

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

KEITH BRILL, M.D., FACOG, FACS,  
AN INDIVIDUAL; AND WOMEN'S  
HEALTH ASSOCIATES OF  
SOUTHERN NEVADA-MARTIN PLLC,  
A NEVADA PROFESSIONAL LIMITED  
LIABILITY COMPANY,

Appellants,

vs.

KIMBERLY TAYLOR, AN  
INDIVIDUAL,

Respondent.

Supreme Court Case No.:  
84492/84881 Electronically Filed  
Oct 03 2022 06:36 p.m.  
Elizabeth A. Brown  
Dist. Court Case No. A7/2472  
Clerk of Supreme Court

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**APPELLANTS' APPENDIX – VOL. III**

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	<b>CHRONOLOGICAL APPENDIX</b>	<b>Bates No.</b>
1	Notice of Entry of Judgment.....	APPX 000001 – APPX 000008
2	Defendants’ Verified Memorandum of Costs.....	APPX 000009 –  APPX 000230
3	Defendants’ Motion for Attorneys’ Fees and Costs.....	APPX 000231 –  APPX 000261
4	Plaintiff’s Motion to Re-Tax Costs.....	APPX 000262 –  APPX 000500
5	Defendants’ Opposition to Plaintiffs’ Motion to Retax Costs.....	APPX 000501 – APPX 000528
6	Plaintiff’s Opposition to Defendants’ Motion for Attorneys’ Fees and Costs.....	APPX 000529 – APPX 000544
7	Plaintiff’s Reply in Support of Plaintiff’s Motion to Re- Tax and Settle Costs.....	APPX 000545 – APPX 000550
8	Defendants’ Reply in Support of Motion for Attorneys’ Fees and Costs .....	APPX 000551 – APPX 000560
9	Transcript of January 18, 2022 hearing on Motion to Retax and Motion for Attorneys’ Fees and Costs.....	APPX 000561 – APPX 000572

10	Notice of Entry of Order Granting in Part and Denying in Part Plaintiff's Motion to Re-Tax and Settle Costs.....	APPX 000573 - APPX 000579
11	Notice of Entry of Order Denying Defendants' Motion for Attorneys' Fees.....	APPX 000580 – APPX 000589

<b>VOLUME APPENDIX</b>		<b>Bates No.</b>
<b><u>Volume I</u></b>		
Notice of Entry of Judgment.....		APPX 000001 – APPX 000008
Defendants' Verified Memorandum of Costs.....		APPX 000009 – APPX 000230

<b><u>Volume II</u></b>		<b>Bates No.</b>
Defendants' Motion for Attorneys' Fees and Costs.....		APPX 000231 – APPX 000261
Plaintiff's Motion to Re-Tax Costs.....		APPX 000262 – APPX 000500

<b><u>Volume III</u></b>		<b>Bates No.</b>
Defendants' Opposition to Plaintiffs' Motion to Retax Costs.....		APPX 000501 – APPX 000528
Plaintiff's Opposition to Defendants' Motion for Attorneys' Fees and Costs.....		APPX 000529 – APPX 000544

Plaintiff's Reply in Support of Plaintiff's Motion to Re-Tax and Settle Costs.....	APPX 000545 –  APPX 000550
Defendants' Reply in Support of Motion for Attorneys' Fees and Costs .....	APPX 000551 –  APPX 000560
Transcript of January 18, 2022 hearing on Motion to Retax and Motion for Attorneys' Fees and Costs.....	APPX 000561 – APPX 000572
Notice of Entry of Order Granting in Part and Denying in Part Plaintiff's Motion to Re-Tax and Settle Costs.....	APPX 000573 - APPX 000579
Notice of Entry of Order Denying Defendants' Motion for Attorneys' Fees.....	APPX 000580 – APPX 000589

### **CERTIFICATE OF COMPLIANCE**

I hereby certify that on this appendix consists of true and correct copies of papers in the Clark County District Court file as required by NRAP 30(g).

DATED: October 3, 2022.

McBRIDE HALL

*/s/ Heather S. Hall*

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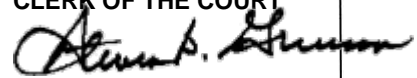
Attorneys for Appellants

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 3rd day of October 2022, service of the foregoing **APPELLANTS' APPENDIX – VOL. III** was served electronically to all parties of interest through the Court's CM/ECF system as follows:

ADAM J. BREEDEN, ESQ.  
Nevada Bar No. 008768  
BREEDEN & ASSOCIATES, PLLC  
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Las Vegas, NV 89119  
Attorney for Appellant

/s/Candace Cullina  
An employee of  
McBRIDE HALL



**OPPM**

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Attorneys for Defendants,

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*Women's Health Associates of Southern Nevada –*

*MARTIN, PLLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

KIMBERLY D. TAYLOR, an Individual,

Plaintiff,

vs.

KEITH BRILL, MD, FACOG, FACS, an  
Individual; WOMEN'S HEALTH  
ASSOCIATES OF SOUTHERN NEVADA –  
MARTIN, PLLC, a Nevada Professional  
Limited Liability Company,

Defendants.

**CASE NO.: A-18-773472-C**

**DEPT: III**

**DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION TO RETAX AND  
SETTLE COSTS**

**DATE OF HEARING: 1/18/2022**

**TIME OF HEARING: 9:00 A.M.**

COME NOW, Defendants, KEITH BRILL, MD, FACOG and WOMEN'S HEALTH ASSOCIATES OF SOUTHERN NEVADA – MARTIN, PLLC, by and through their counsel of record, ROBERT C. McBRIDE, ESQ. and HEATHER S. HALL, ESQ. of the law firm of McBRIDE HALL, and hereby submit this Opposition to Plaintiff's Motion to Retax and Settle Costs.

///

1 This Opposition is made and based on the Memorandum of Points and Authorities attached  
2 hereto, the papers and pleadings on file herein, and the arguments counsel makes at the time of the  
3 hearing on this matter.

4 DATED this 6<sup>th</sup> day of December 2021.

McBRIDE HALL

5  
6 */s/ Heather S. Hall*

7 

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10 Las Vegas, Nevada 89113

11 Attorneys For Defendants,

*Keith Brill, M.D., FACOG and*

12 *Women's Health Associates of Southern*  
13 *Nevada – Martin, PLLC*  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION AND FACTS**

4 This is a medical malpractice action filed by Plaintiff Kimberly Taylor arising out of care  
5 and treatment rendered by Defendant Keith Brill, M.D. and Women's Health Associate of  
6 Southern Nevada ("WHASN"). Plaintiff acknowledges that Defendants are the prevailing parties  
7 and entitled to costs. Despite this, Plaintiff's Motion to Retax and Settle Costs makes various  
8 inflammatory statements about Dr. Brill (i.e., "Dr. Brill now seeks to victimize his patient a second  
9 time. . ." Plf's Mtn., 3:2) and greatly mischaracterizes the trial testimony of defense expert Dr.  
10 McCarus and the defense's primary theory of defense. Contrary to the arguments made, the  
11 defense's primary theory was not that Ms. Taylor assumed the risk of negligence. Instead,  
12 Defendants' position throughout the litigation and trial was that Ms. Taylor experienced a known  
13 risk and complication that occurred in the absence of negligence. The members of the jury reached  
14 a verdict consistent with the evidence and found in favor of Defendants. Plaintiff's disagreement  
15 with that verdict does not warrant the personal attacks contained in the Motion.

16 Plaintiff now argues that this Court should re-tax Defendants' costs because Plaintiff  
17 claims that none should be allowed and there is not proper documentation to substantiate the costs  
18 or the necessity of the cost or the reasonableness of the charges. Plaintiff claims that the costs are  
19 not recoverable pursuant N.R.S. 18.005, 18.020, and 18.110. Alternatively, Plaintiff requests that  
20 if the Defendants are awarded costs, such costs should be limited to \$3,889.12. As explained in  
21 more detail below, Plaintiff is incorrect on all accounts. All of the costs contained in Defendants'  
22 Verified Memorandum of Costs are supported by invoices and substantial, related documentation.<sup>1</sup>  
23 While Plaintiff may object to all costs claimed by Defendants, this case has been actively litigated  
24 since 2018 and trial lasted for eight days. The costs Plaintiff seeks to exclude were necessarily  
25 incurred and permissible under NRS 18.005 and applicable case law interpreting that statute.

26 \_\_\_\_\_  
27  
28 <sup>1</sup> The documentation provided in the Verified Memorandum of Costs is more than sufficient and the inclusion of  
additional support in this Opposition is not a concession that the documentation was deficient in any regard.



1 Defendants should be awarded the full costs requested of \$60,167.20. *See* Defendants' Verified  
2 Memorandum of Costs.

3 **II.**

4 **LEGAL ARGUMENT**

5 **A. DEFENDANTS SHOULD BE AWARDED EACH AND EVERY COST SET**  
6 **FORTH IN THE DETAILED, VERIFIED MEMORANDUM OF COSTS.**

7 Plaintiff specifically attacks several of Defendants' costs and asks this Court to disallow  
8 various reasonable and necessary expenses. Defendants did not include every cost that was  
9 incurred because of this litigation. Had Defendants included all costs incurred they would have  
10 sought considerably more. Instead, Defendants' counsel carefully considered what was incurred  
11 in this litigation and what was allowable under NRS 18.005. Each and every requested cost should  
12 be awarded to Defendants as the prevailing party.

13 Defendants' Verified Memorandum of Costs provides more than adequate documentation,  
14 including billing invoices. The invoices document all of the costs included in the Memorandum  
15 of Costs. While Plaintiff may believe that these Defendants' costs are excessive, this case has  
16 been actively litigated since 2018 and trial lasted eight days. All of the Defendants' costs are  
17 reasonable, properly documented and permitted under the statute.

18 **1. The Clerks' Fees Should be Reimbursed to these Prevailing Parties.**

19 Plaintiff concedes that Defendants are entitled to the full amount for Clerks' Fees/Filing  
20 Fees sought for a total of \$3,889.12. This falls squarely under NRS 18.005(1) and should be  
21 awarded.

22 **2. The Court Reporter Fees Should be Awarded to Defendants.**

23 Plaintiff challenges the \$21,093.60 sought for court reporter fees. Primarily, Plaintiff  
24 objects to the \$16,260.75 in costs incurred for daily transcripts and the \$700 charged for the court  
25 recorder's fees because this was split evenly with Plaintiff. *See Exhibit "A"*, additional invoices  
26 for daily transcripts. NRS 18.005(8) provides for "Compensation for the official reporter or  
27 reporter pro tempore." Trial transcripts are not limited to use in an appeal. The purpose of ordering  
28 trial transcripts during trial is to assist in trial preparation, including examination of witnesses and

1 closing argument. In order to successfully defend against Plaintiff's claims, defense counsel  
2 requested and utilized daily trial transcripts. To prepare for each day of trial, defense counsel  
3 relied heavily on daily trial transcripts from the preceding day.

4 The \$700 sought for the court recorder's fees represents the Defendants' share of this cost.  
5 This cost was split evenly with Plaintiff, but that is of no consequence to Defendants seeking  
6 reimbursement of this necessary cost as the prevailing party. These costs are fair and reasonable  
7 and was incurred in connection with the trial presentation and fall under NRS 18.005(2). As such,  
8 these costs should be reimbursed.

9 **3. The Copying Costs Should be Reimbursed to Defendants.**

10 Plaintiff argues that Defendants did not provide specificity as to the documents copied, the  
11 reason for the copies, and the necessity of the same. However, Plaintiff states that Defendants  
12 identify the month of the charges, number of copies, the total amount of charges per month and  
13 Defendants reference the billing statement to their insurance carrier. NRS 18.005(12) only states  
14 "reasonable costs for photocopies." As such, \$2,667.63 for approximately three years of litigation  
15 is certainly reasonable for costs for photocopies, and Defendants properly identified same in the  
16 Verified Memorandum of Costs.

17 **4. The Expert Witness Fees are Reasonable and Necessary**

18 Defendants incurred \$16,955.70 in expert fees. These fees are recoverable pursuant to  
19 NRS 18.005(5) and NRS 18.005(4), which allow for "Fees for witnesses at trial, pretrial hearings  
20 and deposing witnesses, unless the court finds that the witness was called at the instance of the  
21 prevailing party without reason or necessity." Plaintiff argues that Defendants should not be  
22 awarded any of these expert fees despite the fact that NRS 18.005(5) specifically allows for:  
23 "Reasonable fees of not more than five expert witnesses in an amount of not more than \$1,500 for  
24 each witness, unless the court allows a larger fee after determining that the circumstances  
25 surrounding the expert's testimony were of such necessity as to require the larger fee."

26 Plaintiff's argument is based upon the flawed argument that "It was not necessary for Dr.  
27 Brill to hire a retained medical expert at all in this case because Dr. Bill [sic] could have testified  
28 alone in his defense (and did)." *See* Plf's Mtn., 7:11 – 13. It is not reasonable for Plaintiff to

1 suggest no expert was needed in defense of Dr. Brill's medical care. The undersigned has never  
2 presented a medical malpractice case at trial without the benefit of a liability expert supporting the  
3 defendant's care. That is exactly what happened here and Dr. McCarus's testimony was essential  
4 to the defense.

5 As is evident from the statute, it is within this Court's discretion to enlarge the fee when  
6 the "circumstances surrounding the expert's testimony were of such necessity as to require a larger  
7 fee." *Carpenters for Southern Nevada Health and Welfare Trust v. Better Building Company*, 101  
8 Nev. 742, 710 P.2d 1379 (1985). In fact, the statute specifically provides that costs include  
9 "reasonable fees of not more than five expert witnesses in an amount of not more than \$1,500 for  
10 each witness, unless the court allows a larger fee after determining that the circumstances  
11 surrounding the expert's testimony were of such necessity as to require the larger fee."  
12 [Emphasis added]; see also *Frazier v. Drake*, 357 P.3d 365, 2015 Nev. App. LEXIS 12 (Nev. Ct.  
13 App. 2015) (quoting *Logan v. Abe*, 131 Nev. Adv. Rep. 31, 350 P.3d 1139, 1143-44 (2015) (The  
14 Nevada Supreme Court affirmed the district court's award in excess of \$1,500 for defendants'  
15 expert even though the expert was not deposed and did not testify at trial.)).

16 The Nevada Court of Appeals has concluded as follows:

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

25 *Id.* at 378, 2015 Nev. App. LEXIS 12 at \*37.

26 Dr. McCarus is a Board-certified OB/GYN and a Fellow of the American College of  
27 Obstetricians and Gynecologists (ACOG). In addition to various seminars and teaching positions,  
28 he has been in private practice for nearly 30 years. He was first retained in March of 2018, upon

1 receipt of Plaintiff's pre-litigation demand letter. There were numerous medical records and  
2 deposition transcripts to review in this case. Dr. McCarus reviewed the entire case file in order to  
3 provide competent expert opinions to defend the care at issue. It is within this Court's sound  
4 discretion to award expert witness fees in excess of \$1,500.00. *Arnold v. Mt. Wheeler Power Co.*,  
5 101 Nev. 612, 707 P.2d 1137 (1985); *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993).

6 This is a medical malpractice case which necessitated hiring a qualified expert witness to  
7 testify at trial and to defend against Plaintiff's allegations. Defendants' retained expert was  
8 necessary to defend against Plaintiff's claims. The testimony of Dr. McCarus assisted the jury in  
9 understanding the medical issues involved in this complex medical case. Plaintiff mischaracterizes  
10 Dr. McCarus's trial testimony. Dr. McCarus testified that Dr. Brill fully complied with the  
11 standard of care and that Ms. Taylor's unusual anatomy led to the complications she experienced.  
12 During his testimony, Dr. McCarus explained the anatomy in detail. He also explained the  
13 Symphon device and performance of a hysteroscopy in detail.

14 It is also illogical for Plaintiff to assert that Defendants should have retained a local expert  
15 when Plaintiff's expert was also out-of-state. Plaintiff's expert, David Berke, D.O., practices in  
16 Riverside, California. Given that Dr. McCarus has worked on this matter for 3 ½ years and  
17 physically appeared to testify at trial, his charges of 16,955.70 are incredibly reasonable.  
18 Accordingly, Defendants should be awarded all the expert costs associated with defending against  
19 Plaintiff's claims.

#### 20 **5. Costs for Travel is Permitted and Should Be Reimbursed.**

21 Plaintiff attacks the \$429.08 sought by Defendants for travel expenses that were necessarily  
22 incurred in defending against this matter. NRS 18.005(15) specifically permits an award to a  
23 prevailing party of "reasonable costs for travel and lodging incurred taking depositions and  
24 conducting discovery."

25 The cost of \$93.59 incurred on July 19, 2021 was for a rental car to drive to the deposition  
26 of Plaintiff's expert Dr. Berke. This deposition took place in Riverside, California. The remaining  
27 two charges for this deposition (\$27.09 and \$32.41) were for gas to drive to and from the  
28 deposition. See **Exhibit "B"**, credit card receipts of Heather Hall. It is very surprising that Plaintiff

1 would take the position that defense counsel should not have traveled to take this deposition in  
2 person. **Plaintiff's counsel, Adam Breeden, Esq. also attended in person and advised defense**  
3 **counsel he drove to the deposition.**

4 Any meals included should be reimbursed. Pursuant to NRS 18.005(17), this Court may  
5 award "any other reasonable and necessary expense incurred in connection with the action . . ."  
6 Meals should be included. Each and every travel expense included in Defendants' Verified  
7 Memorandum of Costs was necessarily incurred and should be awarded.

8 **6. Medical records were necessary to Defend Against Plaintiff's Claims.**

9 Nothing defense counsel did in this case was "frivolous". *See* Plf's Mtn., 8:22. It is not  
10 clear what provider Plaintiff is claiming Defendants frivolously made re-requests for medical  
11 records. However, any follow-up with a medical facility due to lack of response to a request for  
12 medical records or for updated medical records was not needless. Defendants incurred \$3,399.95  
13 in medical records charges since 2018. These costs are appropriately documented. Medical record  
14 charges are reasonable and necessary when litigating a medical malpractice case. Therefore,  
15 Defendants respectfully request to be awarded \$3,399.95.

16 **7. Defendants are entitled to the remaining Costs and Expenses.**

17 Lastly, Plaintiff takes issue with the miscellaneous fees included in the Verified  
18 Memorandum of Costs. Specifically, Plaintiff asks the Court to deny Defendants \$7,850 for  
19 mediation costs with Retired Judge Stu Bell and \$3,350 for medical illustrations which defense  
20 counsel utilized throughout the trial.

21 First, the amount requested for mediation is **\$7,400**. *See Exhibit "C"*, invoice from JAMS.  
22 The parties agreed to private mediation. While the mediation was not successful, the lack of  
23 success does not negate that the mediation was necessarily incurred. Defendants bore the full brunt  
24 of the expense, but there was never any waiver of Defendants' right to seek reimbursement of this  
25 necessarily incurred cost in the event that Defendants prevailed at trial.

26 As for the medical illustrations, they were not basic. They were detailed anatomic color  
27 illustrations prepared by a professional illustrator and were not stock. *See Exhibit "D"*,  
28 Illustrations. To prepare them, the illustrator required input from the medical records and defense



1 counsel, especially in light of the unusual anatomy being illustrated. Beginning with Opening  
2 Statement, defense counsel utilized these illustrations throughout the trial presentation. They were  
3 also utilized during witness testimony and Closing Argument. These illustrations were vital to  
4 demonstrating the internal anatomy of the patient and key to the defense's success at trial.

5 As stated above, this Court may award "any other reasonable and necessary expense  
6 incurred in connection with the action . . ." See NRS 18.005(17). Costs for mediation and medical  
7 illustrations were reasonable and necessarily incurred. Pursuant to NRS 18.005(17), these costs  
8 should also be awarded to Defendants.

9 **8. The Memorandum of Costs was Verified by Oath of Counsel, as**  
10 **Required by Nevada Law.**

11 Defendants are not estimating or inflating the time worked or the costs incurred. Instead,  
12 voluminous support for the Verified Memorandum of Costs was provided in the form of attorney  
13 invoices, checks, receipts, and third-party invoices. The Verified Memorandum of Costs includes  
14 the following statement signed by defense counsel Ms. Hall: "I hereby certify, under penalty of  
15 perjury, that I am an attorney of record in this matter, that I have personal knowledge of the  
16 information contained in this document, that to the best of my knowledge the information is true  
17 and correct and all costs incurred in the defense of this proceeding." Verified Memorandum of  
18 Costs, 9:3 – 4. All of the costs set forth in the Memorandum, for a grand total of \$60,167.20, are  
19 sufficiently documented and recoverable by these prevailing parties.

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III.

CONCLUSION

By statute, Defendants are the prevailing party and entitled to an award of costs incurred in the pursuit of this matter. Therefore, Defendants respectfully requests that the Court award them the costs incurred in this matter in the amount of \$60,167.20 plus applicable interest.

DATED this 6<sup>th</sup> day of December 2021.

McBRIDE HALL

*/s/ Heather S. Hall*

\_\_\_\_\_  
ROBERT C. McBRIDE, ESQ.

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Attorneys For Defendants,

*Keith Brill, M.D., FACOG and*

*Women's Health Associates of Southern  
Nevada – Martin, PLLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 6<sup>th</sup> day of December 2021, I served a true and correct copy of the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO RETAX AND SETTLE COSTS** addressed to the following counsel of record at the following address(es):

- ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of e-service attached to any copy filed with the Court; or
- ☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on the service list below in the United States mail at Las Vegas, Nevada
- ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number indicated on the service list below.

Adam J. Breeden, Esq.  
BREEDEN & ASSOCIATES, PLLC  
376 E. Warm Springs Road, Suite 120  
Las Vegas, Nevada 89119  
*Attorneys for Plaintiff*

  
An Employee of McBRIDE HALL



**EXHIBIT “A”**

**EXHIBIT “A”**

## ***CHECK REQUEST FORM***

Vouchered \_\_\_\_\_

Vouchered & Billed \_\_\_\_\_

Payee: TheRecordXchange

Address: 7590 East Gray Road, Suite 202  
Scottsdale, AZ 85260

Phone Number:

Tax ID: 47-1807876

Amount: \$16,260.75

Not To Exceed:

File No: 507-5477-01

Case Name: Taylor v. Brill

Invoice Date: \_\_\_\_\_

Invoice Number: \_\_\_\_\_

Purpose of Payment:

Daily Transcripts

Requesting Secretary: Candace Cullina

Requesting Attorney: Robert C. McBride

Date Submitted: 10/4/2021

Date Needed: 10/5/2021

Time:

# Request for Taxpayer Identification Number and Certification

► Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Give Form to the  
requester. Do not  
send to the IRS.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. <b>American Platform Services LLC</b>	
	2 Business name/disregarded entity name, if different from above <b>TheRecordXchange</b>	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only <b>one</b> of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input checked="" type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► <b>P</b> <b>Note:</b> Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is <b>not</b> disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ►	
	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <small>(Applies to accounts maintained outside the U.S.)</small>	
	5 Address (number, street, and apt. or suite no.) See instructions. <b>7590 East Gray Road, Suite 202</b>	Requester's name and address (optional)
	6 City, state, and ZIP code <b>Scottsdale, AZ 85260</b>	
	7 List account number(s) here (optional)	

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number								
			-				-	
or								
Employer identification number								
4	7	-	1	8	0	7	8	7

## Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ► 	Date ► 12/13/2018
-----------	--	-------------------

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

## Candace P. Cullina

---

**From:** maukele@hawaii.rr.com  
**Sent:** Monday, October 4, 2021 4:10 PM  
**To:** Candace P. Cullina  
**Subject:** Taylor v. Brill, request for daily jury trial transcripts  
**Attachments:** TheRecordXchange\_2019 W9.pdf

Aloha, Candace

It's always a pleasure chatting with you. We have received your request for daily transcripts for your trial that is scheduled for October 7 to October 20, 2021. All of our work is handled through TheRecordXchange platform.

The estimated cost for the daily transcripts is \$16,260.75 (225 pgs x \$8.03 per pg (daily rate) = \$1,806.75 per day).

We will be requesting payment of this amount prior to preparing your transcript. Once your order is created, I will go ahead and share it with you. We will be creating a new order each day, and so you will be receiving an email from TheRecordXchange each day. Payment may be made by credit card directly on the site under the "Payments" tab or by company check. **If paying by check, please make the check payable to TheRecordXchange and mail the check to: TheRecordXchange, 7590 East Gray Road, Suite 202, Scottsdale, Arizona 85260.**

Any balance remaining once the trial is completed will be credited back to the credit card used for the deposit or if paying by check a refund check will be issued and mailed to you. I have attached a copy of the W9 for TheRecordXchange for your files.

I will email you the transcript each day. Please provide me with the names and email addresses of the trial team that should receive the transcript each day.

You will receive an email from TheRecordXchange once your transcript is completed. You can then log in to your account to view your order. Click on the "Downloads" tab to download your transcript. All transcripts from this point forward will be stored in the repository, and you will be able to access your transcripts at any time, from any place by logging into your account.

Should you have any questions, please do not hesitate to contact me.

Thank you,

**Jessica B. Cahill**  
**Maukele Transcribers, LLC**  
467 Maukele Place  
Wailuku, Maui, Hawaii 96793  
Telephone: (808)298-8633

To order a transcript: <https://maukeletranscribers.trxchange.com/>  
Website: <https://Maukeletranscribers.trxchange.com>

**EXHIBIT “B”**

**EXHIBIT “B”**



Printed from Chase Personal Online

## CREDIT CARD (...0494)

\$27.09

Sale

Jul 19, 2021  
Transaction dateJul 20, 2021  
Posted dateChevron  
LAS VEGAS, NV 89123  
(925) 842-1000

Description CHEVRON 0206965  
Also known as Chevron  
Merchant type Automated fuel dispensers  
Method In person  
Card number (...0494)  
Category Gas

## Rewards earned with this transaction

+ Points earned on all other purchases	27.09
--	-------

Total Rapid Rewards® points	27.09
-----------------------------	-------

Transaction details may be preliminary or incomplete and may not match the transaction as it appears on your periodic statement, which is the official record of your account activity.

Taylor v. Brill  
507-5477-01



Printed from Chase Personal Online

## CREDIT CARD (...0494)

\$32.41

Sale

Jul 19, 2021

Transaction date

Chevron

BARSTOW, CA 92311

Jul 20, 2021

Posted date

(925) 842-1000

Description CHEVRON 0099752  
Also known as Chevron  
Merchant type Automated fuel dispensers  
Method In person  
Card number (...0494)  
Category Gas

## Rewards earned with this transaction

+ Points earned on all other purchases	32.41
--	-------

Total Rapid Rewards® points	32.41
-----------------------------	-------

Transaction details may be preliminary or incomplete and may not match the transaction as it appears on your periodic statement, which is the official record of your account activity.



TERRIBLE HERBST #208  
00206965  
7310 S.LAS VEGAS BLV  
LAS VEGAS, NV  
07/19/2021 442982762  
05:55:00 PM

XXXXXXXXXXXX0494  
VISA  
INVOICE E/6572299  
AUTH 00186D

PUMP# 11  
UNLEAD REG 6.775G  
PRICE/GAL \$3.999

FUEL TOTAL \$ 27.09

CREDIT \$ 27.09

Chip Read  
CHASE VISA  
Mode: Issuer  
AID: A0000000031010  
TVR: 000000000  
IAD: 0602120360A002  
TSI: E000  
ARC: 00

Get rewarded on  
every fill-up at  
Chevron with a  
Techron Advantage  
card. See app  
for details.

I agree to pay the above total amount  
according to card issuer agreement.

---TERRIBLEHERBST.COM---

Customer Copy

Chevron Stations Inc  
00099752  
2890 Lenwood Rd  
Barstow, CA

07/19/2021 671950321  
03:36:39 PM

XXXXXXXXXXXX0494  
VISA  
INVOICE E/5271236  
AUTH 060910

PUMP# 12  
UNLEAD REG 6.956G  
PRICE/GAL \$4.659

FUEL TOTAL \$ 32.41

Total = \$ 32.41

CREDIT \$ 32.41

Chip Read  
CHASE VISA  
Mode: Issuer  
AID: A0000000031010

Get rewarded on  
every fill-up at  
Chevron with a  
Techron Advantage  
card. See app  
for details.

I agree to pay the  
above total amount  
according to card  
issuer agreement.

Customer Copy





Printed from Chase Personal Online

---

CREDIT CARD (...0494)

\$93.59

Sale

Jul 20, 2021  
Transaction dateEnterprise Rent-A-Car  
LAS VEGAS, NV 89119Jul 21, 2021  
Posted date(855) 266-9565

---

Description ENTERPRISE RENT-A-CAR  
Also known as Enterprise Rent-A-Car  
Merchant type ENTERPRISE RENT-A-CAR  
Method In person  
Card number (...0494)  
Category Travel

---

## Rewards earned with this transaction

+ Points earned on all other purchases	93.59
--	-------

---

Total Rapid Rewards® points	93.59
-----------------------------	-------

---

Transaction details may be preliminary or incomplete and may not match the transaction as it appears on your periodic statement, which is the official record of your account activity.

---



## Trip Summary



Finished!

Tell us how we are doing (optional)

Overall satisfaction with  
Concur:Comments and suggestions:  
(Max 1000 Characters)

1000 characters left

☐ Sign me up to participate in future research  
studies.[Send Feedback](#)

## Finished!

You have successfully booked your trip!

## Trip Record Locator : VGYOUM

This trip complies with your travel policy.

Your itinerary has been saved. ProAssurance will service your itinerary.

Please Note: Fares are not guaranteed until tickets are issued and are subject to change without notice.

## Travel Contact Information

## TRIP OVERVIEW

Trip Name: Car/Hotel Reservation

Start Date: July 19, 2021

End Date: July 19, 2021

Created: July 10, 2021, Heather Hall (Modified: July 10, 2021)

Description: Taylor v. Brill - Deposition of Plaintiff's Expert Dr. Berke

Comments to Agent: 7026770504

Agency Record Locator: VGYOUM

Reservation for: Heather Sue Hall

Total Estimated Cost: \$66.17 USD

Agency Name: ProAssurance

## RESERVATIONS

Monday, July 19, 2021



## Enterprise Car Rental at: Las Vegas US (LAS)

Pick-up at: Las Vegas US (LAS)

Pick Up: 08:00 AM Mon Jul 19

Pick-up at: Las Vegas US (LAS)

Number of Cars: 1

Confirmation: 2048488249COUNT

Status: Confirmed

Rate Code: Z3K74I

Return: 09:00 PM Mon Jul 19

Returning to: Las Vegas US (LAS)

## Additional Details

Rate: \$46.00 USD daily rate, unlimited miles; \$46.00 USD extra daily rate, unlimited miles; \$13.53 USD extra  
hourly rate, unlimited miles

Total Rate: \$66.17 USD

Corporate Discount: XZ55278

## Rental Details

Intermediate / Car / Automatic transmission / Air conditioning

## TOTAL ESTIMATED COST

Car:	\$66.17 USD
Total Estimated Cost:	\$66.17 USD

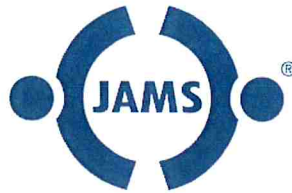
Your Itinerary has been saved.

[Print Itinerary](#)[E-mail Itinerary](#)[Return to Travel Center](#)

**EXHIBIT “C”**

**EXHIBIT “C”**

# DEPOSIT REQUEST



**Invoice Date**  
4/20/2021

**Invoice Number**  
5667756

Bill To: Mr. Robert McBride Esq.  
McBride Hall  
8329 West Sunset Road  
Suite 260  
Las Vegas, NV 89113  
US

**Reference #:** 1260006270 - Rep# 4  
Billing Specialist: Mason, Glenn T  
Email: [gmason@jamsadr.com](mailto:gmason@jamsadr.com)  
Telephone: 949-224-4654  
Employer ID: 68-0542699

RE: Taylor, Kimberly D. vs. Brill, M.D., Keith et al.

Neutral(s): Hon. Stewart Bell (Ret.)

Representing: Keith Brill, M.D. ; Women's Health Associates of Southern Nevada - Martin, PLLC

Hearing Type: MEDIATION

SP

Date / Time	Description	Your Share
4/20/21	<b>Hon. Stewart L Bell (Ret.)</b> Deposit for services: To be applied to professional time (session time, pre and post session reading, research, preparation, conference calls, travel, etc.), expenses, and case management fees. Failure to pay the deposit by the due date may result in a delay in service or cancellation of the session. With the exception of non-refundable fees, (Please review the Neutral's fee schedule regarding case management fee and cancellation policies), any unused portion of this deposit will be refunded at the conclusion of the case.	\$ 7,400.00

**Total Billed:** \$ 7,400.00

**Total Payment:** \$ 0

**Balance:** \$ 7,400.00

Unused deposits will not be refunded until the conclusion of the case. If the case cancels or continues, fees are due per our cancellation and continuance policy. Please make checks payable to JAMS, Inc. **For Arbitration Cases, please contact your case manager for due date, otherwise, payment is due upon receipt.**

[Click here to pay](#)

Standard mail:  
P.O. Box 845402  
Los Angeles, CA 90084

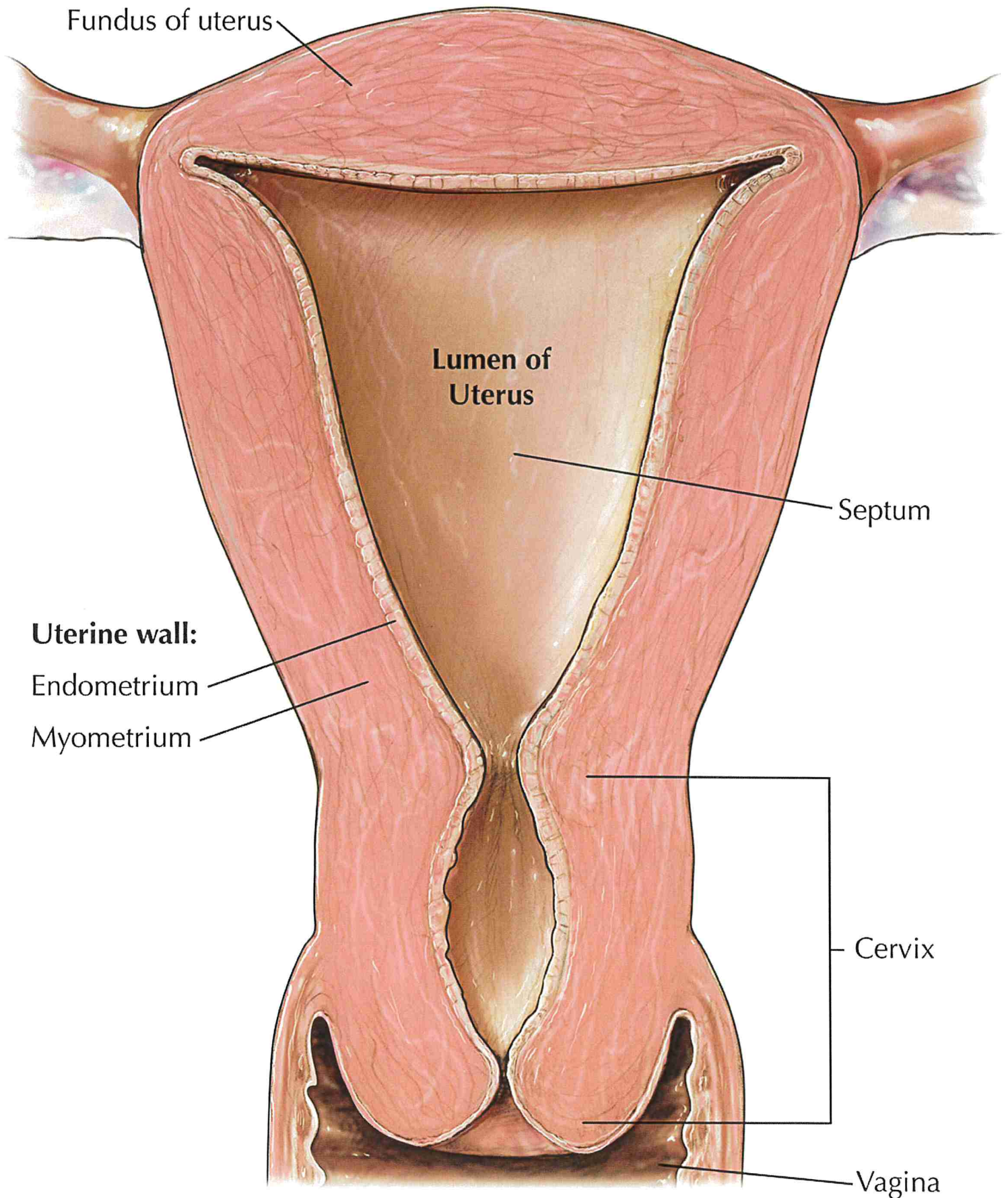
Overnight mail:  
18881 Von Karman Ave. Suite 350  
Irvine, CA 92612

**EXHIBIT “D”**

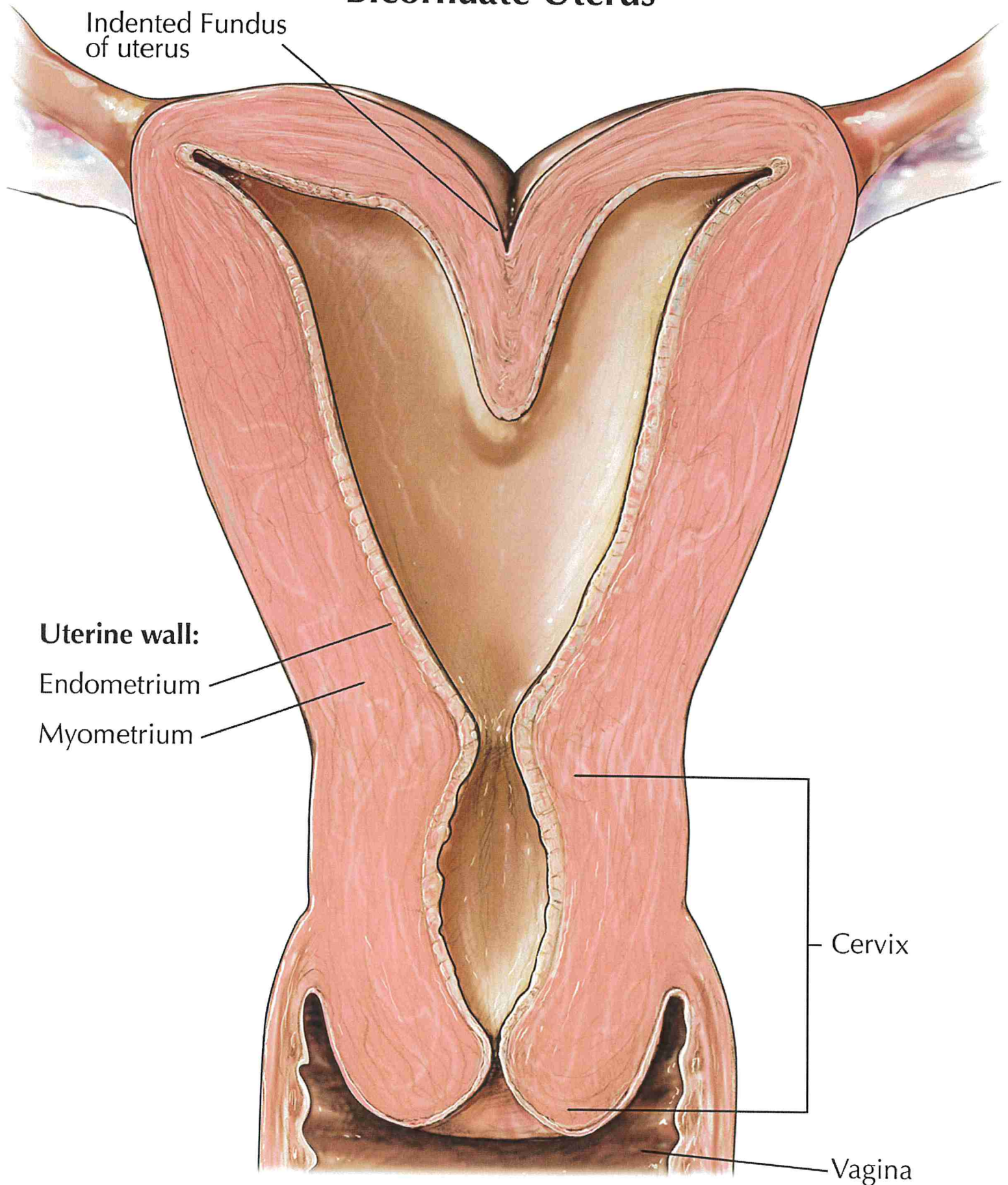
**EXHIBIT “D”**



# Normal Uterus

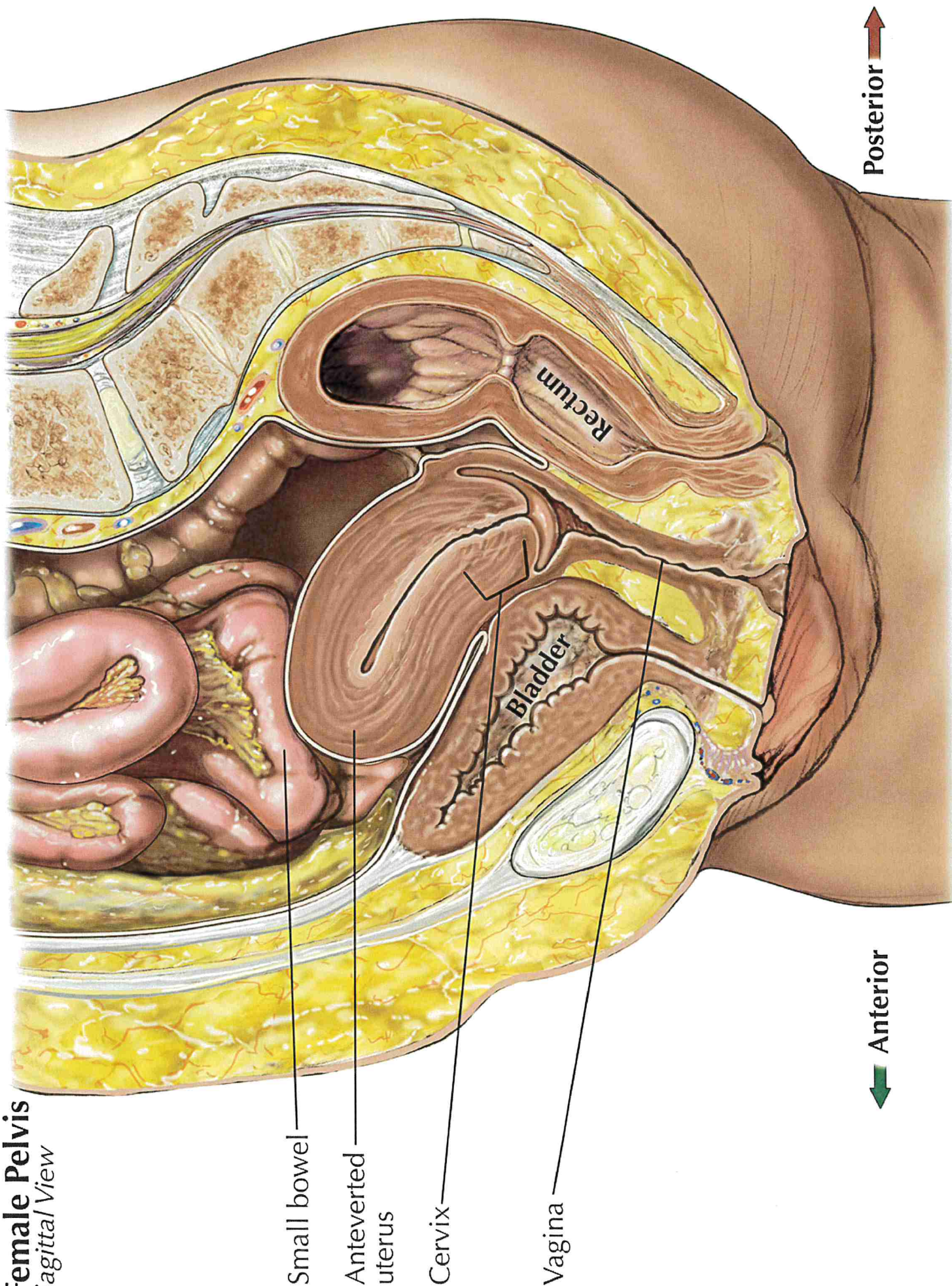


# Bicornuate Uterus





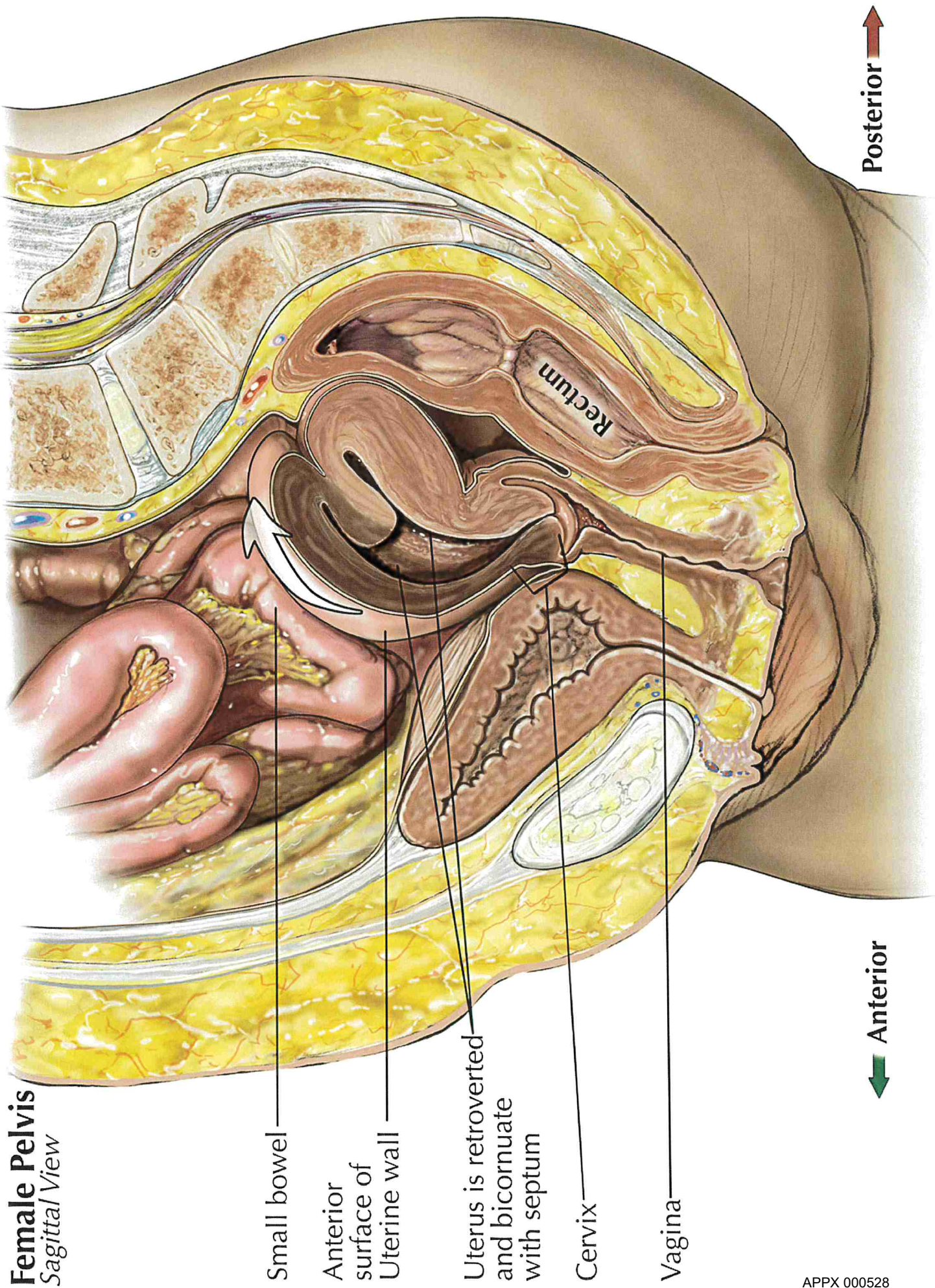
# Female Pelvis Sagittal View



APPX 000527



# **Female Pelvis** *Sagittal View*



Small bowel

Anterior  
surface of  
Uterine wall

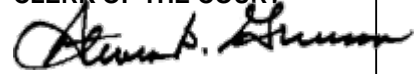
Uterus is retroverted  
and bicornuate  
with septum

Cervix

Vagina

Anterior

Posterior



OPM  
ADAM J. BREEDEN, ESQ.  
Nevada Bar No. 008768  
BREEDEN & ASSOCIATES, PLLC  
376 E. Warm Springs Road, Suite 120  
Las Vegas, Nevada 89119  
Phone: (702) 819-7770  
Fax: (702) 819-7771  
Adam@Breedonandassociates.com  
*Attorneys for Plaintiff*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIMBERLY TAYLOR, an individual,  
  
Plaintiff,

CASE NO.: A-18-773472-C

DEPT NO.: III

v.

KEITH BRILL, M.D., FACOG, FACS, an  
individual; WOMEN'S HEALTH  
ASSOCIATES OF SOUTHERN NEVADA –  
MARTIN, PLLC, a Nevada Professional  
Limited Liability Company; BRUCE  
HUTCHINS, RN, an individual;  
HENDERSON HOSPITAL and/or VALLEY  
HEALTH SYSTEMS, LLC, a Foreign LLC  
d/b/a HENDERSON HOSPITAL, a subsidiary  
of UNITED HEALTH SERVICES, a Foreign  
LLC; TODD W. CHRISTENSEN, M.D., an  
individual; DIGNITY HEALTH d/b/a ST.  
ROSE DOMINICAN HOSPITAL; DOES I  
through XXX, inclusive; and ROE  
CORPORATIONS I through XXX, inclusive,

**PLAINTIFF'S OPPOSITION TO  
DEFENDANTS' MOTION FOR  
ATTORNEY'S FEES AND COSTS**

Date of Hearing: December 30, 2021

Time of Hearing: Chambers

Defendants.

Plaintiff, KIMBERLY TAYLOR, by and through her attorney of record Adam J. Breedon,  
Esq. of BREEDEN AND ASSOCIATES, PLLC, hereby submits the following Opposition to  
Defendant's Motion for Attorney's Fees and Costs.

**MEMORANDUM IN OPPOSITION OF MOTION**

**I. CASE BACKGROUND**

This is a medical malpractice action by Plaintiff Kimberly Taylor against her OB/GYN

1 Defendant Keith Brill. On April 26, 2017, Dr. Brill performed an intended dilation and curettage  
2 with hysteroscopy combined with fibroid tumor removal and hydrothermal ablation procedure on  
3 Ms. Taylor. In layman's terms, this meant that during part of the procedure a small camera and  
4 cutting device called a resectoscope would be inserted through Taylor's vagina into the uterus and  
5 a fibroid tumor previously identified via ultrasound in the uterus would be removed. This procedure  
6 was done with the use of a Symphion system resectoscope. This is a small, tube-like device of 2-3  
7 mm in diameter that is inserted into the uterus. The tip has a cutting device which cuts with  
8 radiofrequency or heat from electricity. The patient is under complete anesthesia for the procedure.  
9 During the procedure, Dr. Brill perforated the uterus and small intestine with the resectoscope, but  
10 did not advise Taylor of this in the recovery room. Taylor emerged with severe abdominal pain, the  
11 cause of which was unknown to her initially. After two visits to the emergency room post-  
12 operatively, another physician finally diagnosed the injury to the small intestine. A second surgery  
13 had to occur wherein a portion of Taylor's small intestine had to be removed and she had to be  
14 hospitalized for over a week. She presented a claim for approximately \$225,620.07 in medical  
15 special damages and the cap amount of \$350,000 for pain and suffering.

16 All Defendants other than Dr. Brill and his clinic settled prior to trial. The case proceeded  
17 to an eight day trial ending on October 19, 2021. At trial, Dr. Brill admitted to causing both a uterine  
18 and intestinal perforation during the procedure. He admitted he did not tell Taylor about either  
19 perforation post surgery (he claimed he saw the uterine perforation but did not realize he perforated  
20 the small intestine). He did not contest the reasonableness and necessity of Taylor's aftercare, which  
21 included two trips to the emergency, a nine day hospitalization with bowel resection surgery and  
22 subsequent IV antibiotics. He did not contest the reasonableness of over \$200,000 in medical  
23 charges she incurred. He contested only liability.

24 The medical witnesses that testified at trial were Taylor's retained medical expert, Dr. Berke,  
25 Dr. Brill in his own defense, and Dr. Brill's retained expert, Dr. McCarus, all OB/GYN physicians  
26 who collectively have performed thousands of hysteroscopies. All three medical experts stated that  
27 intestinal perforations during hysteroscopy were extremely rare and none had ever caused or  
28 personally seen such a perforation except for Taylor's case. Taylor's expert Dr. Berke testified that

1 Dr. Brill negligently caused the perforation by improper use of the resectoscope and burning through  
2 the uterus and small bowel, thus causing a thermal injury. Even Dr. Brill's own expert, Dr. McCarus  
3 testified that a thermal injury of this kind would be beneath the standard of care, so the defense  
4 argued that instead Dr. Brill mechanically pushed or jammed the blunt tip of the resectoscope  
5 through the uterus and into the small intestine and, remarkably, that it was perfectly acceptable and  
6 within the standard of care to do so for the procedure. Taylor's expert Dr. Berke addressed this  
7 alternate theory by simply stating it was also negligent, in his opinion, for Dr. Brill to push the tip  
8 of the resectoscope through the uterus and into the small bowel since Dr. Brill would have been  
9 visually seeing this on the camera and would feel resistance while he encountered the structures.

10 At trial, Dr. Brill admitted to nearly every fact in the case, he just concluded for liability  
11 purposes that he was not liable because he deemed uterine and intestinal perforation during the  
12 procedure to be a "risk" of surgery to which Taylor gave informed consent. During trial, the  
13 testimony from the defendant, testimony from his retained medical expert, cross-examination of  
14 Taylor and the defense's closing argument was heavily focused on assumption of risk, despite the  
15 fact that such evidence is *universally found to be irrelevant and prejudicial in a medical malpractice*  
16 *action*. E.g., *Wright v. Kaye*, 267 Va. 510, 593 S.E.2d 307 (2004) (evidence of the informed consent  
17 discussions or consent form "is neither relevant nor material to the issue of the standard of care" and  
18 "pre-operative discussion of risk is not probative upon the issue of causation: whether [the doctor]  
19 negligently performed the procedure.").

20 Despite repeated objections by Taylor that it was improper, the Defense was allowed during  
21 trial to present an assumption of the risk defense (that Taylor was advised of the risk of intestinal  
22 perforation prior to the procedure but consented knowing the risks and therefore the doctor was not  
23 liable). The jury returned a defense verdict. The verdict highlights the very reason why assumption  
24 of risk evidence is considered irrelevant, prejudicial, improper and misleading to the jury in a  
25 medical malpractice action and should be barred at trial. Nevertheless, the Defense achieved their  
26 defense verdict through this improper, faux defense and Taylor has already appealed seeking a new  
27 trial.

28 Dr. Brill now seeks to victimize his patient a second time and financially devastate her with



1 a large award of litigation costs. He seeks to punish Taylor--who by all accounts and innocent  
2 victim of a terrible, serious injury--by seeking well over \$100,000 in litigation costs and attorney's  
3 fees. Taylor now opposes his efforts.

### 4 **III. LAW AND ARGUMENT**

#### 5 **A. Adjudication of this Motion as to Costs and Fees is Inappropriate until the Pending** 6 **Motion to Disqualify Defense Counsel is Adjudicated**

7 Unknown to Taylor or her counsel, apparently on the day of the verdict in this case the  
8 defense law firm of McBride Hall interviewed and several days later made a job offer to the  
9 paralegal from Plaintiff counsel who extensively worked on this case, attended all days of trial and  
10 knows all confidential and privileged information as to Plaintiff's case, including post-verdict  
11 strategy. The paralegal literally interviewed with McBride Hall and the next day worked on a letter  
12 to Taylor detailing all post-trial strategy of Taylor's attorney. As a result, Taylor filed a Motion to  
13 Disqualify and the McBride Hall law firm, which is presumed to be disqualified in this matter. The  
14 McBride Hall law firm responds that they believe they can cure the imputed disqualification by  
15 screening the paralegal at her new law firm.

16 The Motion to Disqualify is set for hearing on December 7, 2021. McBride Hall should not  
17 be able to file any motions, oppositions, replies or otherwise participate in this matter until that  
18 motion is fully adjudicated. Taylor therefore objects to the filing of the Motion for Attorney's Fees  
19 and Costs and any further briefing or hearings until this imputed disqualification issue is decided.

#### 20 **B. The Award of Costs should be Denied Consistent with Taylor's Motion to Re-Tax Costs**

21 Dr. Brill's motion seeks an award of costs. The issues raised in the motion are duplicative  
22 of the issues raised in Taylor's *Motion to Re-Tax and Settle Costs* filed with the court on November  
23 22, 2021 and presently set for hearing on January 18, 2022. It is wasteful for Taylor to repeat each  
24 and every point and argument made in that Motion in this Opposition. Therefore, Taylor simply  
25 notes that she has disputed a majority of the claimed costs, some of which are disallowed under  
26 Nevada law and some of which were not properly supported in the memorandum of costs.

27 The only new issue raised in the *Motion for Fees and Costs* as to costs which was not raised  
28 by Taylor's *Motion to Re-Tax and Settle Costs* is that Dr. Brill requests accrued, pre-judgment

1 interest on his costs. Dr. Brill claims that he is entitled to prejudgment interest on costs from the  
2 date of service of the summons and complaint. This is plainly an *incorrect* statement of the law.  
3 To obtain interest on an item of costs, a party must establish when the expense was incurred and  
4 calculate the interest from that time forward, not the date of service of the summons and complaint.  
5 If the party cannot establish when the cost was incurred, they are entitled only to post-judgment  
6 interest on the costs from the time of the judgment. *Gibellini v. Klindt*, 110 Nev. 1201, 1209, 885  
7 P.2d 540, 545 (1994) (“interest on costs should run from the time when the costs were incurred. If  
8 a party is unable to prove when costs were incurred, interest on those costs should be awarded only  
9 from the time of judgment.”); *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*,  
10 114 Nev. 1348, 1355, 971 P.2d 383, 388 (1998) (explaining the application of *Gibellini*). Therefore,  
11 not only are the items of costs recoverable disputed, but Dr. Brill has not set forth his calculation of  
12 interest owed properly. Therefore, his request for interest should be denied.

13 **C. Dr. Brill’s Motion for Attorney’s Fees under NRS § 18.010(2) must be Denied as Fees**  
14 **are not Available to a Prevailing Defendant under that Statute**

15 In Nevada, attorney's fees cannot be recovered unless authorized by agreement or by statute  
16 or rule. *Young v. Nevada Title Co.*, 103 Nev. 436, 744 P.2d 902 (1987). This is the so-called  
17 “American Rule” of attorney’s fees. Dr. Brill first asserts NRS § 18.010(2) as a basis for an award  
18 of attorney’s fees. NRS § 18.010(2) has two subsections which state as follows:

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

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

22 (b) Without regard to the recovery sought, when the court finds that the claim,  
23 counterclaim, cross-claim or third-party complaint or defense of the opposing party  
24 was brought or maintained without reasonable ground or to harass the prevailing  
25 party.

26 Dr. Brill seeks an award of \$130,541.00 in attorney’s fees plus interest<sup>1</sup> on the fees under

---

27 <sup>1</sup> Dr. Brill’s request for pre-judgment interest on any award of attorney’s fees is erroneous. Under  
28 Nevada law, pre-judgment interest on attorney’s fees is recoverable only “when attorney fees are  
awarded as an element of damages.” *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 430, 132 P.3d  
1022, 1036 (2006). For example, *Albios* concerned a construction defect statute allowing  
(footnote continued)

1 this statute. He seeks the award under both subsection (a) [prevailing party has not recovered more  
2 than \$20,000] and (b) [complaint was brought or maintained without reasonable ground or to harass  
3 the prevailing party].

4 Dr. Brill's request under subsection (a) is a frivolous legal position and has been rejected  
5 repeatedly by the Nevada Supreme Court. As explained by the Supreme Court, the purpose of  
6 enacting subsection (a) was to address the problem that "[p]laintiffs who sought relatively small  
7 recoveries were not being made whole because they were required to pay attorney fees out of their  
8 [small] judgments." *Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 281-82 (1995). Therefore,  
9 plaintiffs and attorneys had a *disincentive* to bring small but meritorious claims due to the costs of  
10 recovery. NRS § 18.010(2)(a) was enacted to encourage small but meritorious claims. Because of  
11 this, the Nevada Supreme Court has repeatedly held that NRS § 18.010(2)(a) cannot be used by a  
12 prevailing Defendant obtaining a defense verdict who has not affirmatively asserted and recovered  
13 on claims of their own, such as a cross-claim or counterclaim. *Key Bank v. Donnels*, 106 Nev. 49,  
14 53, 787 P.2d 382, 385 (1990) ("when attorney's fees are based on the provisions in [NRS 18.010(2)]  
15 subsection (a), we have held that an award of a money judgment is a prerequisite to an award of  
16 attorney's fees."); *Shupe & Yost v. Fallon Nat'l Bank*, 109 Nev. 99, 102, 847 P.2d 720, 722 (1993)  
17 (same denial of fees citing *Key Bank*); *Singer v. Chase Manhattan Bank*, 111 Nev. 289, 294, 890  
18 P.2d 1305, 1308 (1995) (same); *Woods v. Label Investment Corp.*, 107 Nev. 419, 812 P.2d 1293  
19 (1991) ("If the award was based on NRS 18.010(2)(a), then it was improper because a money  
20 judgment is a prerequisite to an award of attorney's fees under this subsection"); *Nat'l Union Fire*  
21 *Ins. v. Pratt and Whitney*, 107 Nev. 535, 543, 815 P.2d 601, 605 (1991) ("A money judgment 'is a  
22 prerequisite to an award of attorney's fees' under NRS 18.010(2)(a)"); *Singer v. Chase Manhattan*  
23 *Bank*, 111 Nev. 289, 294, 890 P.2d 1305, 1308 (1995) ("this court extended to prevailing defendants  
24 the requirement of a money judgment for recovery of attorney's fees under NRS 18.010(2)(a)").

25  
26  
27 attorney's fees as damages to a successful plaintiff. However, when attorney's fees are merely  
28 granted after final judgment and not part of the actual element of damages in the underlying case,  
no pre-judgment interest accrues.

1 Any effort of Dr. Brill to argue that a prevailing Defendant who achieved a defense verdict but  
2 recovered on no affirmative claims of his own is simply frivolous and sanctionable under Rule 11  
3 at this point. Ironically, Dr. Brill’s motion quotes heavily from former Chief Justice Steffen in the  
4 *Singer* decision to argue for fees. The quoted lines come from a concurrence, *not* the actual opinion,  
5 where Chief Justice Steffen laments that under the law as currently written and interpreted a  
6 prevailing defendant is unlikely to ever qualify for fees under NRS § 18.010(2)(a) and perhaps the  
7 legislature should change the law. However, the Nevada legislature has never done so. His  
8 concurrence does not support an award of fees in this case under subsection (a) but rather recognizes  
9 that no such fees can be awarded.

10 Dr. Brill next seeks fees under NRS § 18.010(2)(b), which would require that the Court find  
11 that Taylor brought this action “without reasonable ground or to harass the prevailing party.” In  
12 *Duff v. Foster*, 110 Nev. 1306, 1308, 885 P.2d 589, 591 (1994), the Supreme Court emphasized that  
13 the proper inquiry under subsection (b) is whether the claim “was *brought*” (meaning originally  
14 filed) without reasonable grounds. The fine words of the statute “only speaks of *bringing* suits  
15 without reasonable ground, not *maintaining* them [unreasonably].” *Barozzi v. Benna*, 112 Nev. 635,  
16 639, 918 P.2d 301, 303 (1996). Therefore, a plaintiff can proceed to trial even if discovery goes  
17 poorly for her provided she originally filed the claim in good faith. The statute requires the Court  
18 to find that the case was frivolous or “groundless,” meaning “not supported by any credible  
19 evidence” in order to invoke subsection (b) as a basis for a fee award. *Allianz Ins. Co. v. Gagnon*,  
20 109 Nev. 990, 996, 860 P.2d 720, 724 (1993). The mere fact that the law is unsettled, that facts are  
21 disputed or that damages or liability are contested does not mean an action is frivolous when filed.  
22 *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1354, 971 P.2d  
23 383, 387 (1998) (reversing an attorney fee award under NRS § 18.010(2)(b) because although the  
24 case was lost it concerned uncertain law that might have been decided in plaintiff’s favor).

25 If the Court is seriously considering granting attorney fees based on NRS § 18.010(2)(b) in  
26 this case, counsel would demand an evidentiary hearing to dispute frivolousness. However, it is  
27 clear that Taylor sustained serious injury. Dr. Brill admitted to essentially every fact and every  
28 element of damage in this case. His sole defense, an improper one that every court except this Court



1 has considered and barred as improper, was assumption of risk that Taylor had been told an  
2 uncommon risk of the procedure was intestinal perforation yet she consented regardless. Had  
3 Dr. Brill not been allowed to present this improper defense, he would have had no defense at all.  
4 By no stretch of the imagination could Taylor's claims have been deemed frivolous. They were  
5 filed by competent counsel who reviewed the facts with an OB/GYN expert prior to filing. Indeed,  
6 given the requirement under NRS § 41A.071 that an independent medical expert must be consulted  
7 and support a professional negligence action before it is even filed, it would seem improbable for  
8 the Court to ever find such an action is frivolously filed. Attorney's fees cannot be awarded to the  
9 Defendants under NRS § 18.010(2)(b) either.

10 **D. Defendants' Motion for Attorney's Fees under NRCP 68 must also be Denied**

11 Lastly, Dr. Brill seeks an award of attorney's fees under Nevada's Offer of Judgment Rule,  
12 NRCP 68. Under this rule, Dr. Brill is limited to recovery of his *post*-offer attorney's fees, which  
13 he asserts are \$86,148.75, plus interest.<sup>2</sup> These attorney fees should also be denied in their entirety.

14 The purpose of NRCP 68 "is to save time and money for the court system, the parties and  
15 the taxpayers." *Dillard Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 382 (1999). The rule will  
16 "reward a party who makes a *reasonable* offer and punish the party who refuses to accept such an  
17 offer." *Id. citing Muije v. A North Las Vegas Cab Co.*, 106 Nev. 664, 667 (1990). "It is within the  
18 discretion of the trial court judge to allow attorney's fees pursuant to Rule 68" and such awards will  
19 not be overturned unless they are arbitrary or capricious. *Schouweiler v. Yancey Co.*, 101 Nev. 827,  
20 833 (1985).

21 While "the purpose of NRCP 68 is to encourage settlement, it is not to force plaintiffs  
22 unfairly to forego legitimate claims." *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (Nev. 1983);

---

24 <sup>2</sup> Dr. Brill's request for pre-judgment interest on any award of attorney's fees is erroneous. Under  
25 Nevada law, pre-judgment interest on attorney's fees is recoverable only "when attorney fees are  
26 awarded as an element of damages." *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 430, 132 P.3d  
27 1022, 1036 (2006). For example, *Albios* concerned a construction defect statute allowing  
28 attorney's fees as damages to a successful plaintiff. However, when attorney's fees are merely  
granted after final judgment and not part of the actual element of damages in the underlying case,  
no pre-judgment interest accrues.

1 The District Court is well within its discretion to completely deny all fees sought under NRCP 68  
2 when the offer was not a genuine, good faith attempt at settlement but rather a technical attempt to  
3 invoke the rule without making a reasonable offer. *Trustees of Carpenters for S. Nev. Health &*  
4 *Welfare Trust v. Better Bldg. Co.*, 101 Nev. 742, 710 P.2d 1379 (Nev. 1985).

5 The District Court must consider several factors when ruling on a motion for attorney's fees.  
6 First, under *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P. 2d 31, 33 (Nev. 1969) the  
7 District Court must consider:

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

13 Second, if the award of fees is sought pursuant to an offer of judgment, the Court must  
14 additionally consider the following factors from *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268  
15 (1983) in order to determine whether the offer was made in good faith and whether it was grossly  
16 unreasonable or in bad faith for the offeree to reject it:

17 In exercising its discretion, the trial court must evaluate the following factors:  
18 (1) whether plaintiff's claim was brought in good faith; (2) whether the offeror's  
19 offer of judgment was brought in good faith; (3) whether the offeree's decision to  
20 reject the offer and proceed to trial was grossly unreasonable or in bad faith; and  
(4) whether fees sought by the offeror are reasonable and justified in amount.

21 These are commonly known as the *Brunzell* and *Beattie* factors. *E.g., Uniroyal Goodrich Tire Co.*  
22 *v. Mercer*, 890 P. 2d 785, 789 (Nev. 1995), affirming factors set forth in *Beattie v. Thomas*, 99 Nev.  
23 579, 668 P.2d 268 (1983). For a variety of reasons set forth below, the Court should completely  
24 deny any award of attorney's fees under NRCP 68.

25  
26 **1. The Nominal \$0 "Offer of Judgment" cannot be Enforced under *Beattie***

27 In 2004 doctors and their insurers launched the massive ballot initiative political campaign  
28 called KODIN where voters were told (falsely) that doctors were leaving Nevada due to

1 “astronomical” insurance rates and thus tort reform must be enacted. After this campaign, jurors  
2 became very reluctant to award money to any patient suing a doctor, even in very meritorious cases  
3 like, for example, an OB/GYN burning or shoving a scope through a patient’s uterus and through  
4 her small bowel and severely injuring her. As a result, the local medical malpractice industry began  
5 serially abusing offers of judgment by serving nominal offers of judgment that were not truly  
6 designed to resolve cases. In nearly every case litigated today in this district, medical malpractice  
7 defense attorneys do this in order to try to harass and intimidate innocent victims of medical  
8 malpractice by threatening them into abandoning potentially meritorious cases for nothing. In this  
9 case, on June 29, 2021 Dr. Brill served a \$0 offer of judgment on Taylor. Dr. Brill’s offer was  
10 literally to pay \$0. He never offered to pay any amount of money, even aside from the offer of  
11 judgment.  
12

13  
14 The purpose of NRCP 68 was not to abrogate the American Rule of attorney’s fees and was  
15 not to not to “force plaintiffs unfairly to forego legitimate claims.” *Beattie v. Thomas*, 99 Nev. 579,  
16 668 P.2d 268 (Nev. 1983). When defendants serve a \$0 or other nominal or token offer of judgment,  
17 the defendants are not actually assessing their risks and exposure at trial but rather abusing the legal  
18 system by trying to claim there is a one-way exception to the American Rule of attorney’s fees that  
19 automatically allows attorney’s fees with a defense verdict but not with a plaintiff verdict. These  
20 \$0 or nominal offers of judgment do nothing to encourage settlement, which is the purpose of NRCP  
21 68. Instead, they are solely about harassment and intimidation of the claimant.  
22

23 In states which have offer of judgment rules, courts skeptically view nominal offers of  
24 judgment and rarely enforce them because they do not actually represent a good faith offer. *Wear*  
25 *v. Calderon*, 121 Cal. App. 3d 818, 821, 175 Cal. Rptr. 566, 568 (1981) (rejecting a \$1 offer because  
26 “[n]ormally, therefore, a token or nominal offer will not satisfy this good faith requirement); *Pineda*  
27 *v. L.A. Turf Club, Inc.*, 112 Cal. App. 3d 53, 63, 169 Cal. Rptr. 66, 72 (1980) (declining to enforce  
28

1 a \$2,500 offer of judgment in a wrongful death action due to the “enormous exposure” the defense  
2 had at trial had liability been found); *Eagleman v. Eagleman*, 673 So. 2d 946, 948 (Fla. Dist. Ct.  
3 App. 1996) (not enforcing a nominal \$100 offer of judgment because it “was not based on any  
4 reasonable foundation, but was made merely to lay the predicate for a future award of attorney’s  
5 fees and costs”); *Warr v. Williamson*, 359 Ark. 234, 239, 195 S.W.3d 903, 907 (2004) (stating that  
6 a \$1 offer of judgment is not a bona fide offer but rather an attempt to abuse the offer of judgment  
7 rules on technical grounds); *Anderson v. Alyeska Pipeline Serv. Co.*, 234 P.3d 1282, 1289 (Alaska  
8 2010) (refusing to enforce a \$10 offer of judgment because the defendant could not have believed  
9 the plaintiff would “accept ten dollars to settle her case -- or that the offer would even start a dialogue  
10 that could lead to settlement”). *Century 21 Today, Inc. v. Tarrant*, No. 240696, 2003 Mich. App.  
11 LEXIS 2762, at \*2 (Ct. App. Oct. 28, 2003) (rejecting enforcement of a \$1 offer of judgment because  
12 “it was de minimus [sic] and made with the intent to tack attorney fees to the costs in the event of  
13 success and not with the intent to actually settle.”).

14  
15  
16 The case of *Beal v. McGuire*, 216 P.3d 1154, 1178 (Alaska 2009) is particularly instructive  
17 on this point. In *Beal*, the Alaska Supreme Court actually adopted the Nevada Supreme Court’s  
18 decision in *Beattie* and found that a \$1 offer of judgment was unenforceable. The Alaska Supreme  
19 Court gave a seething analysis of the abuse of these nominal offers. It held that “[e]ven though a  
20 purpose of Rule 68 is to encourage settlement and avoid protracted litigation, offers of judgment  
21 made without any chance or expectation of eliciting acceptance or negotiation do not accomplish  
22 the purposes behind the rule.” Such nominal offers “were nothing more than tactical demands that  
23 plaintiffs dismiss their claims to avoid exposure to Rule 68 fees awards” and “these offers could not  
24 be considered valid offers of settlement or compromise, or valid attempts to encourage negotiation.”  
25

26 A \$0 offer of judgment is likely never enforceable absent some sort of showing that the  
27 plaintiff’s claim is objectively frivolous or plainly subject to an absolute defense, such as complete  
28

1 immunity from suit. In this case, Dr. Brill conceded essentially every fact of the case. He conceded  
2 he caused the perforation to Taylor's uterus and small intestine. He conceded he is required to use  
3 his skill training and experience to avoid such perforations. He conceded Taylor was seriously  
4 injured. He did not contest any of Taylor's after-care or assert that the \$200,000+ in medical  
5 expenses she incurred was not usual or customary. His sole defense—argued at every turn by his  
6 counsel—was that he had deemed intestinal perforation to be a “risk” of the procedure and,  
7 therefore, he was could not be held liable for it because Taylor was made aware of the risk and  
8 consented to the procedure. This defense is universally barred in medical malpractice actions.

10 Respectfully, Dr. Brill's \$0 offer of judgment (which actually would have been a negative  
11 offer since it would have required Taylor to absorb thousands of dollars in litigation expenses and  
12 hundreds of thousands of dollars in medical expenses) was not reasonable in amount and cannot  
13 form the basis of an award under NRCP 68.

15 **2. Taylor's Claims were Brought in Good Faith and Taylor's Decision to Proceed to**  
16 **Trial was not Grossly Unreasonable**

17 Further under *Beattie*, Taylor's claims were brought in good faith and it was not grossly  
18 unreasonable for her to proceed to trial. Dr. Brill admitted to essentially every fact and every piece  
19 of damages in this case. His sole defense, an improper one that every court except this Court has  
20 considered and barred as improper, was assumption of risk that Taylor had been told an uncommon  
21 risk of the procedure was intestinal perforation yet she consented regardless. Even Dr. Brill's own  
22 expert conceded that had the injury been caused by a burn it would be below the standard of care,  
23 and the expert never even tried to explain how such a serious perforation through the uterus and into  
24 the small bowel could have occurred under full visualization with Dr. Brill being careful. Had  
25 Dr. Brill not been allowed to present this improper defense, he would have had no defense at all.  
26 By no stretch of the imagination could Taylor's claims have been deemed frivolous. They were  
27 filed by competent counsel who reviewed the facts with an OB/GYN expert prior to filing.  
28

1 Nor was the timing of the rejection unreasonable. The \$0 offer of judgment was made on  
2 June 29, 2021 which was before the close of discovery, prior to the depositions of both parties'  
3 retained experts, prior to all motion in limine rulings and prior to the Court's devastating ruling on the  
4 Motion for Reconsideration made on October 7, 2021 (which all but assured an appeal in this case)  
5 that the Court would allow the assumption of risk defense to be presented at trial. The decision to  
6 reject the \$0 also had to be made before the Court, during trial, refused to allow Taylor to present  
7 over \$200,000 in medical expenses...that Dr. Brill and his expert did not even contest. At the time  
8 Taylor rejected the \$0, Dr. Brill essentially had no defense to liability or the \$200,000+ in special  
9 damages. Total exposure to Dr. Brill exceeded well over \$550,000 had the jury found liability and  
10 awarded all economic and non-economic damages, litigation costs and interest to Taylor. Under  
11 these circumstances, it is not unreasonable to reject a \$0 offer of judgment.  
12

13 Dr. Brill's only argument on this issue is that Taylor was aware after settlements with other  
14 providers that other Defendants would be allowed on the verdict form at trial. The parties heavily  
15 disputed how *Piroozi v. Eighth Judicial Dist. Court*, 131 Nev. 1004, 363 P.3d 1168 (2015) would  
16 apply in this case and the motion in limine on that issue was not heard until September 27, 2021,  
17 several months after the \$0 offer was made. Moreover, neither Dr. Brill nor his retained expert  
18 blamed *any* other providers and Taylor's expert only felt the other providers bore a small amount of  
19 liability and damages for failing to catch the injury that Dr. Brill caused sooner. The bulk of the  
20 fault was always placed on Dr. Brill. Two of the settling entities paid amounts to settle that were  
21 not nominal in amount, making it all the more reasonable that Taylor would proceed against  
22 Dr. Brill, who by any account would have far more liability than those providers. Dr. Brill's  
23 additional argument that Dr. Brill told her he was unable to finish the surgery because "it was  
24 complicated" bears on nothing. The testimony from Dr. Brill and Taylor was clear at trial that  
25 Dr. Brill had not told Taylor the perforations occurred (either one) immediately following the  
26  
27  
28

1 procedure. Dr. Brill also argues that Taylor had “unusual anatomy” but both Dr. Brill and his own  
2 expert agreed that hysteroscopy can be safely performed on a patient with retroverted and bicornuate  
3 uterus. Indeed, statistics show as many as 1 out of 5 women have a bicornuate uterus and Dr. Brill  
4 admitted he knew of these conditions *prior* to the procedure.

5  
6 Prior to trial, Taylor’s counsel conducted two separate focus groups with virtually every  
7 juror awarding hundreds of thousands of dollars against Dr. Brill. Jury verdict and settlement  
8 research showed even a seven-figure settlement result from a virtually identical case. The difference  
9 in this case is that the District Court erred and allowed Dr. Brill to present a universally barred  
10 assumption of risk defense and wrongly refused to allow Taylor to present \$200,000 in medical  
11 special damages so the severity of her injuries was hidden from the jury. Taylor’s decision to reject  
12 a \$0 offer of judgment was not grossly unreasonable given all available factors.

13  
14 **3. Dr. Brill’s Briefing of the *Brunzell* factors is Wholly Inadequate**

15 Even aside from the obvious problems a \$0 offer of judgment presents under *Beattie*,  
16 Dr. Brill barely briefs any of the *Brunzell* factors also required to support any award of attorney’s  
17 fees. Among the many deficiencies of his Motion under *Brunzell* are: (1) no itemized accounting  
18 of time incurred and actually billed to and paid by the client is given (defense counsel are insurance-  
19 retained and would clearly have this), (2) only an unsupported, global figure of fees allegedly  
20 incurred is given, (3) because no itemized statement of time spent by task is given, Taylor cannot  
21 assess or challenge the reasonableness of the hourly rate of the fees, including the fees per  
22 timekeeper and hourly rate per timekeeper, (4) because no itemized statement is given, Taylor  
23 cannot assess or challenge the reasonableness or necessity of the work performed, (5) because no  
24 itemized statement is given, Taylor cannot assess what work was performed after the \$0 offer of  
25 judgment was served, (6) no affidavits from the attorneys involved attesting to their skill, training  
26 and experience is given, and (7) no analysis of hourly rates for insurance-retained medical  
27 malpractice defense attorneys and similar awards in the community are given. The Court cannot  
28 fairly award any fees with a motion so poorly supported under *Brunzell*.



1 The only minimal effort Dr. Brill gives to comply with *Brunzell* appears to be conclusory  
2 statements on pages 12 and 13 of the *Motion for Attorney's Fees and Costs* that Dr. Brill was  
3 "represented by duly licensed and experienced attorneys..." and that "the case involved depositions  
4 of several witnesses, consultation with a medical expert witness, multiple sets of written discovery  
5 requests, and review of voluminous medical records and other data, all of which culminated in a  
6 two-week jury trial." These conclusory statements offer little to comply with *Brunzell* and do not  
7 address the issues raised above. His motion also argues that Dr. Brill is in good standing in the  
8 medical community, but this statement is irrelevant under *Brunzell*. Dr. Brill is not entitled to fee  
9 simply because he thinks he is a good guy or an important doctor in the community.

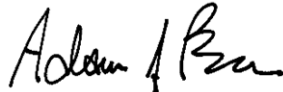
10 **IV. CONCLUSION**

11 In closing, Dr. Brill has prevailed and is entitled to an award of costs. However, not all  
12 expenses incurred related to a case are taxable costs under the law. All costs must be reasonable  
13 and necessary as well as supported through third party invoices with itemization. A summary  
14 document from Dr. Brill's attorneys or insurance company does not provide a sufficient basis to  
15 award costs. Pursuant to the separately briefed *Motion to Re-Tax and Settle Costs*, the Court should  
16 award no greater than \$3,889.12 in costs.

17 Regarding his request for attorney's fees, Dr. Brill is not automatically entitled to said fees.  
18 He has failed to establish that fees may be awarded under either NRS § 18.010(2) or NRCP 68.  
19 Therefore, his request for attorney's fees should be denied entirely.

20 DATED this 6th day of December, 2021.

21 **BREEDEN & ASSOCIATES, PLLC**

22 

23 **ADAM J. BREEDEN, ESQ.**

24 Nevada Bar No. 008768

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Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 6th day of December, 2021, I served a copy of the foregoing legal  
3 document **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR ATTORNEY'S**  
4 **FEES AND COSTS** via the method indicated below:

5

6 X	Pursuant to NRCP 5 and NEFCR 9, by electronically serving all counsel and e-mails registered to this matter on the Court's official service, Wiznet system.
7	Pursuant to NRCP 5, by placing a copy in the US mail, postage pre-paid to the following counsel of record or parties in proper person: 8 9 Robert McBride, Esq. Heather S. Hall, Esq. McBRIDE HALL 10 8329 W. Sunset Road, Suite 260 Las Vegas, Nevada 89113 11 <i>Attorneys for Defendants Keith Brill, M.D. and Women's Health Associates</i> 12
13	Via receipt of copy (proof of service to follow)

14

15 An Attorney or Employee of the following firm:

16 /s/ Adam J. Breeden

17 **BREEDEN & ASSOCIATES, PLLC**

18

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20

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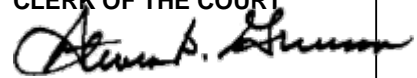
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*Attorneys for Plaintiff*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIMBERLY TAYLOR, an individual,  
  
Plaintiff,

CASE NO.: A-18-773472-C

DEPT NO.: III

v.

KEITH BRILL, M.D., FACOG, FACS, an  
individual; WOMEN'S HEALTH  
ASSOCIATES OF SOUTHERN NEVADA –  
MARTIN, PLLC, a Nevada Professional  
Limited Liability Company; BRUCE  
HUTCHINS, RN, an individual;  
HENDERSON HOSPITAL and/or VALLEY  
HEALTH SYSTEMS, LLC, a Foreign LLC  
d/b/a HENDERSON HOSPITAL, a subsidiary  
of UNITED HEALTH SERVICES, a Foreign  
LLC; TODD W. CHRISTENSEN, M.D., an  
individual; DIGNITY HEALTH d/b/a ST.  
ROSE DOMINICAN HOSPITAL; DOES I  
through XXX, inclusive; and ROE  
CORPORATIONS I through XXX, inclusive,

**REPLY IN SUPPORT OF PLAINTIFF'S  
MOTION TO RE-TAX AND SETTLE  
COSTS**

**HEARING REQUESTED:  
YES**

Defendants.

**REPLY POINTS AND AUTHORITIES**

**I. DEFENDANTS' REQUESTS FOR COSTS SHOULD BE DENIED**

To award costs to the prevailing party, the costs must be found to be (1) reasonable in amount, (2) necessarily incurred and (3) properly supported via statements and invoices. There is a long line of cases from the Nevada Supreme Court establishing how a request for costs must be supported, otherwise it is invalid and the costs should not be awarded. Taylor continues to object

1 to Defendants' requests for costs because they do not comply with these decisions and often simply  
2 declare an amount and a purpose with no meaningful support.

3 **1. Filing Fees**

4 The Parties do not dispute the \$3,889.12 in court filing fees the Defense seeks. This is  
5 essentially the only item Taylor does not contest.

6 **2. Court Reporter Fees**

7 The Defense seeks to recover \$16,260.75 in court reporter fees for daily transcripts of trial  
8 proceedings. This is contested as an unnecessary expense. It is not required that daily transcripts  
9 be ordered. Taylor's counsel did not order them. The Defense cites no case law stating that it is  
10 necessary to have these ordered. Not every luxury of Defense counsel is reimbursable by Taylor.  
11 The Defense could have adequately put on a trial without these transcripts. Taylor should not have  
12 to pay for them. No case law has been cited by the Defense that daily transcripts are recoverable.  
13 Merely because court transcripts are a category of recoverable costs does not mean it was *necessary*  
14 for the Defense to incur those costs in this particular case. Therefore, Taylor objects to them.

15 Next, the Defense argues that merely because they agreed to split the court-required court  
16 recorder fees, they did not waive a right to be reimbursed those fees. There is no law on this issue.  
17 However, Taylor continues to object that having agreed to equally share those costs prior to the  
18 verdict, the portion born by the Defense should not be taxable back to her.

19 Lastly, other than the Court recorder's invoice for \$700 to each party, the Defense has  
20 produced no itemized invoices to establish the amounts they paid for court reporters. Therefore,  
21 they clearly have failed to properly support the costs requests and they should be denied.

22 **3. Copying, Printing, and Scans**

23 As previously cited by Taylor, the Nevada Supreme Court in *Bobby Berosini, Ltd. v. PETA*,  
24 114 Nev. 1348, 1353, 971 P.2d 383, 386 (1998) (denying copying expenses for failure to fully  
25 itemize) expressly found that a party seeking reimbursement of such expenses as taxable costs must  
26 provide "sufficient justifying documentation *beyond* the date of each photocopy and the total  
27 photocopying charge." In other words, a mere printout showing the date of the copies and the  
28 expense is insufficient. Instead, the exact purpose of the copies must be itemized to allow opposing

1 counsel an opportunity to assess why the copies were made and whether they were reasonable,  
2 especially in this digital age. None of this information gap is provided or cured in by the Defense  
3 in their opposition. Entries such as “Copies (In House)” in the Memorandum of Costs are the exact  
4 type of entry the case law states must not be granted. Therefore, these costs are not recoverable.

#### 5 **4. Expert and Witness Fees**

6 Dr. Brill seeks an award of \$16,955.70 for the costs of his retained medical expert, Dr. Steven  
7 McCarus. Anything awarded over \$1,500 is subject to the sole discretion of the District Court under  
8 the factors set forth in *Frazier v. Drake*, 131 Nev. 632, 634, 357 P.3d 365, 377-78 (Nev. App. 2015).  
9 The Defense does not cite *Frazier v. Drake*, not does it provide a copy of the itemized billing of  
10 Dr. McCaraus so an assessment of the reasonableness of the time and fees incurred can be analyzed.  
11 Given that the Defense has not fully briefed the *Frazier* case to the court, it would be an abuse of  
12 discretion for the Court to award those fees. Respectfully, the expert witness fees for Dr. McCarus  
13 should be denied entirety or limited to the statutory presumptive rate of \$1,500.

#### 14 **5. Costs for Travel**

15 Dr. Brill seeks a total of \$429.08 in travel expenses to attend Dr. Berke’s deposition in  
16 Riverside, California. It was wholly unnecessary to hold this deposition in person in Riverside,  
17 California and incur travel expenses. The deposition, which lasted approximately an hour, could  
18 have easily been held via Zoom (for example, Taylor’s counsel held the deposition of Defense expert  
19 Dr. McCarus remotely by Zoom). This was during the COVID crisis and virtually all depositions  
20 were being held remotely at that time. The travel costs incurred were unnecessary and should not  
21 have been awarded. While Dr. Brill notes that Taylor’s counsel also personally travelled to  
22 Riverside, California for the deposition that was not his choice. He would absolutely have held the  
23 deposition remotely by Zoom if he had been allowed to set it to avoid the additional time and  
24 expense of travel.

#### 25 **6. Medical Records**

26 No actual invoices for the medical records sought to be awarded are provided by the Defense  
27 and, therefore, cannot be awarded under *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1353, 971  
28 P.2d 383, 386 (1998). The Defense also does nothing to explain why Taylor should have to pay

1 twice for the costs of obtaining the records when she originally supplied the same records to the  
2 defense. It was unnecessary and duplicative for the Defense to order those records again from the  
3 providers.

4 **7. Other Reasonable Costs and Expenses**

5 Dr. Brill should not be allowed to recover \$7,400 in medical expenses because he appeared  
6 at the mediation in bad faith by offering \$0 and a cost-free settlement conference through the court's  
7 judicial settlement conference program could have been used if he merely wanted to have a dog-  
8 and-pony show of that kind. It was wholly unnecessary for him to incur the \$7,400 in expenses just  
9 to have everyone prepare, show up and go home after about an hour.

10 Taylor also contests the \$3,350 for medical illustrations because these are essentially stock  
11 images and were not absolutely necessary for presentation of the case. Therefore, she continues to  
12 object to these expenses.

13 **8. Verified Memorandum of Costs Insufficient by Itself**

14 Lastly, Dr. Brill's counsel suggests that because she (Ms. Hall) signed the Verified  
15 Memorandum of Costs *under oath* that this alone properly supports reimbursement of all costs  
16 merely based on her word. This is plainly incorrect. All applicable Nevada Supreme Court case  
17 law, most specifically *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1353, 971 P.2d 383, 386  
18 (1998), rejects the notion that counsel's statement of a figure and why it was incurred is sufficient  
19 to establish the reasonableness, necessity or the bare amount of the costs. Instead, substantial support  
20 typically in the form of itemized statements or receipts must be provided which are lacking in this  
21 case.

22 **II. SUMMARY OF TAYLOR'S POSITION**

23 In summary, Taylor intends to appeal the defense verdict in this case on many grounds.  
24 However, she is now faced with having to pay the doctor that maimed her, twice being a victim.  
25 Few people would call that justice. She disputes numerous costs asserted by Dr. Brill and asserts  
26 that only the following costs are taxable in this case:

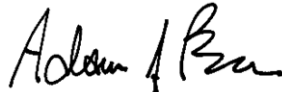
1	1. Clerk's Fees/Filing Fees	\$3,889.12
2	2. Reporter's Fees	\$0
3	2. Copies/Printing/Scanning	\$0
4	3. Witness Fees (retained expert)	\$0
5	4. Travel and Meals	\$0
6	5. Medical Records	\$0
7	6. Miscellaneous/Other	\$0
8	<b>TOTAL</b>	<b>\$3,889.12</b>

### 10 **III. CONCLUSION**

11 In closing, Dr. Brill has prevailed and is entitled to an award of costs. However, not all  
12 expenses incurred related to a case are taxable costs under the law. All costs must be reasonable  
13 and necessary as well as supported through third party invoices with itemization. A summary  
14 document from Dr. Brill's attorneys or insurance company does not provide a sufficient basis to  
15 award costs. His Opposition simply does not cure all of the deficiencies in his cost request and does  
16 not attach itemized invoices setting forth the costs. Pursuant to the foregoing, the Court should  
17 award no greater than \$3,889.12 in costs.

18 DATED this 13th day of December, 2021.

19 **BREEDEN & ASSOCIATES, PLLC**

20 

21 **ADAM J. BREEDEN, ESQ.**

22 Nevada Bar No. 008768

23 376 E. Warm Springs Road, Suite 120

24 Las Vegas, Nevada 89119

25 Phone: (702) 819-7770

26 Fax: (702) 819-7771

27 Adam@Breedendassociates.com

28 *Attorneys for Plaintiff*



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 13th day of December, 2021, I served a copy of the foregoing  
3 legal document **REPLY IN SUPPORT OF PLAINTIFF'S MOTION TO RE-TAX AND**  
4 **SETTLE COSTS** via the method indicated below:

5

6 X	Pursuant to NRCP 5 and NEFCR 9, by electronically serving all counsel and e-mails registered to this matter on the Court's official service, Wiznet system.
7	Pursuant to NRCP 5, by placing a copy in the US mail, postage pre-paid to the following counsel of record or parties in proper person: 8 9 Robert McBride, Esq. Heather S. Hall, Esq. McBRIDE HALL 10 8329 W. Sunset Road, Suite 260 Las Vegas, Nevada 89113 11 <i>Attorneys for Defendants Keith Brill, M.D. and Women's Health Associates</i> 12
13	Via receipt of copy (proof of service to follow)

14

15 An Attorney or Employee of the following firm:

16 /s/ Sarah Daniels

17 **BREEDEN & ASSOCIATES, PLLC**

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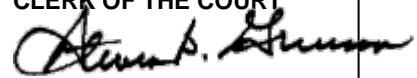
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**RPLY**

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Nevada Bar No. 7082  
HEATHER S. HALL, ESQ.  
Nevada Bar No. 10608  
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Attorneys for Defendants,  
*Keith Brill, M.D., FACOG and*  
*Women's Health Associates of Southern Nevada –*  
*MARTIN, PLLC*

DISTRICT COURT  
CLARK COUNTY, NEVADA

KIMBERLY D. TAYLOR, an Individual,  
Plaintiff,

vs.

KEITH BRILL, MD, FACOG, FACS, an  
Individual; WOMEN'S HEALTH  
ASSOCIATES OF SOUTHERN NEVADA –  
MARTIN, PLLC, a Nevada Professional  
Limited Liability Company,  
Defendants.

**CASE NO.: A-18-773472-C**  
**DEPT: III**

**DEFENDANTS' REPLY IN SUPPORT OF  
MOTION FOR ATTORNEYS' FEES AND  
COSTS**

**DATE OF HEARING: 12/30/2021**

**TIME OF HEARING: IN CHAMBERS**

COME NOW, Defendants, KEITH BRILL, MD, FACOG and WOMEN'S HEALTH  
ASSOCIATES OF SOUTHERN NEVADA – MARTIN, PLLC, by and through their counsel of  
record, ROBERT C. McBRIDE, ESQ. and HEATHER S. HALL, ESQ. of the law firm of  
McBRIDE HALL, and hereby submits their Reply in Support of their Motion for Attorneys' Fees  
and Costs.

///

1           This Reply is made and based upon the attached Memorandum of Points and Authorities,  
2 the papers and pleadings on file herein, and any oral argument made at the time of the hearing of  
3 this matter.

4  
5 DATED this 23<sup>rd</sup> day of December 2021.

McBRIDE HALL

6           */s/Heather S. Hall*

7           \_\_\_\_\_  
8 ROBERT C. McBRIDE, ESQ.

Nevada Bar No.: 7082

HEATHER S. HALL, ESQ.

9 Nevada Bar No.: 10608

10 8329 W. Sunset Road, Suite 260

Las Vegas, Nevada 89113

11 Attorneys For Defendants,

*Keith Brill, M.D., FACOG and*

12 *Women's Health Associates of Southern*  
13 *Nevada – Martin, PLLC*

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1 alleged numerous causes of action against Dr. Brill and WHASN including (1) Medical  
2 Malpractice/Professional Negligence; (2) Res Ipsa Loquitor – NRS 41A.100; (3) Vicarious  
3 Liability; and (4) Negligent Hiring, Training, and Supervision. *See generally* Plaintiff’s Complaint.

4 Dr. Brill and WHASN have vehemently denied Plaintiff’s allegations and have sought an  
5 award of attorney’s fees since they Answered Plaintiff’s Complaint, where Defendants expressly  
6 stated: “Defendants allege that it has been necessary to employ the services of an attorney to defend  
7 this action and a reasonable sum should be allowed these Defendants for attorney’s fees, together  
8 with the costs expended in this action.” *See* Defendants Dr. Brill and WHASN’s September 26,  
9 2021 Answer to Plaintiff’s Complaint at ¶ 19, page 16.

10 On June 29, 2021, Defendants served Plaintiff an Offer of Judgment for waiver of fees and  
11 costs in the amount of \$41,522.25 in attorneys’ fees incurred and \$19,200.53 in litigation costs  
12 incurred. Plaintiff, however, rejected the Offer of Judgment.

13 After litigating and actively defending against Plaintiff’s numerous claims for years, Dr.  
14 Brill and WHASN prevailed, receiving a unanimous jury verdict and now seek attorneys’ fees and  
15 costs as permitted by Nevada law<sup>1</sup>.

## 16 II.

### 17 LEGAL ARGUMENT

#### 18 **A. DEFENDANT IS ENTITLED TO AN AWARD OF ATTORNEY’S FEES UNDER** 19 **NRS 18.010(2).**

20 NRS 18.010 provides that it is within the Court’s discretion to award attorney’s fees under  
21 two scenarios where attorney’s fees are not expressly provided under the statute. The first scenario  
22 is “[w]hen the prevailing party has not recovered more than \$20,000.” *See* NRS 18.010(2)(a). This  
23 discretionary award of attorney’s fees by the Court requires no finding that the opposing parties’  
24 claims were frivolous or maintained without reasonable ground. As the prevailing party, Dr. Brill  
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28 <sup>1</sup> Despite Plaintiff’s claim that this Motion should have not been filed pending resolution of Plaintiff’s Motion for Disqualification, this Motion for Attorney’s Fees and Costs was timely filed pursuant to NRCP 54(d)(2)(B) within 21 days of service of the Notice of Entry of Judgment on the Jury Verdict, which was served on November 19, 2021.

1 and WHASN have recovered no monetary award – a figure substantially smaller than \$20,000.  
2 Accordingly, it is within the Court’s discretion to grant an award of attorneys’ fees to Dr. Brill and  
3 WHASN in this matter pursuant to NRS 18.010(2)(a), regardless of any other considerations.

4 Moreover, although the Nevada Supreme Court held that that a money judgment was required  
5 in order for a prevailing party to be awarded attorney fees in *Singer v. Chase Manhattan Bank*,  
6 111 Nev. 289, 890 P.2d 1305 (1995), as Chief Justice Steffen explained in his dissenting opinion,  
7 a defendant will almost always not obtain a money judgment, which is one of the inequities for a  
8 defendant under NRS 18.010(2)(a). Thus, Defendant requests that the Court treat him as a  
9 prevailing Plaintiff would be treated because Defendant prevailed at trial and did not recover more  
10 than \$20,000.

11 It is also within the Court’s discretion to grant an award of attorneys’ fees in cases where  
12 the claim was “brought or maintained without reasonable ground.” *See* NRS 18.010. In fact, the  
13 legislature expressly mandated the courts to “liberally construe the provisions of [the associated  
14 paragraph] **in favor of awarding attorney’s fees in all appropriate situations.**” *Id.* (emphasis  
15 added). The legislature expressly conveyed their intent to the courts and indicated that it wished  
16 “to punish for and deter frivolous or vexatious claims [...] because such claims [...] overburden  
17 limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs  
18 of engaging in business and providing professional services to the public.” *See* NRS 18.010  
19 (emphasis added).

20 Plaintiff offers no substantive evidence to refute the claim that this litigation was brought  
21 without reasonable grounds, instead simply stating that the Plaintiffs suffered injury. The simple  
22 fact that Ms. Taylor suffered an injury does not give rise to a reasonable claim, a fact that was  
23 clearly supported by the jury as they rendered a verdict in favor of the Defendant on all claims.

24 Furthermore, Plaintiff appears to argue that her claims against Dr. Brill and WHASN were  
25 reasonable because she settled with other Defendants. However, the resolution of Plaintiff’s  
26 claims with other parties has no bearing on whether her claim against Dr. Brill and WHASN had  
27 any merit, especially as joint and several liability has been abrogated in medical malpractice  
28 actions in the State of Nevada. *See* NRS 41A.045; *see also Brunzell v. Golden Gate Nat’l Bank* 85

1 Nev. 345, 349, 455 P.2d 31, 33 (1969). Furthermore, Plaintiffs’ reliance on the “American Rule”,  
2 requiring both sides to bear their own fees, wholly ignores that Nevada statutes allow for attorneys’  
3 fees to the prevailing party. They also allow for attorney’s fees to a party pursuant to an Offer of  
4 Judgment, as discussed more thoroughly below. The Court should find the fees sought are  
5 reasonable and justified in the amount argued in Defendant’s underlying Motion.

6  
7 **B. PURSUANT TO NRCP 68(f)(2), DEFENDANT IS ENTITLED TO POST-OFFER**  
8 **ATTORNEYS’ FEES AND COSTS.**

9 Defendants maintain that they are entitled to fees as the prevailing party. However,  
10 Defendants alternatively requested post-offer fees that total \$86,148.75. Plaintiff takes the position  
11 that Defendants made no monetary offer. However, the Offer of Judgment made on June 29, 2021  
12 offered significant consideration and was a valid offer. Defendants offered to waive attorney’s  
13 fees and costs totaling \$41,522.25 in attorneys’ fees incurred and \$19,200.53 in litigation costs  
14 incurred, which Plaintiff rejected.

15 In this Offer, Defendants were willing to forego a substantial sum in exchange for a  
16 dismissal, which Plaintiff erroneously concludes did not constitute a monetary offer. However,  
17 nowhere in the language of NRCP 68 does it state that the offer must be one of certain a dollar  
18 amount payment to Plaintiff.

19 Further, it is well-settled precedent in Nevada that “an offeree who makes an unimproved-  
20 upon offer of judgment – an offer that is more favorable to the opposing party than the judgment  
21 ultimately rendered by the district court – is entitled to recover costs and reasonable attorney fees  
22 incurred after making the offer of judgment.” *See Logan v. Abe*, 360 P.3d 1139, 1140 (2015).  
23 When deciding whether to award attorney fees subsequent to an offer of judgment, the court must  
24 consider the following factors set forth in *Beattie v. Thomas*: “(1) whether the plaintiff’s claim was  
25 brought in good faith; (2) whether the defendants’ offer of judgment was reasonable and in good  
26 faith in both its timing and amount; (3) whether the plaintiff’s decision to reject the offer and  
27 proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the  
28 offeror are reasonable and justified in amount.” 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983);



1 *see also Busick v. Trainor*, Order Affirming in Part, Reversing in Part and Remanding, 2019 Nev.  
2 Unpub. LEXIS 378, at \*7 (Mar. 28, 2019).

3 The case at hand is strikingly analogous to the facts of the case of *Busick v. Trainor*. 2019  
4 Nev. Unpub. LEXIS 378, at \*7 (Mar. 28, 2019). Similar to the waiver of fees and costs served in  
5 the instant case, the defendant in *Busick* offered a mutual waiver of fees and costs in exchange for  
6 dismissal of the lawsuit with prejudice. *Id.* The court in *Busick* awarded defendant \$59,689.50 for  
7 attorney's fees incurred from the expiration of the offer of judgment, after finding that the offer of  
8 judgment was justified and reasonable after analysis of the *Beattie* and *Brunzell* factors. *Id.* at \*8.

9 Here, the amount that the Defendants were willing to forego constitutes valid consideration  
10 for the offer, as they were offering to give up a claim for costs and fees which they were legally  
11 entitled to pursue. As set forth in the Defendants' Motion, the Offer was reasonable and justified  
12 and thus, supports a finding for the defense of post-offer attorneys' fees and costs pursuant to  
13 NRCF 68(f)(2) totaling \$86,148.75 plus interest.<sup>2</sup>

14 **C. THE ATTORNEY'S FEES SOUGHT ARE REASONABLE AND JUSTIFIED**  
15 **WHEN ANALYZED UNDER *BRUNZELL*.**

16 As set forth in the underlying Motion, the last factor to be considered is whether the fees  
17 sought are reasonable and justified in amount. *Beattie*, 99 Nev. at 589. In *Brunzell v. Golden Gate*  
18 *Nat'l Bank*, the Supreme Court of Nevada set forth four factors to weigh when determining the  
19 reasonable value of attorney's fees, "(1) the qualifies of the advocate: his ability, his training,  
20 education, experience, professional standing and skill; (2) the character of the work to be done: its  
21 difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the  
22 prominence and character of the parties where they affect the importance of the litigation; (3) the

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27 <sup>2</sup> The Nevada Supreme Court held in *Albion v. Horizon Cmty's., Inc.*, 122 Nev. 409, 429, 132 P.3d 1022, 1035 (2006)  
28 that under NRS 17.130(1)'s plain language, prejudgment interest is recoverable on judgments awarding costs.  
"Prejudgment interest runs on costs from the time when the costs were incurred. Therefore, the recovering party must  
prove when the costs were incurred and, if the party fails to do so, interest on the costs is awarded only from date of  
the judgment." *Id.*

1 work actually performed by the lawyer: the skill, time and attention given to the work; (4) the  
2 result: whether the attorney was successful and what benefits were derived.” 85 Nev. at 349.

3 Medical malpractice claims are intricate and involve a high level of specialized knowledge.  
4 Defense counsel in this case are well-respected, experienced attorneys who specialize in handling  
5 such sophisticated cases. This case was even more complicated than the average medical case, in  
6 that it involved four causes of action against these Defendants and reams of medical records.

7 Furthermore, Defendants spent almost three years defending this case by requesting and  
8 comprehending medical records, retaining and designating highly qualified experts, filing motions  
9 and attending court hearings. Defendants’ post-offer of judgment fees in the amount of \$86,148.75  
10 involve a minute portion of the work actually expended over the course of this litigation and are  
11 necessarily incurred and justified. Pursuant to NRS 17.115, Defendants should be awarded the  
12 full amount of attorney’s fees they incurred from June 29, 2021 to present. Consideration of the  
13 relevant *Brunzell* factors supports the conclusion that an award for the full amount of attorney fees  
14 requested by Defendants is proper.

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**III.**

**CONCLUSION**

Based on the foregoing, the prevailing Defendants, Dr. Brill and Women's Health Associates of Southern Nevada, respectfully request the Court award their costs, plus interest, in the amount of **\$60,167.20** and attorneys' fees, plus interest, in the amount of **\$130,541.00**, which were reasonably incurred defending Plaintiff's claims since 2018. In the alternative, Defendants respectfully request an award of all post-Offer attorneys' fees, which total **\$86,148.75**, plus interest, which were reasonably incurred during trial preparation and trial of this matter, and for any other relief the Court deems just and proper.

DATED this 23<sup>rd</sup> day of December 2021.

McBRIDE HALL

*/s/Heather S. Hall*

---

ROBERT C. McBRIDE, ESQ.

Nevada Bar No.: 7082

HEATHER S. HALL, ESQ.

Nevada Bar No.: 10608

8329 W. Sunset Road, Suite 260

Las Vegas, Nevada 89113

Attorneys For Defendants,

*Keith Brill, M.D., FACOG and*

*Women's Health Associates of Southern  
Nevada – Martin, PLLC*

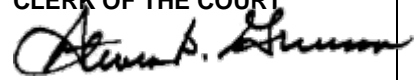
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 23<sup>rd</sup> day of December 2021, I served a true and correct  
3 copy of the foregoing **DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR**  
4 **ATTORNEYS' FEES AND COSTS** addressed to the following counsel of record at the  
5 following address(es):  
6

- 7 ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of e-  
8 service attached to any copy filed with the Court; or  
9 ☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with  
10 postage thereon fully prepaid, addressed as indicated on the service list below in the United  
11 States mail at Las Vegas, Nevada  
12 ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number  
13 indicated on the service list below.

14 Adam J. Breeden, Esq.  
15 BREEDEN & ASSOCIATES, PLLC  
16 376 E. Warm Springs Road, Suite 120  
17 Las Vegas, Nevada 89119  
18 *Attorneys for Plaintiff*

21 /s/Candace Cullina  
22 An Employee of McBRIDE HALL  
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RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

KIMBERLY D. TAYLOR,	)	
	)	CASE NO. A-18-773472-C
Plaintiff,	)	
	)	
vs.	)	DEPT. NO. III
	)	
KEITH BRILL, M.D., WOMEN'S	)	
HEALTH ASSOCIATES OF SOUTHERN	)	<b>Transcript of Proceedings</b>
NEVADA - MARTIN PLLC, UNITED	)	
HEALTH SERVICES,	)	
	)	
Defendants.	)	

BEFORE THE HONORABLE MICHAEL CHERRY, DISTRICT COURT JUDGE  
**PLAINTIFF'S MOTION TO RETAX AND SETTLE COSTS; DEFENDANTS'  
MOTION FR ATTORNEYS' FEES AND COSTS**

TUESDAY, JANUARY 18, 2022

APPEARANCES:

For the Plaintiff: ADAM J. BREEDEN, ESQ.

For the Defendants: HEATHER S. HALL, ESQ.

RECORDED BY: REBECA GOMEZ, DISTRICT COURT  
TRANSCRIBED BY: KRISTEN LUNKWITZ

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

1 TUESDAY, JANUARY 18, 2022, AT 9:15 A.M.

2

3 THE CLERK: Case A773472, *Kimberly Taylor versus*  
4 *Keith Brill, M.D.*

5 MR. BREEDEN: Good morning, Your Honor. This is  
6 attorney Adam Breeden on behalf of the plaintiff, Ms.  
7 Taylor.

8 MS. HALL: Good morning, Your Honor. Heather Hall  
9 for the defendants.

10 THE COURT: Okay. This is first Plaintiff's  
11 Motion to Retax and Settle Costs and Defendants' Motion for  
12 Attorneys' Fees and Costs. Plaintiff is going to go first.

13 MR. BREEDEN: Your Honor, I can go first, if you'd  
14 like, on behalf of the plaintiff.

15 The issues in the two Motions are intertwined, so  
16 it probably makes sense to just argue them both at the same  
17 time.

18 THE COURT: Sounds good to me.

19 MR. BREEDEN: This case was tried back in October  
20 and resulted in a defense verdict, so this is the Motion  
21 for Fees and Costs that come out of that. The matter is up  
22 on appeal right now.

23 In terms of the costs, Your Honor, we recognize  
24 that Chapter 18 does allow Dr. Brill recovery of certain  
25 costs, if they're adequately established and proven-up.



1 The only cost that we did not dispute are the Clerk's fees  
2 or the Court filings fees of \$3,899.12. We found fault  
3 with all other costs claimed by the defense under the  
4 applicable Nevada Supreme Court cases, including the *Bobby*  
5 *Berosini* case. Costs are not automatically recoverable.  
6 The party seeking them, which, in this case is the  
7 defendant, to establish that the costs incurred were  
8 reasonable, necessary, and actually incurred.

9 And, just as a common theme, in this particular  
10 case, what you had was just sort of blanket statements,  
11 without any invoices attached, and certainly no affidavits  
12 that would attest to what normal fees or costs for some of  
13 these things provided were.

14 It's difficult and I'm not going to argue each and  
15 every itemized cost that was claimed. I think the briefing  
16 does that, but we do object to, virtually, all costs that  
17 are sought in this matter.

18 Regarding the attorneys' fees, attorneys' fees are  
19 sought under two different sources of law by the defendant.  
20 The first is NRS 18.010. As set forth in the briefing,  
21 this statute is clearly inapplicable because this matter  
22 was not brought in bad faith or for harassment, but it also  
23 -- that statute is not available to a prevailing defendant  
24 simply because they defense a case. They have to have some  
25 affirmative claim, like a counterclaim that they prevail

1 on, in order to make use of that statute.

2           The only other source of law that attorneys' fees  
3 can be granted under is NRCP 68, the Offer of Judgment  
4 Rule. And this case presents what I would call a classic  
5 abuse of that rule that's going around right now,  
6 especially in the medical malpractice defense industry with  
7 the infamous zero-dollar Offer of Judgment. And this  
8 plainly -- well, first of all, these token Offers of  
9 Judgment are, in many jurisdictions, just summarily  
10 rejected or unenforced. Other jurisdictions do have rules  
11 that say: Well, we'll look at them, but there has to be  
12 something, you know, highly unusual about the case in order  
13 to enforce them.

14           For example, if this had been a case where we  
15 sued, despite clear statutory immunity of the defendant,  
16 then perhaps a zero-dollar offer could be in good faith or  
17 a reasonable settlement offer. However, that's not what  
18 this case is. Virtually every fact in this case was  
19 conceded. This case was lost on a unique defense that my  
20 client had been informed of risks and consented to the  
21 risks. That defense is universally barred in every other  
22 case that's considered that. A zero-dollar Offer of  
23 Judgment was not made in good faith. It was not a  
24 reasonable settlement offer, especially given the timing in  
25 which it was made. And, therefore, we ask that you aware

1 no attorneys' fees in this case against my client.

2 THE COURT: Opposition for the retax and state the  
3 -- the Motion for Attorneys' Fees?

4 MS. HALL: Yes, Your Honor. I'll start with the  
5 attorneys' fees issue, since that's the last issue Mr.  
6 Breeden spoke on.

7 First and foremost, I certainly am familiar with  
8 the *Singer* case and the holding of that case. And,  
9 although, you know, in my ideal world we would be treated -  
10 - defendants would be treated just as a plaintiff would be  
11 treated, I recognize that the *Singer* holding is that unless  
12 we recover a monetary judgment, I think less than 20,000,  
13 then we are kind of -- we're pretty much never going to get  
14 attorneys' fees under that statute. And I recognize that.

15 But what I would point out to Your Honor is that  
16 the Offer of Judgment that I served on behalf of my clients  
17 in June of 2021 was not an offer for nothing. It was a  
18 very substantial offer to waive \$41,522 in attorneys' fees,  
19 as well as over 19,000 in litigation costs that had been  
20 incurred at that point in time for the defendants.

21 So, I think very clearly under that *Busick versus*  
22 *Trainor* case that is a Nevada Court of Appeals case, while  
23 it is unpublished, it is a 2019 case that sets forth that  
24 it's within this Court's discretion to find that a waiver -  
25 - an Offer of Judgment for a waiver of fees and costs is

1 sufficient to support an award of attorneys' fees. And  
2 that's exactly what occurred in the District Court in the  
3 *Busick* case. And, on appeal, it was upheld for that  
4 reason, that an Offer of Judgment for waiver of substantial  
5 attorneys' fees and costs is sufficient to support an award  
6 of attorneys' fees.

7           And, so, I think that is very compelling and the  
8 attorneys' fees that are post-Offer attorneys' fees,  
9 because the Offer expired on July the 13<sup>th</sup>, are \$86,148.75.  
10 So, I think that is not an offer for nothing. That is a  
11 very substantial consideration. And, certainly, many more  
12 costs were incurred after that date and as we approached  
13 the trial date that we had in October.

14           I don't agree with some of the points that were  
15 raised about the defense. I don't think the defense that  
16 was presented was novel, although I certainly appreciate  
17 the compliment. This was a case that was very clearly a  
18 known risk and complication of the procedure that the  
19 patient had and the defense was that she experienced a  
20 known risk and complication in the absence of negligence.  
21 And that is the defense that resulted in a unanimous  
22 defense verdict.

23           With respect to the costs, Your Honor, much like  
24 Mr. Breeden, I don't want to go through each and every  
25 cost. I will just tell you that we asked for \$60,167.20 in

1 documented litigation costs. I provided substantial  
2 invoices from my office, as well as supporting  
3 documentation. I also verified the Memorandum of Costs  
4 that I submitted. And I'm not sure what additional support  
5 I could have provided. I think that all of the costs that  
6 have been requested are reasonable, they're properly  
7 supported, and they are permitted under the statute.

8           Two costs, though, that I want to specifically  
9 address. One is plaintiff's counsel challenged the cost  
10 for daily trial transcripts that were \$16,000 and some  
11 change. I have tried a number of medical malpractice cases  
12 in this jurisdiction, as has my partner, and I routinely  
13 order daily trial transcripts, Your Honor. And I use  
14 those, and as does my co-counsel, I use those to prepare  
15 for the next day of trial, as well as closing argument and  
16 additional, you know, preparation as the trial progresses.  
17 So, simply because Mr. Breeden doesn't believe those are  
18 necessary doesn't change the fact that those are necessary  
19 to my presentation of the defense, and I think were  
20 critical in resulting in a defense verdict.

21           One other cost that I did want to specifically  
22 mention, Your Honor, is the expert fees. As you know, the  
23 statute says 1,500 per expert, unless the Court finds that  
24 a larger fee is warranted. And, here, this is a case that  
25 was filed in 2018. I will tell you that pre-litigation,

1 there was substantial work and prior counsel for Ms.  
2 Taylor, Mr. Kent, I had a lot of discussions with him pre-  
3 litigation. I retained my expert, Dr. McCarus, pre-  
4 litigation. So, he's been working on this case since early  
5 2018. He traveled from Florida to give in-person testimony  
6 during this trial. He's a Board Certified OBGYN, he's a  
7 fellow of the American College of Obstetricians and  
8 Gynecologists. I do not know any medical expert who would  
9 do anything, frankly, for \$1,500. And I certainly think if  
10 the Court considers his qualifications, the substance of  
11 his testimony, and the result, his testimony was critical.  
12 And it certainly warrants the fees that -- the costs that  
13 I've requested.

14 And, unless Your Honor has any specific questions  
15 for me, I'll rest on the pleadings.

16 THE COURT: Any reply from the plaintiff?

17 MR. BREEDEN: Your Honor, I will not say much in  
18 rebuttal other than, on the issue of the expert fees, I  
19 mean, I believe we had in excess of \$16,000. Yeah, close  
20 to \$17,000 for the defense retained litigation expert here.  
21 Of course, that's unnecessary. Dr. Brill is a doctor and  
22 could have testified in his own defense, but you saw very  
23 little briefing under the *Frazier versus Drake* case from  
24 the defense on this particular issue. We saw no CV or fee  
25 schedule that was provided. We [inaudible] time that was

1 provided by this expert. Therefore, I could not tell what  
2 he was working on, and when, and whether that would have  
3 been reasonable to have been incurred. And, so, we raised  
4 a number of issues under *Frazier versus Drake* that we  
5 thought were valid and should limit recovery of the expert  
6 fee in this case.

7 And, with that, unless Your Honor has another  
8 itemized amount that you would like the parties to discuss,  
9 I'll submit.

10 THE COURT: I'm going to -- I'm ready to rule on  
11 this. I'm -- I'll grant the Motion in this respect. I'm  
12 going to give the transcript costs. I'm going to give the  
13 3,889.12 for juror fees and filing fees. And I'm only  
14 going to give the 1,500 for the expert fee. So, I'm going  
15 to give the 6 -- I think it's like 16,000 plus for the  
16 transcripts, 1,500 for the expert, and I'm going to give  
17 the 3,889.12 for juror fees and filing fees. That's having  
18 reviewed it to my best ability. So, that will be the  
19 Order.

20 Defendant will prepare that Order. So, --

21 MS. HALL: And just a --

22 THE COURT: Thank you.

23 MS. HALL: -- point of clarification, Your Honor.  
24 Anything you did not specifically reference, does that mean  
25 those costs are not awarded?



1 THE COURT: Yes. I'll just -- I just wanted to  
2 give those. I thought that was fair and, in reading the  
3 briefs, I know there was controversy.

4 As far as the attorneys' fees are concerned, I'm  
5 going to follow the *Singer* case in this particular matter.  
6 I think that's more appropriate in this type of case. You  
7 know, I feel bad that there has to be defense costs, but  
8 there has to be, unfortunately. When you defend a case,  
9 you did a good job, and you got your client off any type of  
10 liability, which I think is very admirable. So, what --  
11 but I don't feel that there's been any change in *Singer*  
12 *versus Chase Manhattan*. Maybe it's something that the  
13 insurance industry ought to look at and visit my former  
14 colleagues up in Carson City, if that's an issue, because  
15 you raised a very valid point. The -- your second point  
16 was valid, but the first point just doesn't fly with *Singer*  
17 *versus Chase Manhattan*.

18 So, plaintiff, will you prepare the Order on the  
19 denial of attorneys' fees?

20 MR. BREEDEN: Yes, Your Honor.

21 THE COURT: Okay. So, defendant will --

22 MS. HALL: And as for the --

23 THE COURT: -- prepare one Order, the plaintiff  
24 will prepare the other Order.

25 MS. HALL: And just so the ruling is clear, the

1 request for attorneys' fees under the post-Offer fees, that  
2 is denied as well?

3 THE COURT: Right. At this point. I think it's  
4 an interesting issue.

5 MS. HALL: Okay. Thank you, Your Honor.

6 THE COURT: I didn't see it in the 12 years I was  
7 on the Court. I don't think I ever saw it in the briefs.  
8 So it may be something you want to consider.

9 Thank you, both. You're excellent litigators,  
10 both of you. Very good briefs and very good argument. It  
11 was a tough case for me coming in like this. Have a good  
12 day. Stay safe.

13 MR. BREEDEN: Thank you.

14 MS. HALL: Thank you.

15 MR. BREEDEN: Thank you, Your Honor.

16  
17 PROCEEDING CONCLUDED AT 9:30 A.M.

18 \* \* \* \* \*

1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

13

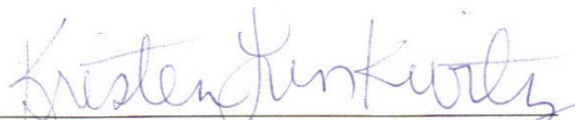
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20 KRISTEN LUNKWITZ

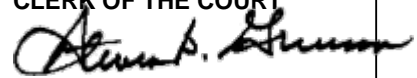
21 INDEPENDENT TRANSCRIBER

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25



1 **NEOJ**  
2 **ADAM J. BREEDEN, ESQ.**  
3 Nevada Bar No. 008768  
4 **BREEDEN & ASSOCIATES, PLLC**  
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9 Adam@Breedendandassociates.com  
10 *Attorneys for Plaintiff*

11 **EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 KIMBERLY TAYLOR, an individual,  
14  
15 Plaintiff,

CASE NO.: A-18-773472-C

DEPT NO.: III

16 v.

17 **NOTICE OF ENTRY OF ORDER**  
18 **GRANTING IN PART AND DENYING IN**  
19 **PART PLAINTIFF'S MOTION TO RE-**  
20 **TAX AND SETTLE COSTS**

21 KEITH BRILL, M.D., FACOG, FACS, an  
22 individual; WOMEN'S HEALTH  
23 ASSOCIATES OF SOUTHERN NEVADA –  
24 MARTIN, PLLC, a Nevada Professional  
25 Limited Liability Company; BRUCE  
26 HUTCHINS, RN, an individual;  
27 HENDERSON HOSPITAL and/or VALLEY  
28 HEALTH SYSTEMS, LLC, a Foreign LLC  
d/b/a HENDERSON HOSPITAL, a subsidiary  
of UNITED HEALTH SERVICES, a Foreign  
LLC; TODD W. CHRISTENSEN, M.D., an  
individual; DIGNITY HEALTH d/b/a ST.  
ROSE DOMINICAN HOSPITAL; DOES I  
through XXX, inclusive; and ROE  
CORPORATIONS I through XXX, inclusive,

Defendants.

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YOU AND EACH OF YOU please take notice that an *Order Granting in Part and Denying in Part Plaintiff's Motion to Re-Tax and Settle Costs* was entered in the above-captioned matter on the 1st day of March, 2022. A true and correct copy of the same is attached hereto.

DATED this 1st day of March, 2022.

**BREEDEN & ASSOCIATES, PLLC**

Adrian R. B.

**ADAM J. BREEDEN, ESQ.**

Nevada Bar No. 008768

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Las Vegas, Nevada 89119

Phone: (702) 819-7770

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adam@breedenandassociates.com

*Attorneys for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 1st day of March, 2022, I served a copy of the foregoing legal  
3 document **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN**  
4 **PART PLAINTIFF'S MOTION TO RE-TAX AND SETTLE COSTS** via the method indicated  
5 below:

6

7 X	Pursuant to NRCP 5 and NEFCR 9, by electronically serving all counsel and 8 e-mails registered to this matter on the Court's official service, Wiznet 9 system.
10	Pursuant to NRCP 5, by placing a copy in the US mail, postage pre-paid to 11 the following counsel of record or parties in proper person: 12 Robert C. McBride, Esq. 13 Heather S. Hall, Esq. 14 McBRIDE HALL 15 8329 W. Sunset Road, Suite 260 16 Las Vegas, Nevada 89113 <i>Attorneys for Defendants Keith Brill, M.D. and Women's Health Associates</i>
17	Via receipt of copy (proof of service to follow)

18 An Attorney or Employee of the following firm:

19 /s/ Sarah Daniels

20 **BREEDEN & ASSOCIATES, PLLC**

21

22

23

24

25

26

27

28

**ORDR**  
**ADAM J. BREEDEN, ESQ.**  
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*Attorneys for Plaintiff*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIMBERLY TAYLOR, an individual,  
  
Plaintiff,

CASE NO.: A-18-773472-C

DEPT NO.: III

v.

KEITH BRILL, M.D., FACOG, FACS, an  
individual; WOMEN'S HEALTH  
ASSOCIATES OF SOUTHERN NEVADA –  
MARTIN, PLLC, a Nevada Professional  
Limited Liability Company; BRUCE  
HUTCHINS, RN, an individual;  
HENDERSON HOSPITAL and/or VALLEY  
HEALTH SYSTEM, LLC, a Foreign LLC dba  
HENDERSON HOSPITAL, and/or  
HENDERSON HOSPITAL, a subsidiary of  
UNITED HEALTH SERVICES, a Foreign  
LLC; TODD W. CHRISTENSEN, M.D., an  
individual; DIGNITY HEALTH d/b/a ST.  
ROSE DOMINICAN HOSPITAL; DOES I  
through XXX, inclusive; and ROE  
CORPORATIONS I through XXX, inclusive,

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
MOTION TO RE-TAX AND SETTLE  
COSTS**

**DATE OF HEARING: 1/18/2022**

Time of Hearing: 9:00 a.m.

Defendants.

On November 19, 2021 Defendants filed their Verified Memorandum of Costs. Plaintiff filed her Motion to Re-Tax and Settle Costs on November 22, 2021. Plaintiff's Motion to Re-Tax and Settle Costs came on for hearing on January 18, 2022 at 9:00 a.m. Plaintiff appeared by and through her attorney of record ADAM BREEDEN, ESQ. of the law firm of BREEDEN & ASSOCIATES. Defendants appeared by and through their attorney of record HEATHER S. HALL,



1 ESQ. of the law firm of McBRIDE HALL. The Court, having reviewed all pleadings and papers  
2 on file herein, and having considered the written and oral argument of counsel, finds as follows:

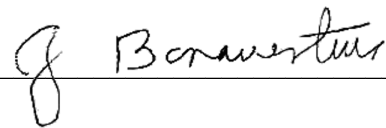
3 Defendants' Verified Memorandum of Costs requests costs in the amount of \$60,167.20.  
4 Plaintiff's Motion to Re-Tax and Settle Costs asks this Court to limit any award of costs to  
5 \$3,889.12.

6 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendants' request for  
7 litigation costs is **GRANTED IN PART, DENIED IN PART** and Plaintiff's Motion to Re-tax and  
8 Settle Costs is **GRANTED IN PART, DENIED IN PART**. Specifically, in applying NRS Chapter  
9 18 and the Nevada Supreme Court's precedent, including but not limited to *Bobby Berosini, Ltd. v.*  
10 *People for the Ethical Treatment of Animals*, 114 Nev. 1348, 971 P.2d 383 (1998), the Court finds  
11 some of the costs requested are reasonable, necessary and properly supported with justifying  
12 documentation and awards Defendants the following costs:

- 13 1. All Clerk's Fees as set forth in Defendants' verified memorandum of costs at pages  
14 1 – 2, totaling \$3,889.12;
- 15 2. Reporters' Fees/Transcript Fees for hearings and trial but only those totaling  
16 \$16,260.75 which represent the amount sought for daily trial transcripts; and
- 17 3. \$1,500 in expert fees for Defendants' medical expert Stephen McCarus, M.D.

18 The total costs awarded to Defendants is **\$21,649.87**. The remaining costs are denied as  
19 not reasonable, necessary or properly supported with justifying documents under the applicable  
20 statutes or case law.

21 Dated this 1st day of March, 2022

22   
\_\_\_\_\_

23 Submitted by:

24 **BREEDEN & ASSOCIATES, PLLC**

25 /s/ Adam J. Breeden

26 **ADAM J. BREEDEN, ESQ.**

27 Nevada Bar No. 008768

28 *Attorneys for Plaintiff*

**39A DEC FCD6 086A**  
**Joe Bonaventure Sr.**  
**District Court Judge**

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Kimberly Taylor, Plaintiff(s)

CASE NO: A-18-773472-C

7 vs.

DEPT. NO. Department 3

8 Keith Brill, M.D., Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 3/1/2022

15 Adam Breeden

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17 Heather Hall

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22 John Cotton

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23 Adam Schneider

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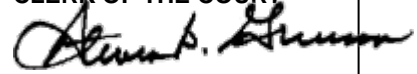
24 Michelle Newquist

mnewquist@mcbridehall.com

25 James Kent

jamie@jamiekent.org

1	Diana Samora	dsamora@hpslaw.com
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6	Lauren Smith	lsmith@mcbridehall.com
7	Natalie Jones	njones@mcbridehall.com
8	Anna Albertson	mail@legalangel.com
9	Madeline VanHeuvelen	mvanheuvelen@mcbridehall.com
10	Sarah Daniels	sarah@breedenandassociates.com
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NEO  
ROBERT C. McBRIDE, ESQ.  
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Nevada Bar No. 10608  
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Attorneys for Defendants,  
*Keith Brill, M.D., FACOG and*  
*Women's Health Associates of Southern Nevada –*  
*MARTIN, PLLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

KIMBERLY D. TAYLOR, an Individual,  
  
Plaintiff,

vs.

KEITH BRILL, MD, FACOG, FACS, an  
Individual; WOMEN'S HEALTH  
ASSOCIATES OF SOUTHERN NEVADA –  
MARTIN, PLLC, a Nevada Professional  
Limited Liability Company,  
  
Defendants.

CASE NO.: A-18-773472-C  
DEPT: III

**NOTICE OF ENTRY OF ORDER  
DENYING DEFENDANT KEITH BRILL,  
M.D. AND WOMEN'S HEALTH  
ASSOCIATES OF SOUTHERN NEVADA-  
MARTIN, PLLC'S MOTION FOR  
ATTORNEY'S FEES**

PLEASE TAKE NOTICE that an ORDER DENYING DEFENDANT KEITH BRILL,  
M.D. AND WOMEN'S HEALTH ASSOCIATES OF SOUTHERN NEVADA-MARTIN,  
PLLC'S MOTION FOR ATTORNEY'S FEES was entered and filed on the 12<sup>th</sup> day of May 2022,  
a copy of which is attached hereto.

DATED this 13<sup>th</sup> day of May 2022.

/s/ Heather S. Hall

ROBERT C. McBRIDE, ESQ.  
Nevada Bar No.: 7082  
HEATHER S. HALL, ESQ.  
Nevada Bar No.: 10608  
8329 W. Sunset Road, Suite 260  
Las Vegas, Nevada 89113  
Attorneys For Defendants

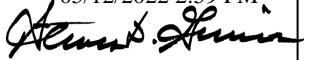
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 13<sup>th</sup> day of May 2022, I served a true and correct copy  
3 of the foregoing **NOTICE OF ENTRY OF ORDER DENYING DEFENDANT KEITH**  
4 **BRILL, M.D. AND WOMEN'S HEALTH ASSOCIATES OF SOUTHERN NEVADA-**  
5 **MARTIN, PLLC'S MOTION FOR ATTORNEY'S FEES** addressed to the following counsel  
6 of record at the following address(es):  
7

- 8 ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of e-  
9 service attached to any copy filed with the Court; or
- 10 ☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with  
11 postage thereon fully prepaid, addressed as indicated on the service list below in the United  
12 States mail at Las Vegas, Nevada
- 13 ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number  
14 indicated on the service list below.

15 Adam J. Breeden, Esq.  
16 BREEDEN & ASSOCIATES, PLLC  
17 376 E. Warm Springs Road, Suite 120  
18 Las Vegas, Nevada 89119  
19 *Attorneys for Plaintiff*

20  
21  
22 /s/ Candace Cullina  
23 An Employee of *McBRIDE HALL*  
24  
25  
26  
27  
28

  
CLERK OF THE COURT

**ORDR**

ROBERT C. McBRIDE, ESQ.

Nevada Bar No.: 7082

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Nevada Bar No.: 10608

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Attorneys for Defendants,

*Keith Brill, M.D., FACOG and*

*Women's Health Associates of Southern Nevada –*

*MARTIN, PLLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

KIMBERLY D. TAYLOR, an Individual,

Plaintiff,

vs.

KEITH BRILL, MD, FACOG, FACS, an  
Individual; WOMEN'S HEALTH  
ASSOCIATES OF SOUTHERN NEVADA –  
MARTIN, PLLC, a Nevada Professional  
Limited Liability Company; TODD W.  
CHRISTENSEN, MD, an Individual; DOES I  
through XXX, inclusive; and ROE  
CORPORATIONS I through XXX, inclusive;

Defendants.

**CASE NO.: A-18-773472-C**

**DEPT: III**

**ORDER DENYING DEFENDANT KEITH  
BRILL, M.D. AND WOMEN'S HEALTH  
ASSOCIATES OF SOUTHERN NEVADA-  
MARTIN, PLLC'S MOTION FOR  
ATTORNEY'S FEES**

**DATE OF HEARING: 1/18/2022**

**TIME OF HEARING: 9:00 A.M.**

Defendants' Motion for Attorney's Fees came for oral argument on January 18, 2022 at 9:00 a.m. Plaintiff, KIMBERLY TAYLOR was represented by her counsel Adam J. Breeden, Esq. of BREEDEN & ASSOCIATES, PLLC. Defendants, KEITH BRILL, M.D. and WOMEN'S HEALTH ASSOCIATES OF SOUTHERN NEVADA- MARTIN, PLLC were represented by

1 their counsel Heather Hall, Esq. of McBRIDE HALL. Hon. Michael Cherry presided over the  
2 hearing. Having reviewed the pleadings and papers on file and heard oral argument;

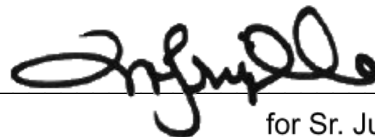
3 **THE COURT FINDS** that attorney's fees are not recoverable under NRS § 18.010(2)(b)  
4 because this action was not filed "without reasonable ground or to harass the prevailing party."  
5 *Duff v. Foster*, 110 Nev. 1306, 1308, 885 P.2d 589, 591 (1994). Attorney's fees are also not  
6 recoverable under NRS § 18.010(2)(a) because the Defendants did not recover on any of their own  
7 claims. *Key Bank v. Donnels*, 106 Nev. 49, 53, 787 P.2d 382, 385 (1990) ("when attorney's fees  
8 are based on the provisions in [NRS 18.010(2)] subsection (a), we have held that an award of a  
9 money judgment is a prerequisite to an award of attorney's fees.").

10 **THE COURT FINDS** that attorney's fees are not recoverable under NRCP 68 either. On  
11 June 29, 2021, Defendants served an offer of judgment for a mutual waiver of attorneys' fees and  
12 costs. Defense attorneys' fees incurred as of the date of service of the Offer were \$41,552.25 and  
13 costs were \$19,200.53. This Offer expired on July 13, 2021. The Court has reviewed the parties'  
14 arguments and the factors under *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (Nev. 1983) and  
15 *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P. 2d 31, 33 (Nev. 1969). The Court  
16 finds that Defendants' offer of judgment for a mutual waiver of attorneys' fee and costs does not  
17 entitle Defendants to attorneys' fees. Therefore;

18 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED** that Defendants'  
19 Motion for Attorney Fees is denied, Plaintiff's counsel shall prepare the Order.

20 **IT IS SO ORDERED.**

21  
22 \_\_\_\_\_ Dated this 12th day of May, 2022

23   
24 \_\_\_\_\_

for Sr. Judge Cherry

25 **0CB 53E D335 20C5**  
26 **Monica Trujillo**  
27 **District Court Judge**  
28



Respectfully Submitted by:

DATED this 14<sup>th</sup> day of February, 2022.

McBRIDE HALL

/s/ Heather S. Hall

\_\_\_\_\_  
Heather S. Hall, Esq.  
Nevada Bar No. 10608  
8329 W. Sunset Road, Suite 260  
Las Vegas, Nevada 89113  
Attorneys for Defendants  
*Keith Brill, M.D., FACOG, FACS and  
Women's Health Associates of Southern  
Nevada – Martin, PLLC*

Approved as to Form and Content by:

DATED this    day of February 2022.

BREEDEN & ASSOCIATES, PLLC

*REFUSED TO SIGN*

\_\_\_\_\_  
Adam J. Breeden, Esq.  
Nevada Bar No.: 008768  
376 E. Warm Springs Road, Suite 120  
Las Vegas, Nevada 89119  
Attorneys for Plaintiff

**From:** [Heather S. Hall](#)  
**To:** [Adam Breeden](#)  
**Cc:** [Candace P. Cullina](#); [Robert McBride](#); [Sarah Daniels](#); [Teyla Charlotte Buys](#)  
**Subject:** RE: Taylor v. Brill, A-18-773472-C- Order Regarding Attorney Fees  
**Date:** Wednesday, February 16, 2022 8:23:30 AM  
**Attachments:** [image001.png](#)

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I will submit a competing order.

---

**From:** Adam Breeden <adam@breedenandassociates.com>  
**Sent:** Wednesday, February 16, 2022 7:58 AM  
**To:** Heather S. Hall <hshall@mcbridehall.com>  
**Cc:** Candace P. Cullina <ccullina@mcbridehall.com>; Robert McBride <rcmcbride@mcbridehall.com>; Sarah Daniels <sarah@breedenandassociates.com>; Teyla Charlotte Buys <tcbuys@mcbridehall.com>  
**Subject:** Re: Taylor v. Brill, A-18-773472-C- Order Regarding Attorney Fees

Heather,

The attorney's fees were denied. Judge Cherry gave little analysis at the hearing on the issue but he apparently adopted Plaintiff's opposition. I felt the order should explain the position and contain some legal analysis. I am inclined to submit my version as a disputed order today, I will notify the Court that it appears you dispute the language of the Order and may submit a competing order.

**Adam Breeden, Esq.**

Trial Attorney, Breeden & Associates

☐ 376 E. Warm Springs Rd. Ste. 120 Las Vegas, NV 89119

☐ 702.819.7770 ☐ 702.819.7771 ☐ [adam@breedenandassociates.com](mailto:adam@breedenandassociates.com) ☐

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On Mon, Feb 14, 2022 at 2:04 PM Heather S. Hall <[hshall@mcbridehall.com](mailto:hshall@mcbridehall.com)> wrote:

Adam,

Here are my changes to your Order. I am also attaching a copy of the transcript. The comments regarding bad faith, \$0, etc. were your comments and not findings of the Court.

With these changes, you may use my e-signature.

Heather S. Hall, Esq.

[hshall@mcbridehall.com](mailto:hshall@mcbridehall.com) | [www.mcbridehall.com](http://www.mcbridehall.com)

8329 West Sunset Road

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Las Vegas, Nevada 89113

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**MCBRIDE HALL**  
ATTORNEYS AT LAW

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**From:** Adam Breeden <[adam@breedenandassociates.com](mailto:adam@breedenandassociates.com)>

**Sent:** Thursday, January 27, 2022 9:26 AM

**To:** Heather S. Hall <[hshall@mcbridehall.com](mailto:hshall@mcbridehall.com)>

**Cc:** Candace P. Cullina <[ccullina@mcbridehall.com](mailto:ccullina@mcbridehall.com)>; Robert McBride <[rcmcbride@mcbridehall.com](mailto:rcmcbride@mcbridehall.com)>; Sarah Daniels <[sarah@breedenandassociates.com](mailto:sarah@breedenandassociates.com)>; Teyla Charlotte Buys <[tcbuys@mcbridehall.com](mailto:tcbuys@mcbridehall.com)>

**Subject:** Re: Taylor v. Brill, A-18-773472-C- Order Regarding Attorney Fees

Heather,

The Court directed my firm to prepare an order on the attorney's fees issues and your firm to prepare an order on the costs issues. I waited a few days but no minutes have posted. I have drafted the attached Order, please advise if I may affix your e-signature and submit to the Court.

**Adam Breeden, Esq.**

Trial Attorney, Breeden & Associates

☐ 376 E. Warm Springs Rd. Ste. 120 Las Vegas, NV 89119

☐ [702.819.7770](tel:702.819.7770) ☐ [702.819.7771](tel:702.819.7771) ☐ [adam@breedenandassociates.com](mailto:adam@breedenandassociates.com) ☐

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☐ ☐ ☐ ☐

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1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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5  
6 Kimberly Taylor, Plaintiff(s) CASE NO: A-18-773472-C  
7 vs. DEPT. NO. Department 3  
8 Keith Brill, M.D., Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 5/12/2022

15 Adam Breeden	adam@breedenandassociates.com
16 E-File Admin	efile@hpslaw.com
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20 Robert McBride	rcmcbride@mcbridehall.com
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