4:45 timeframe that in the midst of Dr. Hurwitz's testimony on cross-examination the question that got asked. And you saw on that video clip which is one thing that the Court saw is that there's questions asked, albeit a whole bunch of questions about the *Vickie Center* case. Okay. Which far in excess of what the Court was allowing on its pre-instruction, but that was Defense's own decision so.

But you saw bends over, picks up the deposition which was there. It appeared on counsel's table. Was there. Picked it up. Was holding it and was reading from the deposition, which was a strong concern to the Court. And actually, so it wasn't just a general reference on looking at a notepad and referencing some prior testimony. It was physically picking up the deposition.

And then you heard the words that were stated. They're in front of the jury. Never outside the presence of the jury even though it had the 15th which was the deadline even. Or the 16th or the 17th or

earlier the day of the 18th that there was any intention to in any way want to utilize that deposition in any manner whatsoever because of the specific discussion on the 14th that should've specifically been brought to the Court's attention. And it didn't even need to have the Court to even say that because NRCP 32 is very clear on the use of a deposition in court proceedings.

But nevertheless, it was in front of the jury and the way it was stated that, oh, I can lodge the deposition. I have copies. So that's why the Court really is going to find that the conduct was intentional and willful because the deposition was right there. It appears there was copies specifically brought. Specifically stated as part of the scripting of how the cross-examination went while looking into the deposition. Picking it up physically in front of the jury to see that it is a deposition. Then asking the question. Then you had the objection by Mr. Leavitt and then a statement in front of the jury even after this objection. Knows full well, this experienced litigator, there's an objection. You don't say something like, well, I can lodge this, and I have copies as well. Okay.

Even in the absence of the specific discussion on the 14th, that's why this Court would really find clear and convincing evidence of willful and intentional conduct. And the Court even notes that when it looked at the opposition that somehow the oral order did not specifically clearly prohibit it other than opening and publishing. Well, the transcript -- well, obviously, by the own opposition it said that the Court prohibited opening it so, obviously, there was a deposition opened in open Court in front of the jury so there really wouldn't be a distinction between the

original publishing it. Plus, does it really even have to go there. NRCP 32, using depositions in court proceedings is very clear when a deposition can and cannot be used.

Dr. Hurwitz was not a party opponent. Dr. Hurwitz was an expert. It says when it can be used, right? It can be used -- talks about in general. No one said any of those would be in general. In fact, when you all came to bench, no one even asserted that the deposition was trying to be used for any purpose appropriate under NRCP 32. That was never even mentioned at bench or was it even requested afterwards. Ever mentioned. Okay.

The Court's saying this with regards to NRCP 32, but that argument was never even brought to the Court's attention nor was there any offer of proof made at any point whatsoever in a timely manner before Dr. Hurwitz testified. And you all know by October 18th how many times this Court had already told counsel not to address issues in the middle of witnesses testifying. That she needed to ensure that the Court had any issues addressed before the witness went on the stand because it would be completely impermissible to try and raise these issues that you knew that you were going to do. Meaning you knew if you were going to ask a question at a deposition.

You knew this can happen. If any of those -- any questions about any of the Court's prior rulings address that outside the presence of the jury. That was specifically discussed with all counsel prior to the 18th. There would be no basis for anyone to think that there was any question about a Court ruling that anyone could mention in front of the

jury.

And NRCP didn't -- it wasn't impeachment or the use -- in order to be utilized, it would have to have been lodged -- have to be lodged under EDCR 2.69. It was not done so. There was no request even after the Court gave the additional permission. The additional extension to the 15th. That was not utilized. Never brought to the Court's attention. It then was right in the middle of cross-examination in front of the jury lifted up. Specific question asked. And then the additional comment which is why this Court really finds it so clear and convincing that it was intentional by not only the deposition but also copies. And that's really where it's very, very, very concerning to this Court.

It's not that, oh, inadvertently I just brought my own copy of the deposition. It's, like, no, I have re-brought the original deposition plus extra copies in front of the jury to say that statement. Court doesn't see that that's inadvertent blurt. In fact, it wasn't even said it was an inadvertent blurt. And then, of course, that's prejudicial to Plaintiffs because here now it's in front of a jury. It's a per se rule violation.

Even in the absence of NRCP 32, the Court doesn't even need NRCP 32. Those are two independent analyses. But NRCP 32 says when a deposition can be used, but even in the absence of NRCP 32, okay, the Court had given a specific order and it even given the opportunity for counsel to provide whatever information he wanted with regards to the Hurwitz deposition. Said it needed to be done on the 15th. It wasn't done. Completely waived any aspect with anything regarding the Hurwitz deposition or any opportunity to bring it in in any manner, the

deposition itself.

And so then the Court even asked when you all are at bench, how would there be any justification to do indirectly what you could not do directly? There was no explanation given. And so the Court would find that, once again, there would've been opportunity right then and there if somebody felt that there should've been an explanation. Could've been given. Was not given. There was no inadvertent -- any at that time any statement that misunderstood the Court directive at all. It did show up in the pleading afterwards, but it did not show up on the 18th during the trial, so that's why the Court would find that that conduct during trial is clear and convincing, intentional and willful.

So that's clearly set forth in the motion as well, so the Court does find that Plaintiff's aspect in that regard is well-taken. So then the Court is looking at the degree of willfulness. Well, the Court's analyzed the degree of willfulness. The Court has explained why it's found willfulness in at least two of the areas and it finds very strong willfulness. I mean, you don't bring a deposition plus copies of a deposition. Do it in the middle of cross-examination when you know that there's been several discussions about discussing things outside the presence of the jury. Discussing things before a witness comes on the stand.

And there's been a specific carve-out for that very deposition to be addressed on the 15th and then you waive that opportunity. Don't bring it up on the 16th or 17th. Everybody knew Dr. Hurwitz was testifying on the 18th so it's not as if he was a surprise witness that came and spoke. So it was plenty of time. Because if you all look at the

entirety of the 18th and see how much time there was spent outside the presence on the 18th for oral argument on a variety of different topics, this Court in no way limited you all.

You can look at the comparison of how much time was spent outside the jury's presence with regards to oral arguments addressing each and every issue that you all brought up. Whether or not you brought it up right then and there. You missed things. Or you brought it up before a witness or you asked it multiple times during the day at all the breaks, et cetera. So full opportunities to be heard. Never chose to do it. Instead, did it right in front of the jury and that's why it was so important, like I said, to show the video. So degree of willfulness is egregious. I mean, unfortunately, the Court is looking at these issues, so these issues are extreme.

And then you also have the additional issue of the rest of the brief. And we're going to go to the brief so. Also brought up and brought up and addressed in the opposition. And it's key here. I should -- I'm sorry, before I go on. What's key here is also is the Court didn't look at the opposition filed by Defense counsel. And even contending that section -- Section 4 says an attempt to impeach Dr. Hurwitz is not grounds to strike the answer. So even saying that -- I mean, and the only way to use impeachment is a published deposition. So even by that own language in the opposition and the analysis thereon makes it clear it was an intent to impeach by utilizing a deposition that was not lodged because of Defendant's own conduct.

Defense counsel had a full opportunity to provide it on the

8th just like any other deposition if they felt that there was a need. Extenuating circumstances. Had a fine opportunity by the end of the day of the 8th just like any other deposition. Anything else that you all require that day. And then the additional chance on the 14th to bring it to the Court's attention. All those opportunities not utilized. Fully waived and instead done on the 18th in front of the jury. So the Court looked at that as well.

So then we go to the aspect of which of this conduct was taken care of in the prior hearing on the first motion for sanctions and which is new conduct that occurred after the first hearing, and whether or not the Court should take those together because of a conduct being ongoing of an egregious nature that this Court's already found to be willful and intentional. Okay.

So the Court in fashioning remedy is not going to be in any way sanctioning Defendant for something that the Court had already addressed in the first motion. But remember in the first motion for sanctions, the reason why the Court -- although the Court found the conduct to be egregious, Court found that all the appropriate standards had been met. The Court's ruling in not striking the answer at that time based on after having a three-day hearing, right? You all had September 26th. The Court then offered the evidentiary hearing for the 7th and then you also had the 10th. I said even after those three days is because of the timing of when Plaintiffs brought it to the Court's attention. Okay.

It wasn't the nature and the egregiousness and the willfulness of the conduct. It was the time of when it was brought to the

Court's attention. That same issue does not apply with the renewed motion because the renewed motion includes trial conduct. Trial conduct could not have been brought to the Court's attention prior to trial by definition. And so now the Court has to look at this differently.

The Court also has to look at the ongoing conduct because what the Court has to look at is at this time with this ongoing egregious conduct by a clear and convincing standard that's willful and intentional, the Court had already had a sanctioned hearing by Plaintiffs. But in addition to that, the Court had already had other -- well, had already issued the two orders that were setting the hearing. Saying there was impermissible documents. Had already given -- and that was the two I mentioned before. Had already given a memo on impermissible pleadings to Defense counsel. And had already walked through, if you all recall from the September 30th supplemental pleading which is -- I don't want to -- sorry. I'm sorry, I don't mean to say September 30th. I just misspoke on the date. My apologies. Let me get the correct date.

It was the pleading that was filed on October 4th, I believe. I want to get the correct date. I believe it was the pleading that was filed on October 4th that was discussed on October 7th. That impermissible supplemental document. And so while I may be off on the date, it is the discussion that the Court had with the parties. It talks about on -- starts on page -- one moment, please. I'll get the correct date. Court discussed at the beginning of the hearing on October 7th because a pleading had just been filed. And -- okay.

Okay. Friday. So it would've been Friday before, so that

would've been October 4th. Okay. And that was that supplemental document regarding the alleged Brenske conversation. And I only use the term alleged because the document obviously was an impermissible document, so that's why I'm using that term.

So I already had that discussion about ensuring the Court fully be put on notices. The fact of not filing or providing documentation. And not doing -- surprise and making sure that it had the Court on notice. And so that also is of concern because that happened post the prior hearing. At least the notification shouldn't -- the conduct of the prior pleading on October 4th of course did not happen prior to the Court's ruling on October 10th. But the notice of what conduct was appropriate and not appropriate was fully discussed. And so the Court has to look at the background of do we have all this ongoing continuous conduct and there is.

So regardless if I start the conduct which Plaintiff is asking I should start it back in discovery or whether I even start it after the first motion for sanctions and then do the conduct during the course of trial which is the renewed motion. Under any of those standards, they're still egregious, impermissible conduct during the course of the trial that directly could have had an impact.

Now whether it did or didn't, Court wouldn't know because didn't ask the jury on those specific questions because questions because it -- or at least this Court didn't ask the jury because the Court doesn't ask the jury those questions. Court only asks the jury, you know, what things the Court can do to improve and how is their time as

being potential -- how is their time as being jurors. I don't ask any substantive questions. I just want to make sure everyone feels like they were appreciated for doing jury duty.

So now you have at this juncture, egregious conduct happening after we've already had one sanctions hearing where the Court has made a ruling. You've got *Johnny Ribeiro*. You've got *Valley Health Systems*. The Court fully appreciates *Rish v Simao* cited in Defendant's brief as well. You've got all those analyses in other cases. So what's the remedy?

Well, as you all are asking me to look at this right as of the time that the hearing was initially was supposed to be, the Court can't disregard what the verdict -- can't look at what the verdict was because Defendant objected. Which appreciate he had an objection. That's why the Court wanted to know, because it comes with the positives and the negatives, right. If the Court has to look at it with the eyes on the day that the hearing was, the Court can't take into account what the jury verdict actually was. Right.

The Court has to take into account what was the conduct. What would've been the impact at the point in time that the hearing would've initially happened because that's what was asked to do for the due process and that that's the way it was noticed. So I can't give the benefit of saying, well, because a jury verdict did this and so therefore look at it from hindsight to a benefit, but yet not take into account the continuing conduct. It's got to be if it's a cutoff, it's the cutoff date. Fairness to everyone as if the hearing had happened on its originally

scheduled date. Right. I'm sure both parties -- does either party disagree that that would be the appropriate way to do it, right?

MR. DOYLE: I would disagree because now you're blending their motion with the Court's own --

THE COURT: No, I'm not.

MR. DOYLE: -- motion.

THE COURT: Counsel, what I'm just saying is you made a statement in your argument that wouldn't have any impact because the jury verdict was what the jury verdict was. If you're asking this Court to put this motion -- a Rule 37 renewed motion, only take into account the motion, the opposition and the reply and the conduct that happened as articulated in the motion, opposition and reply.

The Court also cannot take into account what was the ultimate jury verdict because if you're asking me to cut it off at that point of time, right, as the day the hearing should have been initially, subject to you all wanting it continued. I've got to cut it off for everything. I can't cut it off for not taking into account conduct but then somehow include the jury verdict, right? If you're asking me to treat this as if I heard it on the Wednesday originally it was going to be heard, then I have to do that for all purposes. I can't take into account the jury verdict.

You're saying for your due process opportunity to be heard, right? So you can't have the benefit of having the jury verdict but not have any of the conduct taken into account, right? Fair is fair. Treat it as if it was the day originally was going to be the hearing is what you asked this Court to do for due process standpoint, so I'm doing that for all

purposes.

MR. DOYLE: No. My -- your question to me and my comment had to do specifically with Plaintiffs' motion to the extent you are now adding to or separately discussing the Court's own concerns and what the Court wants to do on its own regardless of Plaintiffs' motion then, I mean, that presents a different set of circumstances.

THE COURT: I'm not.

MR. DOYLE: Okay. Well --

THE COURT: I'm very clear that I'm not. Okay. I'm sorry. Let me go back. Plaintiffs' renewed motion for Rule 37 sanctions, et al. was originally to be heard, right?

MR. DOYLE: Uh-huh.

THE COURT: On the 22nd. On that date certain. You have a motion. You have an opposition. You have a reply thereto, correct?

MR. LEAVITT: Correct.

THE COURT: Both parties agree on that, right?

MR. DOYLE: Yes, Your Honor.

THE COURT: I had understood Defense counsel when the Court asked the question about whether or not the conduct that should be considered in this Rule 37 motion only, not dealing with the Court's motion -- the Court's order, right, on what it's hearing. Court doesn't file motions. It's the Court order. Okay. To hear the parties explanation with regards to conduct. So not that hearing yet.

On the Rule 37, if I'm treating it as if it was heard on the date it was originally going to be heard and only take into account the alleged

conduct up until that date that this motion was going to be heard as articulated in the motion, opposition and reply, then I also have to not take into account what the actual jury verdict was because in fairness, if I'm only taking into account the conduct as if this motion happened basically nunc pro tunc to the day originally was going to be heard then I can't have the eyes of what actually ended up happening with the verdict.

I have to look at it as if I was hearing this nunc pro tunc to the day it was originally going to be heard on I believe it was the Wednesday, but it's the day that it was originally going to be heard in the midst of trial. I'm just confirming that both parties agree because that's the fair way to do it. That's all. It's nothing to do with the Court's order.

MR. DOYLE: But my comment was about the conduct. I mean, if the Court is going to strike -- I mean, I think the Court has to look at the verdict in terms of to what extent the motion and the relief sought is moot.

THE COURT: Well, but -- okay.

MR. DOYLE: I mean, is the Court contemplating striking the answer now?

THE COURT: Well, the Court is evaluating all remedies that are sought in the motion. The Court, in doing so, has to look at it because you raised an objection for notice to be heard and due process that you did not want the Court to look at anything that happened after the date that this motion was originally going to be heard.

MR. DOYLE: The conduct was --

THE COURT: So you want the Court not to consider any conduct but yet you get the benefit of the verdict?

MR. DOYLE: Well, of course. Because how can you strike an answer when there's a verdict in favor of Plaintiffs.

THE COURT: Well, the Court's about to answer that question potentially, right so--

MR. DOYLE: Okay. Well, I'll wait and hear.

THE COURT: Okay. So, well, the Court doesn't find that Defense's position is appropriate in light of these circumstances because if the Court's only going to consider the conduct and treat as if the Court heard it on the date that the Court heard it then the Court has to do a remedy as if it heard on that day. Fully taking into account that its remedy from a practical sense is an alternative remedy to what actually happened in this case.

So it would only be an alternative remedy of what the Court in hearing this motion would find from an alternative remedy as a sanction. Because if it's being asked that the Court preclude -- by Defense counsel that the Court preclude the monetary sanction request asked by Plaintiffs' counsel because that was not in the motion, opposition and reply. Then by definition I can only -- that if you're saying that they can't do monetary as an alternative then I have to look at what was requested in the motion.

Plaintiffs can't get precluded from every single aspect of their motion and not have actually be heard both from a substantive standpoint and a remedy standpoint because the parties jointly agree

that it could be deferred until a later date. The Court would have to look at it -- bless you.

Nunc pro tunc to as if it were heard on that Wednesday, and any relief ordered the Court would have to say is alternative relief what the Court ordered. And is not an advisory opinion. It's an opinion nunc pro tunc. But it's nunc pro tunc to modify or change the jury verdict. It is an alternative of what the Court's ruling would be for sanctions. I'm not -- let me be clear. Let me phrase it a little bit differently.

I'm not -- the order is not going to be nunc pro tunc. Let me be clear on that. It's that I'm trying to explain just from a conceptual standpoint. And I only use the term nunc pro tunc not for what the order would be but I'm using it conceptually on what the Court is looking at for both the conduct and what would've been the remedy. Okay. Because the alternative is I have to look at what is an appropriate remedy with view of today. If look at appropriate remedy of view today, then I need to take into consideration Plaintiffs' request for monetary sanctions distinct from the monetary sanctions that they would've asked for in their initial motion.

Because in fairness, can't preclude all the remedies asked by a Plaintiff and then somehow not have the conduct. Okay. Meaning, can't say Plaintiff gets absolutely no remedy because they have a jury verdict in their favor. That their motion, because they agreed to have it heard at a later date, somehow they have no chance to have any remedy whatsoever. Both sides have to have fair and impartial opportunity to have this motion.

And if you even look specifically in Valley Health Systems, they even talk about how things aren't moot because of footnote 1. Threshold is about whether or not the matter's moot since the underlying case was settled. They even found in that case that the underlying issue was not moot even though the case had settled. The Court, by analogy is using footnote 1 of Valley Health Systems to find that it needs to still address this issue. Because guess what? Before you all started your oral arguments today, no one raised the issue that the whole issue is moot, and the Court shouldn't be hearing the motion at all. So Court has to address the motion on the merits and do a remedy.

So here is the Court's going to remedy in a variety of alternative bases. Okay. The Court's remedy would be as follows:

As a sanction, which is one of the requests here in the motion itself, if the Court had heard this on the date sought, the Court would've as a sanction granted the relief with regards to the past medical specials. And that was one of the areas of the brief that was sought. And the reason why the Court would've granted that is there was a couple of different alternatives for relief sought. One of those was to strike the answer. Once again, while the answer -- really there is enough to strike the answer in this case, the Court is not going to strike the answer in this case because there was some additional conduct that happened during the trial that if I take this in totality with everybody's benefit then there are a few challenges here between the conduct of counsel versus the conduct of the parties.

Once again, having to take that distinction, the Court finds it

to be a very, very, very, very close call and that really is dicta because I'm not making the call. But that it wouldn't have stricken the answer because with regards to Dr. Reeves, it would've been striking his and laparoscopic's because of the conduct of his counsel. And the Court can't attribute some of the most egregious, which is the Dr. Hurwitz and how that was handled to Dr. Reeves. And the prepping and the potential perjury had not been flushed out enough that the Court would find that striking the answer would've been the appropriate remedy.

So then the Court looks at the alternative relief. The alternative relief -- the additional jury instructions would've been to lessen the sanctions. The Court would've found that there needed to be a monetary component to take into account. In the monetary component, the reason why the past damages would've been appropriate, is the past damages was the amount that would take the nature of the past damages is where Dr. Hurwitz's testimony was impacted. Okay. His impact is that he was not allowed to really give his testimony.

The conduct of the various objections. The conduct of the -- and that's stated in the brief as well. The conduct of the trying to bring in the impermissible deposition transcript did not -- and the way it was done did not allow Dr. Hurwitz to actually complete his testimony in a fully manner could've impacted the case. Because at that juncture, remember what the situations was. You all didn't know whether you all could get Dr. Hurwitz back or not. And Dr. Hurwitz then had to appear via video conference to the prejudice and detriment of Plaintiffs.

So Dr. Hurwitz wasn't even able to, in some respects, fully articulate some of his answers because of that harm was done by Defense counsel's conduct. So what would be the impact of Dr. Hurwitz's deposition testimony? Dr. Hurwitz's deposition testimony -- excuse me, I said deposition, I'm sorry, I meant to say trial testimony. My apologies. Is what is the harm caused by that? The harm caused by Defense counsel's conduct and that of his client impacted the past medical specials and whether or not -- well, it ended up through different rulings that the Court wouldn't be able to take into consideration, but it did impact the potentiality of Plaintiff being able to provide testimony, et cetera with regards to the past medical specials. So that would've been the appropriate sanction.

So what the Court is saying from a sanction standpoint, is regardless of the Rule 50 motion, that's -- I already ruled on Rule 50 as why it was on the special, right? It's Rule 50 motion is one avenue of how the medical specials were established. Alternatively, the medical specials would be established as a sanction because of the conduct of Defense counsel and its client, that would've required that to be the appropriate sanction remedy. Okay. However, the Court fully realizes that that sanction remedy is no longer needed at this juncture because of what ended up happening with regards to the jury's verdict.

However, if the Court just remains -- that is that would've been the sanction remedy this Court would have issued. And the Court does not find that that's an advisory opinion because by you all's specific agreement, you always wanted the Court to not rule during the course of

the time of trial was because you all asked this Court to wait. So in waiting, the Court doesn't find that that would moot the issue because that would be unfairly prejudicial to Plaintiff by agreeing that Defense counsel was able to put on their witnesses and then agreeing that this issue got postponed, should not prejudice Plaintiffs from actually having a ruling.

Now to the extent that that ruling is in no way intended for Plaintiffs' counsel to get any additional damages, Court's already signed the judgment. Hopefully, you filed it. But the Court is just making note that that would have been the sanction. Okay. And is the sanction if the Court issued this order. You would've heard it is my inclination back on that Wednesday because I -- we looked at the video, but I looked at the video before the day I was going to be hearing this to make sure soon as I saw these briefs. So everything I'm saying today is pretty much the same I'd be saying, with some few exceptions, that I would've been saying back that. So that would've been the sanction. That is the -- as an alternative relief. Okay.

And it's in no way -- let me be clear, in no way vitiates the special verdict or anything like that. It's just purely alternative relief, as if this motion had been heard back on the date that you originally -- prior to all your agreements to get it continued. So that ends the Rule 37 renewed motion hearing and that's the Court's order. It is so ordered.

So that means that one's taken care of. Anyone have any questions on that?

MR. DOYLE: No, Your Honor.

THE COURT: Counsel for Plaintiff?

MR. LEAVITT: No, Your Honor.

THE COURT: Okay. So and let me be clear. In doing that fashion remedy, I am not denying any alternative request for fees and costs that may or may not come before the Court. Court's going to have to evaluate that when it comes before the Court. The Court's not taking any affirmative position on that. The Court -- just because there was an objection, the Court could not consider an alternative monetary amount that was not in the underlying pleadings is why the Court did not address that alternative monetary request.

MR. LEAVITT: Very good, Your Honor. I understand.

THE COURT: Okay. And both sides understand that? Okay.

MR. DOYLE: Yes.

THE COURT: That's where the Court's going for that. So looks like we're going back to -- well, got two choices. Do you want to -- seems to me I need to clean up the offers of -- finish off the documents that were filed on November 1st. I just didn't know how many of your people were staying for the ones past the Rule 37 so for courtesy to them, I was trying to get that one done for you first.

Okay. So let's go back to the offer -- the November 1st documents. November 1st documents, the Court already went through four of them -- I mean, excuse me, three of them. Court sees that it has the other four to address on the order to show cause. So the order to show cause, Court can -- I was doing this in timestamp order. So let me get back to the timestamp order. Timestamp order, next one would be

Dr. Brian Juell. Order to show cause on Dr. Brian Juell -- okay, Dr. Juell. Give the Court one moment so I can switch my papers.

THE COURT: Sorry.

UNIDENTIFIED SPEAKER: Excuse me.

THE COURT: No worries.

Okay, the assertion there is that Dr. Juell's testimony had not been limited. So with regards to Dr. Juell, similarly, the Court, as with the other three -- do you want me to go back, procedurally, to ask you the same question with regards to why you didn't notify the Court when you filed this or notify opposing counsel, or should I just go to the substance?

MR. DOYLE: Please go to substance. The answers wouldn't be any different.

THE COURT: Okay.

Counsel for Plaintiff, do you have any objection if I just go to substance, in light of Defense's response that the answers wouldn't be any different?

MR. LEAVITT: No, Your Honor. I have no objection to that.

THE COURT: Okay. So this would be another one that the Court went back and looked, and I didn't see any request for any offer of proof. I know you've had the intervening day between yesterday and today. Counsel for Defense, is there any assertion that you requested an offer of proof, at any point, with regards to Dr. Juell?

MR. DOYLE: I frankly can't remember, but if the Court went back and checked, I'd defer to the Court.

THE COURT: And Counsel for Plaintiff, I'm in no way precluding you from speaking or setting forth a position if you -- sorry, is there a question for me?

UNIDENTIFIED SPEAKER: No.

THE COURT: Oh, okay. No worries.

So if you have a position or something that you need to set forth, I just was trying to -- just one moment please -- but you didn't file anything, so the Court had some specific questions the Court was asking, but I'm not in any way precluding you if you have a position or not, so --

MR. LEAVITT: Well, simply put, Your Honor, these are rogue documents. Again, Plaintiff's position is, is on *Southern Pacific Transportation Company v. Fitzgerald,* 579 P.2d 1251, "If appellant's counsel learned, after presentation of the evidence, that a definite job offer" -- it goes into it. It says, "An offer of proof obviously is not a proper substitute for the tender of evidence which was never been presented or ruled upon. Apparently, counsel made his last-ditch offer of proof for the sole purpose of attempting to save the issue for appeal."

These offers of proof are rogue documents. There's case law on it. Defense Counsel said he did a search. I did a search on the free service provided by the Nevada State Bar, which is *Fast* case. I found it in moments. These are rogue. They should be struck. They should never be permitted to be discussed outside of this Court's ruling. That's the Plaintiff's position throughout this whole -- and in fairness, we also have the same thing in *Las Vegas Convention and Visitors Center (sic)*

vs. Miller. The Court is aware of this citation.

THE COURT: Uh-huh.

MR. LEAVITT: And that's the Plaintiff's position. He should all be struck.

THE COURT: Okay. Well, the question's really with regards -- whatever Counsel contends, whatever you'd like to say with regard to Dr. Juell, because I will tell you, the Court went through on this and didn't see that you'd ever questioned an offer of proof. The Court saw that there was briefing on the issue on the expert reports. There were questions and extensive oral argument on Dr. Juell. And the Court did specifically provide Defense Counsel the opportunity, specifically on Dr. Juell, to show me his various reports and where things were in his reports, or where they were in a deposition, or they were in any way appropriately disclosed in any manner.

And nothing was asked, if there was any offer of proof, either directly -- not even utilizing those words, but anything that said that there was even any reconsideration of any of the determinations. And so I couldn't even find something about what day, because he testified for different days, which day you may even be referring to in this particular one.

So maybe you can enlighten the Court what day you were talking about, of his trial testimony, that you think something was not done? Because, I mean, honestly, it's three weeks' worth of testimony. I went looking through for things to try and give the benefit of the doubt before this hearing, and I couldn't find it.

MR. DOYLE: I can't tell you the day. However, his ability to offer these opinions was brought up. It was objected to. There was discussion. The Court ruled for various reasons. I don't recall the details.

THE COURT: Uh-huh.

MR. DOYLE: And the Court ruled that he would not be able to offer these opinions, hence, the offer of proof --

THE COURT: Well, the -- okay.

MR. DOYLE: -- in the event that on appeal there's disagreement about the Court's ruling precluding those opinions.

THE COURT: What opinions are we even -- I mean, see, the challenge here for the Court is, these are so vague and ambiguous. Without any dates, without any kind of information, or any reference to any rulings, I've got no dates, I've got no rulings, I've got -- when I say, "I've got", probably more particularly I should say, you understand, your offer of proof is a couple of -- a few sentences. I mean, it takes up -- well, other than Defendant's Barry Rives' laparoscopic surgery, hereby submit the following offer of proof, colon, and then it just says, "If Dr. Brian Juell's testimony had not been limited, he would've testified the ligature device did not cause the two holes found and repaired by Dr. Barry Rives, how the device works, the steps necessary to create a hole, hole thickness injury, have to place jaws across the bowel itself and cauterize, burn, or cut with a blunt blade or both; a hole would've been obvious to Dr. Rives; it would not have been possible to close the holes with staples; and Dr. Rives" -- would've performed -- sorry -- "would have had to

perform an open procedure, colectomy and colostomy. Reports and depositions are attached as Exhibit A, B, and C, respectively.

But it never says what ruling, in any way, directly did that, whether it was a specific question that there was an objection; and then you could've easily asked another question afterwards. And so --

MR. DOYLE: I asked Dr. Juell the question, to a reasonable degree of medical probability, did the ligature device cause the two holes? There was an objection that there was not an opinion previously expressed. There was discussion. There was argument. There's a Court ruling. I can't tell you --

THE COURT: The two holes.

MR. DOYLE: -- what day or what time that happened. And then the remainder of the contents are the offer of proof or follow-up questions, if he had been allowed to give that opinion.

THE COURT: But Counsel, are you contending that you even asked anything about hole thickness injury? I went listening for that, and I --

MR. DOYLE: Well --

THE COURT: -- because that was kind --

MR. DOYLE: -- it was a follow-up question to the question I couldn't ask.

THE COURT: So it was never even asked; is that correct?

MR. DOYLE: I was not -- if I had been allowed to ask Dr. Juell if the ligature device caused the two holes found and repaired by Dr. Barry Rives, he would've said no. And then I would've asked a number

of follow-up questions that I've outlined here to bring out the bases for his opinions.

THE COURT: Well, but you never asked the Court those other --

MR. DOYLE: Well, I couldn't.

THE COURT: What --

MR. DOYLE: They're follow-up questions to the question the Court precluded.

THE COURT: Well, wait a second. An objection to a specific way a question gets asked; people reframe the question and reask the question in a different way, if that's the objection. Then you have an opportunity to rephrase it, reask it all sorts of different ways. Remember, the Court always said, sustaining the objection was sustaining it to the way that the question was phrased. And oftentimes, I even say, sustained, the way the question was phrased.

So whether I said it or not, it was to a specific question. And the Court, in not having -- there was no -- are you saying there was any reconsideration of the Court's ruling in that regard?

MR. DOYLE: I don't have anything else to add.

THE COURT: I was just asking. Are you --

MR. DOYLE: This is simply a document prepared to preserve the record on appeal.

THE COURT: But, Counsel, the reason why the Court keeps asking these questions is, you can't preserve something in appeal if you never bring it up with the Trial Court. I mean, there's so much case law,

and the fact that in order to bring something up on appeal, you have to bring it up to the Trial Court.

MR. DOYLE: I did --

THE COURT: And that --

MR. DOYLE: -- bring it up.

THE COURT: You brought up anything about --

MR. DOYLE: I --

THE COURT: -- thickness --

MR. DOYLE: The basic opinion is stated after the colon. Everything that comes after the semicolons are follow-up questions to the question coming after the colon, to explain the bases and the reasoning for his opinion. If you preclude the basic opinion, then it's not possible to ask the bases and follow-up questions to get the bases for the opinion that has been precluded. I mean, that just doesn't make any sense. And you and I disagree about this and --

THE COURT: It's not a disagreement.

MR. DOYLE: And --

THE COURT: I'm asking whether you asked the question. I know there was testimony of what a ligature was. There was testimony that got fleshed out during the trial, what a ligature was and what it does. And so when I see in here that that wasn't discussed, ligature was discussed. Ligature, how the device works, was discussed from various different witnesses.

And so that one doesn't seem -- I mean, per se, that does not seem a genuine concept. It seems disingenuous to say that there is no

way anything was ever discussed with ligature, how the ligature device works, because that was discussed.

Then I look at questions that were never asked. How could the Court have ever had an opportunity to ever rule on something that was never asked, because that goes back to the crystal ball thing that I asked you all, over and over, and you kept on saying, I don't have a crystal ball. You need to present the specific issues to the Court, so that I can rule on them. I'd be glad to rule on them, but if you don't give the Court a chance to rule on them, and don't give Plaintiff an opportunity to hear what it is, how is it possible to say that it could in any way be presented? The Court, if you did reconsiderations, the Court would've evaluated it and ruled on it.

I ruled on every single thing that you all asked the Court to rule on, and even when you came back and asked things to be ruled on multiple times in different ways and different things. Dr. Chaney, as I mentioned, was one of the good examples, when round 1 issue was, she had one subpoena. Then it was, no, she had two subpoenas, and then it was, no, she voluntarily. So each of those different contentions raised by Defendants, three different arguments, which the Court sill addressed each and every one of those, and gave you an opportunity, even Dr. Chaney came on the stand outside the presence of the jury to address each of those.

So that's why the Court's asking these questions, because I'm looking through this, and then I look through. You actually had pleadings, right? You filed a pleading, the declaration of Thomas Doyle

in support of the opposition to Plaintiff's motion to strike Defendant's fourth and fifth supplement to NRCP 16.1 disclosure of witnesses and documents on order shortening time. You had that, and then you had your, actually, opposition as well. And nowhere did I find in there. did you ask for this opinion to be addressed. So I'm looking at pleadings, I'm looking at testimony -- sorry, and I also had the declaration. I meant -- sorry -- the third one with -- I mean, you have this thick declaration of Chad Couchot in opposition, also, to the motion for the fourth and fifth supplement to the NRCP 16.1 disclosures.

And this supplement is attached, gosh oh golly, I don't know, it's a good inch thick. So nowhere in there does it talk about this purported opinion. I had you all come to bench and still -- I mean, are you going to -- can you point out to me, today, any opinion in his reports that says ligature did not cause the two holes?

MR. DOYLE: That's where we have the dispute. And that's where the Supreme Court or the Appellate Court will have to resolve the dispute. I don't have anything to add to everything that's already in the transcript from the trial.

THE COURT: Counsel for Plaintiff?

MR. LEAVITT: Yes, Your Honor. If I may add this. These questions were waived. These are speculation, at best. When an offer of proof is made in any trial, if Counsel felt that this was precluded, one, he had many opportunities on the many breaks that we took. He had many opportunities to brief it. What he's trying to do is say, look, these questions should've been asked because I should've asked them. He's

going back into hindsight. And frankly, this is all speculation and conjecture on his part. He could've made an offer of proof. Your Honor, I would like to have my -- I would like the jury excused and have this witness testify outside the presence of the jury. He didn't do that. These questions and this offer of proof have been waived long ago.

THE COURT: Okay. Okay. So moving on to the next one. One moment please. The next one is -- everybody had a full opportunity to be heard?

Counsel for Defense, full opportunity to be heard on the Brian Juell?

MR. DOYLE: If I'm allowed to include everything that we discussed on the record during trial, yes, I am.

THE COURT: Well, Counsel, you've got to be more specific than that. I'm here to listen to anything you want to say, but you have to give me specific dates, times, or something like that. You can't say, anything in a three-week trial, right? I mean --

MR. DOYLE: I'm relying on the question that I asked, the objection, the discussion, the argument, and the Court's ruling.

THE COURT: Okay.

MR. DOYLE: I can't tell you the date and time.

THE COURT: Okay.

MR. DOYLE: But that is all part and parcel --

THE COURT: Sure.

MR. LEAVITT: -- and gave rise to the offer of proof.

THE COURT: Okay. So it was that single question, okay. So

if you had a full opportunity to be heard on Juell, should I move on to Stone?

MR. DOYLE: I'm not sure what you mean by "full opportunity" if you're precluding me from incorporating, by reference, what occurred during trial, but I don't have anything else to add today.

THE COURT: The Court's not precluding anything. Today, it's an order to show cause. I'm trying to give you the opportunity to explain whatever you'd like to explain, to provide the information, because you can appreciate that --

MR. DOYLE: I've given you --

THE COURT: these were not --

MR. DOYLE: -- my ex --

THE COURT: -- provided to the Court, no courtesy copies, no anything, and they do not provide any dates, times, any points and authorities, any anything. So that's why this Court's having to ask these questions, because I don't have any of the dates or times, the Court can't go back and look at anything. So the only person I can ask is you, because you said you drafted them.

MR. DOYLE: Right. And on the matter of the courtesy copies, I am looking at Rule 220 which is taped to the table, and it speaks to contested motions, and I did not perceive these to be contested motions.

THE COURT: Well, Counsel, that's not the only thing that 220 -- it talks about with movants --

MR. DOYLE: Well, you --

THE COURT: -- but also --

MR. DOYLE: -- referred me yesterday to what was taped on the table. I'm just simply looking at it.

THE COURT: There's two provisions, actually. That's not the only one on there.

MR. DOYLE: Right.

THE COURT: See, there's two EDCR sections, actually, on there?

MR. DOYLE: Right. "Serving orders and other papers."

THE COURT: Also, read the rest of that. It also talks about -- that other provision also talks about courtesy copies.

MR. DOYLE: Right.

THE COURT: Okay? "Other papers", that includes all papers.

MR. DOYLE: Right.

THE COURT: This would be a paper.

MR. DOYLE: Well, I'm reading it, but we can disagree about the interpretation.

THE COURT: Okay. Do you want --

MR. DOYLE: It says, "Attorneys are requested to leave courtesy copies of any paper filed within five days of a hearing at which the paper may be considered. The boxes may also be used to deliver courtesy copies of any other filed material which a party wishes the Court to receive in advance of a trial or hearing."

THE COURT: Right.

MR. DOYLE: "Courtesy copies must indicate the date of any

hearing to which they pertain." I wasn't asking for a hearing. I wasn't asking for the Court to do anything in response to these offers of proof.

THE COURT: But if you read the rest of the EDCR provisions, right, you are required to. And feel free to read the -- even though it's not specifically -- a specific requirement, we already talked about this. Would you like to look at the various -- providing the --

MR. DOYLE: I'd like to keep move --

THE COURT: Okay, Counsel, you can go to --

MR. DOYLE: I'd like to keep moving.

THE COURT: -- September 18th memo that you got, you can go to the orders you previously got, or you can go to your responsibility to know the rules, including Administrative Order 1903, which clearly addresses this as well. So please, I reminded you over and over and over, please read the rules, okay?

MR. DOYLE: I have read the rules.

THE COURT: Well, if you read the rules, then you wouldn't be saying what you're just saying, Counsel, because the idea, if you'd like to, it specifically requires -- see, here's what you did is, all these documents in addition to what you filed here is -- well, I'll -- let's go right to it.

Okay, "It is ordered" -- I am now referencing March 12th, 2019, Administrative Order 1903. I was going to address this at the end, but since you're mentioning it right now, the Court will be glad to address it right now. It is Administrative Order 1903 which, of course, all attorneys need to file -- comply with. "It is ordered, the following rules

are suspended or modified until further notice." And then it also includes, "Rule 2.20(b) is suspended. "Motions" -- designation 'Hearing Requested' in the caption" -- and it tells you. And it also explains to you that everything needs to have "Hearing Requested".

And if you'd like to look at the modifications even more recently under EDCR 2.20, that just came down from the Supreme Court within the last month or so, it specifically tells you that every single document filed, right, other than, like, subpoenas, have to either say "Hearing Requested" or "Hearing Not Requested." You can't file a document that goes in after, right, because the Court has to be aware of documents. You can't just file documents. There's only certain types of documents to be filed. That's why I said, please read the rules, because EDCR -- I would like you to take the time now from others, but I really think you should read the EDCR. It explains to you that every document that needs to be filed. There's only types of documents that can be filed, and the documents, types that can be filed, need to have the appropriate designations on them.

Because the whole idea is, under your theory, if you think about it, people could file all sorts of documents, right, and they just would be out there, and the courts would never know about them. And then the courts could never address things. And then somehow, the courts would be somehow responsible for things that got filed and they never had notice of? That, of course, is not the way the law works. That's, of course, not the way the rules work. And that, of course, would be unethical for anyone, under NRCP 11, to try and file such documents,

because any document has to put the Court on notice of any issues. You can't just file things and not tell the Court. And as an experienced litigator, you would know that. But the rules are very clear in that regard.

And that's why, not only if you weren't aware of that in the first place, remember going back to October 4th, the document that you filed, and we had that discussion. Feel free to read the transcript of the evidentiary hearing at the beginning, including, oh, it's right before page -- it's around page 12 of the October 7th hearing, when the Court and you went over that discussion. That was the whole thing about the supplemental pleading that you filed on October 4th. We went through that discussion as well. So you would've been fully on notice about a month before you filed all these documents on November 1st.

So if there was any question, the Court even said -- oh, here. I've got it right in front of me. I even said to you -- okay, let's walk through the dates. Do you want me to go through this at this time? I mean, you could easily read the October 7th. You were there. We went through the whole analysis.

MR. DOYLE: I've read it all. We can keep moving forward if you like.

THE COURT: Okay. Because page 21, "Well, Counsel, therein lies part of the challenge that this Court's going to have address with you, right? Please read the rules. Please stop violating the rules. Please actually read the rules when the Court sends memos sets forth because they're there. Please read and comply with. You would've found it there

if you'd read them. As an experienced litigator, you know you can't say you didn't know it existed. So you're just going to violate them and do what you wanted to do. Plus, as you know, you even stated in your statement that your alleged conversation, you know, the Court can't take it into account substantively, because it's pure hearsay, so it goes there." And then it says, "In your declaration" -- and we are reading from the October 7th page 21; was that the question?

THE CLERK: Yes.

THE COURT: October 7th, page 21, going on to page 22, and then the Court talked about that and even went through about being a rogue document, gave you a nice explanation. Really, the Court's explanation starts on page 21 and goes through page 22 of that transcript, page 23, page 24, and then it goes, examples I reiterated. It's still in the 20s, okay. And so the Court went over all of that with you back on October 7th before the trial started, so you would've been fully familiar with that by the time, and know not to file things on November 1st, so that -- the Court did walk through all of that with you.

But let's move on. You had an opportunity to be heard. Let's -- anything else you want, on Dr. Juell, that you want to say?

MR. DOYLE: No.

THE COURT: Okay. Then let's go to Lance Stone. Lance Stone said, if Lance Stone had been allowed to testify he would've testified, in keeping with his curriculum vitae report December 19th, Defendant's life care plan in his depositions.

Well, wasn't the issue that he didn't comply with all of his

obligations for disclosure? So how could he have -- when the Court read this one, the Court really was questioning. Because one of the main issues for striking him was, his whole curriculum vitae was supposed to include all of his designations of all of his prior testimonies and depositions. So how could he have done it consistently with that, when his curriculum vitae, including the depositions and testimony lists, which is all a part of the curriculum vitae, was part of the reason why he wasn't allowed to testify in this case?

Because this was the one that he did the Vickie Center, right -- did not include Vickie Center, was specifically asked, in his deposition, about all of his other cases and he was supposed to supplement it, and never supplemented it. So how could he testify consistent with the very thing that violated the rule?

MR. DOYLE: Well --

THE COURT: That was a challenge for the Court on this one, honestly.

MR. DOYLE: I'm not going to reargue the arguments that we had. I disagree with your ruling, and it will be an issue on appeal. And being an issue on appeal, the offer of proof was necessary and required.

THE COURT: But how was -- okay, but Counsel --

MR. DOYLE: I'm not going to --

THE COURT: -- if you disagreed --

MR. DOYLE: I'm not going to --

THE COURT: if you disagreed, okay, and you thought you wanted to preserve it for appeal, you have to bring it to the Court's

attention. There's Supreme Court authority galore on that, right? Issues are waived unless they're brought before the District Court. The Court's going to view this, of course, each one of these is waived because you never brought them to the Court --

MR. DOYLE: The Court --

THE COURT: -- Court, right? So --

MR. DOYLE: No, I did. He was here --

THE COURT: You did? Which -- what did --

MR. DOYLE: -- ready to testify, and the Court

MR. DOYLE: He was here ready to testify, and the Court, for various reasons, precluded his testimony. So I don't understand how the Court can say I waived something.

THE COURT: Well, but --

MR. DOYLE: I was prepared to offer him as a witness and to testify. And based upon Plaintiff's objections, and our argument, and the Court's ruling, you said no. I mean that -- I don't know why you would want me to then immediately ask for reconsideration or reargue what we've just argued. That just doesn't make any sense, in trying to keep the trial moving forward.

THE COURT: Well, Counsel, you all spent --

MR. DOYLE: I mean, we just disagree.

THE COURT: Counsel, you all spent hours and hours and hours arguing on every single other point. The Court would've easily addressed these points. The Court's question, really with Lance Stone DO was, really, the practical one. Because in this one, look at his offer of

proof. Because the basis of his exclusion, there was, right, a two-prong basis, right? The whole preclusion for him not complying with any of the rules, preclusion, right? After, specifically in his deposition, and the Vickie Center. I'm not going to rehash everything that the Court said. Then there was the alternative analysis under Hallmark.

But how could -- if you offer proof, how could he testify in keeping with his curriculum vitae, when his curriculum vitae was part of the reason he couldn't testify because it didn't have all of his depositions and trial testimony, including specifically, the Vickie Center? So how could he have testified with the very thing that was noncompliant? That's what the Court just didn't understand when I read this.

MR. DOYLE: Okay. Well, you and I disagree about the merits of your ruling. And somebody else will look at that. And in order to look at that, they have to have the offer of proof. I don't know what more I can say for each and every one of these.

THE COURT: But --

MR. DOYLE: The each and every one of these is based on your ruling, precluding testimony.

THE COURT: Well, Counsel, that's not actually accurate. Because you know, particularly with Ms. Larson, right? There was no ruling on Ms. Larson. If you'd like me to show that clip, I would show that clip.

MR. DOYLE: We've already discussed Ms. Larson.

THE COURT: Right. But you said, "every one of these", and so I wanted to be --

MR. DOYLE: Well, and you have taken a comment by me out of context. We'll just -- again, it's an issue for appeal, that's all. We disagree.

THE COURT: And Exhibit C was never offered into evidence, and so --

MR. DOYLE: We disagree. It's an issue for the Appeal. I don't want to go back --

THE COURT: Sure.

MR. DOYLE: -- and reargue what we argued yesterday.

THE COURT: Counsel, I don't argue. I'm asking questions. Are you in any way asserting, after yesterday's hearing, that you found any basis that you, in any way, sought to admit Exhibit C in its entirety, versus the position you took yesterday that you asked, at one point, about pages 1 and 2 with Dr. Chaney? And that was objected to, just pages 1 and 2. And that the Court sustained the objections to pages 1 and 2, and that therefore, thereafter, you never sought the admission of the entirety of Exhibit C, nor any of the other pages referenced in your document that you filed on November 1st, with regards to Exhibit C?

If you're now contending that you sought to admit the entirety of Exhibit C, the Court would need to know, because remember, before the jury went back, remember I had you all -- we went through each and every exhibit that was offered, each and every exhibit that was admitted. Gave you the opportunity to look at the clerk's list, went through them each so that you all could double-check it with your checkbox.

At that point, even at that point, nobody said that Exhibit C had been offered in its entirety. If you have a different position today from what you had yesterday, this Court would just need to know, so I can address it. I just --

MR. DOYLE: Well, if you just ask me the simple question, I would tell you my position today is the same as it was yesterday. I have nothing new.

THE COURT: Okay. So do you wish to speak anymore on Lance Stone?

MR. DOYLE: No.

THE COURT: Counsel for Plaintiff, do you have any position on Lance Stone you wish to speak, or do you want me to move on?

MR. LEAVITT: Do you --

THE COURT: It's getting to 10 minutes to 5, so you all tell me --

MR. LEAVITT: Yeah.

THE COURT: -- what you'd like to do. I'm more than glad to -- we won't be able to finish this today, but we can come back on Monday and do more.

MR. LEAVITT: That would be Plaintiff's position, come back on Monday. Other than, again, these documents are a Rule 11 violation. They violate EDCRs, and NRCPs. And I stick by the same with Lance Stone. This isn't an offer of proof. This is going back. He waived this. This is gone. These need to be struck and not brought up. The same argument.

THE COURT: Okay. So let's go to Eric Volk. Eric Volk's testimony would not have been limited. He would've testified in keeping with his report and future care cost report, dated December 19th, and Defendant's life care plan, and his deposition.

Well, Counsel for Defense, what would you like to say with regards to Mr. Volk?

MR. DOYLE: The only thing I can say is, when the Court precluded Mr. Volk's testimony about the Defendant's life care plan as being an improper rebuttal opinion, then he was allowed to testify for a limited basis. And this is an offer of proof as to what he would've testified if the Court had not precluded his testimony.

THE COURT: Okay. So --

MR. DOYLE: I don't have anything else to add.

THE COURT: And --

MR. DOYLE: And it would be the same argument for Dr. Ardonato.

THE COURT: Are you asserting that there was any request for any reconsideration at any point?

THE DOYLE: I don't believe I asked for a request for reconsideration. I can, well, save my thinking for the appellate brief.

THE COURT: Any offer of proof with regards to Mr. Eric Volk?

MR. DOYLE: Yes. It's in front of us right now.

THE COURT: To this Court, before you rested?

MR. DOYLE: There was no offer of proof, because time

constraints would have precluded that.

THE COURT: What time --

MR. DOYLE: As --

THE COURT: -- constraints, Counsel? Because this trial --

MR. DOYLE: Because --

THE COURT: -- lasted extra days, and you all had hours and hours and hours. That's what I'm not understanding is, everything you all wanted to argue, you argued for as long as you wanted to do. And the Court addressed every single issue. So I'm not sure what time constraint --

MR. DOYLE: Well, what -- it --

THE COURT: -- on which day was there a time constraint, Counsel?

MR. DOYLE: I'm not prepared to discuss the details of that. I don't have that committed to memory.

THE COURT: Well, you understood that yesterday and today were the days for your order to show cause, so you'd be able to present whatever you wish to present.

MR. DOYLE: Well, based upon the wording of the order to show cause, yes, I did prepare. But the order to show cause, I don't believe gave me notice, as to the level of detail that the Court was going to require me to produce.

THE COURT: Well, any detail. Counsel, it says, "and show cause why seven separate documents were filed by Defendants on November 1st, 2019, during closing arguments, without any notice to the

Court, after all parties already rested, after the Court reconfirmed there was no further outstanding issues to be addressed." So it's as open-ended as you want to discuss, that's why the Court's trying to do this.

MR. DOYLE: It is very open-ended.

THE COURT: Trying to --

MR. DOYLE: And I've already provided the explanation and response to that. But there was -- I did not know we were going to go through each one and nitpick it and go through and try to recreate the record that gave rise to my need for the offer of proof. I don't have anything to add.

THE COURT: Well, Counsel, the Court is trying to -- the Court in no way would just treat them globally. Try to give you an opportunity, right? I have to treat each and every one of these documents that were filed, individually, right? And so that way, gave you notice that it was going to talk about all seven of them, and give you an opportunity to show cause why you filed. And actually, we even put seven separate documents, right?

So if you had any questions about this, nothing was raised as a question until yesterday. And this originally was set on the 7th and started on the 7th. And so Court would have been more than glad to provide you whatever additional information you thought you needed. But you didn't raise anything until most of the way through yesterday. And in order to show cause, provides any counsel the opportunity to show cause why they did conduct.

The Court doesn't pin you in to limit you, to say, A, B, or C?

It gives you the full breadth of opportunity to provide whatever good cause you think you have for any of the conduct. And that's why the Court drafted it that way, to give you the full opportunity with any of them. Focused on all the documents, that they're separate documents, and that there's different reasonings for each of the documents. You may have reasoning separate from one document versus another document. Giving you the full opportunity to explain each and every document, or totality, or however you wish to explain it.

But that's why the Court's going them one by one, is to make sure that if you had different arguments or different positions on each of those documents, you could present them to the Court so the Court could evaluate them, rather than just trying to take it as a global grouping of them. Because I don't know why you did each one, so that's the why only the Court can do it. The Court only knows that they were filed. The Court was given no notice of them, and the Court's aware of all the communications, writings, orders, pending sanction hearings, et cetera. And yet, these documents were filed, and that they don't comply with any rule for a document to file in the Eighth Judicial District. And so, that's why the Court was even asking on how these were done, so that I could give you a full opportunity to explain each and every one, or in total, each and every one.

And so that's why I spent the hours and hours trying to go through to see if there was a basis. I wouldn't have done it in order to show cause if the Court had seen any basis. Tried to give you the benefit of the doubt, first off. Look up all the information to see if there's

anything, and then give you a full opportunity after doing that. Trying to give you every possible opportunity, so -- okay.

Well, in the absence of knowing anything, and not being provided anything, and no offer of proof being provided to the Court, the Court couldn't make a ruling as to what Mr. Volk would have testified to the Court. Doesn't agree on what it even means, by what -- potentially limited. And the second page was even more concerning to me, I must admit. Because the second page on Mr. Volk's, he did testify to the 20 to 30 percent reduction. In fact, I overruled Plaintiff's objection in that regard. And even though that was not in his report, allowed that to be in, because there was an inference in his deposition. And in fact, that's even on a special verdict form, highlighted to Defendant's advantage. And since Plaintiff didn't disagree with highlighted, you know what I mean?

MR. LEAVITT: Uh-huh.

THE COURT: It specifically gave his opinion the full opportunity that the jury could look to see if they agreed with him, and that'd be a reduction. And so he did testify all about his 20 to 30 percent, and that was even on the verdict form, so --

MR. DOYLE: The 20 to 30 percent was to Dr. Clauretie's report, dated October 9th, if he had been allowed to testify. I didn't appreciate, at the time when Dr. Clauretie testified, that not only when he prepared his supplemental report did he modify his calculations to account for additional attendant care, he had also changed his interest rates. And so he had a greater negative net discount rate in his report of

July 5th, than he did of October 9th, further ballooning the present value. And this is what Mr. Volk would have testified about.

THE COURT: But that was never, ever raised to this Court. You've got exactly what you asked for in his deposition, of the 20 to 30 percent.

MR. DOYLE: I asked --

THE COURT: Counsel --

MR. DOYLE: Okay.

THE COURT: -- this issue of these numbers; are you saying to this Court that you brought to the Court's attention the assertion that Dr. Clauretie used a 3,223,752 number?

MR. DOYLE: I -- you know, I had a good faith basis at the time I prepared this. I just don't recall the details. But yes, I did try to ask Mr. Volk about what his percentage would be if he looked at, not the October 9th report, but rather, the July 5th, and there was an objection that was sustained, as I recall.

THE COURT: Pardon, counsel? House of a plan --

MR. DOYLE: That's what I recall.

MR. LEAVITT: Your Honor, this is all new argument. This is a -- bologna can only be cut so thin. This is all new. He could have voir dired him. This is all way -- I mean at this point, I'm going to file a new motion for more -- for sanctions. This is -- he is spending --

THE COURT: Don't --

MR. LEAVITT: -- Plaintiff's time. This is absurd.

THE COURT: Okay. Give me one second. Counsel, I'm

actually looking right now at the transcript of Volk based on what was the Court's ruling. If you can show me anywhere in Volk's deposition where he ever addressed the Dr. Clauretie number, I will be glad to -- I mean --

MR. DOYLE: Well, I can't do it right now. I don't have --

THE COURT: You have it attached. You have it in your offer, so you had to have a good faith basis --

MR. DOYLE: I only have the offer. I don't have the attachments.

THE COURT: But counsel, you do realize that you pointed out in the deposition the number because at one point he said 25 to 30 percent. In fact, you corrected it because the court initially had said 20 to 30. You said no, at another point, he said 25 to 30. So the court said fine, but still you still got the whole range of 20 to 30, right? And that's why the court allowed that testimony.

You never mentioned anything about any numbers because the Court even asked that specific question. So -- and I'm looking through his deposition testimony right now. Let me quickly -- hold on one second. I'm looking for numbers. One second, please. And I apologize that it's getting late.

Counsel, you didn't say anywhere in his deposition that he even referenced that 3,223,752 number?

MR. DOYLE: I'm --

THE COURT: Because that's the only thing you brought up to the Court was the deposition.

MR. DOYLE: I'm referring to the events at trial. And again, I don't have the transcript with me.

THE COURT: Are you saying that you were trying to bring up a question that was nowhere in the deposition, nowhere presented anywhere for the first time at trial?

MR. DOYLE: I don't recall now. I have to look at the transcript, Your Honor.

THE COURT: Right, but -- okay.

MR. DOYLE: I had a good faith basis for including this in the offer of proof at the time I prepared it that Thursday night. I would have to go back and recreate --

THE COURT: Based on --

MR. DOYLE: -- how I came up with that.

THE COURT: Counsel?

MR. LEAVITT: It's nowhere.

THE COURT: Based on what though? I mean that's why the Court is asking these questions because I'm trying not to think that you're blatantly --

MR. DOYLE: It's based upon --

THE COURT: -- saying something and misrepresenting --

MR. DOYLE: It's based --

THE COURT: -- to the Court. You have a duty of candor to the Court which is what I keep on --

MR. DOYLE: I'm talking about trial. I'm not talking about his deposition or his reports.

THE COURT: But counsel, if it's nowhere in his deposition, nowhere in his reports, are you trying to assert that he can say something for the first time at trial and you not even bring up to the Court that somehow he wants to say something the first time at trial and somehow you can put that in an offer, what you call an offer of proof, after everybody has rested, at the time you're in the middle of closing arguments and not notify the Court or break that down to all the different subparts, any of it? Because, counsel, on this one the Court specifically gave you over the strenuous objection of Plaintiff's counsel the Volk 0 to 30 because they're like it's not in the reports, it's not in the reports, he's phrased more eloquently. I'm paraphrasing. It's late.

But I gave the benefit of the doubt, and I know in my ruling even said I'm giving you the benefit of the doubt that it's in the depo even though, you know. And so that's why he was -- I'm paraphrasing. I mean I use the words benefits of the doubt, but I probably did, but it was in this regard.

And then it even went on the special verdict form his own opinion so highlighting that over Dr. Clauretie and everything. But once again, since it was to the advantage of Defendant and Plaintiff wasn't objecting because Plaintiff -- it was fine. But it even gave him the whole thing about do you agree with Mr. Volk. This jury ruled on that specifically in the special verdict form and then even had the reduction thereafter all the way up to the 30 percent. And that was the full breadth of the language. Okay.

Well, I don't see how there's any good faith basis on the

second page because I'm asking you in your order to show cause to give me something. And I'm looking through the deposition, and I'm not seeing in any way it was in the deposition. That's the only thing you presented to the Court. I mean you filed pleadings on all of this. I'm asking you if you can show me anywhere in any pleading that you filed with the Court with regards to this argument. This argument wasn't just up in the air. This argument was you all did briefs on this.

You all pointed to things. You all showed me depositions. That's how the Court ruled. This other number is nowhere in that. You can't say that the Court didn't rule on something you never presented. It's got to be way -- you can't -- it was never brought up to the Court. I mean this -- the difference in this 3,223,752.

So okay, the Court doesn't find there's any good faith basis there. Now we got Bruce Ardonato. Bruce Ardonato's expert had not been limited. He even testified on his two reports in depositions. Well, and then it says testified about diabetes, neuropathy. Feel free to show me where in his reports it said anything about diabetes and the symptoms of peripheral neuropathy because I know I asked you that before and no one can show it to me. Are you saying that it was in --

MR. DOYLE: Between his reports and his deposition that this was all -- this was all testimony.

THE COURT: Feel free to point anything out to the Court.

MR. LEAVITT: And he was rebuttal only.

THE COURT: Pardon?

MR. LEAVITT: And he was rebuttal only. He wasn't -- he

never provided an initial --

THE COURT: He was --

MR. DOYLE: These opinions were based upon the fact that he was an improper rebuttal expert not that they were not something that had been previously disclosed.

THE COURT: But if he's rebuttal, he has to rebuttal who brought up diabetes for -- in order for him to rebut?

MR. DOYLE: Dr. Willen when -- or Willer, I forget, when he would not acknowledge that she did have diabetes -- diabetic neuropathy.

THE COURT: So --

MR. DOYLE: Again, we went through this at some -- at great length at the time of trial, and I'll just stand by, you know, the trial record for the --

THE COURT: Longstanding --

MR. DOYLE: -- basis for this offer of proof.

THE COURT: But how could he have even -- I mean I'm reading through this, but how could he even -- longstanding? You had Dr. Chaney talk about --

MR. LEAVITT: Right.

THE COURT: -- her history. You didn't -- so how would he know about her history of diabetes?

MR. DOYLE: We already argued this at trial.

THE COURT: But you didn't raise these issues --

MR. DOYLE: And you precluded the testimony, so this is

simply in response to that.

THE COURT: Right. But, counsel, you didn't raise --

MR. DOYLE: I don't know -- I don't want to re-argue --

THE COURT: -- these issues.

MR. DOYLE: -- the issue that we argued at trial.

THE COURT: But, counsel, the Court doesn't see that you actually raised these issues at trial. That's why the Court is asking you because there would have to be some basis for him to have said something. So --

MR. DOYLE: You precluded his general discussion on all of these topics.

THE COURT: But how -- I can't preclude something that's not presented to me. That's why the Court is asking --

MR. DOYLE: We -- again, we disagree about what you did and didn't rule on.

THE COURT: So --

MR. DOYLE: This is simply an administrative --

THE COURT: -- counsel, when did you present it to me?

MR. DOYLE: -- pleading to preserve my record --

THE COURT: Sure.

MR. DOYLE: -- on appeal.

THE COURT: So counsel, you did briefs on this. Can you show me anywhere in your briefs that you address this issue?

MR. DOYLE: I'm not sure what briefs you're referring to.

THE COURT: The briefs you filed with the Court.

MR. DOYLE: And no. I don't have any briefs with me.

THE COURT: You filed briefs in response to all these motions. You have the daily transcripts of all this stuff. You know it was argued. I just --

MR. DOYLE: And I don't have anything else to add that I --

THE COURT: Okay.

MR. DOYLE: -- haven't already said today or yesterday.

THE COURT: Ardonato wasn't mentioned yet. I mean and the worsening and the cause. I mean what -- there was nothing argued to this Court about the cause of the worsening of her diabetic peripheral neuropathy after July 2015. What records would he have even relied on? I mean please show me somewhere in his depo where he talks about her.

MR. DOYLE: I'm not going to re-argue the argument that we made at the time of trial. I'm just going to stand on the trial transcript.

THE COURT: But, counsel, there is no trial transcript that you've given me to show that you even presented this argument. That's why the Court is asking this question.

MR. DOYLE: Well, I did -- again, based upon the order to show cause, I did not realize that we needed to have that level of detail.

THE COURT: Well, but, counsel, in order for you to say that you had a good faith belief to file these, I have to ask you the questions about your own documents that you filed.

MR. DOYLE: And these came from my outline of my direct examination of him and the parts of it that I crossed out based upon the

Court's ruling limiting his testimony.

THE COURT: Okay. But if you look at his depo, I just -- depo page 52. "When was she diagnosed with diabetic neuropathy? I don't know when she was formally diagnosed. I think the records indicate that she was having neuropathy symptoms as far back to 2012." But you already know that was proved incorrect because that was an issue and asked everybody to show me any records and no one could provide. And then you corrected that that it wasn't 2012 because you went through the whole Chaney records and how she didn't even take the new MGM insurance until, and you quoted from her deposition, and I'm doing this one by memory so I may be off a few, but I believe she said to late 2013, 2014. And that was part of the issue of 2012.

And then it says, "So is there no" -- it says, "So there's no place where she was formally diagnosed; is that fair? I don't know if that's fair or not. I'm not sure. I'm not quite sure what formally diagnosed entailed. But I think if I went" -- "If -- I think if I went back and looked at Dr. Chaney's records, there's probably some point in time the patient herself must have been diagnosed because at intake it says she's having pain in her feet."

So I don't see where he's even offering. I see general conversations about diabetes. But that's why I'm asking you if there's anything that --

MR. DOYLE: I mean --

THE COURT: In order for something to be brought to the Court, you would have had a basis to bring it to the Court. And if you're

saying that it's here in the deposition, I'm reading --

MR. DOYLE: I had said multiple times I'm relying on what transpired in court and the trial transcript. And that's the basis for my offer of proof. I'm not looking at the deposition. I'm looking at what happened at trial.

THE COURT: Well, but, counsel, your offer of proof says, "If Defendant's expert witness Dr. Bruce Ardonato's testimony had not been limited, he would have testified in keeping with his two reports and deposition. The reports and depositions are attached hereto."

So in order for him to testify in accordance with the reports and deposition, it has to be based in his reports and deposition which is why the Court was asking you. If you're saying that you brought this to the Court's attention, the Court couldn't see it anywhere in the trial transcript, right? Then the other way to say is well, if you're saying it's based on the reports and deposition, please point it out where it's in the reports or deposition. And then you're telling me you didn't bring any of that with you today which is very surprising because it's your own offer of proof which is the issue of today's order to show cause. Are you telling me you didn't bring any of these documents in any manner whatsoever --

MR. DOYLE: No.

THE COURT: -- to answer any of the Court's questions even after yesterday when you knew the Court was asking you all these questions --

MR. DOYLE: No, I did not.

THE COURT: -- in order --

MR. DOYLE: I don't have them.

THE COURT: So what were you planning on doing for your order to show cause when yesterday the Court was asking questions and asked you to make sure that you were fully prepared and continued to today so you could be fully prepared? I don't -- hold on. I'm -- in the absence of you providing me any information whatsoever how it's based at all in his reports or deposition, I can't see how you can possibly contend to this Court that you brought it up that it was based on the deposition or reports if you can't even point out that it's based on the deposition or reports and so that you can even say that it was brought to the Court's attention. So that's where the Court has to go with this.

So it appears the Court is going to have to make -- here's the short version of the ruling. The Court's short version is all seven of these documents were impermissibly filed because to the extent that any of these issues could easily have been raised in the three weeks of trial at the timing, not only during the three weeks of trial, some of these issues were raised -- could have been raised pretrial, okay, because there were already objections.

So pretrial, during the time of trial were never raised. There was never an offer of proof ever requested of this Court on any of these seven. There was never any reconsideration as acknowledged on any of these seven. Many of these seven documents are -- I hate to use the term, but I'm going to have to use it -- blatantly inaccurate, just have false statements in them.

I mean, for example, I will go to Sarah Larson. Sarah Larson was never a ruling by this Court. There is specific -- the transcript will bear out she was withdrawn and dismissed by Defense Counsel. So the Court can't see that there's any basis for any potential even a good faith basis to say that as stated -- okay, let's go to Sarah Larson. Sarah Larson. There's no good basis to say if she's allowed to testify, she would have testified in keeping with her curriculum vitae because the Court did not preclude her testimony. She was withdrawn and dismissed by Defense Counsel.

Why Defense Counsel did it was his own reasoning. But this Court did not make a ruling with regard to Sarah Larson precluding her from testifying. No such ruling was made by this Court, and the transcript will easily bear that out. So going forth with the filing of these, to the filing of these, they're impermissibly filed because everyone had closed all evidence.

Closing arguments, these were filed during closing argument. And it's particularly egregious in this case because of the number of times that this Court asked counsel if there's any outstanding issues. Every single break, beginning of the day. Is there any other issues outside the presence of the jury? The warnings, the afternoons, the fact that we went overtime on several days, which, unfortunately, we're going today too, with regards to making sure to get each of your issues taken care of. Even though there weren't motions in limine filed because you all missed that deadline and improperly didn't do them. And we'll get to that because I had to continue for the Court's hearing,

unfortunately.

So there was more than ample time for all of them in totality. The fact that they were filed on the 1st, giving no notification to the Court or to Plaintiff's counsel is egregious conduct in which there's been no good cause shown. The Court gave you full opportunity in the order to show cause both yesterday and today as well as November 7th and gave fully time of -- to prepare for all of these. Not only did it in the order to show cause, but on the 7th said I was going to ask background questions about each of these. And so if there was any objection or any lack of clarity, this could have easily been brought to the Court's attention on the 7th before we had the continuation yesterday and then today. Nothing was done in that regard.

So the fact that they were done during closing arguments and not notified to the Court is incredibly egregious. Particularly since on that day on the 1st the only thing that counsel for Defense told the Court when discussing the special verdict form, and I'm paraphrasing here, is that part of the reason a special verdict form was -- well, was asleep at a certain point and the Court even point out that I left at 4:30 was a clear easy time because counsel even said yesterday that -- approved all of these pleadings being filed before he came to court on Friday, November 1st.

So clearly knew those pleadings were going to be filed on Friday, November 1st. The Court is clearly asking what's happening on October 31st because trying to give -- well, ensuring that both sides had a full opportunity to provide two special verdict forms if they chose to do

so and before ruling on a special verdict form was making sure there was not any conduct or any good cause on why Defense Counsel did not provide a special verdict form. And clearly could have told the Court well, I didn't do those because I was working on written offers of proof. Chose not to notify the Court, chose not to notify the Court on the 1st, had other attorneys here assisting with the jury instructions and the special verdict form on the 31st which presumably could have even said that the person needed to leave to do these or that these had been discussed.

The fact that there was so much documentation and printing on them while counsel says these were all done on the 31st, taking at that statement that means that easily could have been discussed that they were going to be done on the 31st when you all left. You did the rule 50 motions. The Court again asked before. But the Court also asked on the 1st before, during the whole conversation with regards of the special verdict form and the whole analysis.

The Court finds there's an intentional misrepresentation to this Court intentionally omitting when the Court was asking well, what happened the night before, why there wasn't a special verdict form. It was never mentioned well, I was doing any offers -- purported offers of proof that were going to be filed that day even though knowing by his own statement that these were going to be filed on that same day. Then having them filed. Not mentioning it the whole day knowing that they had been filed.

Presumably knowing or had a reason to know that they

would be filed and had been filed, but still never notifies the Court the whole day of the 1st. The Court doesn't hold the hearing on the sanctions, et cetera, that day knowing that -- and then but still, you all were here as late as you were, still had plenty of free time to tell the Court when you came back at 2:15 before the jury came back in all the issues. When you were cleaning up your stuff, still never said oh, there was documents that were filed. Even after they were filed, you were still here. These were filed from the 10:50ish hour through the early 11:00 hour. You were here way past that. Before you went out and talked to the jury, anyone could have easily told either the Court or Plaintiff's counsel so that the Court could have easily taken care of these issues before the verdict was in. Nothing was told to the Court.

The Court finds that that is egregious conduct because even if feels that there's a need to file them, which the Court finds no basis to have filed them, even independently of that to not notify the Court or opposing counsel so that they can be addressed, the Court finds no reason on any of these seven. So those will be rogue documents particularly here because of what happened on October 4th and the whole discussion as set forth in the hearing transcript of October 7th about Defense Counsel filing a pleading without consent of the Court, without notifying the Court. That whole discussion happened on the 7th.

And so clearly Defense Counsel knew what was the protocol because he said on the 7th he wasn't aware of that. So the Court explained everything. The Court mentioned what pages. I went over that on the 7th. So that was clearly understanding what needed to be

done and still chose not to notify the Court, notify opposing counsel.

So these were all impermissibly filed on that basis both procedurally because they were after everyone rested. There was no offer of proof in anyway made throughout the trial as well as no request for any offer of proof, any request for reconsideration. Then not notifying that these could be addressed in any manner and that they don't even comply with the EVCR. And then when the Court asked if there was any legal basis on which these could be filed at the time and date which they were filed, counsel for defense was able -- not able to provide a single citation of anything that would say it is allowed. The only thing that was said is that looked and spoke with another attorney and didn't see that there was anything that didn't allow them. But that does not provide that it can be allowed. It has to -- pleadings have to be allowed -- it's not -- you can't prove a negative.

You can't say well, just because -- I mean there's lots of things, okay. There's not a rule that says you can't file -- I mean I'll take something silly -- you can't file a candy bar, okay. Everyone knows you can't file a candy bar in court proceeding. It doesn't have to have a statute of rules that says you can't file a candy bar, okay. The rules say how you must file the pleadings, what must be done and must notify the court.

Any concept that somehow there is any excusal not to notify the court of something that's being filed that addresses a trial or something that's being filed or even after it's filed while you're still present in court and it has been filed, is completely without any merit

because the court is supposed to be told about documents that impact the case in any manner. And the Court finds that that's a lack of candor, you also got the rule of professional conduct and you got Valley Health Systems so lack of candor there.

Then you go substantively. Substantively. Substantively, the Court would independently strike the offer of proof for Sarah Larson because it is factually inaccurate. The Court never made a ruling on Sarah Larson. So independent from all those other reasons in the group entirely, that would be precluded.

Then you go to Michael Hurwitz. Michael Hurwitz also has impermissible and inaccurate statements. The Court already went through this, is not going to go back and even showed you all the clip referencing what the Court already went through with what happened on October 8th with the depositions EDCR 2.69. The special exception given for the end of that day but then also the October 14th statement to counsel giving him to October 15th.

He chose not to do anything all the way October 15th through October 18th. And then the conduct that happened on October 18th that you all even saw the clip on. And so the Court can't say that because counsel engaged in inappropriate conduct in front of the jury that somehow that meant that he could somehow lodge a deposition that was, per se, precluded by every other aspect and never even brought to the Court's attention. So Hurwitz would be precluded substantively as well because of its blatant inaccuracies.

Then you go to Brian Juell. Brian Juell, the Court asked

questions to try and find out how there's any basis for Brian Juell. Counsel even acknowledged that to quote hypothetical follow-up questions after the semi-colon were never even addressed to the Court. So we can't have an offer of proof on something that was never even presented to the Court with regards Brian Juell -- or let me go -- Brian Juell also there was briefing. These issues were not presented in the briefing and no reconsideration to the extent that the Court made a ruling that Brian Juell could not testify for something that was not an opinion done previously provided. That's, per se, in accordance with the rules. And so in that regard, the Court would reaffirm its opinion and there would be no basis to even have the offer of proof because it wasn't giving the Court the opportunity to even present that.

I need to go back to Hurwitz. Hurwitz also there was already pleadings -- everything that the Court said with regards to Hurwitz yesterday. Also, everything that the Court said with regards to Sarah Larson also yesterday because there were pleadings, et cetera with regards to her and then things weren't addressed.

So these are all waivers in additions to the Court saying all seven are waivers in addition to the improprieties and these additional specifics that I'm going through.

Lance Stone. Well, the -- in addition to everything the Court said with the group all seven in general with the waivers and impermissibility, here the Court can't see how it can even on the basis have any aspect with regards to Lance Stone in keeping with his curriculum vitae when the curriculum vitae included as you all

characterized the argument the curriculum vitae included trial testimony and deposition testimony. And since that was part of his preclusion because he did not include *Vickie Center* and several other cases as pointed out throughout the oral argument and also did not -- and was requested during his deposition and never provided all that supplementation that would be precluded. And so this would be -- I can't see how you can do an offer of proof with regards to things that already were per se in violation of the rules. But even independent of that, the Court would reaffirm its ruling with regards to Lance Stone for all the reasons previously stated. Just like the Court would reaffirm its ruling on Michael Hurwitz. And to let you know well, the Court never made a ruling on Sarah Larson so the Court can't reaffirm something it never made, and it was never brought to its attention even requesting a ruling. But the Court would reaffirm, obviously, on Juell and Lance Stone as well.

So then you get to Volk. When you get to Volk, the Court has drawn concerns because the Court gave Defendant what they wanted with regards to Volk. They wanted the 20 to 30 percent reduction. The Court gave that. So to the extent that this purported offer of proof says that somehow it mentions another number by Clauretie of 3,223,752, that was never brought to the Court's attention. The Court even asked today where anywhere it was anywhere in the report, anywhere in the deposition that purportedly supported that, but it was never presented any of those documents as purportedly -- it was never brought to the Court's attention so the Court couldn't have ruled on it. And so the offer

of proof allegedly is impermissible because it asserts that the Court ruled on something that was never presented to the Court. If never presented to the Court, something not presented for the first time cannot be represented elsewhere.

But also is impermissible because it's inaccurate because it says the Court made a ruling on something that was never presented to the Court. So the Court has to strike it because it's impermissible, inaccurate and also note it violates the duty candor, et cetera. And even to the extent that not otherwise covered, the Court's ruling with regards to Volk to what was presented to the Court, the Court would reaffirm its ruling. But that ruling included giving the 20 to 30 percent which is exactly what Defense Counsel wanted so I'm not sure how that one gets there.

Get to Bruce Ardonato. Bruce Ardonato in addition to all the reasons previously stated, with regards to Bruce Ardonato, once again, the Court asked specifically and not presented on the order to show cause any manner how somehow it states that Bruce Ardonato would testify to all these things about diabetes, et cetera, the Court asked where it is anywhere in the report or deposition which is the purported foundation of what he would have testified to by their very own offer of proof saying he testified in keeping with his two reports and deposition. But counsel for defense can't point out in any manner whatsoever to this Court.

It was asked today about where it was anywhere in his deposition. The Court quickly was trying to skim through the deposition

itself. Can't see that those issues were even presented to the Court. If it wasn't presented to the Court, the Court, of course, couldn't have made a ruling. If the Court didn't make a ruling, then of course, it was never presented. The Court can't say that -- Defense can't make a good faith statement that it was presented to the Court when it wasn't.

And also since it's nowhere in the deposition, nowhere in the reports, at least the Court has asked Defense Counsel to provide the Court somewhere where it is. Whether you view it as he chose not to, says he can't or isn't going to do so, it's nowhere in the offer of proof. It's nowhere in anything presented to the Court despite that today is the third day of these hearings relating thereto.

So full opportunity to really have the basis of the very own offer of proofs that were filed by Defendants. We're not asking about something that's not his own document that he filed under his signature. And in absence of that, the Court has to find that that offer of proof has to be stricken because substantively there's no support for it and there's no support for any contention that somehow the Court had limited testimony that was never presented to the Court.

So it's disingenuous to say the Court did when it didn't. And the Court offered an opportunity to provide it so -- and to the extent that the Court did any rulings with regards to Dr. Bruce Ardonato, the Court would, of course, need to reaffirm that because the Court keeps on asking Defense Counsel for any basis for any aspect for the Court to reconsider it. And not giving the Court any information, any support or anything, the Court can't change any rulings that it otherwise made

when it's not provided anything to make any rulings. And since counsel for defense said that these were administrative anyway and not really asking the Court to make a ruling, the Court still has analyzed each of these seven purported offers of proof and finds that they all need to be stricken as rogue documents and for all the reasons for being impermissible, individual reasons for the ones that are inaccurate, never brought to the Court's attention.

In fact, the arguments that were not presented to the Court, the fact that all these arguments are waived because these were filed not only after people rested and after they did their rule 50 motions, but after these were filed in the midst of closing arguments with no notice to anyone so they could not be addressed. And not even brought -- they were never brought even to the Court's attention even afterwards. The Court had to bring it to counsel's attention when the Court saw this on -- filings on Monday morning and so this was even after the verdict was entered into the record.

So the Court can't even consider that these would have been -- could have been addressed because Defense Counsel has a full opportunity to ask the Court at any time to address them, choose not to do so. And so he waived his right to do so and instead filed these impermissible documents.

For all those reasons, those strikes Defendant's Exhibit C, also Defendant's Exhibit C as clearly shown in all the records, everything, Exhibit C was never sought to be admitted in its entirety so it's impermissible to say it was. The Court -- Defense Counsel even

acknowledged that the only portion of Exhibit C even sought at any point was pages 1 and 2. So the reference to pages 7 through the end, impermissible, inaccurate, disingenuous, should never have been in the pleading in addition to all the other aspects. And since it was never even sought, the Court couldn't have ruled on it. The Court couldn't have ruled on it. There's no way there could, quote, be an offer of proof with regards to saying the Court -- it's not only impermissible to say if the Court had allowed the admission because that implies that the Court did not allow the admission. Because it had never been sought, the Court couldn't have ruled on something that never was presented to the Court.

So therefore, it would be precluded for not only being inaccurate and misrepresenting the status of what happened, but also would be precluded, in addition for all the other reasons, is because you can't bring something up that was never presented to the Court and it was even acknowledged only pages 1 and 2. And pages 1 and 2 could have easily been re-asked in the very next question as would have been several of these other issues raised in the other six that's previously been discussed, more so on yesterday and today, not really -- the Court asked a couple of questions on the 7th.

And so it is so ordered that all seven of these documents need to be stricken for the totality of what the Court has said in its ruling today as well as taking and incorporating everything that the Court said yesterday and the questions asked, the totality of that. So the Court is going to rule in that regard after giving a full opportunity. So the order to show cause has not been met. Since the order to show cause Defense

Counsel has not shown cause, any cause why the seven separate documents were filed without the notice, until all parties had already rested, and the Court confirms there's no further standing since there has been no good cause shown. That means that standard has not been met. The Court has given all opportunities on November 7th, yesterday and today. It has not been done. It's been now more than a few hours since -- it's past the 5:00 hour. But therefore these all need to be stricken for the totality of all the reasons.

Please do not excerpt any particular one sentence from the Court's ruling. The Court is including the totality of yesterday and today and the full opportunity to present whatever Defense Counsel wished to do so. He is choosing not to present -- choose only to present what he chooses to present.

So the Court has to make its ruling. And since Defense Counsel made it clear that there wasn't even supposed to be any rulings on any of these, these were, quote, administrative, the Court would find that's another independent basis because there is nothing that, quote, is administrative pleading that can just be filed for the sake of being filed in a district court proceeding because Defense Counsel has not provided any authority that that can be done. And there's nothing in the rules that's provided or any case law in that regard. And so that would be another independent basis for striking it.

It is so ordered. Thank you so very much for your time. It's 5:33. My apologies to my wonderful team. You know I'm going to have to continue now the Court's hearing --

MR. LEAVITT: Yes.

THE COURT: The Court's hearing I can do -- I think I can do Monday. Can I do Monday? I cannot -- I know you all cannot do tomorrow so let me look at what Monday looks like. So --

MR. DOYLE: I can do Monday if that works for the Court.

THE COURT: I appreciate it. Just one second. Let me take a quick look to see what -- before I volunteer some time that -- the 18th. Oh, you already -- thank you. You already -- one step ahead of me. 18th at 10:00. Does that work for the parties?

MR. DOYLE: Yes.

MR. JONES: Your Honor, I apologize I'm out of town. But Mr. Leavitt and Mr. --

THE COURT: Okay.

MR. JONES: -- we're checking, Your Honor.

THE COURT: I could do it the afternoon of the 19th.

MR. LEAVITT: I can do it the afternoon on the --

MR. DOYLE: I'm not available that afternoon. I can do anytime on Monday.

MR. LEAVITT: I have a depo on Monday and 30(b)(6) on [indiscernible].

THE COURT: The reason why I may have to hesitate on Monday is I may not have all my team here on Monday. And so I may need to pick the 19th or the 20th.

MR. LEAVITT: I can't do the 18th, Monday the 18th. I have to have 30(b)(6).

THE COURT: I can do the --

MR. DOYLE: I could do the 19th, but it would have to be in the morning. I have a --

THE COURT: I've got motion calendars. I cannot move my motion calendar so --

MR. DOYLE: Well --

THE COURT: -- I could do it the 20th. The afternoon is my last choice so I can offer you the 19th or I can offer you the 20th. I can offer you the 20th in the afternoon.

MR. DOYLE: 20th in the afternoon is fine.

MR. LEAVITT: I can do that. I can do the 20th on the afternoon, yes.

THE COURT: Whoever is going to --

MR. JONES: Is it acceptable, Your Honor --

THE COURT: As long as I have --

MR. JONES: -- if Mr. Leavitt is here and I'm not?

THE COURT: As long as I have --

MR. JONES: Okay.

THE COURT: -- one from each side, that's all I need.

MR. LEAVITT: Perfect.

MR. JONES: Thank you, Your Honor.

MR. LEAVITT: Let's do the short stick.

THE COURT: Okay. So you all want 1:30 on the 20th?

MR. DOYLE: Yes.

MR. LEAVITT: That works.

THE COURT: Does that work for everybody?

MR. LEAVITT: Yes, Your Honor.

THE COURT: 1:30 on the 20th then to continue. So the only thing left outstanding is the Court's order regarding the 9/19 order and the 10/2 order. Okay?

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

THE COURT: I appreciate it. Thank you for your time.

MR. DOYLE: Thank you, Your Honor.

[Proceedings concluded at 5:35 p.m.]

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

Jessica B. Cahill

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Jessica B. Cahill, Transcriber, CER/CET-708