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Nov 08 2022 10:17 AM  
Elizabeth A. Brown  
Clerk of Supreme Court

**ANOA**  
D. Lee Roberts, Jr., Esq.  
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*Attorneys for Defendant*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SANDRA L. ESKEW, as special administrator  
of the Estate of William George Eskew,

Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

Defendant.

Case No.: A-19-788630-C  
Dept. No.: 4

**AMENDED NOTICE OF APPEAL**

1 Please take notice that defendant Sierra Health and Life Insurance Company, Inc. hereby  
2 appeals to the Supreme Court of Nevada from all judgments, rulings, and orders in this case,  
3 including:

- 4 1. Judgment Upon the Jury Verdict, filed April 18, 2022, notice of entry of which was  
5 served electronically on April 18, 2022 (Exhibit A);
  - 6 2. Amended Judgment Upon the Jury Verdict, filed October 7, 2022, notice of entry  
7 of which was served electronically on October 24, 2022 (Exhibit B);
  - 8 3. Order Granting in Part and Denying in Part Defendant's Motion to Retax, filed June  
9 8, 2022, notice of entry of which was served electronically on June 9, 2022 (Exhibit  
10 C);
  - 11 4. Minute Order denying Defendant's Renewed Motion for Judgment as a Matter of  
12 Law, electronically served by Courtroom Clerk on August 15, 2022 (Exhibit D);
  - 13 5. Minute Order denying Defendant's Motion for a New Trial or Remittitur,  
14 electronically served by Courtroom Clerk on August 15, 2022 (Exhibit E);
  - 15 6. Order denying Defendant's Renewed Motion for Judgment as a Matter of Law,  
16 filed October 5, 2022, notice of entry of which was served electronically on October  
17 24, 2022 (Exhibit F);
  - 18 7. Order denying Defendant's Motion for a New Trial or Remittitur, filed October 5,  
19 2022, notice of entry of which was served electronically on October 24, 2022  
20 (Exhibit G);
  - 21 8. Order granting Plaintiff's Motion for Order Shortening Time, filed on October 7,  
22 2022 (Exhibit H);
  - 23 9. Findings and Conclusions as to Allegations of Attorney Misconduct, filed on  
24 October 24, 2022, notice of entry of which was served electronically on October  
25 24, 2022 (Exhibit I); and
  - 26 10. All judgments, rulings and interlocutory orders made appealable by any of the  
27 foregoing.
- 28

1 DATED: October 31, 2022.

2 /s/ Ryan T. Gormley

3 D. Lee Roberts, Jr., Esq.

4 Phillip N. Smith, Esq.

5 Ryan T. Gormley, Esq.

6 WEINBERG, WHEELER, HUDGINS,

GUNN & DIAL, LLC

6385 South Rainbow Blvd., Suite 400

Las Vegas, Nevada 89118

7 Thomas H. Dupree Jr., Esq.

8 GIBSON, DUNN & CRUTCHER LLP

1050 Connecticut Avenue, N.W.

Washington, DC 20036

9 *Attorneys for Defendant*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on October 31, 2022 a true and correct copy of the foregoing  
3 **AMENDED NOTICE OF APPEAL** was electronically filed and served on counsel through the  
4 Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the  
5 electronic mail addresses noted below, unless service by another method is stated or noted:

6 Matthew L. Sharp, Esq.  
7 [matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)  
8 MATTHEW L. SHARP, LTD.  
432 Ridge St.  
Reno, NV 89501

9 Douglas A. Terry, Esq.  
10 [doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)  
DOUG TERRY LAW, PLLC  
200 E. 10<sup>th</sup> St. Plaza, Suite 200  
11 Edmond, OK 73018  
Attorneys for Plaintiffs  
12 Sandra L. Eskew, Tyler Eskew and  
William G. Eskew, Jr.  
13

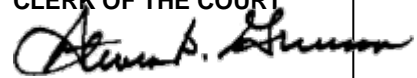
14 /s/ Cynthia S. Bowman

15 An employee of WEINBERG, WHEELER,  
16 HUDGINS, GUNN & DIAL, LLC  
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**EXHIBIT A**

**EXHIBIT A**



NJUD  
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*Attorney for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,  
  
Plaintiffs,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,  
  
Defendant.

Case No. A-19-788630-C

Dept. No. 4

**NOTICE OF ENTRY OF JUDGMENT UPON JURY VERDICT**

PLEASE TAKE NOTICE that the Judgment Upon Jury Verdict was filed herein on April 18,  
2022, in the above-captioned matter.

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///

1 A copy of the Judgment Upon Jury Verdict is attached hereto as Exhibit 1.

2 DATED this 18<sup>th</sup> day of April 2022.

3 MATTHEW L. SHARP, LTD.

4  
5 /s/ Matthew L. Sharp

6 MATTHEW L. SHARP, ESQ.

7 Nevada Bar No. 4746

8 432 Ridge Street

9 Reno NV 89501

(775) 324-1500

[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)

*Attorneys for Plaintiffs*

1 **CERTIFICATE OF SERVICE**

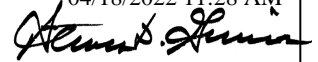
2 I hereby certify that I am an employee of Matthew L. Sharp, Ltd., and that on this date, a true  
3 and correct copy of the foregoing was electronically filed and served on counsel through the Court's  
4 electronic service system pursuant to Administrative Order 14-2 and NEFCR 9, via the electronic mail  
5 address noted below:

6 D. Lee Roberts, Jr. Esq.; [lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)  
7 Marjan Hajimirzaee, Esq.; [mhajimirzaee@wwhgd.com](mailto:mhajimirzaee@wwhgd.com)  
8 Ryan T. Gormley, Esq.; [rgormley@wwhgd.com](mailto:rgormley@wwhgd.com)  
9 WEINBERG WHEELER HUDGINS GUNN & DIAL LLC  
6385 S. Rainbow Blvd., Ste. 400  
Las Vegas, NV 89118  
10 *Attorneys for Defendants*

11 DATED this 18<sup>th</sup> day of April 2022.

12  
13 /s/ Cristin B. Sharp  
An employee of Matthew L. Sharp, Ltd.

# EXHIBIT 1

  
CLERK OF THE COURT

JUV

MATTHEW L. SHARP, ESQ.

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(405) 463-6362

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*Attorney for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,

Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

Defendant.

Case No. A-19-788630-C

Dept. No. 4

**JUDGMENT UPON THE JURY VERDICT**

THIS MATTER came for trial by jury from March 14, 2022 through April 5, 2022. Plaintiff Sandra L. Eskew, as Special Administrator of the Estate of William George Eskew, appeared in person and by and through her counsel Matthew L Sharp, Esq. and Douglas Terry, Esq. Defendant Sierra Health and Life Insurance Company appeared in person and by and through its counsel, Lee Roberts, Esq., Ryan Gormley, Esq., and Phillip Smith, Esq., of the law firm of Weinberg, Wheeler, Hudgins, Gunn, & Dial, LLC. Testimony was taken. Evidence was admitted. Counsel argued the merits of the case. Pursuant to NRS 42.005(3), the trial was held in two phases.

1 On April 4, 2022, in phase one, the jury unanimously rendered a verdict for Plaintiff Sandra  
2 L. Eskew as Special Administrator of the Estate of William George Eskew and against Defendant  
3 Sierra Health and Life Insurance Company and awarded compensatory damages in the amount of  
4 \$40,000,000. The jury unanimously found grounds to award punitive damages.

5 Phase two for punitive damages was held on April 5, 2022. The jury unanimously rendered a  
6 verdict for Plaintiff Sandra L. Eskew as Special Administrator of the Estate of William George  
7 Eskew and against Defendant Sierra Health and Life Insurance Company and awarded punitive  
8 damages in the amount of \$160,000,000.

9 Pursuant to NRS 17.130, Plaintiff Sandra L. Eskew, as Special Administrator of the Estate of  
10 William George Eskew, is entitled prejudgment interest of \$6,363,287.67 for past compensatory  
11 damages awarded of \$40,000,000, from April 9, 2019 through entry of judgment of April 18, 2022,  
12 based upon a pre-judgment interest rate of 5.25 percent.<sup>1</sup>

13 IT IS SO ORDERED AND ADJUDGED that Plaintiff Sandra L. Eskew, as Special  
14 Administrator of the Estate of William Georg Eskew, be given and granted judgment against  
15 Defendant Sierra Health and Life Insurance Company in the total amount of \$206,363,287.67, plus  
16 taxable costs as determined by this Court, all to bear interest as provided by NRS 17.130(2) from the  
17 date of entry of judgment until paid in full.

18 DATED this \_\_ day of April 2022.

19 Dated this 18th day of April, 2022

20 

21 \_\_\_\_\_  
DISTRICT COURT JUDGE

22 53A 8A7 E0AC A706

23 Nadia Krall

24 District Court Judge

25  
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27 <sup>1</sup> <https://www.washoecourts.com/toprequests/interestrates>. The pre-judgment interest rate is 5.25  
28 percent. \$40,000,000 times 5.25 percent and divided by 365 days equals a daily rate of interest of  
\$5,753.42. April 9, 2019 through April 18, 2022 is 1106 days for \$6,363,287.67.

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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5  
6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 4/18/2022

15 Audra Bonney

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16 Cindy Bowman

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17 D. Lee Roberts

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18 Raiza Anne Torrenueva

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19 Matthew Sharp

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20 Cristin Sharp

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21 Ryan Gormley

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22 Flor Gonzalez-Pacheco

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23 Kelly Gaez

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24 Suzy Thompson

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25 Marjan Hajimirzaee

mhajimirzaee@wwhgd.com

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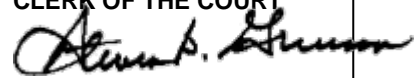


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Maxine Rosenberg	Mrosenberg@wwhgd.com
Stephanie Glantz	sglantz@wwhgd.com
Douglas Terry	doug@dougterrylaw.com

**EXHIBIT B**

**EXHIBIT B**



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(405) 463-6362  
[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)

*Attorney for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,  
  
Plaintiffs,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,  
  
Defendant.

Case No. A-19-788630-C

Dept. No. 4

**NOTICE OF ENTRY OF AMENDED JUDGMENT UPON JURY VERDICT**

PLEASE TAKE NOTICE that the Amended Judgment Upon Jury Verdict was filed herein on  
October 7, 2022 in the above-captioned matter.

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1 A copy of the Amended Judgment Upon Jury Verdict is attached hereto as Exhibit 1.

2 DATED this 24<sup>th</sup> day of October 2022.

3 MATTHEW L. SHARP, LTD.

4 /s/ Matthew L. Sharp

5 MATTHEW L. SHARP, ESQ.

6 Nevada Bar No. 4746

7 432 Ridge Street

8 Reno NV 89501

9 (775) 324-1500

10 [matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)

11 *Attorneys for Plaintiffs*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Matthew L. Sharp, Ltd., and that on this date, a true  
3 and correct copy of the foregoing was electronically filed and served on counsel through the Court's  
4 electronic service system pursuant to Administrative Order 14-2 and NEFCR 9, via the electronic mail  
5 address noted below:

6 D. Lee Roberts, Jr. Esq.; [lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)  
7 Phillip N. Smith, Esq.; [psmith@wwhgd.com](mailto:psmith@wwhgd.com)  
8 Ryan T. Gormley, Esq.; [rgormley@wwhgd.com](mailto:rgormley@wwhgd.com)  
9 WEINBERG WHEELER HUDGINS GUNN & DIAL LLC  
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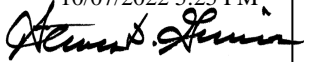
10 Thomas H. Dupree Jr., Esq.; [TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)  
11 GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036

12 *Attorneys for Defendants*

13 DATED this 24<sup>th</sup> day of October 2022.

14  
15 /s/ Suzy Thompson  
16 An employee of Matthew L. Sharp, Ltd.  
17  
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# EXHIBIT 1

  
CLERK OF THE COURT

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Nevada State Bar #4746  
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(405) 463-6362  
[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)

*Attorney for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,  
  
Plaintiff,

Case No. A-19-788630-C

Dept. No. 4

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,  
  
Defendant.

**AMENDED JUDGMENT UPON THE JURY VERDICT**

THIS MATTER came for trial by jury from March 14, 2022 through April 5, 2022. Plaintiff Sandra L. Eskew, as Special Administrator of the Estate of William George Eskew, appeared in person and by and through her counsel Matthew L Sharp, Esq. and Douglas Terry, Esq. Defendant Sierra Health and Life Insurance Company appeared in person and by and through its counsel, Lee Roberts, Esq., Ryan Gormley, Esq., and Phillip Smith, Esq., of the law firm of Weinberg, Wheeler, Hudgins, Gunn, & Dial, LLC. Testimony was taken. Evidence was admitted. Counsel argued the merits of the case. Pursuant to NRS 42.005(3), the trial was held in two phases.

1 On April 4, 2022, in phase one, the jury unanimously rendered a verdict for Plaintiff Sandra  
2 L. Eskew as Special Administrator of the Estate of William George Eskew and against Defendant  
3 Sierra Health and Life Insurance Company and awarded compensatory damages in the amount of  
4 \$40,000,000. The jury unanimously found grounds to award punitive damages.

5 Phase two for punitive damages was held on April 5, 2022. The jury unanimously rendered a  
6 verdict for Plaintiff Sandra L. Eskew as Special Administrator of the Estate of William George  
7 Eskew and against Defendant Sierra Health and Life Insurance Company and awarded punitive  
8 damages in the amount of \$160,000,000.

9 Pursuant to NRS 17.130, Plaintiff Sandra L. Eskew, as Special Administrator of the Estate of  
10 William George Eskew, is entitled prejudgment interest of \$6,363,287.67 for past compensatory  
11 damages awarded of \$40,000,000, from April 9, 2019 through entry of judgment of April 18, 2022,  
12 based upon a pre-judgment interest rate of 5.25 percent.<sup>1</sup>

13 On June 8, 2022, this Court issued an order awarding taxable costs to Plaintiff Sandra L.  
14 Eskew as Special Administrator of the Estate of William George Eskew in the amount \$313,634.62.

15 IT IS SO ORDERED AND ADJUDGED that Plaintiff Sandra L. Eskew, as Special  
16 Administrator of the Estate of William Georg Eskew, be given and granted judgment against  
17 Defendant Sierra Health and Life Insurance Company in the total amount of \$206,363,287.67, plus  
18 taxable costs of \$313,634.62, all to bear interest as provided by NRS 17.130(2) from the date of  
19 entry of judgment of April 18, 2022 until paid in full.

20 DATED this \_\_\_ day of October 2022.

21 Dated this 7th day of October, 2022

22 

23 DISTRICT COURT JUDGE

24 6F8 956 5BA9 9FA7

25 Nadia Krall

26 District Court Judge

27 <sup>1</sup> <https://www.washoecourts.com/toprequests/interestrates>. The pre-judgment interest rate is 5.25  
28 percent. \$40,000,000 times 5.25 percent and divided by 365 days equals a daily rate of interest of  
\$5,753.42. April 9, 2019 through April 18, 2022 is 1106 days for \$6,363,287.67.



1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/7/2022

15 Audra Bonney

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16 Cindy Bowman

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19 Matthew Sharp

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suzy@mattsharplaw.com

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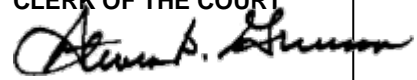
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Stephanie Glantz	sglantz@wwhgd.com
Douglas Terry	doug@dougterrylaw.com

**EXHIBIT C**

**EXHIBIT C**



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*Attorney for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
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SANDRA L. ESKEW, as Special  
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William George Eskew,  
  
Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,  
  
Defendant.

Case No. A-19-788630-C

Dept. No. 4

**NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART  
DEFENDANT'S MOTION TO RETAX**

PLEASE TAKE NOTICE that an Order Granting in Part and Denying in Part Defendant's  
Motion to Retax was filed on June 8, 2022, in the above-captioned matter.

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1 A copy of the Order is attached hereto.

2 DATED this 9<sup>th</sup> day of June 2022.

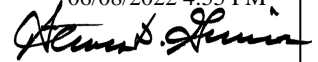
3 MATTHEW L. SHARP, LTD.

4  
5  
6 /s/ Matthew L. Sharp  
7 MATTHEW L. SHARP, ESQ.  
8 Nevada Bar No. 4746  
9 432 Ridge Street  
10 Reno NV 89501  
11 (775) 324-1500  
12 [matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)  
13 *Attorneys for Plaintiffs*  
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CLERK OF THE COURT

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*Attorney for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,

Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

Defendant.

Case No. A-19-788630-C

Dept. No. 4

**ORDER GRANTING IN PART AND DENYING IN PART**  
**DEFENDANT'S MOTION TO RETAX**

On April 22, 2022, Defendant filed its Motion to Retax Costs. This Court has reviewed Plaintiff's Memorandum of Costs, Defendant's Motion to Retax Costs, and Plaintiff's Opposition to Defendant's Motion to Retax Costs with a Declaration of Matthew L. Sharp in Support of Plaintiff's Memorandum of Costs. This Court grants Defendant's Motion to Retax Costs in part and denies the motion in part consistent with the modification to Plaintiff's Memorandum of Costs as set forth in Plaintiff's Opposition to Motion to Retax Costs.

**I. LEGAL STANDARDS FOR MOTION TO RETAX COSTS**

1. NRS 18.020(3) provides costs must be allowed to “the prevailing party against any adverse party against whom judgment is rendered...[i]n an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.”

2. The prevailing party is “entitled to recover all costs as a matter of right.” *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 431, 132 P.3d 1022, 1036-37 (2006). NRS 18.005 defines the costs that are recoverable.

3. NRS 18.110(1) provides that the party seeking costs must provide a memorandum of costs setting forth the recoverable costs that have been necessarily incurred. The requirements of NRS 18.110(1) are not jurisdictional. *Eberle v. State ex rel. Redfield Trust*, 108 Nev. 587, 590, 836 P.2d 67, 69 (1992).

4. This Court has the discretion to determine the allowable costs under NRS 18.020. *Motor Coach Indus., Inc. v. Khiabani by & through Rigaud*, 137 Nev. Adv. Op. 42, 493 P.3d 1007, 1017 (2021).

5. NRS 18.005(5) governs the recovery of expert witness fees. It provides, “Reasonable fees of not more than five expert witnesses of not more than \$1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert’s testimony were of such necessity as to require the larger fee.” In evaluating a request for expert fees over \$1,500 per witness, this Court should “carefully evaluate a request for excess fees.” *Motor Coach Indus. v. Khiabani*, 492 P.3d at 1017. This Court should recognize the importance of expert witnesses and consider the factors set forth in *Frazier v. Drake*, 131 Nev. 632, 650-51, 357 P.3d 365, 377-78 (Ct. App. 2015). Those factors include: (1) the importance of the expert’s testimony to the case; (2) the degree that the expert aided the jury in deciding the case; (3) whether the expert’s testimony was repetitive of other experts; (4) the extent and nature of the work performed by the expert; (5) the amount of time the expert spent in court, preparing a report, and testifying at trial; (6) the expert’s area of expertise; (7) the expert’s education and training; (8) the fees charged by the expert; (9) the fees traditionally charged by the expert on related matters; (10) comparable expert fees charged in similar cases; and (11) the fees that



1 would have been charged to hire a comparable expert in Las Vegas, Nevada. *Id.* Whether a particular  
2 factor is applicable depends upon the facts of the case.

## 3 **II. FINDINGS OF FACT**

4 1. This case proceeded to trial on March 14, 2022.

5 2. On April 4, 2022, a verdict in phase one was rendered in favor of Plaintiff.

6 3. On April 5, 2022, a verdict on phase two was rendered in favor of Plaintiff.

7 4. On April 18, 2022, this Court filed a judgment in favor of Plaintiff.

8 5. On April 18, 2022, Plaintiff filed a Notice of Entry of Judgment.

9 6. On April 19, 2022, Plaintiff filed a Memorandum of Costs with supporting documentation to  
10 support each item of costs requested.

11 7. On April 22, 2022, Defendant filed its Motion to Retax Costs (“Motion”).

12 8. On May 6, 2022, Plaintiff filed its Opposition to Motion to Retax Costs (“Opposition”) with  
13 the Declaration of Matthew L. Sharp in Support to Plaintiff’s Opposition to Motion to Retax Costs  
14 (“Declaration”).

15 9. Defendant challenged the Memorandum of Costs on the basis that the attorneys for Plaintiff  
16 did not include a sworn declaration to verify the costs. Memorandum of Costs, which was signed by  
17 counsel as an officer of the Court, included the bills showing each item of costs requested were  
18 incurred, and Declaration verified the Memorandum of Costs as well as addressing each item of cost  
19 that Defendant sought to retax. The Memorandum of Costs, Opposition, and Declaration provided the  
20 information sufficient for this Court to evaluate the reasonableness of Plaintiff’s costs.

21 10. Pursuant to NRS 18.005(1), Plaintiff submitted filings fees of \$560. The Defendants did not  
22 contest the filing fees. Filing fees of \$560 were necessarily incurred in this action.

23 11. Pursuant to NRS 18.005(2), Plaintiff submitted \$24,162 for court reporter fees for depositions.  
24 In its Motion, Defendant asked to re-tax costs by \$8,187.40 on basis that: (1) jury trial transcripts of  
25 \$2,798.50 are not taxable; (2) \$3,230.16 for duplicate charges; and (3) video deposition charges of  
26 \$1,092.20. In the Opposition, Plaintiff omitted the duplicate charges of \$3,230, and jury trial  
27 transcripts charges of \$2,798.50.

12. Based upon Plaintiff's Opposition and Declaration, it is common practice generally in a case to videotape the deposition of a witness, and it is the common practice specifically in this case to videotape the deposition of a witness as evidenced, in part, that Defendant videotaped each of the seven depositions it took.

13. Reporter fees for depositions of \$16,840.20, represented as reporter fees of \$15,748 and video depositions of \$1,092.20, were necessarily incurred in this action

14. Pursuant to NRS 18.005(4), Plaintiff submitted jury fees and expenses of \$5,079.09. The fees were not contested by Defendant. The Defendants did not contest the jury fees and expenses. The jury fees and expenses of \$5,079.09 were necessarily incurred in this action.

15. Plaintiff submitted witness fees of \$48. The witness fees were not contested by Defendant. Witness fees of \$48 were necessarily incurred in this action.

16. Pursuant to NRS 18.005(5), Plaintiff submitted expert witness fees of \$229,490.49. Those fees were allocated as follows: (1) Dr. Andrew Chang for \$115,184.38; (2) Stephen Prater for \$105,355.06; (3) Elliot Flood for \$6,888.55; and (4) Dr. Clark Jean for \$2,062.50. In its motion, Defendant asked to re-tax costs for each expert as follows: (1) Dr. Andrew Chang from \$115,184.38 to between \$30,000 to \$58,184.38; (2) Stephen Prater from \$105,355.06 to \$64,104; (3) Elliott Flood from \$6,888.55 to \$5,473.55; and (4) Dr. Clark Jean from \$2,062.50 to zero. In the Opposition, Plaintiff withdrew the charges for Dr. Jean of \$2,062.50 and agreed to reduce the recovery of Mr. Flood's fee to \$5,473.55.

17. With respect to Dr. Chang, he is a well-qualified radiation oncologist who specializes in proton beam therapy ("PBT"). Without Dr. Chang's testimony, Plaintiff could not have prevailed in this case. His testimony involved a complicated subject matter and was necessary for Plaintiff to prevail on liability, causation, and damages. Dr. Chang explained radiation oncology generally. Dr. Chang testified about PBT. Dr. Chang testified about Mr. Eskew's condition, including the location of the tumors that needed to be radiated. Dr. Chang explained why PBT was the best radiation treatment available to Mr. Eskew and why IMRT posed a significant risk of injury to Mr. Eskew's esophagus. Dr. Chang testified about how IMRT injured Mr. Eskew's esophagus, the development of chronic esophagitis, and how that impacted Mr. Eskew.

1 18. In applying the relevant factors in *Frazier*, Dr. Chang's testimony was very important. There  
2 is a high degree of certainty his testimony assisted the jury. While Dr. Liao also testified, Dr. Chang's  
3 testimony was not repetitive of her testimony and dealt with different aspects of why PBT was  
4 necessary for Mr. Eskew and the injuries he sustained from IMRT including the development of the  
5 chronic esophagitis. The charges of \$115,184.38 were consistent with the work Dr. Chang performed.  
6 Dr. Chang hourly rate \$750 per hour was consistent with Dr. Chang's standard rate and consistent  
7 with what a doctor with his expertise would charge. Dr. Chang's fees were consistent with the amount  
8 of work he did preparing his report, preparing for trial, and testifying at trial. PBT is not a therapy  
9 offered in Las Vegas, so it was not practical to find an expert on PBT from Las Vegas. Dr. Kumar,  
10 SHL's radiation oncologist and who, at one-time lived in Las Vegas, charged more than Dr. Chang at  
11 \$800 per hour. Dr. Chang's total fee of \$115,184.38 was consistent with a case of this complexity  
12 and consistent with Dr. Chang's qualifications, the complexity of his testimony, and the importance  
13 of his testimony.

14 19. Pursuant to the relevant *Frazier* factors, Dr. Chang's expert witness fees of \$115,184.38 were  
15 necessarily incurred in this action.

16 20. With respect to Mr. Prater, he was used as an expert in insurance claims handling practices.  
17 Mr. Prater's testimony was necessary on the issue of liability for breach of the implied covenant of  
18 good faith and fair dealing and implied malice and oppression for purposes of punitive damages.

19 21. In applying the *Frazier* factors, Mr. Prater's testimony was very important. Given the verdict,  
20 the degree to which Mr. Prater assisted the jury was high. Mr. Prater has a high degree of expertise  
21 with over 35 years of experience studying insurance claims practices, training insurance companies  
22 on complying with industry standards and the duty of good faith and fair dealing, and years of  
23 testifying experience. For 30 years, Mr. Prater taught insurance law as a professor of law at Santa  
24 Clara University. Mr. Prater utilized his vast experience to explain insurance industry principals and  
25 standards for fair claims handling. He utilized the facts of the case to assist in explaining Plaintiff's  
26 theory of the case including how SHL violated industry standards and consciously disregarded Mr.  
27 Eskew's rights. Mr. Prater explained complex concepts to the jury, including: (1) how a reasonable  
28 insurer would interpret the insurance policy generally; (2) how SHL should have interpreted the policy

1 with respect to Mr. Eskew's claim; (3) how an insurer investigates and evaluates a claim generally;  
2 (4) how SHL investigated and evaluated Mr. Eskew's claim; and (5) how SHL should have  
3 investigated and evaluated Mr. Eskew's claim. Mr. Prater charged his customary fee of \$750 per hour  
4 which was consistent with his background and expertise.

5 22. While Defendant seeks to reduce Mr. Prater's fees by 55 hours, Mr. Prater spent the time billed,  
6 and the tasks for which he billed were necessary to the case. The charges reflect the time spent to  
7 provide an extensive report, review of discovery materials, preparation for deposition, extensive  
8 preparation for trial, and trial testimony.

9 23. Pursuant to the relevant *Frazier* factors, Mr. Prater's expert witness fee of \$105,355.06 were  
10 necessarily incurred in this action.

11 24. With respect to Mr. Flood, he was retained as an insurance expert to testify about two aspects:  
12 (1) the corporate relationship between United Health Group, Sierra Heath, Optum, ProHealth Proton  
13 Center Management, New York Proton Management LLC, and UHG's management of the New York  
14 Proton Center and the investment into the New York Proton Center; and (2) the Defendant's value  
15 for purposes of punitive damages. At trial, Mr. Flood's testimony established the foundation to put  
16 into evidence that, as early as 2015, United Health Group, through ProHealth Proton, invested into a  
17 proton center in New York City, in part, to use PBT to treat lung cancer. In applying the *Frazier*  
18 factors, Mr. Flood's testimony was important. He aided the jury in understanding the corporate  
19 structure of United Health Group. New York Proton Center was an important part of Plaintiff's theory  
20 in challenging the Defendant's position and credibility of its position that PBT for lung cancer was  
21 unproven and not medically necessary.

22 25. In applying the relevant *Frazier* factors, Mr. Flood's charges to \$5,473.55 were necessarily  
23 incurred in this action.

24 26. Pursuant to NRS 18.005(7), Plaintiff submitted process service fees of \$95. The process  
25 service fees were not contested by Defendant. The process service fees of \$95 were necessarily  
26 incurred in this action.

27 ///

28 ///

1 27. Pursuant to NRS 18.005(8), Plaintiff submitted \$8,071 in costs for compensation for the  
2 official reporter. Defendant does not contest those costs. The \$8,071 for compensation for the official  
3 reporter were necessarily incurred in this action.

4 28. Pursuant to NRS 18.005(12), Plaintiff submitted photocopy costs of \$5,013.85 split out as  
5 follows: (1) medical record copies of \$3,193.92; (2) in-house photocopies \$1,626 for 6,504 copies at  
6 \$.25 per copy; (3) FedEx copy costs of \$193.93 for trial. Defendant asked to re-tax costs for the in-  
7 house copy costs of \$1,626.

8 29. This case was extensively litigated, involved thousands of pages of documents, many expert  
9 witnesses, many pretrial motions, hundreds of trial exhibits, and a 13-day trial. Plaintiff charged copy  
10 costs only for those charges necessary to the preparation of the case. \$1,626 for 6,504 copies at \$.25  
11 per copy is reasonable for a case of this size. In-house copying costs of \$1,626 were necessarily  
12 incurred in this action.

13 30. The photocopy costs of \$5,013.85 were necessarily incurred in this action.

14 31. Pursuant to NRS 18.005(14), Plaintiff submitted postage charges of \$420.21 as: (1) United  
15 States postage of \$49.84 and (2) Federal Express charge of \$370.34. The Defendant moved to re-tax  
16 Federal Express charges of \$370.34.

17 32. Plaintiff utilized Federal Express charges for establishing the Estate of William Eskew and  
18 charges for providing binders to this Court for the pre-trial hearings. Those charges were necessarily  
19 incurred as postage or other reasonable expenses under NRS 18.005(17).

20 33. Postage expense of \$420.21 were necessarily incurred in this action.

21 34. Pursuant to NRS 18.005(17), Plaintiff sought miscellaneous expenses as follows: (1) legal  
22 research of \$2,475.83; (2) runner services fees of \$211; (3) Tyler Technologies e-filing service fees of  
23 \$170.80; (4) Focus Graphics for medical illustrations of \$7,510; (5) E-deposition trial technician fees  
24 of \$25,614.80; (6) Empirical Jury for focus groups of \$20,000; (7) HOLO Discovery for trial copying  
25 and Bates-stamping exhibits of \$2,970.29; (8) Nikki McCabe to read deposition designations of Dr.  
26 Liao of \$831.36; and (3) pro hac vice fees of \$1,550. In its Motion, the Defendant contested the legal  
27 research fees, the runner service fees, Focus Graphic charges, E-deposition trial technician fees, the  
28 Empirical Jury's fee, and Ms. McCabe's charges.

35. The charges of \$170.80 for Tyler Technologies e-filing service fees, \$2,970.29 for HOLO Discovery and \$1,550 for pro hac vice fees were charges necessarily incurred in this action.

36. With respect to the legal research expenses, this was an insurance bad faith case that involved many legal issues including research to respond to the various pre-trial motions, prepare and review of jury instructions and address legal issues raised in trial. Plaintiff utilized the internal practices to assure the charges were for research were appropriately allocated to this case. The legal research charges of \$2,475.83 were necessarily incurred in this action.

37. With respect to the Focus Graphic charges, Focus Graphics, with the Plaintiff's attorneys and Dr. Chang, prepared demonstrative exhibits to assist in explaining why PBT was the best treatment for Mr. Eskew. Those demonstrative exhibits were used in Dr. Chang's testimony as well as in closing arguments. The demonstrative exhibits assisted the jury to understand Plaintiff's position that PBT was the best treatment for Mr. Eskew. Focus Graphic charges of \$4,335 to prepare the demonstrative exhibits were necessarily incurred in this action.

38. With respect to E-depositions' charges, E-depositions provided the courtroom technology to the Plaintiff during trial. Defendant asserts courtroom technology services is not a necessary expense. This case involved many trial exhibits. Courtroom technology services during trial are necessary as evidenced, in part, by the fact Defendant had its own person providing courtroom technology. The services of E-depositions were important to assist Plaintiff in presenting evidence to the jury and to assist the jury in understanding the evidence. The E-depositions charges of \$25,614.80 were necessarily incurred in this action.

39. With respect Empirical Jury, Plaintiff retained Empirical Jury to conduct focus groups. Defendant contests the charge on the basis that jury consulting services were not necessary. Based upon Plaintiff's Opposition, jury consulting services in a case of this nature were necessary, and Empirical Jury's charges of \$20,000 were necessarily incurred in this action.

40. With respect Nikki McCabe, she was retained to read deposition designations of Dr. Liao. Defendant asserts that her charges were not necessary. Dr. Liao was a critical witness for the Plaintiff. Ms. McCabe performed a necessary role in the case. Ms. McCabe's fee of \$831.36 was an amount necessarily incurred in this action.

1 **III. CONCLUSIONS OF LAW**

2 1. Pursuant to NRS 18.0202(3), the Plaintiff is the prevailing party.

3 2. Through the Memorandum of Costs, the Oppositions and Declaration, Plaintiff complied with  
4 NRS 18.110(1) and provided the information necessary for this Court to determine the costs that were  
5 necessarily incurred in this action.

6 3. Defendant's Motion was timely filed.

7 4. This Court grants Defendant's Motion as follows: (1) court reporter fees are reduced by  
8 \$2,798.50 for jury trial transcripts and \$3,230.16 for duplicate court reporter charges; (2) expert  
9 charges for Elliot Flood are reduced from \$6,888.55 to \$5,473.55; (3) charges for Dr. Clark Jean are  
10 not allowed. In all other respects, Defendant's Motion is denied as the remaining costs challenged by  
11 the Defendant were necessarily incurred in this action.

12 5. Pursuant to NRS 18.020, this Court awards Plaintiff's taxable costs of \$313,634.62 and  
13 itemized as follows:

14 **1) Clerks' Fees**

15 Filing Fees and Charges Pursuant to NRS 19.0335 ..... \$560.00

16 **2) Reporters' Fees for Depositions, including videography** ..... \$16,840.20

17 **3) Juror fees and expenses** ..... \$5,079.09

18 **4) Witness Fees**..... \$48.00

19 **5) Expert Witness Fees**..... \$226,012.99

20 **6) Process Service** ..... \$95.00

21 **7) Compensation for the Official Reporter** ..... \$8,071.00

22 **8) Photocopies** ..... \$5,013.85

23 (1) Medical records copies (\$3,193.92)

24 (2) In-house photocopies 6,504 copies at \$.25 per copy (\$1,626)

25 (3) FedEx copy costs from trial (\$193.93)

26 **9) Postage/Federal Express**..... \$420.21

27 (1) Postage (\$49.87)

28 (2) Federal Express shipping charges (\$370.34)

10) Other Necessary and Reasonable Expenses

Legal Research..... \$2,475.83  
Runner services..... \$211.00  
Tyler Technologies (e-filing service fees) ..... \$170.80  
Trial Related, Jury Fees, and Support Services..... \$47,086.65  
• Focus Graphics – medical illustrations (\$4,335)  
• E-Depositions – trial technician (\$25,614.80)  
• Empirical Jury – focus groups (\$20,100)  
• HOLO Discovery – trial exhibits & bates stamping (\$2,970.29)  
• Nikki McCabe – voice actress to read depo designation (\$831.36)  
• Out-of-State Association and Pro Hac Vice Fees..... \$1,550.00  
**TOTAL COSTS ..... \$313,634.62**

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

Dated this 8th day of June, 2022



DISTRICT JUDGE

939 71A 6FB3 9590

Nadia Krall

District Court Judge

Approved as to form:

WEINBERG WHEELER HUDGINS  
GUNN & DIAL LLC

/s/ Ryan T. Gormley

Ryan T. Gormley, Esq.

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*Attorneys for Defendants*



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**RE: Eskew v. Sierra**

1 message

**Gormley, Ryan** <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>

Mon, Jun 6, 2022 at 3:07 PM

To: Matt Sharp <[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)>, "Roberts, Lee" <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>Cc: Doug Terry <[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)>

That is fine, you can add my e-signature on the approval as to form.

Thank you,



Ryan Gormley, Attorney

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**From:** Matt Sharp <[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)>**Sent:** Monday, June 6, 2022 2:57 PM**To:** Gormley, Ryan <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>; Roberts, Lee <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>**Cc:** Doug Terry <[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)>**Subject:** Eskew v. Sierra

**This Message originated outside your organization.**

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Ryan,

I accepted all changes but the first change. Let me know if I have your authority to submit the order.

Thanks.

Matthew Sharp

[432 Ridge St.](#)

[Reno, NV 89501](#)

[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)

775-324-1500

Past-President Nevada Justice Association  
Board of Governors American Association for Justice  
Leaders Forum American Association for Justice

The information contained in this message may contain privileged client confidential information. If you have received this message in error, please delete it and any copies immediately.

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 6/8/2022

15 Audra Bonney

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16 Cindy Bowman

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17 D. Lee Roberts

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18 Raiza Anne Torrenueva

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**EXHIBIT D**

**EXHIBIT D**

A-19-788630-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**August 15, 2022**

---

A-19-788630-C      Sandra Eskew, Plaintiff(s)  
vs.  
Sierra Health and Life Insurance Company Inc, Defendant(s)

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**August 15, 2022      3:00 AM      Minute Order      Defendant's Renewed  
Motion for Judgment as a  
Matter of Law**

**HEARD BY:** Krall, Nadia

**COURTROOM:** Chambers

**COURT CLERK:** Pharan Burchfield

**JOURNAL ENTRIES**

- NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to secure efficient, just and inexpensive determinations in every action and proceeding.

Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time with or without oral argument, and grant or deny it.

Defendant's Renewed Motion for Judgment as a Matter of Law filed on 5/16/2022; Plaintiff's Opposition to Defendant's Renewed Motion for Judgment as a Matter of Law filed on 6/29/2022; and Defendant's Reply in Support of its Renewed Judgment as a Matter of Law filed on 7/20/2022.

The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on file.

COURT ORDERED, Defendant's Renewed Motion for Judgment as a Matter of Law filed on 5/16/2022 is DENIED pursuant to M.C. Multi-Family Development, L.L.C. v. Crestdale Associates, Ltd., 124 Nev. 901 (2008); Harrah's Las Vegas, LLC v. Muckridge, 473 P.3d 1020 (Nev. 2020); Broussard v. Hill, 100 Nev. 325 (1984); Ainsworth v. Combined Ins. Co. of Am., 104 Nev. 587 (1988); Albert v. H. Wohlers & Co. v. Bartgis, 114 Nev. 1249 (1998); Allstate Ins. Co. v. Miller, 125 Nev. 300 (2009); Guar. Nat. Ins. Co. v. Potter, 112 Nev. 199 (1996); Powers v. United Servs. Auto Ass'n, 114 Nev. 690 (1998); Century Sur. Co. v. Casino W., Inc., 130 Nev. 395 (2014); Powell v. Liberty Mut. Fire Ins. Co., 127 Nev. 156 (2011); Holcomb v. Georgia Pac., LLC, 128 Nev. 614 (2012); NRS 51.005; Countrywide Home Loans, Inc. v. Thitchener, 124 Nev. 725 (2008); Ainsworth v. Combined Ins. Co. of America, 104 Nev. 587 (1988); United Fire Ins. Co. v. McClelland, 105 Nev. 504 (1989); First

PRINT DATE: 08/15/2022

Page 1 of 2

Minutes Date: August 15, 2022

Interstate Bank v. Jafbros Auto Body, 106 Nev. 54 (1990); and Wreth v. Rowatt, 126 Nev. 446 (2010).

COURT FURTHER ORDERED, counsel for Plaintiff to draft and circulate a proposed order for opposing counsel's signature prior to submitting it to the Department 4 inbox for the Judge's review and signature within fourteen (14) days and distribute a filed copy to all parties involved in this matter.

COURT FURTHER ORDERED, counsel for Plaintiff to include Findings of Fact and Conclusions of Law based upon the Memorandum of Points and Authorities set forth in Plaintiff's pleadings.

COURT FURTHER ORDERED, Defendant's Renewed Motion for Judgment as a Matter of Law filed on 5/16/2022 and scheduled for hearing on 8/17/2022 at 9:00 A.M. is VACATED.

CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Pharan Burchfield, to all registered parties for Odyssey File & Serve.//pb/8/15/22.

**EXHIBIT E**

**EXHIBIT E**



A-19-788630-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**August 15, 2022**

---

A-19-788630-C      Sandra Eskew, Plaintiff(s)  
vs.  
Sierra Health and Life Insurance Company Inc, Defendant(s)

---

**August 15, 2022      3:00 AM      Minute Order      Defendant's Motion for a  
New Trial or Remittitur**

**HEARD BY:** Krall, Nadia      **COURTROOM:** Chambers

**COURT CLERK:** Pharan Burchfield

**JOURNAL ENTRIES**

- NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to secure efficient, just and inexpensive determinations in every action and proceeding.

Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time with or without oral argument, and grant or deny it.

Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022; Plaintiff's Opposition to Defendant's Motion for a New Trial or Remittitur filed on 6/29/2022; Defendant's Reply in Support of Its Motion for a New Trial or Remittitur filed on 7/20/2022; and Defendant's Motion for Leave to File Supplemental Authority in Support of its Motion for a New Trail or Remittitur filed on 8/10/2022.

The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on file.

COURT ORDERED, Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022 is DENIED pursuant to Bahena v. Goodyear Tire & Rubber Co., 126 Nev. 243 (2010); NRCP 59(a)(1)(B) & (F); Wyeth v. Rowatt, 126 Nev. 446 (2010); Bayerische Motoren Werke Aktiengesellschaft v. Roth, 127 Nev. 122 (2011); Grosjean v. Imperial Palace, 125 Nev. 349 (2009); Cox v. Copperfield, 138 Nev. Adv. Op. 27 (2022); Pizarro-Ortega v. Cervantes-Lopez, 133 Nev. 261 (2017); Lioce v. Cohen, 124 Nev. 1 (2008); Ringle v. Bruton, 120 Nev. 82 (2004); Walker v. State, 78 Nev. 463 (1962); Born v. Eisenman, 114 Nev. 854 (1998); Satackiewicz v. Nissan Motor Corp. in U.S.A., 100 Nev. 443 (1983); Guaranty Nat. Ins. Co. v. Potter, 112 Nev. 199 (1996); Automatic Merchandisers, Inc. v. Ward, 98 Nev. 282 (1982); Hernancez v. City of Salt Lake, 100 Nev. 504 (1984); Dejesus v. Flick, 116 Nev. 812 (2000); Wells, Inc.

PRINT DATE: 08/15/2022

Page 1 of 2

Minutes Date: August 15, 2022

v. Shoemake, 64 Nev. 57 (1947); Nevada Independent Broadcasting Corporation v. Allen, 99 Nev. 404 (1983); Quintero v. McDonald, 116 Nev. 1181 (2000); Barmettler v. Reno, Air, Inc., 114 Nev. 441 (1998); State v. Eaton, 101 Nev. 705 (1985); Jacobson v. Manfredi, 100 Nev. 226 (1984); BMW of N. Am. Inc. v. Gore, 517 U.S. 559 (1996); State Farm Mut. Aut. Ins. Co. v. Campbell, 538 U.S. 408 (2003); TXO Prod. Corp. v. Alliance Res. Corp., 509 U.S. 443 (1993); Merrick v. Paul Revere Life Ins. Co., 594 F.Supp.2d 1168 (Nev. Dis. 2008); and Campbell v. State Farm. Mut. Auto Ins. Co., 98 P.3d 409 (Utah 2004).

COURT FURTHER ORDERED, counsel for Plaintiff to draft and circulate a proposed order for opposing counsel's signature prior to submitting it to the Department 4 inbox for the Judge's review and signature within fourteen (14) days and distribute a filed copy to all parties involved in this matter.

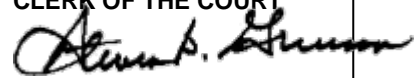
COURT FURTHER ORDERED, counsel for Plaintiff to include Findings of Fact and Conclusions of Law based upon the Memorandum of Points and Authorities set forth in Plaintiff's pleadings.

COURT FURTHER ORDERED, Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022 and scheduled for hearing on 8/17/2022 at 9:00 A.M. is VACATED.

CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Pharan Burchfield, to all registered parties for Odyssey File & Serve.//pb/8/15/22.

**EXHIBIT F**

**EXHIBIT F**



NEOJ  
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*Attorney for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,  
  
Plaintiffs,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,  
  
Defendant.

Case No. A-19-788630-C

Dept. No. 4

**NOTICE OF ENTRY OF ORDER DENYING RENEWED MOTION FOR JUDGMENT AS**  
**A MATTER OF LAW**

PLEASE TAKE NOTICE that the Order Denying Renewed Motion for Judgment as a Matter  
of Law was filed herein on October 5, 2022, in the above-captioned matter.

///

///

///

///

1 A copy of the Order Denying Renewed Motion for Judgment as a Matter of Law is attached  
2 hereto as Exhibit 1.

3 DATED this 24<sup>th</sup> day of October 2022.

4 MATTHEW L. SHARP, LTD.

5  
6 /s/ Matthew L. Sharp  
7 MATTHEW L. SHARP, ESQ.  
8 Nevada Bar No. 4746  
9 432 Ridge Street  
10 Reno NV 89501  
11 (775) 324-1500  
12 [matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)  
13 *Attorneys for Plaintiffs*  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Matthew L. Sharp, Ltd., and that on this date, a true  
3 and correct copy of the foregoing was electronically filed and served on counsel through the Court's  
4 electronic service system pursuant to Administrative Order 14-2 and NEFCR 9, via the electronic mail  
5 address noted below:

6 D. Lee Roberts, Jr. Esq.; [lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)  
7 Phillip N. Smith, Esq.; [psmith@wwhgd.com](mailto:psmith@wwhgd.com)  
8 Ryan T. Gormley, Esq.; [rgormley@wwhgd.com](mailto:rgormley@wwhgd.com)  
9 WEINBERG WHEELER HUDGINS GUNN & DIAL LLC  
6385 S. Rainbow Blvd., Ste. 400  
Las Vegas, NV 89118

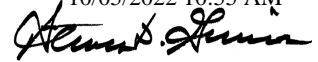
10 Thomas H. Dupree Jr., Esq.; [TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)  
11 GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036

12 *Attorneys for Defendants*

13 DATED this 24<sup>th</sup> day of October 2022.

14  
15  
16 /s/ Suzy Thompson  
An employee of Matthew L. Sharp, Ltd.

# EXHIBIT 1

  
CLERK OF THE COURT

**ORDD**

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*Attorneys for Defendant*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SANDRA L. ESKEW, as special administrator  
of the Estate of William George Eskew,

Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

Defendant.

Case No.: A-19-788630-C

Dept. No.: 4

**ORDER DENYING DEFENDANT'S  
RENEWED MOTION FOR JUDGMENT  
AS A MATTER OF LAW**



1 NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to  
2 secure efficient, just and inexpensive determinations in every action and proceeding.

3 Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time  
4 with or without oral argument, and grant or deny it.  
5

6 The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on  
7 file: Defendant's Renewed Motion for Judgment as a Matter of Law filed on 5/16/2022; Plaintiff's  
8 Opposition to Defendant's Renewed Motion for Judgment as a Matter of Law filed on 6/29/2022;  
9 and Defendant's Reply in Support of its Renewed Judgment as a Matter of Law filed on 7/20/2022.

10 Defendant's Renewed Motion for Judgment as a Matter of Law filed on 5/16/2022 is  
11 DENIED pursuant to *M.C. Multi-Family Development, L.L.C. v. Crestdale Associates, Ltd.*, 124  
12 Nev. 901 (2008); *Harrah's Las Vegas, LLC v. Muckridge*, 473 P.3d 1020 (Nev. 2020); *Broussard*  
13 *v. Hill*, 100 Nev. 325 (1984); *Ainsworth v. Combined Ins. Co. of Am.*, 104 Nev. 587 (1988); *Albert*  
14 *v. H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249 (1998); *Allstate Ins. Co. v. Miller*, 125 Nev. 300  
15 (2009); *Guar. Nat. Ins. Co. v. Potter*, 112 Nev. 199 (1996); *Powers v. United Servs. Auto Ass'n*,  
16 114 Nev. 690 (1998); *Century Sur. Co. v. Casino W., Inc.*, 130 Nev. 395 (2014); *Powell v. Liberty*  
17 *Mut. Fire Ins. Co.*, 127 Nev. 156 (2011); *Holcomb v. Georgia Pac., LLC*, 128 Nev. 614 (2012);  
18 NRS 51.005; *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725 (2008); *Ainsworth v.*  
19 *Combined Ins. Co. of America*, 104 Nev. 587 (1988); *United Fire Ins. Co. v. McClelland*, 105 Nev.  
20 504 (1989); *First Interstate Bank v. Jafbro's Auto Body*, 106 Nev. 54 (1990); and *Wreth v. Rowatt*,  
21 126 Nev. 446 (2010).  
22  
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1 For the foregoing reasons, Defendant's Renewed Motion for Judgment as a Matter of Law  
2 is denied.

3  
4 DATED this \_\_\_\_ day of \_\_\_\_\_ 2022.

5 Dated this 5th day of October, 2022

6 

7 DISTRICT COURT JUDGE

8 4AA A72 41E3 4A93

Nadia Krall

District Court Judge

Submitted by:

9  
10 /s/ Ryan T. Gormley

D. Lee Roberts, Jr., Esq.

11 Phillip N. Smith, Esq.

Ryan T. Gormley, Esq.

12 WEINBERG, WHEELER, HUDGINS,

GUNN & DIAL, LLC

13 6385 South Rainbow Blvd., Suite 400

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15 Thomas H. Dupree Jr., Esq.

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16 1050 Connecticut Avenue, N.W.

Washington, DC 20036

17 *Attorneys for Defendant*  
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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 10/5/2022

16 Audra Bonney

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17 Cindy Bowman

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18 D. Lee Roberts

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19 Raiza Anne Torrenueva

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20 Matthew Sharp

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22 Cristin Sharp

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23 Ryan Gormley

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24 Flor Gonzalez-Pacheco

FGonzalez-Pacheco@wwhgd.com

25 Suzy Thompson

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26 Marjan Hajimirzaee

mhajimirzaee@wwhgd.com

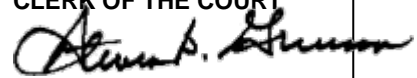
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Maxine Rosenberg	Mrosenberg@wwhgd.com
Stephanie Glantz	sglantz@wwhgd.com
Douglas Terry	doug@dougterrylaw.com

**EXHIBIT G**

**EXHIBIT G**



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[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)

*Attorney for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,  
  
Plaintiffs,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,  
  
Defendant.

Case No. A-19-788630-C

Dept. No. 4

**NOTICE OF ENTRY OF ORDER DENYING MOTION FOR A NEW TRIAL OR**  
**REMITTITUR**

PLEASE TAKE NOTICE that the Order Denying Motion for a New Trial or Remittitur was  
filed herein on October 5, 2022, in the above-captioned matter.

///

///

///

///

1 A copy of the Order Denying Motion for a New Trial or Remittitur is attached hereto as  
2 Exhibit 1.

3 DATED this 24<sup>th</sup> day of October 2022.

4 MATTHEW L. SHARP, LTD.

5  
6 /s/ Matthew L. Sharp  
7 MATTHEW L. SHARP, ESQ.  
8 Nevada Bar No. 4746  
9 432 Ridge Street  
10 Reno NV 89501  
11 (775) 324-1500  
12 [matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)  
13 *Attorneys for Plaintiff*  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Matthew L. Sharp, Ltd., and that on this date, a true  
3 and correct copy of the foregoing was electronically filed and served on counsel through the Court's  
4 electronic service system pursuant to Administrative Order 14-2 and NEFCR 9, via the electronic mail  
5 address noted below:

6 D. Lee Roberts, Jr. Esq.; [lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)  
7 Phillip N. Smith, Esq.; [psmith@wwhgd.com](mailto:psmith@wwhgd.com)  
8 Ryan T. Gormley, Esq.; [rgormley@wwhgd.com](mailto:rgormley@wwhgd.com)  
9 WEINBERG WHEELER HUDGINS GUNN & DIAL LLC  
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10 Thomas H. Dupree Jr., Esq.; [TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)  
11 GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036

12 *Attorneys for Defendants*

13 DATED this 24<sup>th</sup> day of October 2022.

14  
15  
16 /s/ Suzy Thompson  
An employee of Matthew L. Sharp, Ltd.

# EXHIBIT 1

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Nevada Bar No. 8877

Phillip N. Smith, Esq.

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Facsimile: (202) 530-9670

*Attorneys for Defendant*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SANDRA L. ESKEW, as special administrator  
of the Estate of William George Eskew,

Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

Defendant.

Case No.: A-19-788630-C

Dept. No.: 4

**ORDER DENYING DEFENDANT'S  
MOTION FOR A NEW TRIAL OR  
REMITTITUR**

1           NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to  
2 secure efficient, just and inexpensive determinations in every action and proceeding.

3           Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time  
4 with or without oral argument, and grant or deny it.

5  
6           The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on  
7 file: Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022; Plaintiff's Opposition  
8 to Defendant's Motion for a New Trial or Remittitur filed on 6/29/2022; Defendant's Reply in  
9 Support of Its Motion for a New Trial or Remittitur filed on 7/20/2022; and Defendant's Motion  
10 for Leave to File Supplemental Authority in Support of its Motion for a New Trail or Remittitur  
11 filed on 8/10/2022.

12           Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022 is DENIED pursuant  
13 to *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243 (2010); NRCP 59(a)(1)(B) & (F); *Wyeth*  
14 *v. Rowatt*, 126 Nev. 446 (2010); *Bayerische Moteren Werke Aktiengesellschaft v. Roth*, 127 Nev.  
15 122 (2011); *Grosjean v. Imperial Palace*, 125 Nev. 349 (2009); *Cox v. Copperfield*, 138 Nev. Adv.  
16 Op. 27 (2022); *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261 (2017); *Lioce v. Cohen*, 124  
17 Nev. 1 (2008); *Ringle v. Bruton*, 120 Nev. 82 (2004); *Walker v. State*, 78 Nev. 463 (1962); *Born*  
18 *v. Eisenman*, 114 Nev. 854 (1998); *Satackiewicz v. Nissan Motor Corp. in U.S.A.*, 100 Nev. 443  
19 (1983); *Guaranty Nat. Ins. Co. v. Potter*, 112 Nev. 199 (1996); *Automatic Merchandisers, Inc. v.*  
20 *Ward*, 98 Nev. 282 (1982); *Hernancez v. City of Salt Lake*, 100 Nev. 504 (1984); *Dejesus v. Flick*,  
21 116 Nev. 812 (2000); *Wells, Inc. v. Shoemake*, 64 Nev. 57 (1947); *Nevada Independent*  
22 *Broadcasting Corporation v. Allen*, 99 Nev. 404 (1983); *Quintero v. McDonald*, 116 Nev. 1181  
23 (2000); *Barmettler v. Reno, Air, Inc.*, 114 Nev. 441 (1998); *State v. Eaton*, 101 Nev. 705 (1985);  
24 *Jacobson v. Manfredi*, 100 Nev. 226 (1984); *BMW of N. Am. Inc. v. Gore*, 517 U.S. 559 (1996);  
25 *State Farm Mut. Aut. Ins. Co. v. Campbell*, 538 U.S. 408 (2003); *TXO Prod. Corp. v. Alliance Res.*  
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1 *Corp.*, 509 U.S. 443 (1993); *Merrick v. Paul Revere Life Ins. Co.*, 594 F.Supp.2d 1168 (Nev. Dis.  
2 2008); and *Campbell v. State Farm. Mut. Auto Ins. Co.*, 98 P.3d 409 (Utah 2004).

3 For the foregoing reasons, Defendant's Motion for a New Trial or Remittitur is denied.

4  
5 DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

6 Dated this 5th day of October, 2022

7 

8 

---

DISTRICT COURT JUDGE

4FA E0A 2FD9 0D46

Nadia Krall

District Court Judge

9 Submitted by:

10 /s/ Ryan T. Gormley

11 D. Lee Roberts, Jr., Esq.

Phillip N. Smith, Esq.

12 Ryan T. Gormley, Esq.

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13 GUNN & DIAL, LLC

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15 Thomas H. Dupree Jr., Esq.

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18 *Attorneys for Defendant*

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1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/5/2022

15 Audra Bonney

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16 Cindy Bowman

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17 D. Lee Roberts

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18 Raiza Anne Torrenueva

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Maxine Rosenberg	Mrosenberg@wwhgd.com
Stephanie Glantz	sglantz@wwhgd.com
Douglas Terry	doug@dougterrylaw.com



**EXHIBIT H**

**EXHIBIT H**

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Matthew W.H. Wessler, Esq.\*  
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*Attorneys for Plaintiff*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate  
of William George Eskew,

Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

Defendant.

Case No. A-19-788630-C

Dept. No. 4

**PLAINTIFF'S MOTION TO CONSIDER PLAINTIFF'S MOTION FOR ENTRY OF**  
**EXPRESS FINDINGS AS REQUIRED BY LIOCE V. COHEN ON**  
**AN ORDER SHORTENING TIME BASIS**

1 Plaintiff Sandra Eskew, as the Special Administrator of the Estate of William George Eskew  
2 (“Estate”) filed a Motion for Entry of Express Findings as Required by *Lioce v. Cohen* (“Motion for  
3 Express Findings”) on October 6, 2022. Plaintiff asks this Court to consider the Motion for Express  
4 Findings on an order shortening time basis. Exhibit 1 is the Motion for Express Findings with  
5 exhibits. An order shortening time is supported by the following: (1) the Declaration of Matthew L.  
6 Sharp; (2) the Motion for Express Findings with the supporting exhibits, (3) *Lioce v. Cohen* requires  
7 express factual findings and conclusions by the district court in its order denying a motion for new  
8 trial on the basis of alleged attorney misconduct; and (4) the order denying the Defendant’s Motion  
9 for New Trial or Remittitur and Renewed Motion for Judgment Notwithstanding the Verdict, which  
10 was submitted by the Defendant, does not include express factual findings and conclusion on the  
11 denial of Defendant’s Motion for New Trial on the basis of alleged attorney misconduct.

12 DATED this 6<sup>th</sup> day of October 2022.

13 MATTHEW L. SHARP, LTD.

14  
15 /s/ Matthew L. Sharp  
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21 [matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)  
22 *Attorneys for Plaintiffs*

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1 **ORDER SHORTENING TIME**

2 Pursuant to the Declaration of Matthew L. Sharp Esq. below in support of the Motion for  
3 Order Shortening Time and good cause demonstrated:

4 IT IS ORDERED that the hearing on Plaintiff's Motion for Entry of Express Findings as  
5 Required by *Lioce v. Cohen* be set before this Department 4 at the hour of \_\_\_\_ a.m. on the  
6 10/18/2022 at 9:00 A.M.  
\_\_\_\_ day of \_\_\_\_\_ 2022.

7 IT IS FURTHER ORDERED that Defendant shall have to and including 5:00 p.m. on  
8 10/13/2022 to file any opposition to this motion.

Dated this 7th day of October, 2022



9 Dated this \_\_\_\_ day of October 2022.

10 F98 2F6 1CCD 83F6  
Nadia Krall  
District Court Judge

11 \_\_\_\_\_  
DISTRICT JUDGE NADIA KRALL

12 **DECLARATION OF MATTHEW L. SHARP IN SUPPORT**  
13 **OF ORDER SHORTENING TIME**

14 Under penalty of perjury, Matthew L. Sharp, Esq does declare under penalty of perjury as  
15 follows:

16 1. I am one of the attorneys who represents Sandra Eskew as the Administrator of the  
17 Estate of William George Eskew.

18 2. My understanding of *Lioce v. Cohen*, 124 Nev. 1, 7, 174 P.3d 970, 974 (2008)  
19 requires that the district court make express findings and conclusions when it denies a motion for  
20 new trial that requests a new trial upon the basis of alleged attorney misconduct.

21 3. Defendant filed a Motion for New Trial or Remittitur requesting a new trial, in part,  
22 upon the basis of alleged attorney misconduct.

23 4. On August 15, 2022, this Court entered a minute order denying the Defendant's  
24 Motion for New Trial or Remittitur and directed the Plaintiff to draft a proposed order which were to  
25 include Findings of Fact and Conclusions of Law.

26 5. On August 29, 2022, I submitted to chambers Plaintiff's proposed Findings of Fact  
27 and Conclusions of Law, and Order Denying Defendant's Motion for New Trial or Remittitur.  
28 Section IV at pages 14-22 contained findings consistent with the requirements of *Lioce v. Cohen*.

1           6.       On September 14, 2022, this Court requested that Defendant submit a competing  
2 order and a redline version of Plaintiff's proposed order.

3           7.       On September 22, 2022, Defendant submitted a proposed Order that mirrored the  
4 Court's minute order but removed the requirements for findings of fact and conclusions of law. A  
5 true and correct of the email string relating to the order that I received and maintain in the ordinary  
6 course of business is attached as Exhibit 4 to the Motion for Express Findings.

7           8.       On October 5, 2022, this Court signed the proposed order submitted by the  
8 Defendant.

9           9.       The order submitted by the Defendant does not contain the findings required by *Lioce*  
10 *v. Cohen*.

11          10.       On October 5, 2022, I spoke with Ryan Gormley indicating that we intended to file a  
12 motion to request findings under *Lioce v. Cohen*.

13          11.       On October 6, 2022, I filed the Motion for Entry of Express Findings as Required by  
14 *Lioce v. Cohen* which is attached as Exhibit 1.

15          12.       Thereafter, on October 6, 2022, I informed Mr. Gormley that I would be filing this  
16 Motion for Order Shortening Time.

17          13.       Exhibit 1 to the Motion for Entry of Express Findings as Required by *Lioce v. Cohen*  
18 is Plaintiff's proposed order which is substantively the same as Section IV to Plaintiff's proposed  
19 Findings of Fact and Conclusions of Law and Order Denying Defendant's Motion for New Trial or  
20 Remittitur.

21          14.       In the proposed order, I removed the language Defendant objected to relating to the  
22 findings on alleged attorney misconduct that were contained in Section IV to Plaintiff's proposed  
23 Findings of Fact and Conclusions of Law and Order Denying Defendant's Motion for New Trial or  
24 Remittitur.

25          15.       Given that this case will be and has been appealed by the Defendant and given the  
26 nature of the case, it is in all parties' interest to have findings of fact entered relating to the denial of  
27 the Motion for New Trial or Remittitur on the basis of alleged attorney misconduct. Otherwise, I  
28

1 believe the Nevada Supreme Court will remand the case to direct this Court to make findings  
2 consistent with the requirements of *Lioce v. Cohen*.

3 16. I believe good cause exist to hear the Motion for Entry of Express Findings as  
4 Required by *Lioce v. Cohen* on an order shortening time basis to facilitate a meaningful appellate  
5 review and to avoid unnecessary delay of a remand and successive appeal.

6 DATED this 6<sup>th</sup> day of October 2022.

7 MATTHEW L. SHARP, LTD.  
8

9 /s/ Matthew L Sharp

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16 Attorney for Plaintiff  
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 Phillip N. Smith, Esq.; [psmith@wwhgd.com](mailto:psmith@wwhgd.com)  
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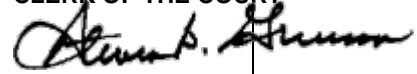
*Attorneys for Defendants*

DATED this 6<sup>th</sup> day of October 2022.

/s/ Cristin B. Sharp  
An employee of Matthew L. Sharp, Ltd.

# EXHIBIT 1





**MOT**

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IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,

Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

Defendant.

Case No. A-19-788630-C

Dept. No. 4

**HEARING REQUESTED**

**MOTION FOR ENTRY OF EXPRESS FINDINGS AS  
REQUIRED BY LIOCE V. COHEN**

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Exhibit 1 are proposed findings and conclusions consistent with requirement of *Lioce*. To facilitate meaningful appellate review now—and to avoid the unnecessary delay of a remand and successive appeal—Plaintiff requests this Court to enter specific written findings under *Lioce* as set forth in Exhibit 1.<sup>1</sup>

1 The Nevada appellate courts have consistently remanded cases for factual findings when the order denying new trial on the basis of misconduct does not include findings of fact. *ee, e.g., Carr v. Paredes* 130 Nev. 1161, 2014 WL 549715 (Unpub. Nev. Feb. 10, 2014) (“[T]he district court failed to make the necessary findings; therefore, we vacate the court’s order denying Carr’s motion and remand this matter to the district court”); *Carr v. Paredes*, 133 Nev. 993, 387 P.3d 215 (Unpub. Nev. January 13, 2017) (“This court previously vacated the district court’s order denying the motion for a new trial and remanded the matter to the district court to make specific findings regarding attorney misconduct pursuant to *Lioce v. Cohen*, 124 Nev. 1, 19–20, 174 P.3d 970, 982 (2008)) (finding no misconduct the second time around); *Jimenez v. Blue Martini Las Vegas, LLC*, 134 Nev. 963, 2018 WL 3912241, at \*1 (Unpub. Nev. App., July 27, 2018) (holding that “a remand is necessary for the district court to make specific findings on the record regarding attorney misconduct, as required by the supreme court and this court’s jurisprudence.”); *Jimenez v. Blue Martini Las Vegas, LLC*, 2019 WL 5681078, at \*1 (Unpub. Nev. App., Oct. 31, 2019) (finding no misconduct in a second appeal a year later, after the district court had made the requisite findings); *see also Wynn Las Vegas, LLC v. Blankenship*, 131 Nev. 1366, 2015 WL 4503211 (Unpub. Nev. App. July 17, 2015) (“Without reasoning supporting the district court’s decision, we are unable to determine whether the district court abused its discretion in denying Wynn’s motion for a new trial based on attorney misconduct. As such, we vacate the district court’s order denying that motion and remand this matter to the district court for a decision applying the standards set forth in *Lioce*.”). Ex. 2.

1 under *Lioce*. Plaintiff's proposed Findings of Fact explained (page 14 ¶ 44) that, under *Lioce*,  
2 "the Court is required to make specific findings" on the issue of alleged attorney misconduct.

3 The Defendant filed written objections to Plaintiff's proposed Findings of Fact. The  
4 Defendant's objection with respect to attorney misconduct was to a single sentence: "And in  
5 the Court's view, counsel's subsequent remarks that counsel was 'not here pointing the fingers  
6 at people like' the witness defeat any inference that counsel intended to impugn the witness's  
7 credibility." See Defendants Further Objections, filed August 31, 2022 at 6:23-25.

8 After Plaintiff submitted her proposed Findings, this Court requested that the Defendant  
9 submit a competing order and a strikethrough. The Defendant submitted a proposed order that  
10 mirrored the Court's minute orders but omitted the request that Plaintiff submit findings of  
11 fact. Ex. 4, e-mail string. The Defendant's order omitted any findings mandated by *Lioce*.

12 Exhibit 1 to this Motion sets forth proposed Findings of Fact and Conclusions  
13 consistent with the requirements by *Lioce*. Exhibit 1 is substantively the same as Section IV to  
14 Plaintiff's proposed Findings of Fact, and the objected to language from the Defendant to the  
15 proposed Findings of Fact with respect to the findings on attorney misconduct has been  
16 removed.<sup>2</sup>

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28 <sup>2</sup>Ex. 1 at ¶ 11 and compared to Findings of Fact at ¶ 52:7-9.

1 To facilitate meaningful appellate review Plaintiff requests this Court to enter specific  
2 written findings under *Lioce* as set forth in Exhibit 1.

3 DATED this 6<sup>th</sup> day of October 2022.

4  
5 /s/ Matthew L. Sharp

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/s/ Suzy Thompson  
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# EXHIBIT 1

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*Attorneys for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,

Plaintiffs,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC., UNITED HEALTHCARE,  
INC.

Defendants.

Case No. A-19-788630-C

Dept. No. 4

**FINDINGS AND CONCLUSIONS AS TO**  
**ALLEGATIONS OF ATTORNEY MISCONDUCT**

Following an eleven-day trial, a jury found Defendant Sierra Health & Life Insurance Company (“SHL”) liable for breaching the duty of good faith and fair dealing and awarded \$40 million in compensatory damages and \$160 million in punitive damages to Plaintiff Sandra Eskew, who is proceeding individually and as Special Administrator of the Estate of William George Eskew. SHL filed a Motion for New Trial or Remittitur. The Court denied the motion.

1 As part of its Motion for New Trial, SHL asked for new trial based upon the allegation of  
2 attorney misconduct. With respect to the order denying SHL’s Motion for New Trial on the basis of  
3 alleged attorney misconduct, this Court makes express findings as a required by *Lioce v. Cohen*, 124  
4 Nev. 1, 174 P.3d 970 (2008).

5 1. When a party makes a motion for a new trial on the basis of allegations of attorney  
6 misconduct at trial, the district court must apply the detailed, sliding-scale standard first articulated by  
7 the Nevada Supreme Court in *Lioce v. Cohen*, 124 Nev. at 16, 174 P.3d at 980. Under *Lioce*, when  
8 ruling on a motion for a new trial based on attorney misconduct, “district courts must make express  
9 factual findings.” *Id.*

10 2. As this Court observed at the end of the trial, counsel for both parties conducted  
11 themselves with exemplary professionalism throughout the trial in this matter. *See App–2832*. This  
12 was not a trial marred by persistent misconduct or lapses in decorum. The record cannot support a  
13 finding of prejudicial misconduct. At trial, neither party conveyed a contrary view. Though both  
14 parties leveled ordinary courtroom objections to one another’s conduct, SHL raised only a few  
15 objections to Mrs. Eskew’s counsel’s conduct on misconduct grounds and did not seek a single  
16 curative admonishment.

17 3. Only after the jury returned a verdict against it did SHL claim for the first time, in its  
18 post-trial briefing, that the trial was tainted by misconduct. SHL’s motion for a new trial quotes  
19 numerous statements from the trial out of context and attempts to portray them as attorney misconduct  
20 that undermined the trial. But after carefully considering each statement identified by SHL, based on  
21 its vantage point presiding over the entire trial, the Court is unable to find any instance of attorney  
22 misconduct, let alone misconduct that would warrant a new trial under the exacting prejudice standards  
23 outlined by the Nevada Supreme Court.

24 **A. Nevada law places a heavy burden on objecting parties to establish that**  
25 **misconduct warrants a new trial.**

26 4. Nevada law permits a district court to grant a new trial based on a prevailing party’s  
27 misconduct only if the movant can show misconduct affecting its “substantial rights.” *Gunderson v.*  
28 *D.R. Horton, Inc.*, 130 Nev. 67, 74, 319 P.3d 606, 611 (2014). This requires showing that misconduct



1 occurred. *See Id.* And in addition, “[t]o justify a new trial, as opposed to some other sanction, unfair  
2 prejudice affecting the reliability of the verdict must be shown.” *Bayerische Motoren Werke*  
3 *Aktiengesellschaft v. Roth*, 127 Nev. 122, 132–33, 252 P.3d 649, 656 (2011).

4       5. As a general matter, counsel “enjoy[] wide latitude in arguing facts and drawing  
5 inferences from the evidence.” *Grosjean v. Imperial Palace*, 125 Nev. 349, 364, 212 P.3d 1068, 1078  
6 (2009). What they may not do is “make improper or inflammatory arguments that appeal solely to the  
7 emotions of the jury.” *Id.* Thus, statements “cross[] the line between advocacy and misconduct” when  
8 they “ask[] the jury to step outside the relevant facts” and reach a verdict based on its “emotions”  
9 rather than the evidence. *Cox v. Copperfield*, 138 Nev. Adv. Op. 27, 507 P.3d 1216, 1227 (2022). An  
10 attorney’s argument may urge the jury to “send a message,” but it cannot ask the jury to “ignore the  
11 evidence.” *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 269, 396 P.3d 783, 790 (2017).

12       6. Even when a party engages in misconduct, whether that misconduct results in “unfair  
13 prejudice” warranting a new trial depends on the context in which the misconduct occurred. *Roth*,  
14 127 Nev. at 132–33, 252 P.3d at 656. Most importantly, it depends on whether the moving party  
15 “competently and timely” stated its objections and sought to correct “any potential prejudice.” *Lioce*,  
16 124 Nev. at 16, 174 P.3d at 980. That is because “the failure to object to allegedly prejudicial remarks  
17 at the time an argument is made . . . strongly indicates that the party moving for a new trial did not  
18 consider the arguments objectionable at the time they were delivered, but made that claim as an  
19 afterthought.” *Ringle v. Bruton*, 120 Nev. 82, 95, 86 P.3d 1032, 1040 (2004). Nor is simply objecting  
20 enough. Parties must also “promptly” request that the court admonish the offending counsel and the  
21 jury. *Gunderson*, 130 Nev. at 77, 319 P.3d at 613.

22       7. The Supreme Court thus has adopted a sliding scale for assessing prejudice. When the  
23 moving party fails to object, it bears a particularly high burden: It must show “plain error”—that is,  
24 that the misconduct “amounted to irreparable and fundamental error” resulting “in a substantial  
25 impairment of justice or denial of fundamental rights,” such that “it is plain and clear that no other  
26 reasonable explanation for the verdict exists.” *Id.*, 130 Nev. at 75, 319 P.3d at 612. When, by contrast,  
27 the moving party *does* object, the question becomes what steps the party took to cure any prejudice.  
28 If the court sustained an objection and admonished counsel and the jury, the moving party must show

1 that the misconduct was “so extreme that the objection and admonishment could not remove the  
2 misconduct’s effect.” *Lioce*, 124 Nev. at 17, 174 P.3d at 981. If the moving party never sought an  
3 admonishment, it must instead show that the misconduct was “so extreme” that what did occur—  
4 objection and sustainment—“could not have removed the misconduct’s effect.” *Gunderson*, 130 Nev.  
5 at 77, 319 P.3d at 613. Meanwhile, if the moving party objected but its objection was overruled, it  
6 bears the burden of showing that it was error to overrule the objection and that an admonition would  
7 have affected the verdict in its favor. *Lioce*, 124 Nev. at 18, 174 P.3d at 981.

8           **B.       Viewed in context, and applying the proper legal standards, none of counsel’s**  
9           **conduct constituted misconduct warranting a new trial.**

10           8.       SHL points to three types of statements that it says amount to misconduct warranting  
11 a new trial. It says that counsel improperly injected their “personal beliefs into the proceedings,”  
12 improperly leveled personal “attack[s]” on SHL’s counsel, and improperly questioned one SHL  
13 witness. Counsel may not state “to the jury a personal opinion as to the justness of a cause, the  
14 credibility of a witness, or the culpability of a civil litigant.” *Lioce*, 124 Nev. at 21, 174 P.3d at 983.  
15 And they may not impugn parties or witnesses with a stream of offensive epithets. *See Born v.*  
16 *Eisenman*, 114 Nev. 854, 861–62, 962 P.2d 1227, 1231–32 (1998). In the Court’s view, counsel did  
17 not violate either of these proscriptions here.

18                   **i.       Counsel did not improperly state a personal opinion as to the justness of**  
19                   **a cause, credibility of a witness, or culpability of a civil litigant when they**  
20                   **observed that various facts were “remarkable” or “tragic.”**

21           9.       Counsel did not offer a personal opinion as to the justness of a cause, credibility of a  
22 witness, or culpability of a civil litigant when they described Jury Instruction 24 as “remarkable.”  
23 App-2531. Instruction 24 explained to the jury that (1) an insurer is “not liable for bad faith for being  
24 incorrect about policy coverage as long as the insurer had a reasonable basis to take the position that  
25 it did” and (2) bad faith “requires an awareness that no reasonable basis exists to deny the insurance  
26 claims.” Jury Ins. No. 24. In calling the instruction “remarkable,” counsel was observing the  
27 relationship between the instruction and the evidence at trial: The instruction, they argued, did not set  
28 a high bar, yet the evidence showed SHL nevertheless fell short. App-2531–32. The remark thus was  
not a personal opinion on one of the prohibited topics at all. The Court finds that it was an

1 inconsequential observation in the course of a detailed, fact bound explanation of why the evidence at  
2 trial reflected bad faith.

3       10. Nor did counsel offer such a prohibited personal opinion when, shortly thereafter, they  
4 described as “remarkable” which policies SHL had adopted in light of its obligations not to violate the  
5 duty of good faith. App-2532. The Court finds that the observation offered only mild emphasis as  
6 counsel explained the relationship of the evidence to the duty.

7       11. Counsel likewise did not offer an improper personal opinion when they remarked that  
8 it was “tragic” that a particular witness had not heard of the duty of good faith. App-2543. As above,  
9 this statement is not a personal opinion as to the justness of a cause, credibility of a witness, or  
10 culpability of a civil litigant. It was a stray observation on the extent of the witness’s knowledge.

11       12. Counsel did not offer an improper personal opinion when they said it was “remarkable”  
12 that SHL failed to put on a particular witness. App-2543–44. Like the statements above, the comment  
13 is not a personal opinion as to the justness of a cause, credibility of a witness, or culpability of a civil  
14 litigant. In context, the Court finds that it was an ordinary trial argument about the evidence that SHL  
15 decided to present at trial.

16       13. Counsel did not offer a personal opinion as to the justness of a cause, credibility of a  
17 witness, or culpability of a civil litigant when they used the adverb “amazingly” to characterize SHL’s  
18 lack of supervision over reviewers like Dr. Ahmad. App-2545. At most, the Court finds that the  
19 adverb was argumentative language deployed to characterize the evidence.

20       14. Even if any of the comments just listed could be deemed personal opinions as to the  
21 justness of a cause, credibility of a witness, or culpability of a civil litigant, they would not warrant a  
22 new trial. SHL did not object to a single one at trial—either contemporaneously or when the Court  
23 explicitly asked if the parties had any issues to raise outside the presence of the jury. *See* App-2535–  
24 41. They are thus reviewed for plain error.

25       15. There was no plain error here. There are “other reasonable explanation[s]” for the  
26 jury’s verdict, *Gunderson*, 130 Nev. at 75, 319 P.3d at 612, than the “few sentences” SHL identifies,  
27 *Cox*, 507 P.3d at 1228, because the evidence at trial, viewed in the light most favorable to Mrs. Eskew,  
28 was overwhelming. The jury heard evidence that SHL sold Mr. Eskew a platinum health insurance

1 policy that expressly covered therapeutic radiation services like proton-beam therapy. App-1035–40,  
2 1057. It heard evidence that Mr. Eskew’s doctor, a leading expert, determined that proton-beam  
3 therapy was necessary to treat his lung cancer while sparing critical nearby organs. Liao Dep. 48–49,  
4 69–75, 84–88; App-531–33, 539–40, 1067–68, 1106. But, the jury learned, SHL refused to approve  
5 the treatment, instead applying its corporate medical policy of refusing to approve proton-beam  
6 treatment for lung cancer in any circumstances. App-331–33, 813–18, 837–45. It sent Mr. Eskew’s  
7 claim to a reviewer who had no expertise in radiation oncology and who did not investigate his claim,  
8 instead taking only 12 minutes to deny it. App-247–48, 250, 319–21, 337–41, 463, 1083–84, 1114.  
9 SHL defended its policy on the ground that proton-beam therapy was not medically necessary, but the  
10 overwhelming evidence showed otherwise. *See* App-106, 116–17, 331–41 (SHL policy  
11 acknowledging benefits of PBT); App-660–61 (studies cited in SHL policies support use of PBT);  
12 App-720–22, 901–11 (SHL’s sister company operated a proton-beam therapy center).

13 16. The jury heard evidence that the IMRT treatment Mr. Eskew had to receive instead  
14 caused great harm to his physical and emotional health. It learned that the intensive radiation generated  
15 by IMRT caused “Grade III esophagitis”—meaning that Mr. Eskew spent the last months of his life  
16 weak, unable to eat or drink, vomiting daily, and losing weight or unable to keep it on. App-594–606,  
17 680–83, 709–11, 719–20, 1203–08, 1256–58, 1324, 1401–13; Liao Dep. 76–77, 81–83, 155. And it  
18 learned that Mr. Eskew became withdrawn, isolated, and unhappy, unable to enjoy the company of  
19 his family or the activities he previously enjoyed. App-1200–02, 1256, 1259–60, 1416–18, 1610.

20 17. The Court thus cannot find that the record supports SHL’s claim that counsel’s  
21 statements made a meaningful difference.

22 **ii. Counsel did not improperly state a personal opinion as to the justness of**  
23 **a cause, credibility of a witness, or culpability of a civil litigant when they**  
**invited the jury to consider SHL’s contradictory behavior.**

24 18. Counsel likewise did not state a personal opinion on a prohibited topic when they  
25 encouraged the jury to consider the hypocrisy in SHL’s behavior. App-2655. Counsel’s remarks  
26 arose in the context of a detailed, fact bound argument that, even while SHL took the position that  
27 proton-beam therapy for lung cancer was unproven and medically unnecessary, its sister company  
28 promoted the use of the treatment to avoid exactly the same complications Mr. Eskew experienced.

1 App-2653–55. In describing this conduct as hypocritical, counsel was “invit[ing] the jury to consider  
2 the contradiction” in SHL’s behavior. *Cox*, 507 P.3d at 1227. That “amount[s] to advocacy, not  
3 misconduct,” and does not “establish grounds for a new trial.” *Id.*

4 19. Towards the end of his delivery, counsel’s remarks edged towards excessive,  
5 unnecessarily personal rhetoric on this point. *See* App-2655. SHL objected and the Court sustained  
6 the objection. *Id.* But SHL did not request an admonishment, so the statements are reviewed for  
7 whether the misconduct was so extreme that objection and sustainment could not have removed any  
8 prejudicial effect. *See Gundersen*, 130 Nev. at 77, 319 P.3d at 613. And viewed in context, the Court  
9 finds that the statements fall far below this bar. Immediately following the Court’s sustainment, Mrs.  
10 Eskew’s counsel corrected his emphasis, explaining that his point was not personal at all, but rather  
11 about what would be “unbelievable to somebody listening.” App-2655. Sustainment thus easily  
12 removed any prejudicial effect.

13 20. That is especially so because not only did counsel correct himself, but the jury was  
14 explicitly instructed that counsel’s statements, arguments, and opinions were not evidence and that it  
15 should disregard evidence to which an objection was sustained. Jury Ins. No. 8. Juries presumptively  
16 follow such instructions, *Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006), and a  
17 sustained objection under these circumstances generally precludes a finding of prejudice, *see Walker*  
18 *v. State*, 78 Nev. 463, 467–68, 376 P.2d 137, 139 (1962).

19 **iii. Counsel did not improperly state a personal opinion as to the justness of**  
20 **a cause, credibility of a witness, or culpability of a civil litigant when they**  
21 **described Dr. Parvesh Kumar’s testimony.**

22 21. Counsel’s statements concerning Dr. Parvesh Kumar’s testimony during closing are  
23 also not improper personal opinions. In describing the testimony, counsel’s argument was that the  
24 jury should reject Dr. Kumar’s testimony because he was not the subject-matter expert he and SHL  
25 both held him out to be. App-2511. In addition, although counsel at one point compared Dr. Kumar  
26 to other witnesses he had observed, his argument remained about how the *jury* should assess Dr.  
Kumar’s credibility, not about how counsel personally did so.

27 22. Counsel’s statements thus are far afield from the sorts of statements Nevada courts  
28 have held amount to prohibited personal opinions. Those statements typically ask jurors to “step

1 outside the relevant facts” and instead reach a verdict based on their emotions. *Cox*, 507 P.3d at 1227  
2 (statements were improper “because they asked the jury to step outside the relevant facts” and hold a  
3 party not liable because of its bad motivations; while statements that simply invited the jury to consider  
4 the contradiction between different statements were not improper personal opinions); *Grosjean*, 125  
5 Nev. at 368–69, 212 P.3d at 1081–82 (attorney committed misconduct by appealing to jury’s emotions  
6 rather than facts in evidence); *Lioce*, 124 Nev. at 21–22, 174 P.3d at 983–84 (attorney committed  
7 misconduct by calling a plaintiff’s case frivolous and worthless). Here, by contrast, counsel’s  
8 statements were closely tied to and about the evidence the jury did see—that Dr. Kumar could not  
9 “uphold the opinions he gave.” App-2512.

10 23. Even if these statements amounted to misconduct, they would not warrant a new trial.  
11 Because SHL failed to object to them, they are reviewed for plain error. And it is not “plain and clear  
12 that no other reasonable explanation for the verdict exists.” *Gunderson*, 130 Nev. at 75, 319 P.3d at  
13 612. As above, the strong evidence supporting the plaintiff’s case easily supplies that explanation,  
14 and the Court finds no reason to conclude that counsel’s characterization of one witness’s testimony  
15 made a difference to the jury.

16 **iv. Counsel did not improperly state a personal opinion as to the justness of**  
17 **a cause, credibility of a witness, or culpability of a civil litigant when they**  
18 **discussed the verdict form.**

19 24. Counsel’s statements concerning the verdict the jury should reach also do not amount  
20 to a prohibited personal opinion. SHL contends that counsel committed misconduct by stating that  
21 they would not request a particular award if they were not “convinced” it was “the right thing to do.”  
22 App-2692. SHL’s argument is that this comment conveyed an impermissible, moralistic commentary  
23 on the evidence. But, viewed in context, the statement is just as easily understood as telling the jury  
24 that the requested verdict was the right thing to do according to the law as embodied in the Court’s  
instructions and the evidence at trial.

25 25. In any event, even if the statement amounts to a personal opinion, the Court cannot find  
26 that the record reflects any prejudice. Although SHL leveled a successful objection to the comments,  
27 it did not seek an admonishment, and so the statement is reviewed for whether the misconduct was so  
28 extreme that objection and sustainment could not have removed any prejudicial effect. *See Gunderson*,

1 130 Nev. at 77, 319 P.3d at 613. The record does not meet this standard. Nothing about the comment  
2 was “extreme,” and, in any event, counsel again promptly corrected any impression that they were  
3 conveying a personal opinion: Following objection and sustainment, counsel emphasized that the  
4 argument was about what the jury should do, not what counsel thought. *See* App-2692 (“It’s the right  
5 thing to do.”). Thus, if there was any prejudicial effect here, it was modest in light of the powerful  
6 evidence on the plaintiff’s case, and it was immediately cured. Accordingly, the comment does not  
7 warrant a new trial.

8 **v. Counsel did not level improper personal attacks, and even if they had, a**  
9 **new trial would not be warranted.**

10 26. SHL also contends that Mrs. Eskew’s counsel committed misconduct because they  
11 “falsely accused” SHL’s counsel “of calling Mrs. Eskew a liar.” The Court finds that the record does  
12 not support either SHL’s version of the facts or the conclusion it draws from them.

13 27. The statements that SHL identifies were not meaningfully false, because the company’s  
14 strategy at trial was to impugn the Eskews’ motivations and to cast doubt on the truthfulness of their  
15 testimony. *See* App-1448–49 (suggesting testimony was driven by what was “helpful for your case”  
16 rather than the truth); App-1489–90 (asking for agreement that “memories can sometimes fade” or be  
17 “influenced” because people can have “an intent to say certain things, a reason, a motive”); *see also*  
18 App-1221–24, 1239–43, 1342, 1346–52, 1484–1526, 1529–41. At trial, witnesses and the parties  
19 understood this to be SHL’s argument. *See, e.g.,* App-1549–50 (Q: “And you would agree that [the  
20 monetary recovery in this case provides] an incentive for you to say what you’re saying; correct?” A:  
21 “No. I did not lie.”). Indeed, at a break, when plaintiff’s counsel noted that SHL was suggesting that  
22 Mrs. Eskew was “lying or magnifying her problems,” counsel for SHL agreed: “And yes, obviously  
23 it’s my client’s position that it shouldn’t be a surprise to anyone in this room that Mrs. Eskew is  
24 embellishing on her husband’s condition.” App-1458–59; *see also* App-1460 (claiming the “right” to  
25 “cross-examine and challenge whether or not she is being accurate and truthful”).

26 28. SHL objects that the statements are “improper” because the company only “implied”  
27 that the Eskews were lying and that Mrs. Eskew’s counsel exaggerated the effect. But Nevada law  
28 does not hold that an exaggerated characterization of counsel’s arguments or conduct is improper at

1 all, let alone so improper as to amount to misconduct. The only supportive authority SHL identifies  
2 concerns “abusive language,” “derogatory remarks,” and offensive epithets. *See Born*, 114 Nev. at  
3 861–62, 962 P.2d at 1231–32 (counsel engaged in repeated, incendiary outbursts, including describing  
4 opposing counsel and witnesses with offensive epithets in the jury’s hearing and exclaiming that  
5 requests for a sidebar were “outrageous”); *Fineman v. Armstrong World Indus., Inc.*, 774 F. Supp.  
6 266, 272 (D.N.J. 1991) (closing argument focused on claims that “counsel had lied to the jury, had  
7 suborned perjury from witnesses (flavoring these comments with [] titillating remarks . . . ), and had  
8 done it for money”). Nothing like that happened here. And the cases have no bearing on the propriety  
9 of one counsel’s commenting on another’s behavior in questioning a witness.

10         29. Even if counsel’s remarks could amount to misconduct, they were not prejudicial. SHL  
11 made only one objection on these grounds and never sought an admonishment. But that objection,  
12 and the Court’s decision to sustain it, was more than sufficient to cure any possible prejudice.  
13 Following the objection, counsel immediately and plainly clarified his meaning—that SHL had at  
14 minimum suggested that Mrs. Eskew was “embellishing” what happened to her. App-2509. SHL says  
15 it made a second objection, but that objection, viewed in context, went to a different issue—whether  
16 there was evidence supporting Mrs. Eskew’s argument that SHL had not been able to dissuade Mrs.  
17 Eskew from pursuing her case. *See App-2690*. In any event, the Court finds no reason in the record  
18 to treat either objection and its sustainment as inadequate to remove any modest prejudicial effect that  
19 could have resulted.

20         30. SHL also argues that counsel’s conduct was improper because it violated a motion in  
21 limine excluding evidence, argument, or testimony relating to litigation conduct. But that motion in  
22 limine was issued for an unrelated reason: to bar the parties from introducing evidence or argument  
23 concerning litigation conduct during the discovery process. And in any event, SHL failed to object to  
24 any of Mrs. Eskew’s counsel’s conduct on these grounds. *See Roth*, 127 Nev. at 136–38, 252 P.3d at  
25 658–59 (parties are obligated to make “contemporaneous objections to claimed violations of an order  
26 produced by a motion in limine . . . to prevent litigants from wasting judicial, party, and citizen-juror  
27 resources”). It thus waived any objection except in an instance of plain error, which the Court cannot  
28 find. *See Id.*



1                    **vi. Counsel’s questioning of SHL’s witness was not misconduct warranting a**  
2                    **new trial.**

3                    31. SHL also argues that Mrs. Eskew’s counsel committed misconduct when they  
4 questioned SHL’s director of pre-service reviews during the damages phase. According to SHL, their  
5 questioning amounted to a “blatant and shocking violation” of the “norms” of American law. The  
6 Court finds otherwise. During the challenged questioning, SHL’s director testified that, in response  
7 to the jury’s verdict, the company was going to begin offering annual training on the duty of good  
8 faith and fair dealing. App-2774–75. To examine whether the company was as contrite as she  
9 suggested, counsel for Mrs. Eskew urged the director to tell the jury her true view of its verdict. App-  
10 2778–79. SHL takes issue with that question because it says the question was given as a “command”  
11 and was therefore “demeaning” and necessarily improper. The Court finds no reason to agree. It is  
12 not misconduct to phrase a question as a statement rather than a question, especially in the context in  
13 which this exchange arose. SHL has offered no authority to the contrary.

14                    32. SHL did not object on these grounds at trial, saying only that the “form” of the question  
15 was “too broad.” App-2779. And even then, it did not request an admonishment. *Id.* In any event, even  
16 if reviewed for whether an admonishment could have changed the verdict, the record here leaves no  
17 reason to conclude that this line of questioning had any impact, let alone that it warrants a new trial.

18                    **C. Cumulative review of counsel’s conduct makes no difference.**

19                    33. SHL urges the Court to weigh its assorted misconduct claims together and conclude  
20 that even if they were not individually prejudicial misconduct, they rise to that level as a whole. But  
21 however SHL’s allegations are weighed, the Court can find no basis to grant a new trial.

22                    34. The Court finds that SHL cannot meet the standard that applies to grant a new trial  
23 “based on the cumulative effect of attorney misconduct.” *Gunderson*, 130 Nev. at 78, 319 P.3d at  
24 614. To obtain that result, a party “must demonstrate that no other reasonable explanation for the  
25 verdict exists.” *Id.* That generally requires identifying “multiple severe instances of attorney  
26 misconduct as determined by their context.” *Id.* Yet as explained above, in the context of this trial,  
27 the Court cannot find that SHL has identified a single “severe instance[]” of attorney misconduct. *Id.*  
28 At best, it has pointed to a smattering of rhetorical and hyperbolic comments that pale in comparison  
to the extensive evidence marshaled at trial. In the Court’s view, the “scope, nature, and quantity” of

1 this alleged misconduct had no appreciable impact on the “verdict’s reliability.” *Id.* The handful of  
2 assorted statements SHL has identified thus fall far short of explaining the jury’s verdict.

3 35. The Court is particularly inclined to reach that finding in light of SHL’s failure to object  
4 to the lion’s share of the asserted misconduct—and, where it did object, to even once seek an  
5 admonishment. While it is true that counsel are not required to repeat objections that have already  
6 been made and sustained and failed to change counsel’s behavior, *see Lioce*, 124 Nev. at 18, 174 P.3d  
7 at 981, it is equally true that the failure to object “strongly indicates that the party moving for a new  
8 trial did not consider the arguments objectionable at the time they were delivered, but made that claim  
9 as an afterthought,” *Ringle*, 120 Nev. at 95, 86 P.3d at 1040. The Court finds that the record in this  
10 case is more consistent with the latter concern than the former, and thus undermines any inference that  
11 SHL would have been penalized for objecting or requesting admonishments.

12 For the foregoing reasons, the above findings and conclusions are hereby ENTERED.

13 DATED this \_\_\_\_ day of \_\_\_\_\_ 2022.

14  
15 \_\_\_\_\_  
DISTRICT COURT JUDGE

16 **Prepared and submitted by:**

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# EXHIBIT 2

130 Nev. 1161

Unpublished Disposition

This is an unpublished disposition. See Nevada Rules of Appellate Procedure, Rule 36(c) before citing. Supreme Court of Nevada.

John CARR, Appellant,

v.

Gustavo PAREDES; and Kayla D. Paredes,  
Respondents.

John Carr, Appellant,

v.

Gustavo Paredes; and Kayla D. Paredes,  
Respondents.

Nos. 60318, 61301.

|

Feb. 10, 2014.

#### Attorneys and Law Firms

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#### ORDER VACATING IN PART AND REMANDING

\*1 These are consolidated appeals from district court orders entering judgment on a jury verdict, awarding costs, and denying a motion for a new trial based on attorney misconduct. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

After the conclusion of appellant John Carr's personal injury suit against respondent Gustavo Paredes, Carr filed a motion for a new trial based on attorney misconduct. Carr provided three grounds to support his claim, and the parties fully briefed the issue. The district court denied Carr's motion, but failed to explain the reasoning behind its decision.

Now, we must determine if the district court's unexplained denial was an abuse of discretion. *See Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 362, 212 P.3d 1068, 1077 (2009)

(this court reviews a ruling on a motion for a new trial for an abuse of discretion).

When a district court rules on a motion for a new trial based on attorney misconduct, it “*must* make specific findings, both on the record during oral proceedings and in its order, with regard to its application of the standards” enumerated in *Lioce v. Co hen*, 124 Nev. 1, 174 P.3d 970 (2008). *Lioce* at 19–20, 174 P.3d at 982 (emphasis added).

Here, the district court failed to make the necessary findings; therefore, we vacate the court's order denying Carr's motion and remand this matter to the district court. Carr raised additional issues on appeal,\* however, our decision regarding the district court's denial of Carr's motion for a new trial could render the other issues moot. Accordingly, we refrain from making a determination regarding the additional issues at this time. Also, we note that the record in this matter is inadequate. Large portions of transcripts from various court proceedings are missing. This inadequacy will hinder this court's review and should be immediately corrected. Accordingly, we

VACATE the district court's order denying the motion for a new trial and REMAND this matter to the district court for proceedings consistent with this order.



133 Nev. 993

Unpublished Disposition

This is an unpublished disposition. See Nevada Rules of Appellate Procedure, Rule 36(c) before citing. Supreme Court of Nevada.

John CARR, Appellant,

v.

Gustavo PAREDES; and Kayla D. Paredes,  
Respondents.

John Carr, Appellant,

v.

Gustavo Paredes; and Kayla D. Paredes,  
Respondents.

No. 60318, No. 61301

|

FILED JANUARY 13, 2017

**Attorneys and Law Firms**

Phillip Aurbach, Settlement Judge

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**ORDER OF AFFIRMANCE**

\*1 These are consolidated appeals from a district court order entering judgment on a jury verdict in a tort action and post-judgment orders awarding costs and denying a motion for a new trial. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Senior Judge; Kerry Louise Earley, Judge.

Appellant John Carr sued respondent Gustavo Paredes for injuries allegedly sustained when Paredes's car slid into Carr's on a snowy day. The jury returned a verdict for Paredes and Carr moved for a new trial, which the district court denied.

Carr appeals, seeking reversal and remand for a new trial. He raises four issues: (1) the jury manifestly disregarded its instructions, (2) the district court erred when it allowed Dr. Duke to testify as an expert rebuttal witness, (3) the district court erred when it refused to allow Dr. Grover and Dr. Leon to surrebut Dr. Duke, and (4) Paredes's attorney's improper remarks warrant a new trial. We affirm.

*Whether the jury manifestly disregarded its instructions*

NRCP 59(a)(5) authorizes a district court to grant a new trial if there has been a “[m]anifest disregard by the jury of the instructions of the court.” To meet this demanding standard, the movant must establish “that, had the jurors properly applied the instructions of the court, it would have been impossible for [the jury] to reach the verdict” they did. *Weaver Bros., Ltd. v. Misskelley*, 98 Nev. 232, 234, 645 P.2d 438, 439 (1981) (emphasis added). Denial of a motion for a new trial is reviewed for abuse of discretion. *Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 362, 212 P.3d 1068, 1077 (2009). Although the evidence was in sharp dispute, the record demonstrates that it was not impossible for the jury to find Carr failed to prove that Paredes's negligence caused the injuries and consequent damages he claimed. Thus, the district court did not abuse its discretion in denying Carr's motion for a new trial under NRCP 59(a)(5).

*Dr. Duke's designation and testimony as an expert rebuttal witness*

The admissibility of expert rebuttal testimony lies within the sound discretion of the trial court. *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008). Expert rebuttal witnesses are proper if they contradict or rebut the subject matter of the original expert witness. *Downs v. River City Grp., LLC*, No. 3:11-cv-00885-LRH-WGC, 2014 WL 814303, at \*2 (D. Nev. Feb. 28, 2014). Harmless error does not warrant a new trial. See NRCP 61. For error in the admission or exclusion of evidence to merit a new trial, “the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached.” *Wyeth v. Rowatt*, 126 Nev.

446, 465, 244 P.3d 765, 778 (2010); *see also* *Bongiovi v. Sullivan*, 122 Nev. 556, 575, 138 P.3d 433, 447 (2006) (“an error in the admission of evidence is not grounds for a new trial or for setting aside a verdict unless the error is inconsistent with substantial justice”).

Carr's discussion of Dr. Duke's designation and trial testimony confuses expert rebuttal witnesses, who are designated pretrial “to contradict or rebut” case-in-chief experts, *see* NRC 16.1(a)(2)(C) (2011), with lay rebuttal witnesses, who may be called at trial to rebut new or unforeseen evidence offered by the adverse party, *see Morgan v. Commercial Union Assurance Cos.*, 606 F.2d 554 (5th Cir. 1979). While an expert rebuttal witness cannot testify to matters beyond the scope and subject matter of the case-in-chief expert's opinions, a rebuttal expert is designated pretrial to refute a designated case-in-chief expert's expected testimony. The standards for rebutting surprise lay witness testimony at trial differ from the standards that apply to designated rebuttal experts.

\*2 Here, Dr. Duke was designated during discovery to rebut the expected opinions of the treating physicians Carr designated. Both in his designation and at trial, Dr. Duke largely confined his testimony to the opinions offered by Carr's treating-physician experts, Dr. Shang, Dr. Leon, and Dr. Grover, the scope and subject matter of whose testimony concerned: (1) the diagnosis, (2) treatment, (3) response, and (4) medical billing of Carr. Since Dr. Duke stayed within the scope and subject matter of Carr's treating physicians' expected and actual trial testimony, the district court did not abuse its discretion in allowing Dr. Duke to testify as a rebuttal expert.<sup>1</sup> While we question whether Dr. Duke exceeded the scope of a true rebuttal expert in remarking upon Carr's psychological factors, the error in allowing this testimony, if any, did not affect Carr's substantial rights because it does not reasonably appear likely to have changed the outcome at trial.

<sup>1</sup> We note that Paredes timely designated a case-in-chief expert, whom he did not call at trial, but whose designation covered some of the same subjects as Dr. Duke and Carr's treating physicians did.

#### *Dr. Grover's and Dr. Leon's surrebuttal testimony*

To preserve excluded testimony for appeal, the party must make a specific offer of proof to the trial court on the record. *Van Valkenberg v. State*, 95 Nev. 317, 318, 594 P.2d 707, 708 (1979); *see also* NRS 47.040(1)(b). The specific offer of proof affords a basis for both the district court and this court to determine if the surrebuttal testimony would be cumulative or if it moved past treatment to subjects that would have required a pretrial disclosure, even from a treating physician. Because Carr did not make an offer of proof respecting the proffered surrebuttal, and each of the proposed surrebuttal witnesses had already testified in Carr's case in chief, it is unclear that their testimony on surrebuttal would not have been merely cumulative. Rather than address this point, Carr merely argued that his expert witnesses should be allowed to surrebut Dr. Duke because their rebuttal would be based upon their personal treatment of Carr. While the district court's ruling excluding the surrebuttal may have been error because treating physicians are not required to submit a report unless their testimony exceeds their personal treatment of the patient, *FCHI, LLC v. Rodriguez*, 130 Nev., Adv. Op. 46, 335 P.3d 183, 189 (2014), we cannot resolve the matter due to the failure to specify the substance of the proffered surrebuttal testimony on the record. The error, if any, in denying surrebuttal thus was waived and appears harmless in any event.

#### *Paredes's attorney's improper remarks*

Finally, Carr complains that the opposing counsel's misconduct requires a new trial. This court previously vacated the district court's order denying the motion for a new trial and remanded the matter to the district court to make specific findings regarding attorney misconduct pursuant to *Lioce v. Cohen*, 124 Nev. 1, 19–20, 174 P.3d 970, 982 (2008). *See Carr v. Paredes*, Docket Nos. 60318 & 61301 (Order Vacating In Part and Remanding, February 10, 2014). The district court subsequently found that Paredes's attorney (1) did not violate the order in limine prohibiting her from referring to the accident as unavoidable, and (2) the improper comments to which Carr failed to object did not amount to plain error. Because Carr's motion for new trial did not

challenge Paredes's counsel's golden rule arguments or interjection of personal opinion, the district court did not rule on those two issues.

When a party objects to attorney misconduct and the objection is sustained, the misconduct must be “so extreme that the objection and admonishment could not remove the misconduct's effect.” *Lioce*, 124 Nev. at 17, 174 P.3d at 981. If the objection is overruled, then the overruling must be in error and the court's admonishment would have likely changed the verdict. *Id.* at 18, 174 P.3d at 981. If there was no objection, then there must be no other reasonable explanation for the verdict, i.e., plain error. *Id.* at 19, 174 P.3d at 981–82, *Grosjean*, 125 Nev. at 364, 212 P.3d at 1079. “Whether an attorney's comments are misconduct” is reviewed de novo; “however, we will give deference to the district court's factual findings and application of the standards to the facts.” *Lioce*, 124 Nev. at 20, 174 P.3d at 982.

\*3 The unobjected-to conduct did not constitute plain error because there was another reasonable explanation for the verdict: the jury simply could have found that Carr did not suffer compensable injury as a result of a breach of duty by Paredes. Turning to the conduct that was objected to but overruled, we conclude that an admonishment was unlikely to have changed the verdict. Finally, Carr has not met his burden of proving that the objected-to misconduct had an effect upon the jury. While certain of Paredes's attorney's comments were improper, they were not of the severity and pervasiveness as found in *Lioce*, and did not encourage the jury to ignore the facts and decide the case based upon their personal prejudices and opinions.

Accordingly, we ORDER the judgments of the district court AFFIRMED.

#### All Citations

133 Nev. 993, 387 P.3d 215 (Table), 2017 WL 176591



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134 Nev. 963

This is an unpublished disposition. See Nevada Rules of Appellate Procedure, Rule 36(c) before citing.

Court of Appeals of Nevada.

Blanca Esthela JIMENEZ, an Individual, Appellant,

v.

BLUE MARTINI LAS VEGAS, LLC, d/b/a Blue  
Martini, Respondent.

Blanca Esthela Jimenez, an Individual, Appellant,

v.

Blue Martini Las Vegas, LLC, d/b/a Blue Martini,  
Respondent.

No. 72539, No. 73953

FILED JULY 27, 2018

Attorneys and Law Firms

Law Office of Neal Hyman

Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas

ORDER VACATING POST-TRIAL ORDER AND  
REMANDING

\*1 Blanca Esthela Jimenez appeals from a judgment entered pursuant to a jury verdict in a tort action, from a post-trial order denying Jimenez's motion for a new trial, from an order granting attorney fees and costs, and from an order staying the execution of judgment pending appeal. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.<sup>1</sup>

<sup>1</sup> Although Judge Miley presided over the trial and post-trial motions, Senior Judge J. Charles Thompson, signed the judgment on the jury verdict.

Appellant Jimenez fell down a small two-step-high stairway, injuring her wrist, knee, and ankle, while patronizing the Blue Martini nightclub.<sup>2</sup> Jimenez sued Blue Martini for her injuries. After a nine-day jury trial, the jury returned a defense verdict in favor of Blue Martini. Jimenez moved for a new trial, arguing that the verdict was not supported by substantial evidence, that Blue Martini's attorney committed misconduct by calling Jimenez a liar repeatedly in his closing argument, and that the district court committed several errors in pre-trial and trial rulings. Blue Martini opposed the motion, arguing that a new trial was not warranted. The district court denied Jimenez's motion for a new trial, finding that the jury's verdict was supported by substantial evidence, Blue Martini's attorney did not commit misconduct, and the district court did not err in its rulings. Thereafter, Blue Martini filed a motion for attorney fees and costs, which the district court granted. Jimenez filed a motion to stay the execution of judgment pending appeal and requested the district court waive any bond requirement. The district granted Jimenez's motion to stay the judgment execution but required Jimenez to post a \$50,000 bond.

<sup>2</sup> We do not recount the facts except as necessary to the disposition.

On appeal, Jimenez asserts various errors. However, because the district court failed to properly analyze Jimenez's claims of attorney misconduct we need only address that contention, and we conclude a remand is necessary for the district court to make specific findings on the record regarding attorney misconduct, as required by the supreme court and this court's jurisprudence.<sup>3</sup> See *Lioce v. Cohen*, 124 Nev. 1, 19-20, 174 P.3d 970, 982 (2008); *Michaels v. Pentair Water Pool & Spa, Inc.*, 131 Nev. 804, 813-14, 357 P.3d 387, 394 (Ct. App. 2015).

<sup>3</sup> We note that Jimenez also contends a new trial is warranted due to the district court's interlocutory rulings admitting evidence that Jimenez had a prior back condition and knee injury, allowing Blue Martini to show its expert a silent video of Jimenez testifying, giving a comparative fault jury instruction, denying Jimenez leave to amend to seek punitive damages, admitting a witness'

deposition testimony, and declining to sanction Blue Martini for failing to preserve certain surveillance video. However, we conclude Jimenez's arguments are unpersuasive, as the district court's rulings were proper. *See* NRS 48.025 ("All relevant evidence is admissible ...."); NRS 50.285 (allowing an expert to base an opinion or inference on facts "made known to the expert at the hearing"); NRCP 32(a)(3)(D) (stating that a party may introduce a deposition into evidence if the party cannot procure the witness by subpoena); *MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev. —, —, 31, 416 P.3d 249, 254-55 (2018) (affirming a district court's denial of a motion to amend a complaint for undue delay); *FGA, Inc. v. Giglio*, 128 Nev. 271, 283, 285, 278 P.3d 490, 498, 499 (2012) (holding that evidence of prior injury is admissible to show "a causal connection between the prior injury and the injury at issue," and that "[e]vidence of a party's possible intoxication may be probative of the issues of causation and comparative negligence"); *Bass-Davis v. Davis*, 122 Nev. 442, 447-48, 134 P.3d 103, 106-07 (2006) (addressing sanctions for spoliation). Finally, to the extent Jimenez challenges the verdict form, we deem that argument waived because Jimenez did not object to the verdict form below. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

**\*2** Jimenez argues that Blue Martini's counsel committed misconduct, which led to jury nullification, when he repeatedly accused Jimenez of lying on the stand and asked the jury whether they should reward a person who lies.

"Whether an attorney's comments are misconduct is a question of law" reviewed de novo; but we will defer "to the district court's factual findings and application of the [legal] standards to the facts." *Lioce*, 124 Nev. at 20, 174 P.3d at 982; *see also* NRCP 59(a)(2) (stating that misconduct may warrant

a new trial). And, we review unobjected to attorney misconduct for plain error, *Lioce*, 124 Nev. at 19, 174 P.3d at 982. "[D]etermining whether 'plain error' has occurred as a result of unobjected-to misconduct requires the court to closely examine the record, weigh the severity and persistence of the misconduct against the evidence presented, and assess what role, if any, the misconduct likely played in the jury's verdict." *Pentair Water Pool & Spa*, 131 Nev. at 817, 357 P.3d at 397. Under *Lioce*, a district court resolving a motion for a new trial based on unobjected to attorney misconduct is required to make specific findings on the record during the oral proceedings and also in its written order, as to whether the misconduct amounts to plain error, and whether the party moving for a new trial has demonstrated that the misconduct rises to the level of irreparable and fundamental error. *Lioce*, 124 Nev. at 19-20, 174 P.3d at 982. When district court fails to provide reasoning for its decision such that this court cannot determine whether the district court abused its discretion in denying the motion for a new trial, we must remand for a decision on the motion based upon the standards set forth in *Lioce*. *See id.* at 24-25, 174 P.3d at 985.

Here, Jimenez's motion for a new trial detailed incidents of purported misconduct. But, in its order the district court denied Jimenez's motion for new trial without setting forth adequate specific findings under *Lioce*'s plain error standards for evaluating attorney misconduct. The district court merely stated, briefly, that it found nothing in the record to indicate Blue Martini's counsel was acting inappropriately in its closing argument. Yet, the record includes numerous instances wherein Blue Martini's counsel accused Jimenez of lying. *Cf. id.* at 21-22. 174 P.3d at 983 (noting that "an attorney's statements of personal opinion as to the justness of a cause, the credibility of a witness, or the culpability of a litigant is ... improper in civil cases and may amount to prejudicial misconduct necessitating a new trial"); NRCP 3.4(e). Thus, these findings are deficient under *Lioce* and we are unable to determine whether the district court abused its discretion. The district court must revisit Jimenez's NRCP 59(a)(2) motion for a new trial and, in so doing, make specific findings about the alleged attorney misconduct under the standards set forth in *Lioce*. As a result, we vacate the district court's denial of Jimenez's attorney misconduct based request for new trial, and remand this matter for further proceedings.

Accordingly we,

**\*3** ORDER the post-trial order of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>4</sup>

<sup>4</sup> We decline to resolve other issues raised in this appeal regarding the district court's denial of the motion for a new trial in light of this remand for additional findings.

#### **All Citations**

Not Reported in Pac. Rptr., 134 Nev. 963, 2018 WL 3912241

**Jimenez v. Blue Martini Las Vegas, LLC, Not Reported in Pac. Rptr. (2018)**

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134 Nev. 963, 2018 WL 3912241

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This is an unpublished disposition. See Nevada Rules of Appellate Procedure, Rule 36(c) before citing.

Court of Appeals of Nevada.

Blanca Esthela JIMENEZ, Appellant,

v.

BLUE MARTINI LAS VEGAS, LLC, d/b/a Blue Martini, Respondent.

No. 77226-COA

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FILED OCTOBER 31, 2019

**Attorneys and Law Firms**

Law Office of Neal Hyman

Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas

*ORDER OF AFFIRMANCE<sup>1</sup>*

<sup>1</sup> The Honorable Bonnie A. Bulla, Judge, voluntarily recused herself from participation in the decision of this matter.

\***1** Blanca Jimenez appeals from a district court order denying a motion for a new trial in a tort action and an order awarding fees and costs. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Jimenez sued Blue Martini nightclub for negligence, alleging she suffered injuries when she fell down a two-step staircase at Blue Martini.<sup>2</sup> During a nine day jury trial, Jimenez and Blue Martini presented conflicting evidence concerning the cause of Jimenez's injuries. For example, Jimenez called an expert who testified Blue Martin's steps were shorter than building codes required. Conversely, Blue Martini's building expert disputed Jimenez's expert's measurements, and testified

that, in his opinion, the steps did not cause Jimenez's fall. Jimenez also called an expert who testified the lighting levels were below the required levels in an egress area. However, Blue Martini's lighting expert testified the building code referenced by Jimenez's experts was not applicable, because it was the fighting requirement for residential structures.

<sup>2</sup> We do not recount the facts except as necessary to our disposition.

Likewise, Jimenez and Blue Martini presented conflicting evidence and expert testimony regarding both the extent and treatment of Jimenez's injuries. One of Jimenez's treating physicians testified a fall that causes injuries to a tibia and knee could "easily... hurt [Jimenez's] back." On the other hand, Blue Martini's orthopedic expert testified that after examining Jimenez and her medical records, he did not believe the fall injured her back. Further, Jimenez's knee and wrist doctor admitted to retroactively modifying Jimenez's medical records to show an initial complaint of back pain six months after her initial visit. After one of Jimenez's treating physicians testified of the treatment Jimenez needed and would require in the future, Blue Martini called a doctor who testified that the extent of treatment for Jimenez's knee injury was excessive.

During her testimony, Jimenez gave contradictory statements regarding her prior injury and her previous course of treatment. To discredit Jimenez's testimony, Blue Martini admitted into evidence the deposition of Aurora Alvarez, Jimenez's roommate. In her deposition, Alvarez testified that Jimenez had complained of back and knee pain prior to her fall at the Blue Martini.

During closing argument, Blue Martini's counsel emphasized the contradictory testimony of the experts who testified at trial, Jimenez's modified medical records, and inconsistencies in Jimenez's own testimony. Specifically, Blue Martini stated Jimenez's knee and wrist doctor had "fake[d]" medical records and Jimenez had lied about her prior injuries. After the jury returned a verdict in favor of Blue Martini, Jimenez moved for a new trial, arguing that the verdict was inconsistent with the evidence and that Blue Martini committed attorney misconduct. The district court denied the motion.

Subsequently, Jimenez appealed the verdict, the order denying Jimenez's motion for a new trial based on attorney misconduct, and the award of attorney fees and cost. This court considered Jimenez's initial appeal, and vacated and remanded the district court's order for failure to make specific findings under *Lioce v. Cohen*, 124 Nev. 1, 174 P.3d 970 (2008). On remand, the district court found that, under the standards set forth in *Lioce*, Blue Martini did not commit attorney misconduct. Jimenez appealed the district court's findings again.

**\*2** On appeal, Jimenez argues that the district court abused its discretion in denying her motion for new trial under NRCP 59 because Blue Martini's counsel committed attorney misconduct during closing arguments. Jimenez further argues the district court abused its discretion by awarding attorney fees and costs to Blue Martini.

As a starting point, Jimenez asserts a number of trial errors, such as the giving of an improper negligence per se instruction; the erroneous giving of a comparative fault instruction; and errors associated with the parties' opening statements. However, these alleged errors were either previously raised and resolved in Jimenez's prior appeal, or should have been raised in that prior appeal. Issues already raised and previously decided by this court become the "law of the case" and cannot be reargued, *Hsu v. Cty. of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (quoting *Wickliffe v. Sunrise Hosp.*, 104 Nev. 777, 780, 766 P.2d 1322, 1324 (1988)). Issues that were not raised but could and should have been raised in that prior appeal are now waived. For example, Jimenez again argues that the court erred in its "negligence per se" and "comparative fault" jury instructions and that these errors were compounded when the jury used the short verdict form instead of the long one. Jimenez's argument is not that either instruction was wrongly phrased as a matter of law, but rather that the jury verdict form indicates that the jury did not accept those legal theories and therefore the instructions were unnecessary. But Jimenez raised this exact argument in his prior briefing and this court already considered and rejected all of Jimenez's arguments arising from the jury verdict form in footnote 3 of our prior order. *Jimenez v. Blue Martini Las Vegas, LLC*, Docket Nos. 72539

& 73953 (Order Vacating Post-Trial Order and Remanding, Ct. App., July 27, 2018).

Thus, the only district court actions that can be properly challenged in this appeal are any new district court determinations that took place following the prior remand or any issue that this court chose not to reach in the prior appeal, namely, the district court's resolution of the question of attorney misconduct and its award of attorney fees and costs following trial. Therefore, these are the only issues that can now be the proper subject of this appeal.

This court reviews a district court's decision to grant or deny a motion for a new trial for an abuse of discretion, viewing the evidence and all inferences favorably to the party against whom the motion was made. *Michaels v. Pentair Water Pool & Spa, Inc.*, 131 Nev. 804, 814, 357 P.3d 387, 395 (Ct. App. 2015). "Under NRCP 59(a)(2), the district court may grant a new trial if the prevailing party's counsel] committed misconduct that affected the aggrieved party's substantial rights." *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 74, 319 P.3d 606, 611 (2014). An attorney commits misconduct when he or she "encourage[s] the jurors to look beyond the law and the relevant facts in deciding the case[ ] before them." *Lioce v. Cohen*, 124 Nev. 1, 6, 174 P.3d 970, 973 (2008).

To determine whether attorney misconduct warrants a new trial, this court must apply a three-step analysis. *Michaels*, 131 Nev. at 815, 357 P.3d at 395. We must first determine whether an attorney's comments constitute misconduct, which is a question of law reviewed de novo. *Id.* If there was misconduct, we must then decide which legal standard to apply to determine whether the misconduct warrants a new trial—a question resolved by determining whether the party alleging misconduct timely objected to it below. *Id.* Finally, we "must determine whether the district court abused its discretion in applying that standard." *Id.*

**\*3** If the party claiming misconduct did not object at trial, "the district court shall first conclude that the failure to object is critical and ... treat the attorney misconduct issue as having been waived, unless plain error exists." *Lioce*, 124 Nev. at 19, 174 P.3d at 982. Plain error exists only where misconduct occurred and "no other reasonable explanation for the verdict

exists.” *Michaels*, 131 Nev. at 816, 357 P.3d at 396 (quoting *Lioce*, 124 Nev. at 19, 174 P.3d at 982).

Here, Jimenez failed to object to Blue Martini's closing argument below. Accordingly, the jury's verdict must stand unless Jimenez can demonstrate both that misconduct occurred and that misconduct is the only reasonable explanation for the verdict. We conclude that there would still be a reasonable explanation for the jury's verdict in favor of Blue Martini apart from any alleged misconduct. Thus, we conclude that plain error does not exist, and we uphold the district court's denial of Jimenez's motion for a new trial.

Next, we consider whether the district court abused its discretion by awarding fees and costs to Blue Martini. Jimenez argues that the district court failed to consider the *Beattie* factors because Blue Martini's offer was not reasonable and Jimenez's rejection of the offer was reasonable. Blue Martini argues the district court fully considered the *Beattie* factors and the fees and costs were appropriate under *Brunzell*.

This court reviews the district court's decision regarding attorney fees for an abuse of discretion. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 80, 319 P.3d 606, 615 (2014). When awarding attorney fees, the district court must consider the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 311 (1969). *Miller v. Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005). When awarding attorney fees in the offer of judgment context under NRCP 68, the district court must consider the factors set forth in *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983), and *Brunzell*.

Here, before awarding attorney fees and costs in favor of Blue Martini, the district fully considered the factors set forth in *Beattie* and *Brunzell*. The district court found that while Jimenez filed and maintained her claim in good faith, her rejection of the offer of judgment was unreasonable. Prior to trial, Blue Martini offered several times the value of Jimenez's medical costs and claimed lost wages despite evidence of prior injury, comparative negligence, and the disputed causation of Jimenez's fall. Accordingly, we conclude the district court did not abuse its discretion by granting Blue Martini's motion for attorney fees and costs.

Lastly, we consider Jimenez's appeal of the supersedeas bond. Jimenez argues that the district court abused its discretion by failing to consider her financial circumstances and imposing an excessive bond. A district court may use its discretion to set a supersedeas bond that will permit full satisfaction of the judgment. *Nelson v. Heer*, 121 Nev. 832, 834-35, 122 P.3d 1252, 1253 (2005). Thus, we conclude the district court did not abuse its discretion when it set the bond well below the judgment against Jimenez.

Based on the foregoing, we

Order the judgment of the district court AFFIRMED.

#### All Citations

Not Reported in Pac. Rptr., 2019 WL 5681078



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This is an unpublished decision. See Nevada Rules of Appellate Procedure, Rule 36(c) before citing.

Court of Appeals of Nevada.

WYNN LAS VEGAS, LLC, Appellant,

v.

Frances Ann BLANKENSHIP, Respondent.

No. 65615.

|

July 17, 2015.

**Attorneys and Law Firms**

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Before GIBBONS, C.J., TAO and SILVER, JJ.

**ORDER AFFIRMING IN PART, VACATING IN PART, AND REMANDING**

**\*1** This is an appeal from a district court judgment on the jury verdict in a personal injury action and from a post-judgment order denying a new trial. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

This appeal arises from a jury verdict in a personal injury claim for damages following a trip-and-fall in May 2009. Respondent Frances Ann Blankenship was on the premises of appellant Wynn Las Vegas, LLC (“Wynn”) when she tripped over a curb. As a result of the fall, Blankenship suffered a broken arm and other injuries. Blankenship filed a complaint against Wynn alleging, as relevant to this appeal, negligence.

On the night of the incident, Blankenship ate dinner with her family and friends at the Botero restaurant at the Encore at Wynn Las Vegas, which is owned by Wynn. After finishing dinner, the group ordered dessert and coffee, and, while waiting to be served, Blankenship and her husband decided to leave the restaurant to smoke a cigarette. Blankenship and her husband exited the restaurant through the front doors, proceeded down some steps, and walked between two large columns that mark the restaurant's entrance. They then turned left and proceeded down a walkway that runs alongside the restaurant's patio area. A curb separates the walkway from the patio. Blankenship and her husband followed the walkway, passing alongside the curb, until they reached the Encore's pool area where they smoked their cigarettes.

After finishing their cigarettes, Blankenship and her husband did not use the walkway to return to the restaurant. Instead, they attempted to reach the restaurant's front doors by passing through its patio area. But, Blankenship tripped over the curb surrounding the patio area and fell.

Photographs were introduced at trial depicting the patio area, curb, walkway, and lighting in the area. The photographs show a number of tables and chairs inside the patio area and arranged alongside the curb. The photographs were taken during the day, however, and do not necessarily depict the tables and chairs as they were positioned on the night of the incident. The photographs also show overhead lighting in the patio area's canopy and lighting in the landscaping along the walkway.

At trial, Blankenship testified she did not see the curb or any indication she could not cross through the patio area, and she would have used an alternate route if she saw the curb. Blankenship also testified she recalled the space between the tables being larger than depicted in the photographs. According to Blankenship, her chosen route appeared to be a safe, direct route to the entrance that would not intrude on other patrons' dining experience. Blankenship testified she did not know what part of her foot hit the curb, but “she fell flat and it knocked [her] out.”<sup>1</sup>

<sup>1</sup> Blankenship's medical records from the night of the incident states Blankenship saw the curb and was stepping over it, suggesting she knew the curb was there and attempted to navigate it. Blankenship testified she did not recall making that statement, and she was groggy when she went to the hospital.

Blankenship acknowledged she purchased four alcoholic beverages on the day of the incident: two beers during the day, a scotch and water at the bar before dinner, and a scotch and water at dinner. But, Blankenship also testified she did not recall whether she drank the entire scotch and water at the bar, and she did not drink the entire scotch and water at dinner. Blankenship further acknowledged she was wearing two and one-half inch heels when she fell.

\*2 Blankenship retained an expert to testify regarding the curb, but the district court granted Wynn's motion to strike that expert because the expert relied upon photographs of the curb to form an opinion.<sup>2</sup> Thus, Blankenship did not adduce expert testimony regarding the curb.

<sup>2</sup> Blankenship alleges Wynn redesigned the curb before offering her an opportunity to inspect it. To the extent Blankenship argues Wynn spoliated evidence, that argument fails on appeal because she did not raise it before the district court. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“[a] point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”).

Wynn's expert, Deruyter Orlando Butler, testified the building code required Wynn to install a barrier between the patio area and the walkway due to a small elevation difference between the two surfaces. Mr. Butler further testified the curb was compliant with the building code, but other barriers, including a planter, rails, or glass would have also been compliant. Mr. Butler acknowledged the curb was not the safest possible barrier, Wynn has used different barriers at other properties, Wynn selected the curb for aesthetic purposes, and other barriers would have also served those aesthetic purposes. Finally, Mr. Butler testified Wynn painted the curb a

contrasting color to promote guest safety and the lighting in the area was code compliant.

The jury returned a verdict in favor of Blankenship, awarding \$100,000 in damages, but that amount was reduced to \$60,000 because the jury also found Blankenship forty percent liable for the incident. Thereafter, Wynn brought a post-trial motion for judgment as a matter of law, or, in the alternative, a motion for a new trial, which the district court denied. This appeal followed.

On appeal, Wynn challenges the district court's determination on several bases. First, Wynn contends substantial evidence did not support the jury's verdict. Second, Wynn argues the jury manifestly disregarded the district court's instructions, and, therefore, the district court abused its discretion by denying Wynn's motion for a new trial. Third, Wynn asserts the district court abused its discretion by denying Wynn's motion for a new trial because Blankenship's counsel encouraged jury nullification during voir dire.

*Whether substantial evidence supported the jury's verdict*

Wynn maintains the present case concerned the design and construction of a curb. Wynn argues the standard applicable to the design and construction of a curb is not within the common knowledge of laypersons, and, therefore, Blankenship was required to present expert testimony regarding the standard of care. Because Blankenship did not present expert testimony, Wynn asserts substantial evidence did not support the jury's verdict. By contrast, Blankenship contends the case was not about the design and construction of the curb, but rather, whether the Wynn unreasonably placed it at the location of the fall. Blankenship further argues expert testimony regarding the standard of care was not required because the reasonableness of the curb at the location of the fall was within the common knowledge of laypersons. Thus, Blankenship maintains substantial evidence supported the jury's verdict.

We will not overturn a jury's verdict if it is supported by substantial evidence, unless, “it was clearly wrong from all the evidence presented.” *Allstate Ins. Co. v. Miller*, 125 Nev. 300, 308, 212 P.3d 318, 324 (2009). “Substantial evidence is that

which a reasonable mind might accept as adequate to support a conclusion.” *Yamaha Motor Co. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998) (internal quotation marks omitted). In reviewing a jury's verdict, we are “not at liberty to weigh the evidence anew, and where conflicting evidence exists, [we draw] all favorable inferences ... towards the prevailing party.” *Id.*

\*3 It is well-established in Nevada “that the standard of care must be determined by expert testimony unless the conduct involved is within the common knowledge of laypersons.” *Daniel, Mann, Johnson & Mendenhall v. Hilton Hotels Corp.*, 98 Nev. 113, 115, 642 P.2d 1086, 1087 (1982). “Where ... the service rendered does not involve esoteric knowledge or uncertainty that calls for [a] professional's judgment, it is not beyond the knowledge of the jury to determine the adequacy of the performance.” *Id.* (citing *Aetna Ins. Co. v. Hellmuth, Obata & Kassabaum, Inc.*, 392 F.2d 472, 478 (8th Cir.1968) (“general rule requiring expert testimony to establish a reasonable standard of professional care ... is not necessary in passing on commonplace factual situations that the ordinary jury layman can readily grasp and understand.”)).

Wynn cites *Woodward v. Chirco Constr. Co.*, 687 P.2d 1275 (Ariz.Ct.App.1984), *Miller v. Los Angeles Cnty. Flood Control Dist.*, 505 P.2d 193 (Cal.1973), *Lemay v. Burnett*, 660 A.2d 1116 (N.H.1995), and *Nat'l Cash Register Co. v. Haak*, 335 A.2d 407 (Pa.Super.Ct.1975) for the proposition that the standard of care associated with the design and construction of the curb is not within the common knowledge of laypersons. We are not persuaded by Wynn's argument. Even if those cases were binding, which they are not, they are distinguishable because Blankenship's underlying claim was not limited to negligent construction or design. Instead, Blankenship tried the case on the theory that the curb presented an unreasonable risk of harm at the location of the fall.

Given Blankenship's theory of the case, the jury was not charged with assessing the structural integrity of the curb or whether a design defect was present in the curb. It was asked to consider whether Wynn, by placing the curb at the location of the fall, created an unreasonable risk of harm—specifically, a tripping hazard. Because that issue falls within the common

knowledge of laypersons, we conclude Blankenship was not required to present expert testimony regarding the standard of care. See *Daniel*, 98 Nev. at 115, 642 P.2d at 1087; see also *Foster v. Costco Wholesale Corp.*, 128 Nev. —, —, 291 P.3d 150, 156 (2012) (holding where a dangerous condition is open and obvious, the jury must decide whether a landowner breaches its duty of care by permitting the condition to exist and allowing a guest to encounter the condition). Given our conclusion, we turn to whether substantial evidence supports the jury's verdict.

At trial, Blankenship presented photographs depicting the area in which the fall took place. Thus, the jury was able to view the curb, walkway, and patio area; the lighting in the area; and the lack of warnings regarding the curb. Blankenship and her husband both testified they did not see the curb or any indication that they could not walk from the walkway through the patio area. Wynn's expert testified the building code required a barrier between the walkway and patio area due to a small elevation change. But, Wynn's expert also testified (1) a curb was not the only option for the location, (2) Wynn selected the curb for aesthetic purposes, and (3) other barriers may have been safer options for the location. Based on the record and given our conclusion that Blankenship was not required to present expert testimony regarding the standard of care, we conclude substantial evidence supported the jury's verdict.

*Whether the jury manifestly disregarded the district courts instructions*

\*4 Wynn contends that without expert testimony regarding the standard of care, the jury could not have found in favor of Blankenship unless it manifestly disregarded the district court's instructions. Thus, Wynn maintains the district court abused its discretion by denying Wynn's motion for a new trial. Blankenship counters she was not required to present expert testimony regarding the standard of care. Hence, Blankenship asserts the district court did not abuse its discretion by denying Wynn's motion for a new trial because the jury did not manifestly disregard the district court's instructions.

A district court's decision granting or denying a motion for a new trial will not be reversed absent a palpable abuse of discretion. *Krause, Inc. v. Little*, 117 Nev. 929, 933, 34 P.3d 566, 569 (2001). Under NRCP 59(a)(5), a district court may grant a new trial if there has been a “[m]anifest disregard by the jury of the instructions of the court.” Our Supreme Court has held “[t]his basis for granting a new trial may only be used if the jury, as a matter of law, could not have reached the conclusion that it reached.” *Carlson v. Locatelli*, 109 Nev. 257, 261, 849 P.2d 313, 315 (1993). In considering whether the jury manifestly disregarded the district court's instructions, we must “assume that the jury understood the instructions and correctly applied them to the evidence.” *McKenna v. Ingersoll*, 76 Nev. 169, 175, 350 P.2d 725, 728 (1960).

We already concluded Blankenship was not required to present expert testimony regarding the standard of care, and, therefore, Wynn's argument that the jury must have manifestly disregarded the district court's instructions fails. Moreover, nothing in the record suggests the jury's verdict is based on a misunderstanding or misapplication of the district court's instructions. The district court properly instructed the jury, without objection from the Wynn, that “a property owner is not an insurer of the safety of a person on its premises[.]” but a property owner still “owes its patrons a duty to keep the premises in a reasonably safe condition for its intended use.” The district court also properly instructed the jury, once again without objection from the Wynn, to use common sense and draw reasonable inferences in considering the evidence. Based on the district court's instructions as well as the evidence and testimony presented at trial, it cannot be said, as a matter of law, the jury could not have reached the conclusion that it reached.

#### *Whether Blankenship's counsel encouraged jury nullification*

We next turn to Wynn's contention that a new trial is warranted because Blankenship's counsel engaged in misconduct by encouraging jury nullification. A district court has discretion to grant or deny a motion for new trial based on attorney misconduct, and we will not reverse that decision absent an abuse of discretion. *See Lioce v. Cohen*, 124 Nev. 1, 20, 174 P.3d 970, 982 (2008).

\*5 Our Supreme Court has held when a district court rules on a motion for a new trial based on attorney misconduct, “the district court *must* make specific findings, both on the record during oral proceedings and in its order, with regard to its application of the standards described [in *Lioce* ] to the facts of the case before it.” *Id.* at 19–20, 174 P.3d at 982 (emphasis added).

In the present case, the district court failed to make the necessary findings—both during oral proceedings and in its written order. Without reasoning supporting the district court's decision, we are unable to determine whether the district court abused its discretion in denying Wynn's motion for a new trial based on attorney misconduct. As such, we vacate the district court's order denying that motion and remand this matter to the district court for a decision applying the standards set forth in *Lioce*. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

#### All Citations

Not Reported in P.3d, 131 Nev. 1366, 2015 WL 4503211

**Wynn Las Vegas, LLC v. Blankenship, Not Reported in P.3d (2015)**

---

131 Nev. 1366, 2015 WL 4503211

---

End of Document

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# EXHIBIT 3

A-19-788630-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**August 15, 2022**

---

A-19-788630-C      Sandra Eskew, Plaintiff(s)  
vs.  
Sierra Health and Life Insurance Company Inc, Defendant(s)

---

**August 15, 2022      3:00 AM      Minute Order      Defendant's Motion for a  
New Trial or Remittitur**

**HEARD BY:** Krall, Nadia      **COURTROOM:** Chambers

**COURT CLERK:** Pharan Burchfield

**JOURNAL ENTRIES**

- NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to secure efficient, just and inexpensive determinations in every action and proceeding.

Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time with or without oral argument, and grant or deny it.

Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022; Plaintiff's Opposition to Defendant's Motion for a New Trial or Remittitur filed on 6/29/2022; Defendant's Reply in Support of Its Motion for a New Trial or Remittitur filed on 7/20/2022; and Defendant's Motion for Leave to File Supplemental Authority in Support of its Motion for a New Trail or Remittitur filed on 8/10/2022.

The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on file.

COURT ORDERED, Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022 is DENIED pursuant to Bahena v. Goodyear Tire & Rubber Co., 126 Nev. 243 (2010); NRCP 59(a)(1)(B) & (F); Wyeth v. Rowatt, 126 Nev. 446 (2010); Bayerische Motoren Werke Aktiengesellschaft v. Roth, 127 Nev. 122 (2011); Grosjean v. Imperial Palace, 125 Nev. 349 (2009); Cox v. Copperfield, 138 Nev. Adv. Op. 27 (2022); Pizarro-Ortega v. Cervantes-Lopez, 133 Nev. 261 (2017); Lioce v. Cohen, 124 Nev. 1 (2008); Ringle v. Bruton, 120 Nev. 82 (2004); Walker v. State, 78 Nev. 463 (1962); Born v. Eisenman, 114 Nev. 854 (1998); Satackiewicz v. Nissan Motor Corp. in U.S.A., 100 Nev. 443 (1983); Guaranty Nat. Ins. Co. v. Potter, 112 Nev. 199 (1996); Automatic Merchandisers, Inc. v. Ward, 98 Nev. 282 (1982); Hernancez v. City of Salt Lake, 100 Nev. 504 (1984); Dejesus v. Flick, 116 Nev. 812 (2000); Wells, Inc.

PRINT DATE: 08/15/2022

Page 1 of 2

Minutes Date: August 15, 2022



v. Shoemake, 64 Nev. 57 (1947); Nevada Independent Broadcasting Corporation v. Allen, 99 Nev. 404 (1983); Quintero v. McDonald, 116 Nev. 1181 (2000); Barmettler v. Reno, Air, Inc., 114 Nev. 441 (1998); State v. Eaton, 101 Nev. 705 (1985); Jacobson v. Manfredi, 100 Nev. 226 (1984); BMW of N. Am. Inc. v. Gore, 517 U.S. 559 (1996); State Farm Mut. Aut. Ins. Co. v. Campbell, 538 U.S. 408 (2003); TXO Prod. Corp. v. Alliance Res. Corp., 509 U.S. 443 (1993); Merrick v. Paul Revere Life Ins. Co., 594 F.Supp.2d 1168 (Nev. Dis. 2008); and Campbell v. State Farm. Mut. Auto Ins. Co., 98 P.3d 409 (Utah 2004).

COURT FURTHER ORDERED, counsel for Plaintiff to draft and circulate a proposed order for opposing counsel's signature prior to submitting it to the Department 4 inbox for the Judge's review and signature within fourteen (14) days and distribute a filed copy to all parties involved in this matter.

COURT FURTHER ORDERED, counsel for Plaintiff to include Findings of Fact and Conclusions of Law based upon the Memorandum of Points and Authorities set forth in Plaintiff's pleadings.

COURT FURTHER ORDERED, Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022 and scheduled for hearing on 8/17/2022 at 9:00 A.M. is VACATED.

CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Pharan Burchfield, to all registered parties for Odyssey File & Serve.//pb/8/15/22.

# EXHIBIT 4

**Subject:** RE: A-19-788630-FCCO-Eskew vs. Sierra Health  
**Date:** Monday, September 19, 2022 at 11:59:47 AM Pacific Daylight Time  
**From:** Gormley, Ryan  
**To:** Sorensen, David  
**CC:** 'Deepak Gupta', 'Doug Terry', 'Matthew Wessler', Roberts, Lee, 'Dupree Jr., Thomas H.', 'Cristin Sharp', 'suzy@mattsharplaw.com', Everett, Tia, 'Matt Sharp', Everett, Tia  
**Attachments:** image001.jpg, image002.png, e-sig2022final\_ba5cc7df-d101-455c-b785-e4dfc6477db3.png, SHL\_s Proposed Order Denying JAML\_105727195\_1 (002).docx, SHL\_s Proposed Order Denying New Trial\_105727199\_1 (002).docx, SHL\_s Proposed Order Denying New Trial\_105727199\_1 (002).pdf, SHL\_s Proposed Order Denying JAML\_105727195\_1 (002).pdf

Please find attached Defendant's proposed orders in PDF and word format.

Thank you,

---

**From:** Sorensen, David <Dept04LC@clarkcountycourts.us>  
**Sent:** Monday, September 19, 2022 7:47 AM  
**To:** Gormley, Ryan <RGormley@wwhgd.com>  
**Cc:** 'Deepak Gupta' <deepak@guptawessler.com>; 'Doug Terry' <doug@dougterrylaw.com>; 'Matthew Wessler' <matt@guptawessler.com>; Roberts, Lee <LRoberts@wwhgd.com>; 'Dupree Jr., Thomas H.' <TDupree@gibsondunn.com>; 'Cristin Sharp' <cristin@mattsharplaw.com>; 'suzy@mattsharplaw.com' <suzy@mattsharplaw.com>; Everett, Tia <EverettT@clarkcountycourts.us>; 'Matt Sharp' <matt@mattsharplaw.com>; Everett, Tia <EverettT@clarkcountycourts.us>  
**Subject:** RE: A-19-788630-FCCO-Eskew vs. Sierra Health

**This Message originated outside your organization.**

---

Mr. Gormley,

Per my previous email and per the request of the Judge, please provide your proposed orders to me no later than today at noon.

Regards,



DAVID S. SORENSEN, Esq.  
Law Clerk to the Honorable Nadia Krall  
Eighth Judicial District Court – Department 4  
Phone – (702) 671-0513  
[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)

**From:** Gormley, Ryan <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>  
**Sent:** Friday, September 16, 2022 4:03 PM  
**To:** Sorensen, David <[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)>  
**Cc:** 'Deepak Gupta' <[deepak@guptawessler.com](mailto:deepak@guptawessler.com)>; 'Doug Terry' <[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)>; 'Matthew Wessler' <[matt@guptawessler.com](mailto:matt@guptawessler.com)>; Roberts, Lee <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>; 'Dupree Jr., Thomas H.' <[TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)>; 'Cristin Sharp' <[cristin@mattsharplaw.com](mailto:cristin@mattsharplaw.com)>; 'suzy@mattsharplaw.com' <[suzy@mattsharplaw.com](mailto:suzy@mattsharplaw.com)>; Everett, Tia <[EverettT@clarkcountycourts.us](mailto:EverettT@clarkcountycourts.us)>; 'Matt Sharp' <[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)>; Everett, Tia <[EverettT@clarkcountycourts.us](mailto:EverettT@clarkcountycourts.us)>  
**Subject:** RE: A-19-788630-FCCO-Eskew vs. Sierra Health

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT

Thank you, Mr. Sorensen. While we would be pleased to submit anything the Court desires, we presented our objections to plaintiff's proposed orders in writing and did not plan to submit anything further. Redlined documents would not assist the Court because we cannot agree to virtually anything in the plaintiff's proposed orders. We suggest that the Court simply issue short orders that track the language in the Court's August 15 minute orders denying defendant's post-trial motions, rather than adopt plaintiff's overlength, argumentative, and inaccurate proposals.

Thank you,

---

**From:** Sorensen, David <[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)>  
**Sent:** Wednesday, September 14, 2022 2:54 PM  
**To:** Gormley, Ryan <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>  
**Cc:** 'Deepak Gupta' <[deepak@guptawessler.com](mailto:deepak@guptawessler.com)>; 'Doug Terry' <[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)>; 'Matthew Wessler' <[matt@guptawessler.com](mailto:matt@guptawessler.com)>; Roberts, Lee <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>; 'Dupree Jr., Thomas H.' <[TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)>; 'Cristin Sharp' <[cristin@mattsharplaw.com](mailto:cristin@mattsharplaw.com)>; 'suzy@mattsharplaw.com' <[suzy@mattsharplaw.com](mailto:suzy@mattsharplaw.com)>; Everett, Tia <[EverettT@clarkcountycourts.us](mailto:EverettT@clarkcountycourts.us)>; 'Matt Sharp' <[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)>; Everett, Tia <[EverettT@clarkcountycourts.us](mailto:EverettT@clarkcountycourts.us)>  
**Subject:** RE: A-19-788630-FCCO-Eskew vs. Sierra Health

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---

Mr. Gormley,

Judge is requesting that you submit your competing orders and strike-through/redline versions of both of Plaintiffs proposed orders no later than next Monday(9/19/2022 at noon).

Regards,



DAVID S. SORENSEN, Esq.  
Law Clerk to the Honorable Nadia Krall  
Eighth Judicial District Court – Department 4  
Phone – (702) 671-0513  
[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)

---

**From:** Gormley, Ryan <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>  
**Sent:** Wednesday, August 31, 2022 4:35 PM  
**To:** Sorensen, David <[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)>  
**Cc:** 'Deepak Gupta' <[deepak@guptawessler.com](mailto:deepak@guptawessler.com)>; 'Doug Terry' <[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)>; 'Matthew Wessler' <[matt@guptawessler.com](mailto:matt@guptawessler.com)>; Roberts, Lee <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>; 'Dupree Jr., Thomas H.' <[TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)>; 'Cristin Sharp' <[cristin@mattsharplaw.com](mailto:cristin@mattsharplaw.com)>; 'suzy@mattsharplaw.com' <[suzy@mattsharplaw.com](mailto:suzy@mattsharplaw.com)>; Everett, Tia <[EverettT@clarkcountycourts.us](mailto:EverettT@clarkcountycourts.us)>; 'Matt Sharp' <[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)>  
**Subject:** RE: A-19-788630-FCCO-Eskew vs. Sierra Health

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Good afternoon Mr. Sorensen,

With respect to the proposed orders submitted by Plaintiff, Defendant filed an objection and further objection. They are attached here. At this time, Defendant does not intend to file or submit anything further in relation to the proposed orders. Please let us know if you have any questions.

Thank you,



LITIGATION DEPARTMENT  
OF THE YEAR ALM'S DAILY REPORT  
2022 - 2020 - 2019 - 2018 - 2017 - 2016 - 2014

Ryan Gormley, Attorney  
**Weinberg Wheeler Hudgins Gunn & Dial**  
6385 South Rainbow Blvd. | Suite 400 | Las Vegas, NV 89118  
D: 702.938.3813 | F: 702.938.3864  
[www.wwhgd.com](http://www.wwhgd.com) | [vCard](#)

**From:** Sorensen, David <[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)>  
**Sent:** Tuesday, August 30, 2022 12:04 PM  
**To:** 'suzy@mattsharplaw.com' <[suzy@mattsharplaw.com](mailto:suzy@mattsharplaw.com)>  
**Cc:** 'Deepak Gupta' <[deepak@guptawessler.com](mailto:deepak@guptawessler.com)>; 'Doug Terry' <[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)>; 'Matthew Wessler' <[matt@guptawessler.com](mailto:matt@guptawessler.com)>; Roberts, Lee <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>; 'Dupree Jr., Thomas H.' <[TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)>; Gormley, Ryan <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>; 'Cristin Sharp' <[cristin@mattsharplaw.com](mailto:cristin@mattsharplaw.com)>; Everett, Tia <[EverettT@clarkcountycourts.us](mailto:EverettT@clarkcountycourts.us)>; 'Matt Sharp' <[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)>  
**Subject:** RE: A-19-788630-FCCO-Eskew vs. Sierra Health

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---

Suzy and Counsel for Defendants,  
You need to attach that to the back of the order so that it is all one document and resend it to me. It appears that all of these are going to be competing orders. If opposing counsel can  
Email me their version in both Word and PDF no later than close of business tomorrow I would appreciate it. Additionally, please redline/strikethrough any language that is not agreed upon.

Regards,



DAVID S. SORENSEN, Esq.  
Law Clerk to the Honorable Nadia Krall  
Eighth Judicial District Court – Department 4  
Phone – (702) 671-0513  
[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)

---

**From:** [suzy@mattsharplaw.com](mailto:suzy@mattsharplaw.com) <[suzy@mattsharplaw.com](mailto:suzy@mattsharplaw.com)>  
**Sent:** Tuesday, August 30, 2022 11:40 AM  
**To:** Sorensen, David <[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)>  
**Cc:** 'Deepak Gupta' <[deepak@guptawessler.com](mailto:deepak@guptawessler.com)>; 'Doug Terry' <[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)>; 'Matthew Wessler' <[matt@guptawessler.com](mailto:matt@guptawessler.com)>; 'Lee Roberts' <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>; 'Dupree Jr., Thomas H.' <[TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)>; 'Ryan Gormley' <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>; 'Cristin Sharp' <[cristin@mattsharplaw.com](mailto:cristin@mattsharplaw.com)>; Everett, Tia <[EverettT@clarkcountycourts.us](mailto:EverettT@clarkcountycourts.us)>; 'Matt Sharp' <[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)>  
**Subject:** RE: A-19-788630-FCCO-Eskew vs. Sierra Health

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT

David,

Here is the email communication not approving the proposed order that didn't get attached previously.

Suzy Thompson  
Legal Assistant  
Matthew L. Sharp, Ltd.  
432 Ridge Street  
Reno, NV 89501  
[Suzy@mattsharpplaw.com](mailto:Suzy@mattsharpplaw.com)  
(775) 324-1500  
(775) 284-0675 fax

---

**From:** Sorensen, David <[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)>  
**Sent:** Tuesday, August 30, 2022 8:31 AM  
**To:** 'Matt Sharp' <[matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)>  
**Cc:** Deepak Gupta <[deepak@guptawessler.com](mailto:deepak@guptawessler.com)>; Doug Terry <[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)>; Matthew Wessler <[matt@guptawessler.com](mailto:matt@guptawessler.com)>; Lee Roberts <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>; Dupree Jr., Thomas H. <[TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)>; Ryan Gormley <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>; Suzy Thompson <[suzy@mattsharpplaw.com](mailto:suzy@mattsharpplaw.com)>; Cristin Sharp <[cristin@mattsharpplaw.com](mailto:cristin@mattsharpplaw.com)>; Everett, Tia <[EverettT@clarkcountycourts.us](mailto:EverettT@clarkcountycourts.us)>  
**Subject:** RE: A-19-788630-FCCO-Eskew vs. Sierra Health

Counsel,

I am unable to print the PDF versions of your proposed orders. An error message appears when I try to print it.

Additionally, if counsel for Defendant intends on providing their own versions of these orders, please do so by the end of business tomorrow. Please email me Word and PDF versions of your competing orders with redlines/strikethroughs of the language that you do not agree with.

Regards,



DAVID S. SORENSEN, Esq.  
Law Clerk to the Honorable Nadia Krall  
Eighth Judicial District Court – Department 4  
Phone – (702) 671-0513  
[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)

**From:** Matt Sharp <[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)>  
**Sent:** Monday, August 29, 2022 8:56 PM  
**To:** Sorensen, David <[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)>  
**Cc:** Deepak Gupta <[deepak@guptawessler.com](mailto:deepak@guptawessler.com)>; Doug Terry <[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)>; Matthew Wessler <[matt@guptawessler.com](mailto:matt@guptawessler.com)>; Lee Roberts <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>; Dupree Jr., Thomas H. <[TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)>; Ryan Gormley <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>; Suzy Thompson <[suzy@mattsharplaw.com](mailto:suzy@mattsharplaw.com)>; Cristin Sharp <[cristin@mattsharplaw.com](mailto:cristin@mattsharplaw.com)>  
**Subject:** Re: A-19-788630-FCCO-Eskew vs. Sierra Health

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT

David,

Per the clerks request, I am attaching the proposed orders denying the Renewed Motion for Judgment Notwithstanding the Verdict and Motion for New Trial or Remittitur

We have attached a PDF of the proposed and a Microsoft Word version of the proposed order.

The defendant has not approved the proposed order. The email communication is attached to the PDF of the proposed order.

Matthew Sharp  
432 Ridge St.  
Reno, NV 89501  
[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)  
775-324-1500  
Past-President Nevada Justice Association  
Board of Governors American Association for Justice  
Leaders Forum American Association for Justice

The information contained in this message may contain privileged client confidential information. If you have received this message in error, please delete it and any copies immediately.



1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/7/2022

15 Audra Bonney

abonney@wwhgd.com

16 Cindy Bowman

cbowman@wwhgd.com

17 D. Lee Roberts

lroberts@wwhgd.com

18 Raiza Anne Torrenueva

rtorrenueva@wwhgd.com

19 Matthew Sharp

matt@mattsharplaw.com

20 Cristin Sharp

cristin@mattsharplaw.com

21 Thomas Dupree

TDupree@gibsondunn.com

22 Ryan Gormley

rgormley@wwhgd.com

23 Flor Gonzalez-Pacheco

FGonzalez-Pacheco@wwhgd.com

24 Suzy Thompson

suzy@mattsharplaw.com

25 Marjan Hajimirzaee

mhajimirzaee@wwhgd.com

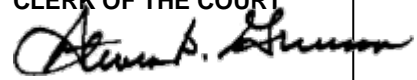
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Maxine Rosenberg	Mrosenberg@wwhgd.com
Stephanie Glantz	sglantz@wwhgd.com
Douglas Terry	doug@dougterrylaw.com

# EXHIBIT I

# EXHIBIT I



NEFF  
MATTHEW L. SHARP, ESQ.  
Nevada State Bar #4746  
Matthew L. Sharp, Ltd.  
432 Ridge St.  
Reno, NV 89501  
(775) 324-1500  
[matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)

Doug Terry, Esq.  
*Admitted PHV*  
DOUG TERRY LAW, PLLC.  
200 E. 10<sup>th</sup> St. Plaza, Ste. 200  
Edmond, OK 73013  
(405) 463-6362  
[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)

*Attorney for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,  
  
Plaintiffs,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,  
  
Defendant.

Case No. A-19-788630-C

Dept. No. 4

**NOTICE OF ENTRY OF FINDINGS AND CONCLUSIONS AS TO ALLEGATIONS OF**  
**ATTORNEY MISCONDUCT**

PLEASE TAKE NOTICE that the Findings and Conclusions as to Allegations of Attorney  
Misconduct was filed herein on October 24, 2022, in the above-captioned matter.

///

///

///

///

1 A copy of the Findings and Conclusions as to Allegations of Attorney Misconduct is attached  
2 hereto as Exhibit 1.

3 DATED this 24<sup>th</sup> day of October 2022.

4 MATTHEW L. SHARP, LTD.

5  
6 /s/ Matthew L. Sharp  
7 MATTHEW L. SHARP, ESQ.  
8 Nevada Bar No. 4746  
9 432 Ridge Street  
10 Reno NV 89501  
11 (775) 324-1500  
12 [matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)  
13 *Attorneys for Plaintiffs*  
14  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Matthew L. Sharp, Ltd., and that on this date, a true  
3 and correct copy of the foregoing was electronically filed and served on counsel through the Court's  
4 electronic service system pursuant to Administrative Order 14-2 and NEFCR 9, via the electronic mail  
5 address noted below:

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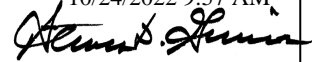
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13 DATED this 24<sup>th</sup> day of October 2022.

14  
15  
16 /s/ Suzy Thompson  
An employee of Matthew L. Sharp, Ltd.

# EXHIBIT 1

  
CLERK OF THE COURT

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,

Plaintiffs,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC., UNITED HEALTHCARE,  
INC.

Defendants.

Case No. A-19-788630-C

Dept. No. 4

**FINDINGS AND CONCLUSIONS AS TO**  
**ALLEGATIONS OF ATTORNEY MISCONDUCT**

Following an eleven-day trial, a jury found Defendant Sierra Health & Life Insurance Company (“SHL”) liable for breaching the duty of good faith and fair dealing and awarded \$40 million in compensatory damages and \$160 million in punitive damages to Plaintiff Sandra Eskew, who is proceeding individually and as Special Administrator of the Estate of William George Eskew. SHL filed a Motion for New Trial or Remittitur. The Court denied the motion.

As part of its Motion for New Trial, SHL asked for new trial based upon the allegation of attorney misconduct. With respect to the order denying SHL’s Motion for New Trial on the basis of alleged attorney misconduct, this Court makes express findings as a required by *Lioce v. Cohen*, 124 Nev. 1, 174 P.3d 970 (2008).

1. When a party makes a motion for a new trial on the basis of allegations of attorney misconduct at trial, the district court must apply the detailed, sliding-scale standard first articulated by the Nevada Supreme Court in *Lioce v. Cohen*, 124 Nev. at 16, 174 P.3d at 980. Under *Lioce*, when ruling on a motion for a new trial based on attorney misconduct, “district courts must make express factual findings.” *Id.*



1           2.       As this Court observed at the end of the trial, counsel for both parties conducted  
2 themselves with exemplary professionalism throughout the trial in this matter. *See App–2832*. This  
3 was not a trial marred by persistent misconduct or lapses in decorum. The record cannot support a  
4 finding of prejudicial misconduct. At trial, neither party conveyed a contrary view. Though both  
5 parties leveled ordinary courtroom objections to one another’s conduct, SHL raised only a few  
6 objections to Mrs. Eskew’s counsel’s conduct on misconduct grounds and did not seek a single  
7 curative admonishment.

8           3.       Only after the jury returned a verdict against it did SHL claim for the first time, in its  
9 post-trial briefing, that the trial was tainted by misconduct. SHL’s motion for a new trial quotes  
10 numerous statements from the trial out of context and attempts to portray them as attorney  
11 misconduct that undermined the trial. But after carefully considering each statement identified by  
12 SHL, based on its vantage point presiding over the entire trial, the Court is unable to find any  
13 instance of attorney misconduct, let alone misconduct that would warrant a new trial under the  
14 exacting prejudice standards outlined by the Nevada Supreme Court.

15           SHL’s motion identifies certain statements by Plaintiff’s counsel that SHL argues, taken  
16 individually or cumulatively, allegedly amount to misconduct warranting a new trial. These  
17 statements include:

- 18           • Plaintiff’s counsel stated “I will tell you, I have seen a lot in a courtroom. I have never  
19 seen a witness implode like Dr. Kumar.” *App. Vol. 11 (4/4 Tr.) at 2511*.
- 20           • Plaintiff’s counsel stated that a jury instruction was “remarkable to me.” *Id. at 2531*.
- 21           • Plaintiff’s counsel stated that “it’s remarkable to me that [SHL] would adopt policies and  
22 programs to violate the duty of good faith when they know if they give their best effort,  
23 we wouldn’t be here. That’s a statement of arrogance on their part.” *Id. at 2532*.
- 24           • Plaintiff’s counsel commented on “[w]hat I find remarkable” and “what I think is  
25 remarkable” about this case. *Id. at 2543, 2544*.
- 26           • Plaintiff’s counsel commented on what was “amazing[] to [him]” about the case. *Id. at*  
27           2545.  
28

- 1 • Plaintiff's counsel stated "I think that's tragic." *Id.* at 2543.
- 2 • Plaintiff's counsel stated "Mr. Terry and I . . . want you" to hold SHL liable and that "Mr.
- 3 Terry and I would put in" an award of \$30 million in compensatory damages when filling
- 4 out the verdict form. *Id.* at 2578.
- 5 • Plaintiff's counsel commented on alleged "hypocrisy" concerning proton beam therapy,
- 6 stating "it's breathtaking to me. The hypocrisy of that just knocks the wind out of me.
- 7 Sometimes I can't believe it. And the funny thing is, the part I'm just God smacked by—"
- 8 *Id.* at 2655.
- 9 • Plaintiff's counsel stated SHL was "speaking out of both sides of [its] mouth" about
- 10 proton beam therapy and told the jury: "I think it renders everything they say about that
- 11 topic unbelievable." *Id.* at 2655–56.
- 12 • Plaintiff's counsel stated "[s]o here's what we ask you to do. Check yes on No. 1 on the
- 13 verdict form. Write in \$30 million and do it with your chest stuck out proudly. Don't
- 14 hesitate. It's the right thing to do. We wouldn't ask you to do it if we weren't convinced
- 15 it was the right thing to do." *Id.* at 2692.
- 16 • Plaintiff's counsel asked if Ms. Eskew had been "lying" and suggested SHL's counsel
- 17 "called her a liar." *See App. Vol. 7 (3/24 Tr.)* at 1543.
- 18 • Plaintiff's counsel then stated "[s]o, Sandy, that guy just said that you have an incentive to
- 19 get on that stand and lie. How does that make you feel?" *Id.*
- 20 • Plaintiff's counsel stated "[s]o this incentive, this money incentive that these people are
- 21 accusing you of having to come here, do you think they have an incentive to come in here
- 22 and call the widow of Bill Eskew and his children liars[?]" *Id.* at 1547.
- 23 • Plaintiff's counsel stated "Did that incentive call you and BJ . . . and Tyler liars? . . . Right
- 24 here in the courthouse in front of people that you don't know?" *Id.*
- 25
- 26
- 27
- 28

- 1 • Plaintiff’s counsel stated “I never thought that an insurance company . . . would stoop to  
2 that, what happened in front of you, to call honest people liars.” App. Vol. 11 (4/4 Tr.) at  
3 2509.
- 4 • Plaintiff’s counsel stated that Ms. Eskew was “a 69-year-old woman” and that SHL’s  
5 counsel “haven’t been able to beat her down no matter what they do to her and her kids on  
6 the stand.” *Id.* at 2690.
- 7 • Plaintiff’s counsel told Shelean Sweet, SHL’s claims manager “to turn to the jury and say,  
8 on behalf of the utilization review manager for Sierra Health and Life, that you agree with  
9 their verdict.” App. Vol. 12 (4/5 Tr.) at 2778.
- 10 • Plaintiff’s counsel told Ms. Sweet to “turn to the jury and tell them that on behalf of Sierra  
11 Health and Life, as a utilization management director, whether or not you accept the  
12 amount?” *Id.* at 2778–79.
- 13 • Plaintiff’s counsel told Ms. Sweet that “[t]here was an amount of money that was awarded  
14 by this jury in the amount of \$40 million to Mr. Eskew for his compensatory  
15 damages . . . . [T]urn to that jury and tell them whether you accept that finding.” *Id.* at  
16 2779.

17  
18 The Court finds that none of the above statements amounts to attorney misconduct warranting  
19 a new trial under the standards set forth in *Lioce*.

20 **A. Nevada law places a heavy burden on objecting parties to establish that**  
21 **misconduct warrants a new trial.**

22 4. Nevada law permits a district court to grant a new trial based on a prevailing party’s  
23 misconduct only if the movant can show misconduct affecting its “substantial rights.” *Gunderson v.*  
24 *D.R. Horton, Inc.*, 130 Nev. 67, 74, 319 P.3d 606, 611 (2014). This requires showing that  
25 misconduct occurred. *See Id.* And in addition, “[t]o justify a new trial, as opposed to some other  
26 sanction, unfair prejudice affecting the reliability of the verdict must be shown.” *Bayerische*  
27 *Motoren Werke Aktiengesellschaft v. Roth*, 127 Nev. 122, 132–33, 252 P.3d 649, 656 (2011).

1           5.       As a general matter, counsel “enjoy[] wide latitude in arguing facts and drawing  
2 inferences from the evidence.” *Grosjean v. Imperial Palace*, 125 Nev. 349, 364, 212 P.3d 1068,  
3 1078 (2009). What they may not do is “make improper or inflammatory arguments that appeal  
4 solely to the emotions of the jury.” *Id.* Thus, statements “cross[] the line between advocacy and  
5 misconduct” when they “ask[] the jury to step outside the relevant facts” and reach a verdict based  
6 on its “emotions” rather than the evidence. *Cox v. Copperfield*, 138 Nev. Adv. Op. 27, 507 P.3d  
7 1216, 1227 (2022). An attorney’s argument may urge the jury to “send a message,” but it cannot ask  
8 the jury to “ignore the evidence.” *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 269, 396 P.3d  
9 783, 790 (2017).

10           6.       Even when a party engages in misconduct, whether that misconduct results in “unfair  
11 prejudice” warranting a new trial depends on the context in which the misconduct occurred. *Roth*,  
12 127 Nev. at 132–33, 252 P.3d at 656. Most importantly, it depends on whether the moving party  
13 “competently and timely” stated its objections and sought to correct “any potential prejudice.” *Lioce*,  
14 124 Nev. at 16, 174 P.3d at 980. That is because “the failure to object to allegedly prejudicial  
15 remarks at the time an argument is made . . . strongly indicates that the party moving for a new trial  
16 did not consider the arguments objectionable at the time they were delivered, but made that claim as  
17 an afterthought.” *Ringle v. Bruton*, 120 Nev. 82, 95, 86 P.3d 1032, 1040 (2004). Nor is simply  
18 objecting enough. Parties must also “promptly” request that the court admonish the offending  
19 counsel and the jury. *Gunderson*, 130 Nev. at 77, 319 P.3d at 613.

20           7.       The Supreme Court thus has adopted a sliding scale for assessing prejudice. When  
21 the moving party fails to object, it bears a particularly high burden: It must show “plain error”—that  
22 is, that the misconduct “amounted to irreparable and fundamental error” resulting “in a substantial  
23 impairment of justice or denial of fundamental rights,” such that “it is plain and clear that no other  
24 reasonable explanation for the verdict exists.” *Id.*, 130 Nev. at 75, 319 P.3d at 612. When, by  
25 contrast, the moving party *does* object, the question becomes what steps the party took to cure any  
26 prejudice. If the court sustained an objection and admonished counsel and the jury, the moving party  
27 must show that the misconduct was “so extreme that the objection and admonishment could not  
28 remove the misconduct’s effect.” *Lioce*, 124 Nev. at 17, 174 P.3d at 981. If the moving party never

sought an admonishment, it must instead show that the misconduct was “so extreme” that what did occur—objection and sustainment—“could not have removed the misconduct’s effect.” *Gunderson*, 130 Nev. at 77, 319 P.3d at 613. Meanwhile, if the moving party objected but its objection was overruled, it bears the burden of showing that it was error to overrule the objection and that an admonition would have affected the verdict in its favor. *Lioce*, 124 Nev. at 18, 174 P.3d at 981.

**B. Viewed in context, and applying the proper legal standards, none of counsel’s conduct constituted misconduct warranting a new trial.**

8. SHL points to three types of statements that it says amount to misconduct warranting a new trial. It says that counsel improperly injected their “personal beliefs into the proceedings,” improperly leveled personal “attack[s]” on SHL’s counsel, and improperly questioned one SHL witness. Counsel may not state “to the jury a personal opinion as to the justness of a cause, the credibility of a witness, or the culpability of a civil litigant.” *Lioce*, 124 Nev. at 21, 174 P.3d at 983. And they may not impugn parties or witnesses with a stream of offensive epithets. *See Born v. Eisenman*, 114 Nev. 854, 861–62, 962 P.2d 1227, 1231–32 (1998). In the Court’s view, counsel did not violate either of these proscriptions here.

**i. Counsel did not improperly state a personal opinion as to the justness of a cause, credibility of a witness, or culpability of a civil litigant when they observed that various facts were “remarkable” or “tragic.”**

9. Counsel did not offer a personal opinion as to the justness of a cause, credibility of a witness, or culpability of a civil litigant when they described Jury Instruction 24 as “remarkable.” App-2531. Instruction 24 explained to the jury that (1) an insurer is “not liable for bad faith for being incorrect about policy coverage as long as the insurer had a reasonable basis to take the position that it did” and (2) bad faith “requires an awareness that no reasonable basis exists to deny the insurance claims.” Jury Ins. No. 24. In calling the instruction “remarkable,” counsel was observing the relationship between the instruction and the evidence at trial: The instruction, they argued, did not set a high bar, yet the evidence showed SHL nevertheless fell short. App-2531–32. The remark thus was not a personal opinion on one of the prohibited topics at all. The Court finds that it was an inconsequential observation in the course of a detailed, fact bound explanation of why the evidence at trial reflected bad faith.

1           10. Nor did counsel offer such a prohibited personal opinion when, shortly thereafter,  
2 they described as “remarkable” which policies SHL had adopted in light of its obligations not to  
3 violate the duty of good faith. App-2532. The Court finds that the observation offered only mild  
4 emphasis as counsel explained the relationship of the evidence to the duty.

5           11. Counsel likewise did not offer an improper personal opinion when they remarked that  
6 it was “tragic” that a particular witness had not heard of the duty of good faith. App-2543. As  
7 above, this statement is not a personal opinion as to the justness of a cause, credibility of a witness,  
8 or culpability of a civil litigant. It was a stray observation on the extent of the witness’s knowledge.

9           12. Counsel did not offer an improper personal opinion when they said it was  
10 “remarkable” that SHL failed to put on a particular witness. App-2543–44. Like the statements  
11 above, the comment is not a personal opinion as to the justness of a cause, credibility of a witness, or  
12 culpability of a civil litigant. In context, the Court finds that it was an ordinary trial argument about  
13 the evidence that SHL decided to present at trial.

14           13. Counsel did not offer a personal opinion as to the justness of a cause, credibility of a  
15 witness, or culpability of a civil litigant when they used the adverb “amazingly” to characterize  
16 SHL’s lack of supervision over reviewers like Dr. Ahmad. App-2545. At most, the Court finds that  
17 the adverb was argumentative language deployed to characterize the evidence.

18           14. Even if any of the comments just listed could be deemed personal opinions as to the  
19 justness of a cause, credibility of a witness, or culpability of a civil litigant, they would not warrant a  
20 new trial. SHL did not object to a single one at trial—either contemporaneously or when the Court  
21 explicitly asked if the parties had any issues to raise outside the presence of the jury. *See App-*  
22 *2535–41*. They are thus reviewed for plain error.

23           15. There was no plain error here. There are “other reasonable explanation[s]” for the  
24 jury’s verdict, *Gunderson*, 130 Nev. at 75, 319 P.3d at 612, than the “few sentences” SHL identifies,  
25 *Cox*, 507 P.3d at 1228, because the evidence at trial, viewed in the light most favorable to Mrs.  
26 Eskew, was overwhelming. The jury heard evidence that SHL sold Mr. Eskew a platinum health  
27 insurance policy that expressly covered therapeutic radiation services like proton-beam therapy.  
28 App-1035–40, 1057. It heard evidence that Mr. Eskew’s doctor, a leading expert, determined that

1 proton-beam therapy was necessary to treat his lung cancer while sparing critical nearby organs.  
2 Liao Dep. 48–49, 69–75, 84–88; App-531–33, 539–40, 1067–68, 1106. But, the jury learned, SHL  
3 refused to approve the treatment, instead applying its corporate medical policy of refusing to  
4 approve proton-beam treatment for lung cancer in any circumstances. App-331–33, 813–18, 837–  
5 45. It sent Mr. Eskew’s claim to a reviewer who had no expertise in radiation oncology and who did  
6 not investigate his claim, instead taking only 12 minutes to deny it. App-247–48, 250, 319–21, 337–  
7 41, 463, 1083–84, 1114. SHL defended its policy on the ground that proton-beam therapy was not  
8 medically necessary, but the overwhelming evidence showed otherwise. *See* App-106, 116–17, 331–  
9 41 (SHL policy acknowledging benefits of PBT); App-660–61 (studies cited in SHL policies support  
10 use of PBT); App-720–22, 901–11 (SHL’s sister company operated a proton-beam therapy center).

11 16. The jury heard evidence that the IMRT treatment Mr. Eskew had to receive instead  
12 caused great harm to his physical and emotional health. It learned that the intensive radiation  
13 generated by IMRT caused “Grade III esophagitis”—meaning that Mr. Eskew spent the last months  
14 of his life weak, unable to eat or drink, vomiting daily, and losing weight or unable to keep it on.  
15 App-594–606, 680–83, 709–11, 719–20, 1203–08, 1256–58, 1324, 1401–13; Liao Dep. 76–77, 81–  
16 83, 155. And it learned that Mr. Eskew became withdrawn, isolated, and unhappy, unable to enjoy  
17 the company of his family or the activities he previously enjoyed. App-1200–02, 1256, 1259–60,  
18 1416–18, 1610.

19 17. The Court thus cannot find that the record supports SHL’s claim that counsel’s  
20 statements made a meaningful difference.

21 **ii. Counsel did not improperly state a personal opinion as to the justness of**  
22 **a cause, credibility of a witness, or culpability of a civil litigant when they**  
**invited the jury to consider SHL’s contradictory behavior.**

23 18. Counsel likewise did not state a personal opinion on a prohibited topic when they  
24 encouraged the jury to consider the hypocrisy in SHL’s behavior. App-2655. Counsel’s remarks  
25 arose in the context of a detailed, fact bound argument that, even while SHL took the position that  
26 proton-beam therapy for lung cancer was unproven and medically unnecessary, its sister company  
27 promoted the use of the treatment to avoid exactly the same complications Mr. Eskew experienced.  
28 App-2653–55. In describing this conduct as hypocritical, counsel was “invit[ing] the jury to consider

1 the contradiction” in SHL’s behavior. *Cox*, 507 P.3d at 1227. That “amount[s] to advocacy, not  
2 misconduct,” and does not “establish grounds for a new trial.” *Id.*

3 19. Towards the end of his delivery, counsel’s remarks edged towards excessive,  
4 unnecessarily personal rhetoric on this point. *See* App-2655. SHL objected and the Court sustained  
5 the objection. *Id.* But SHL did not request an admonishment, so the statements are reviewed for  
6 whether the misconduct was so extreme that objection and sustainment could not have removed any  
7 prejudicial effect. *See Gundersen*, 130 Nev. at 77, 319 P.3d at 613. And viewed in context, the  
8 Court finds that the statements fall far below this bar. Immediately following the Court’s  
9 sustainment, Mrs. Eskew’s counsel corrected his emphasis, explaining that his point was not  
10 personal at all, but rather about what would be “unbelievable to somebody listening.” App-2655.  
11 Sustainment thus easily removed any prejudicial effect.

12 20. That is especially so because not only did counsel correct himself, but the jury was  
13 explicitly instructed that counsel’s statements, arguments, and opinions were not evidence and that it  
14 should disregard evidence to which an objection was sustained. Jury Ins. No. 8. Juries  
15 presumptively follow such instructions, *Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783  
16 (2006), and a sustained objection under these circumstances generally precludes a finding of  
17 prejudice, *see Walker v. State*, 78 Nev. 463, 467–68, 376 P.2d 137, 139 (1962).

18 **iii. Counsel did not improperly state a personal opinion as to the justness of**  
19 **a cause, credibility of a witness, or culpability of a civil litigant when they**  
20 **described Dr. Parvesh Kumar’s testimony.**

21 21. Counsel’s statements concerning Dr. Parvesh Kumar’s testimony during closing are  
22 also not improper personal opinions. In describing the testimony, counsel’s argument was that the  
23 jury should reject Dr. Kumar’s testimony because he was not the subject-matter expert he and SHL  
24 both held him out to be. App-2511. In addition, although counsel at one point compared Dr. Kumar  
25 to other witnesses he had observed, his argument remained about how the *jury* should assess Dr.  
Kumar’s credibility, not about how counsel personally did so.

26 22. Counsel’s statements thus are far afield from the sorts of statements Nevada courts  
27 have held amount to prohibited personal opinions. Those statements typically ask jurors to “step  
28 outside the relevant facts” and instead reach a verdict based on their emotions. *Cox*, 507 P.3d at



1 1227 (statements were improper “because they asked the jury to step outside the relevant facts” and  
2 hold a party not liable because of its bad motivations; while statements that simply invited the jury  
3 to consider the contradiction between different statements were not improper personal opinions);  
4 *Grosjean*, 125 Nev. at 368–69, 212 P.3d at 1081–82 (attorney committed misconduct by appealing  
5 to jury’s emotions rather than facts in evidence); *Lioce*, 124 Nev. at 21–22, 174 P.3d at 983–84  
6 (attorney committed misconduct by calling a plaintiff’s case frivolous and worthless). Here, by  
7 contrast, counsel’s statements were closely tied to and about the evidence the jury did see—that Dr.  
8 Kumar could not “uphold the opinions he gave.” App-2512.

9 23. Even if these statements amounted to misconduct, they would not warrant a new trial.  
10 Because SHL failed to object to them, they are reviewed for plain error. And it is not “plain and  
11 clear that no other reasonable explanation for the verdict exists.” *Gunderson*, 130 Nev. at 75, 319  
12 P.3d at 612. As above, the strong evidence supporting the plaintiff’s case easily supplies that  
13 explanation, and the Court finds no reason to conclude that counsel’s characterization of one  
14 witness’s testimony made a difference to the jury.

15 **iv. Counsel did not improperly state a personal opinion as to the justness of**  
16 **a cause, credibility of a witness, or culpability of a civil litigant when they**  
17 **discussed the verdict form.**

18 24. Counsel’s statements concerning the verdict the jury should reach also do not amount  
19 to a prohibited personal opinion. SHL contends that counsel committed misconduct by stating that  
20 they would not request a particular award if they were not “convinced” it was “the right thing to do.”  
21 App-2692. SHL’s argument is that this comment conveyed an impermissible, moralistic  
22 commentary on the evidence. But, viewed in context, the statement is just as easily understood as  
23 telling the jury that the requested verdict was the right thing to do according to the law as embodied  
24 in the Court’s instructions and the evidence at trial.

25 25. In any event, even if the statement amounts to a personal opinion, the Court cannot  
26 find that the record reflects any prejudice. Although SHL leveled a successful objection to the  
27 comments, it did not seek an admonishment, and so the statement is reviewed for whether the  
28 misconduct was so extreme that objection and sustainment could not have removed any prejudicial  
effect. *See Gunderson*, 130 Nev. at 77, 319 P.3d at 613. The record does not meet this standard.

1 Nothing about the comment was “extreme,” and, in any event, counsel again promptly corrected any  
2 impression that they were conveying a personal opinion: Following objection and sustainment,  
3 counsel emphasized that the argument was about what the jury should do, not what counsel thought.  
4 *See* App-2692 (“It’s the right thing to do.”). Thus, if there was any prejudicial effect here, it was  
5 modest in light of the powerful evidence on the plaintiff’s case, and it was immediately cured.  
6 Accordingly, the comment does not warrant a new trial.

7                   **v.       Counsel did not level improper personal attacks, and even if they had, a**  
8                   **new trial would not be warranted.**

9           26.     SHL also contends that Mrs. Eskew’s counsel committed misconduct because they  
10 “falsely accused” SHL’s counsel “of calling Mrs. Eskew a liar.” The Court finds that the record  
11 does not support either SHL’s version of the facts or the conclusion it draws from them.

12           27.     The statements that SHL identifies were not meaningfully false, because the  
13 company’s strategy at trial was to impugn the Eskews’ motivations and to cast doubt on the  
14 truthfulness of their testimony. *See* App-1448–49 (suggesting testimony was driven by what was  
15 “helpful for your case” rather than the truth); App-1489–90 (asking for agreement that “memories  
16 can sometimes fade” or be “influenced” because people can have “an intent to say certain things, a  
17 reason, a motive”); *see also* App-1221–24, 1239–43, 1342, 1346–52, 1484–1526, 1529–41. At trial,  
18 witnesses and the parties understood this to be SHL’s argument. *See, e.g.,* App-1549–50 (Q: “And  
19 you would agree that [the monetary recovery in this case provides] an incentive for you to say what  
20 you’re saying; correct?” A: “No. I did not lie.”). Indeed, at a break, when plaintiff’s counsel noted  
21 that SHL was suggesting that Mrs. Eskew was “lying or magnifying her problems,” counsel for SHL  
22 agreed: “And yes, obviously it’s my client’s position that it shouldn’t be a surprise to anyone in this  
23 room that Mrs. Eskew is embellishing on her husband’s condition.” App-1458–59; *see also* App-  
24 1460 (claiming the “right” to “cross-examine and challenge whether or not she is being accurate and  
25 truthful”).

26           28.     SHL objects that the statements are “improper” because the company only “implied”  
27 that the Eskews were lying and that Mrs. Eskew’s counsel exaggerated the effect. But Nevada law  
28 does not hold that an exaggerated characterization of counsel’s arguments or conduct is improper at

1 all, let alone so improper as to amount to misconduct. The only supportive authority SHL identifies  
2 concerns “abusive language,” “derogatory remarks,” and offensive epithets. *See Born*, 114 Nev. at  
3 861–62, 962 P.2d at 1231–32 (counsel engaged in repeated, incendiary outbursts, including  
4 describing opposing counsel and witnesses with offensive epithets in the jury’s hearing and  
5 exclaiming that requests for a sidebar were “outrageous”); *Fineman v. Armstrong World Indus., Inc.*,  
6 774 F. Supp. 266, 272 (D.N.J. 1991) (closing argument focused on claims that “counsel had lied to  
7 the jury, had suborned perjury from witnesses (flavoring these comments with [] titillating remarks  
8 . . . ), and had done it for money”). Nothing like that happened here. And the cases have no bearing  
9 on the propriety of one counsel’s commenting on another’s behavior in questioning a witness.

10         29. Even if counsel’s remarks could amount to misconduct, they were not prejudicial.  
11 SHL made only one objection on these grounds and never sought an admonishment. But that  
12 objection, and the Court’s decision to sustain it, was more than sufficient to cure any possible  
13 prejudice. Following the objection, counsel immediately and plainly clarified his meaning—that  
14 SHL had at minimum suggested that Mrs. Eskew was “embellishing” what happened to her. App-  
15 2509. SHL says it made a second objection, but that objection, viewed in context, went to a different  
16 issue—whether there was evidence supporting Mrs. Eskew’s argument that SHL had not been able  
17 to dissuade Mrs. Eskew from pursuing her case. *See App-2690*. In any event, the Court finds no  
18 reason in the record to treat either objection and its sustainment as inadequate to remove any modest  
19 prejudicial effect that could have resulted.

20         30. SHL also argues that counsel’s conduct was improper because it violated a motion in  
21 limine excluding evidence, argument, or testimony relating to litigation conduct. But that motion in  
22 limine was issued for an unrelated reason: to bar the parties from introducing evidence or argument  
23 concerning litigation conduct during the discovery process. And in any event, SHL failed to object  
24 to any of Mrs. Eskew’s counsel’s conduct on these grounds. *See Roth*, 127 Nev. at 136–38, 252  
25 P.3d at 658–59 (parties are obligated to make “contemporaneous objections to claimed violations of  
26 an order produced by a motion in limine . . . to prevent litigants from wasting judicial, party, and  
27 citizen-juror resources”). It thus waived any objection except in an instance of plain error, which the  
28 Court cannot find. *See Id.*

1                    **vi. Counsel’s questioning of SHL’s witness was not misconduct warranting a**  
2                    **new trial.**

3                    31. SHL also argues that Mrs. Eskew’s counsel committed misconduct when they  
4 questioned SHL’s director of pre-service reviews during the damages phase. According to SHL,  
5 their questioning amounted to a “blatant and shocking violation” of the “norms” of American law.  
6 The Court finds otherwise. During the challenged questioning, SHL’s director testified that, in  
7 response to the jury’s verdict, the company was going to begin offering annual training on the duty  
8 of good faith and fair dealing. App-2774–75. To examine whether the company was as contrite as  
9 she suggested, counsel for Mrs. Eskew urged the director to tell the jury her true view of its verdict.  
10 App-2778–79. SHL takes issue with that question because it says the question was given as a  
11 “command” and was therefore “demeaning” and necessarily improper. The Court finds no reason to  
12 agree. It is not misconduct to phrase a question as a statement rather than a question, especially in  
13 the context in which this exchange arose. SHL has offered no authority to the contrary.

14                    32. SHL did not object on these grounds at trial, saying only that the “form” of the  
15 question was “too broad.” App-2779. And even then, it did not request an admonishment. *Id.* In any  
16 event, even if reviewed for whether an admonishment could have changed the verdict, the record  
17 here leaves no reason to conclude that this line of questioning had any impact, let alone that it  
18 warrants a new trial.

19                    **C. Cumulative review of counsel’s conduct makes no difference.**

20                    33. SHL urges the Court to weigh its assorted misconduct claims together and conclude  
21 that even if they were not individually prejudicial misconduct, they rise to that level as a whole. But  
22 however SHL’s allegations are weighed, the Court can find no basis to grant a new trial.

23                    34. The Court finds that SHL cannot meet the standard that applies to grant a new trial  
24 “based on the cumulative effect of attorney misconduct.” *Gunderson*, 130 Nev. at 78, 319 P.3d at  
25 614. To obtain that result, a party “must demonstrate that no other reasonable explanation for the  
26 verdict exists.” *Id.* That generally requires identifying “multiple severe instances of attorney  
27 misconduct as determined by their context.” *Id.* Yet as explained above, in the context of this trial,  
28 the Court cannot find that SHL has identified a single “severe instance[]” of attorney misconduct.  
*Id.* At best, it has pointed to a smattering of rhetorical and hyperbolic comments that pale in

comparison to the extensive evidence marshaled at trial. In the Court’s view, the “scope, nature, and quantity” of this alleged misconduct had no appreciable impact on the “verdict’s reliability.” *Id.* The handful of assorted statements SHL has identified thus fall far short of explaining the jury’s verdict.

35. The Court is particularly inclined to reach that finding in light of SHL’s failure to object to the lion’s share of the asserted misconduct—and, where it did object, to even once seek an admonishment. While it is true that counsel are not required to repeat objections that have already been made and sustained and failed to change counsel’s behavior, *see Lioce*, 124 Nev. at 18, 174 P.3d at 981, it is equally true that the failure to object “strongly indicates that the party moving for a new trial did not consider the arguments objectionable at the time they were delivered, but made that claim as an afterthought,” *Ringle*, 120 Nev. at 95, 86 P.3d at 1040. The Court finds that the record in this case is more consistent with the latter concern than the former, and thus undermines any inference that SHL would have been penalized for objecting or requesting admonishments.

For the foregoing reasons, the above findings and conclusions are hereby ENTERED.

**Dated this 24th day of October, 2022**

Nili Kall

**43A B64 EC33 3CFB**  
**Nadia Krall**  
**District Court Judge**

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 10/24/2022

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22 Thomas Dupree

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23 Ryan Gormley

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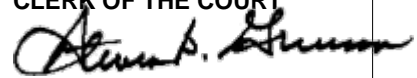
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14 *Attorneys for Defendant*  
15

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

19 SANDRA L. ESKEW, as special administrator  
20 of the Estate of William George Eskew,

21 Plaintiff,

22 vs.

23 SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

24 Defendant.  
25  
26  
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Case No.: A-19-788630-C  
Dept. No.: 4

**AMENDED CASE APPEAL STATEMENT**



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**1. Name of appellant filing this case appeal statement:**

Sierra Health and Life Insurance Company, Inc. (“SHL”)

**2. Identify the judge issuing the decision, judgment, or order appealed from:**

The Honorable Judge Nadia Krall, Department IV of the Eighth Judicial District Court of Clark County, Nevada.

**3. Identify each appellant and the name and address of counsel for each appellant:**

*Attorneys for Sierra Health and Life Insurance Company, Inc.*

D. LEE ROBERTS, JR., ESQ.  
PHILIP N. SMITH, ESQ.  
RYAN T. GORMLEY, ESQ.  
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THOMAS H. DUPREE JR. ESQ.  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington D.C. 200036  
(202) 955-8547

**4. Identify each respondent and the name and address of appellate counsel, if known,  
for each respondent (if the name of a respondent’s appellate counsel is unknown,  
indicate as much and provide the name and address of that respondent’s trial  
counsel):**

*Attorneys for Sandra L. Eskew, as Special Administrator of the Estate of William George Eskew*

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(202) 888-1741

**5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):**

Thomas H. Dupree, Jr., Douglas A. Terry, Deepak Gupta, and Matthew W.H. Wessler are not licensed to practice law in Nevada. The orders granting them permission to appear are attached as Exhibit A.

**6. Indicate whether appellant was represented by appointed or retained counsel in the district court:**

Retained counsel.

**7. Indicate whether appellant is represented by appointed or retained counsel on appeal:**

Retained counsel.

**8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:**

Appellant was not granted leave to proceed in forma pauperis.



1050 Connecticut Avenue, N.W.  
Washington, DC 20036

*Attorneys for Defendant*

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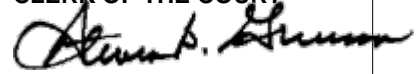
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*Sandra L. Eskew, Tyler Eskew and*  
*William G. Eskew, Jr.*

/s/ Cynthia S. Bowman  
An employee of WEINBERG, WHEELER,  
HUDGINS, GUNN & DIAL, LLC

**EXHIBIT A**

**EXHIBIT A**



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14 *Attorneys for Defendant*

15  
16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 SANDRA L. ESKEW, as special administrator  
of the Estate of William George Eskew,

19 Plaintiff,

20 vs.

21 SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

22 Defendant.  
23  
24

Case No.: A-19-788630-C  
Dept. No.: 4

**NOTICE OF ENTRY OF ORDER  
ADMITTING TO PRACTICE THOMAS  
H. DUPREE, JR., ESQ.**

25  
26  
27  
28 *///*





1 PLEASE TAKE NOTICE that an Order Admitting to Practice Thomas H. Dupree, Jr.,  
2 Esq. was filed July 12, 2022, in the above-captioned matter.

3 A copy of the Order is attached hereto.

4  
5 Dated this 14th day of July, 2022.

6  
7 /s/ Ryan T. Gormley

8 D. Lee Roberts, Jr., Esq.

9 Phillip N. Smith, Esq.

10 Ryan T. Gormley, Esq.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of July, 2022, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER ADMITTING TO PRACTICE THOMAS H. DUPREE, JR., ESQ.** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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*Sandra L. Eskew, Tyler Eskew and*  
*William G. Eskew, Jr.*

/s/ Julie Richards

An employee of WEINBERG, WHEELER,  
HUDGINS, GUNN & DIAL, LLC

*Heather S. Smith*  
CLERK OF THE COURT

WEINBERG WHEELER  
HUDGINS GUNN & DIAL



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*Attorneys for Defendant*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SANDRA L. ESKEW, as special administrator  
of the Estate of William George Eskew,

Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

Defendant.

Case No.: A-19-788630-C

Dept. No.: 4

**ORDER ADMITTING TO PRACTICE:  
THOMAS H. DUPREE, JR., ESQ.**

Thomas H. Dupree, Jr., Esq. of the law firm of GIBSON, DUNN & CRUTCHER, LLP having  
filed a Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a  
Verified Application for Association of Counsel, "Certificate of Good Standing"; and the State



Bar of Nevada Statement; said application having been noticed, the Court having considered this matter, and the Court being fully apprised in the premises, and good cause appearing:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that said application is granted and Thomas H. Dupree, Jr., Esq. is hereby admitted to practice in the above-entitled Court for the purposes for the above-entitled matter only.

Dated this 12th day of July, 2022

---

DISTRICT COURT JUDGE  
18A OCC C628 A9AA  
Nadia Krall  
District Court Judge

*Respectfully Submitted By:*

/s/ Ryan T. Gormley

D. Lee Roberts, Jr., Esq.

Phillip N. Smith, Esq.

Ryan T. Gormley, Esq.

WEINBERG, WHEELER, HUDGINS,  
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*Attorneys for Defendant*

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 7/12/2022

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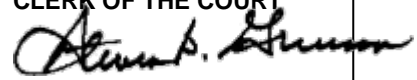
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*Attorney for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,  
  
Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,  
  
Defendant.

Case No. A-19-788630-C

Dept. No. 4

**NOTICE OF ENTRY OF ORDER ADMITTING DEEPAK GUPTA TO PRACTICE**

PLEASE TAKE NOTICE that an Order Admitting Deepak Gupta to Practice was filed on  
August 14, 2022, in the above-captioned matter.

///

///

///

///

1 A copy of the Order is attached hereto.

2 DATED this 15<sup>th</sup> day of August 2022.

3 MATTHEW L. SHARP, LTD.

4  
5  
6 /s/ Matthew L. Sharp  
7 MATTHEW L. SHARP, ESQ.  
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10 Reno NV 89501  
11 (775) 324-1500  
12 [matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)  
13 *Attorneys for Plaintiffs*  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Matthew L. Sharp, Ltd., and that on this date, a true  
3 and correct copy of the foregoing was electronically filed and served on counsel through the Court's  
4 electronic service system pursuant to Administrative Order 14-2 and NEFCR 9, via the electronic mail  
5 address noted below:

6 D. Lee Roberts, Jr. Esq.; [lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)  
7 Marjan Hajimirzaee, Esq.; [mhajimirzaee@wwhgd.com](mailto:mhajimirzaee@wwhgd.com)  
8 Ryan T. Gormley, Esq.; [rgormley@wwhgd.com](mailto:rgormley@wwhgd.com)  
9 WEINBERG WHEELER HUDGINS GUNN & DIAL LLC  
6385 S. Rainbow Blvd., Ste. 400  
Las Vegas, NV 89118  
10 *Attorneys for Defendants*

11 DATED this 15<sup>th</sup> day of August 2022.

12 /s/ Suzy Thompson  
13 An employee of Matthew L. Sharp, Ltd.  
14  
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ORAP  
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*Attorney for Plaintiffs*

DISTRICT COURT  
CLARK COUNTY, NEVADA

SANDRA L. ESKEW, individually and  
as Special Administrator of the Estate  
of William George Eskew,

Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

Defendant.

Case No. A-19-788630-C

Dept. No. 4

**ORDER ADMITTING TO PRACTICE**

Deepak Gupta of the law of firm of Gupta Wessler PLLC, having filed his Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, Certificate of Good Standing for the District of Columbia, and the State Bar of Nevada Statement; said application having been served on all parties herein and no objections having been made, and the Court being fully apprised in the premises, and good cause appearing, it is hereby,

///

///

///

///

///

1 ORDERED, that said application is granted, and Deepak Gupta is hereby admitted to  
2 practice in the above entitled Court for the purposes of the above-entitled matter only.

3 DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

5 Dated this 14th day of August, 2022

6   
DISTRICT COURT JUDGE

7 Submitted by:

1C9 EA8 3EC9 F2EF  
Nadia Krall  
District Court Judge

8  
9 /s/ Matthew L. Sharp  
10 Matthew L. Sharp, Esq.  
11 Nevada State Bar #4746  
12 Matthew L. Sharp, Ltd.  
13 432 Ridge St.  
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15 (775) 324-1500  
16 Attorney for Plaintiff

14 Approved as to form and content:

15 **Weinberg Wheeler Hudgins Gunn & Dial**

16  
17 /s/ Ryan Gormley  
18 Ryan Gormley, Esq.  
19 6385 South Rainbow Blvd., Suite 400  
20 Las Vegas, NV 89118  
21 Attorneys for Defendant  
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**From:** [Matt Sharp](#)  
**To:** [Cristin Sharp](#)  
**Subject:** Fwd: Eskew v. SHL  
**Date:** Friday, August 12, 2022 1:59:43 PM  
**Attachments:** [E-sig2022-01\\_642bd6e0-6f01-49b8-be78-d1edb92d0223.png](#)

---

Matthew L. Sharp  
432 Ridge St  
Reno, NV 89501  
[Matt@mattsharplaw.com](mailto:Matt@mattsharplaw.com)  
775-324-1500

Begin forwarded message:

**From:** "Gormley, Ryan" <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>  
**Date:** August 11, 2022 at 10:59:57 PM PDT  
**To:** Matt Sharp <[Matt@mattsharplaw.com](mailto:Matt@mattsharplaw.com)>  
**Subject:** RE: Eskew v. SHL

Yes, both orders are fine by me.

Thank you,



Ryan Gormley, Attorney

**Weinberg Wheeler Hudgins Gunn & Dial**

6385 South Rainbow Blvd. | Suite 400 | Las Vegas, NV 89118

D: 702.938.3813 | F: 702.938.3864

[www.wwhgd.com](http://www.wwhgd.com) | vCard

---

**From:** Matt Sharp <[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)>  
**Sent:** Wednesday, August 10, 2022 4:30 PM  
**To:** Gormley, Ryan <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>

**Subject:** Eskew v. SHL

**This Message originated outside your organization.**

---

Ryan,

Here are the orders Deepak Gupta and Matt Wessler.

Let me know if we can use your e-signature.

Matt Sharp

The information contained in this message may contain privileged client confidential information. If you have received this message in error, please delete it and any copies immediately.

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 8/14/2022

15 Audra Bonney

abonney@wwhgd.com

16 Cindy Bowman

cbowman@wwhgd.com

17 D. Lee Roberts

lroberts@wwhgd.com

18 Raiza Anne Torrenueva

rtorrenueva@wwhgd.com

19 Matthew Sharp

matt@mattsharplaw.com

20 Cristin Sharp

cristin@mattsharplaw.com

21 Thomas Dupree

TDupree@gibsondunn.com

22 Ryan Gormley

rgormley@wwhgd.com

23 Flor Gonzalez-Pacheco

FGonzalez-Pacheco@wwhgd.com

24 Kelly Gaez

kgaez@wwhgd.com

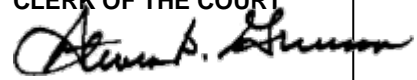
25 Suzy Thompson

suzy@mattsharplaw.com

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Marjan Hajimirzaee	mhajimirzaee@wwhgd.com
Maxine Rosenberg	Mrosenberg@wwhgd.com
Stephanie Glantz	sglantz@wwhgd.com
Douglas Terry	doug@dougterrylaw.com



NEOJ  
MATTHEW L. SHARP, ESQ.  
Nevada State Bar #4746  
Matthew L. Sharp, Ltd.  
432 Ridge St.  
Reno, NV 89501  
(775) 324-1500  
[matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)

Doug Terry, Esq.  
*Admitted PHV*  
DOUG TERRY LAW, PLLC.  
200 E. 10<sup>th</sup> St. Plaza, Ste. 200  
Edmond, OK 73013  
(405) 463-6362  
[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)

*Attorney for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,  
  
Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,  
  
Defendant.

Case No. A-19-788630-C

Dept. No. 4

**NOTICE OF ENTRY OF ORDER ADMITTING MATTHEW W.H. WESSLER**  
**TO PRACTICE**

PLEASE TAKE NOTICE that an Order Admitting Matthew W.H. Wessler to Practice was filed  
on August 14, 2022, in the above-captioned matter.

///

///

///

1 A copy of the Order is attached hereto.

2 DATED this 15<sup>th</sup> day of August 2022.

3 MATTHEW L. SHARP, LTD.

4  
5  
6 /s/ Matthew L. Sharp  
7 MATTHEW L. SHARP, ESQ.  
8 Nevada Bar No. 4746  
9 432 Ridge Street  
10 Reno NV 89501  
11 (775) 324-1500  
12 [matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)  
13 *Attorneys for Plaintiffs*  
14  
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ORAP  
MATTHEW L. SHARP, ESQ.  
Nevada State Bar #4746  
Matthew L. Sharp, Ltd.  
432 Ridge St.  
Reno, NV 89501  
(775)324-1500  
[matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)

*Attorney for Plaintiffs*

DISTRICT COURT  
CLARK COUNTY, NEVADA

SANDRA L. ESKEW, individually and  
as Special Administrator of the Estate  
of William George Eskew,

Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

Defendant.

Case No. A-19-788630-C

Dept. No. 4

**ORDER ADMITTING TO PRACTICE**

Matthew W.H. Wessler of the law of firm of Gupta Wessler PLLC, having filed his Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, Certificates of Good Standing for the District of Columbia and the State of Massachusetts, and the State Bar of Nevada Statement; said application having been served on all parties herein and no objections having been made, and the Court being fully apprised in the premises, and good cause appearing, it is hereby,

///

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///

1 ORDERED, that said application is granted, and Matthew W.H. Wessler is hereby  
2 admitted to practice in the above entitled Court for the purposes of the above-entitled matter  
3 only.

4 DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

5  
6 Dated this 14th day of August, 2022



7  
8 DISTRICT COURT JUDGE

29A 77E DA37 2D20

Nadia Krall

District Court Judge

Submitted by:

9  
10 \_\_\_\_\_ /s/ Matthew L. Sharp

Matthew L. Sharp, Esq.

Nevada State Bar #4746

Matthew L. Sharp, Ltd.

432 Ridge St.

Reno, NV 89501

(775) 324-1500

Attorney for Plaintiff

14  
15 Approved as to form and content:

16 **Weinberg Wheeler Hudgins Gunn & Dial**

17  
18 \_\_\_\_\_ /s/ Ryan Gormley

Ryan Gormley, Esq.

6385 South Rainbow Blvd., Suite 400

Las Vegas, NV 89118

Attorneys for Defendant

**From:** [Matt Sharp](#)  
**To:** [Cristin Sharp](#)  
**Subject:** Fwd: Eskew v. SHL  
**Date:** Friday, August 12, 2022 1:59:43 PM  
**Attachments:** [E-sig2022-01\\_642bd6e0-6f01-49b8-be78-d1edb92d0223.png](#)

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[Matt@mattsharplaw.com](mailto:Matt@mattsharplaw.com)  
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Yes, both orders are fine by me.

Thank you,



Ryan Gormley, Attorney

**Weinberg Wheeler Hudgins Gunn & Dial**

6385 South Rainbow Blvd. | Suite 400 | Las Vegas, NV 89118

D: 702.938.3813 | F: 702.938.3864

[www.wwhgd.com](http://www.wwhgd.com) | vCard

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**Subject:** Eskew v. SHL

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Ryan,

Here are the orders Deepak Gupta and Matt Wessler.

Let me know if we can use your e-signature.

Matt Sharp

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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18 D. Lee Roberts

lroberts@wwhgd.com

19 Raiza Anne Torrenueva

rtorrenueva@wwhgd.com

20 Matthew Sharp

matt@mattsharplaw.com

21 Cristin Sharp

cristin@mattsharplaw.com

22 Thomas Dupree

TDupree@gibsondunn.com

23 Ryan Gormley

rgormley@wwhgd.com

24 Flor Gonzalez-Pacheco

FGonzalez-Pacheco@wwhgd.com

25 Kelly Gaez

kgaez@wwhgd.com

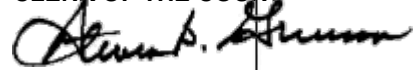
26 Suzy Thompson

suzy@mattsharplaw.com

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Marjan Hajimirzaee	<a href="mailto:mhajimirzaee@wwhgd.com">mhajimirzaee@wwhgd.com</a>
Maxine Rosenberg	<a href="mailto:Mrosenberg@wwhgd.com">Mrosenberg@wwhgd.com</a>
Stephanie Glantz	<a href="mailto:sglantz@wwhgd.com">sglantz@wwhgd.com</a>
Douglas Terry	<a href="mailto:doug@dougterrylaw.com">doug@dougterrylaw.com</a>



ORAP  
MATTHEW L. SHARP, ESQ.  
Nevada State Bar #4746  
Matthew L. Sharp, Ltd.  
432 Ridge St.  
Reno, NV 89501  
(775)324-1500  
[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)

*Attorney for Plaintiffs*

DISTRICT COURT  
CLARK COUNTY, NEVADA

SANDRA L. ESKEW, individually and  
as Special Administrator of the Estate  
of William George Eskew; TYLER  
ESKEW; and WILLIAM G. ESKEW, JR.;

Case No. A-19-788630-C

Dept. No. 1

Plaintiffs,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.; and DOES I through XXX,  
inclusive,

Defendants.

**ORDER ADMITTING TO PRACTICE**

Douglas A. Terry, Esq. having filed his Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, Certificates of Good Standing for the States of Oklahoma and Arkansas, and the State Bar of Nevada Statement; said application having been served on all parties herein and no objections having been made, and the Court being fully apprised in the premises, and good cause appearing, it is hereby

///

///

///



1 ORDERED, that said application is hereby granted, and Douglas A. Terry, Esq. is  
2 hereby admitted to practice in the above entitled Court for the purposes of the above-entitled  
3 matter only.

4 DATED this 30 day of Aug 2019.

6   
7 DISTRICT JUDGE  
8 

8 Submitted by:

9  
10 /s/ Matthew L. Sharp  
11 Matthew L. Sharp, Esq.  
12 Nevada State Bar #4746  
13 Matthew L. Sharp, Ltd.  
14 432 Ridge St.  
15 Reno, NV 89501  
16 (775) 324-1500  
17 Attorney for Plaintiff  
18  
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**CASE SUMMARY****CASE NO. A-19-788630-C**

**Sandra Eskew, Plaintiff(s)**  
**vs.**  
**Sierra Health and Life Insurance Company Inc, Defendant**  
**(s)**

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§

Location: **Department 4**  
 Judicial Officer: **Krall, Nadia**  
 Filed on: **02/01/2019**  
 Case Number History:  
 Cross-Reference Case **A788630**  
 Number:  
 Supreme Court No.: **85369**

**CASE INFORMATION**

**Statistical Closures**  
 04/06/2022 Verdict Reached

Case Type: **Insurance Tort**

Case  
Status: **04/06/2022 Closed**

**DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number A-19-788630-C  
 Court Department 4  
 Date Assigned 01/19/2021  
 Judicial Officer Krall, Nadia

**PARTY INFORMATION****Plaintiff****Eskew, Sandra L***Lead Attorneys*

**Sharp, Matthew L.**  
*Retained*  
 7023226636(W)

**Eskew, Tyler**

Removed: 01/18/2022  
 Dismissed

**Eskew, William G, Jr.**

Removed: 01/18/2022  
 Dismissed

**Estate of William George Eskew**

Removed: 05/19/2022  
 Dismissed

**Defendant****Sierra Health and Life Insurance Company Inc**

**Roberts, D Lee, Jr.**  
*Retained*  
 702-938-3838(W)

**United Healthcare, Inc**

Removed: 05/19/2022  
 Dismissed

**Special  
Administrator****Eskew, Sandra L**

**Sharp, Matthew L.**  
*Retained*  
 7023226636(W)

**DATE****EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

02/01/2019















Complaint With Jury Demand

Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew,  
 William G, Jr.; Plaintiff Estate of William George Eskew

[1] *Complaint and Jury Demand*

# CASE SUMMARY

CASE NO. A-19-788630-C

02/01/2019	 Summons Electronically Issued - Service Pending Party: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[2] Summons</i>
02/01/2019	 Initial Appearance Fee Disclosure Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[3] Initial Appearance Fee Disclosure</i>
04/11/2019	 Summons Filed by: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[4] Summons - Returned Service on Defendant Sierra Health and Life Insurance Company, Inc. - Served April 9, 2019</i>
04/16/2019	 Request Filed by: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[5] Request for Exemption from Arbitration</i>
05/10/2019	 Initial Appearance Fee Disclosure Filed By: Defendant Sierra Health and Life Insurance Company Inc <i>[6] Initial Appearance Fee Disclosure</i>
05/10/2019	 Peremptory Challenge Filed by: Defendant Sierra Health and Life Insurance Company Inc <i>[7] Peremptory Challenge of Judge</i>
05/10/2019	 Motion to Dismiss Filed By: Defendant Sierra Health and Life Insurance Company Inc <i>[8] Defendant SHL's Motion to Dismiss for Failure to State a Claim</i>
05/13/2019	 Clerk's Notice of Hearing <i>[9] Notice of Hearing</i>
05/13/2019	 Notice of Department Reassignment <i>[10] Notice of Department Reassignment</i>
05/24/2019	 Opposition to Motion to Dismiss Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[11] OPPOSITION TO DEFENDANT SHL S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM</i>
06/11/2019	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc <i>[12] Reply in Support of Defendant SHL's Motion to Dismiss for Failure to State a Claim</i>
06/13/2019	 Motion to Associate Counsel Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[13] Motion to Associate Counsel - Douglas A. Terry, Esq.</i>








# CASE SUMMARY

CASE NO. A-19-788630-C

06/24/2019	 Notice of Non Opposition Filed By: Defendant Sierra Health and Life Insurance Company Inc <i>[14] Notice of Non-Opposition to Plaintiff's Motion to Associate Counsel</i>
07/14/2019	 Motion to Associate Counsel Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[15] Motion to Associate Counsel (Douglas Terry)</i>
07/15/2019	 Clerk's Notice of Hearing <i>[16] Notice of Hearing</i>
07/15/2019	 Amended Complaint Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[17] First Amended Complaint and Jury Demand</i>
07/23/2019	 Order Denying Motion Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[18] Order Denying and Granting in Part Defendant SHL's Motion to Dismiss for Failure to State a Claim</i>
07/23/2019	 Summons Electronically Issued - Service Pending Party: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[19] Summons- Civil</i>
07/29/2019	 Answer to Amended Complaint Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[20] Answer to First Amended Complaint</i>
07/29/2019	 Initial Appearance Fee Disclosure Filed By: Defendant United Healthcare, Inc <i>[21] Initial Appearance fee Disclosure (NRS Chapter 19)</i>
08/01/2019	 Summons Filed by: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[22] Summons - Returned Served on Defendant United Healthcare, Inc.</i>
08/22/2019	 ADR - Action Required <i>[23] ADR-Action Required-Code</i>
08/22/2019	 Request for Exemption From Arbitration Filed by: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[24] Request for Exemption from Arbitration</i>
08/27/2019	 Opposition to Request for Exemption Filed by: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[25]</i>

# CASE SUMMARY

CASE NO. A-19-788630-C

09/05/2019	 Order Admitting to Practice Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[26] Order Admitting to Practice - Douglas A. Terry, Esq. for Plaintiffs</i>
09/06/2019	 Commissioners Decision on Request for Exemption - Granted <i>[27] Commissioner's Decision on Request for Exemption - GRANTED</i>
09/27/2019	 Joint Case Conference Report Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[28] Joint Case Conference Report</i>
10/02/2019	 Notice to Appear for Discovery Conference <i>[29] Order to Appear for Mandatory Discovery Conference</i>
10/17/2019	 Notice of Rescheduling <i>[30] Notice of Rescheduling of Time of Hearing</i>
11/01/2019	 Scheduling and Trial Order <i>[31] Scheduling Order and Order Setting Civil Jury Trial and Calendar Call</i>
01/28/2020	 Application Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[32] Application to Issue Commission to Serve Subpoena Outside the State of Nevada</i>
01/28/2020	 Commission Issued Filed by: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[33] Commission to Serve Subpoena Outside the State of Nevada</i>
06/17/2020	 Stipulated Protective Order Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[34] Stipulation and Qualified Protective Order</i>
06/18/2020	 Notice of Entry of Order Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[35] Notice of Entry of Stipulated Qualified Protective Order</i>
06/26/2020	 Stipulation and Order to Extend Discovery Deadlines <i>[36] Stipulation and Order to Extend Discovery</i>
06/29/2020	 Notice of Entry of Stipulation and Order Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[37] Notice of Entry of Stipulation and Order for Extension of Time to Complete Discovery (First Request)</i>
09/30/2020	 Stipulation to Extend Discovery Party: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[38] Stipulation and Order for Extension of Time to Complete Discovery (Second Request)</i>












# CASE SUMMARY

CASE NO. A-19-788630-C

10/01/2020	 Notice of Entry of Order Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[39] Notice of Entry of Stipulation and Order for Extension of Time to Complete Discovery (Second Request)</i>
01/04/2021	Case Reassigned to Department 21 <i>Judicial Reassignment to Judge Tara Clark Newberry</i>
01/14/2021	 Peremptory Challenge Filed by: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[40] Peremptory Challenge of Judge</i>
01/19/2021	 Notice of Department Reassignment <i>[41] Notice of Department Reassignment</i>
01/25/2021	 Stipulation and Order to Extend Discovery Deadlines Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[42] Stipulation and Order for Extension of Time to Complete Discovery (Third Request) (03194037x9C8C6)</i>
01/27/2021	 Notice of Entry of Order Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[43] Notice of Entry of Stipulation and Order for Extension of Time to Complete Discovery (Third Request)</i>
02/08/2021	 Order <i>[44] Amended Order Setting Civil Jury Trial and Calendar Call</i>
03/15/2021	 Stipulation and Order to Extend Discovery Deadlines Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[45] Stipulation and Order for Extension of Time to Complete Discovery (Fourth Request)</i>
03/16/2021	 Notice of Entry of Order Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[46] Notice of Entry of Stipulation and Order for Extension of Time to Complete Discovery (Fourth Request)</i>
04/13/2021	 Application for Issuance of Commission to Take Deposition Party: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[47] Application to Issue Commission to Serve Subpoena Outside the State of Nevada</i>
04/13/2021	 Commission Issued Filed by: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[48] Commission to Serve Subpoena Outside the State of Nevada</i>
06/16/2021	 Stipulation to Extend Discovery Party: Defendant Sierra Health and Life Insurance Company Inc; Defendant United






# CASE SUMMARY

CASE NO. A-19-788630-C

	Healthcare, Inc <i>[49] Stipulation and Order for Extension of Time to Complete Discovery (Fifth Request)</i>
06/18/2021	 Notice of Entry of Stipulation and Order Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[50] Notice of Entry of Stipulation and Order for Extension of Time to Complete Discovery (Fifth Request)</i>
07/20/2021	 Stipulation to Extend Discovery Party: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[51] Stipulation and Order for Extension of Time to Complete Discovery (Sixth Request)</i>
07/21/2021	 Notice of Entry of Order Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[52] Notice of Entry of Stipulation and Order for Extension of Time to Complete Discovery (Sixth Request)</i>
08/17/2021	 Stipulation to Extend Discovery Party: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[53] Stipulation and Order for Extension of Time to Complete Discovery (Seventh Request) and Continue Trial Date (First Request)</i>
08/25/2021	 Notice of Entry of Order Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[54] Notice of Entry of Stipulation and Order for Extension of Time to Complete Discovery (Seventh Request) and Continue Trial Date (First Request)</i>
08/30/2021	 Order Shortening Time Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[55] Joint Motion for Rule 16 Conference on Order Shortening Time (Hearing Requested)</i>
08/30/2021	 Notice of Entry of Order Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[56] Notice of Entry of Order Shortening Time Re: Joint Motion for Rule 16 Conference</i>
09/01/2021	 Application Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[57] Application to Issue Commission to Serve Subpoena Outside the State of Nevada</i>
09/01/2021	 Commission Issued Filed by: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[59] Commission to Serve Subpoena Outside the State of Nevada</i>
09/02/2021	 Amended Order Setting Jury Trial <i>[58] Amended Order Setting Civil Jury Trial and Calendar Call</i>
09/13/2021	 Stipulation to Extend Discovery

# CASE SUMMARY

CASE NO. A-19-788630-C

	<p>Party: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc</p> <p><i>[60] Stipulation and Order for Extension of Time to Complete Discovery (Eighth Request)</i></p>
09/14/2021	<p> Notice of Entry of Order</p> <p>Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc</p> <p><i>[61] Notice of Entry of Stipulation and Order for Extension of Time to Complete Discovery (Eighth Request)</i></p>
12/29/2021	<p> Motion in Limine</p> <p>Filed By: Special Administrator Eskew, Sandra L</p> <p><i>[62] Motion in Limine # 1 Re: Evidence of Appeal</i></p>
12/29/2021	<p> Motion in Limine</p> <p>Filed By: Special Administrator Eskew, Sandra L</p> <p><i>[63] Motion in Limine #2 Re: Evidence of the Proton Beam Therapy Policy</i></p>
12/29/2021	<p> Motion in Limine</p> <p>Filed By: Special Administrator Eskew, Sandra L</p> <p><i>[64] Motion in Limine # 3 Re: Evidence Not Relied Upon By Uhc at the Time of the Subject Claim Denial</i></p>
12/29/2021	<p> Motion in Limine</p> <p>Filed By: Special Administrator Eskew, Sandra L</p> <p><i>[65] Motion in Limine #4 Re: Expert Testimony of Dr. Gary M. Owens</i></p>
12/29/2021	<p> Motion in Limine</p> <p>Filed By: Special Administrator Eskew, Sandra L</p> <p><i>[66] Motion in Limine #5 Re: Expert Testimony of Dr. Amitabh Chandra</i></p>
12/29/2021	<p> Motion in Limine</p> <p>Filed By: Special Administrator Eskew, Sandra L</p> <p><i>[67] Motion in Limine #6 Re: Expert Testimony of Dr. Parvesh Kumar</i></p>
12/29/2021	<p> Motion for Sanctions</p> <p>Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew</p> <p><i>[68] Motion for Sanctions</i></p>
12/29/2021	<p> Declaration</p> <p>Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew</p> <p><i>[69] Declaration of Matthew L. Sharp in Support of Motion for Sanctions</i></p>
12/29/2021	<p> Appendix</p> <p>Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew</p> <p><i>[70] APPENDIX OF EXHIBITS (VOLUME I) TO THE DECLARATION OF MATTHEW L. SHARP IN SUPPORT OF PLAINTIFFS' MOTION FOR SANCTIONS</i></p>
12/29/2021	<p> Appendix</p> <p>Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew</p> <p><i>[71] APPENDIX OF EXHIBITS (VOLUME II) TO THE DECLARATION OF MATTHEW L. SHARP IN SUPPORT OF PLAINTIFF S MOTION FOR SANCTIONS</i></p>



# CASE SUMMARY

CASE NO. A-19-788630-C

12/29/2021	 Temporary Seal Pending Court Approval Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[72] Motion to Seal Exhibits 18 and 19 to Plaintiff's Motion for Sanctions</i>
12/29/2021	 Motion for Partial Summary Judgment Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[73] Motion for Partial Summary Judgment</i>
12/29/2021	 Declaration Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[74] Declaration of Matthew L. Sharp in Support of Plaintiffs Motion for Partial Summary Judgment</i>
12/29/2021	 Appendix Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[75] APPENDIX OF EXHIBITS TO THE DECLARATION OF MATTHEW L. SHARP IN SUPPORT OF PLAINTIFF S MOTION FOR SUMMARY JUDGMENT</i>
12/29/2021	 Errata Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[76] Errata to Motion for Sanctions</i>
12/29/2021	 Errata Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[77] Errata to Motion for Partial Summary Judgment</i>
12/29/2021	 Errata Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr. <i>[78] Errata to Motion in Limine # 1 RE: Evidence of Appeal</i>
12/29/2021	 Errata Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[79] Errata to Motion in Limine #2 Re: Evidence of the Proton Beam Therapy Policy</i>
12/29/2021	 Errata Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[80] Errata to Motion in Limine #3 RE: Evidence Not Relied Upon by UHC at the Time of the Subject Claim Denial</i>
12/29/2021	 Errata Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[81] Errata to Motion in Limine #4 RE: Expert Testimony of Dr. Gary M. Owens</i>
12/29/2021	 Errata Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew,

# CASE SUMMARY

CASE NO. A-19-788630-C

William G, Jr.; Plaintiff Estate of William George Eskew  
[82] Errata to Motion in Limine #5 RE: Expert Testimony of Dr. Amitabh Chandra

12/29/2021



Errata

Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew  
[83] Errata to Motion in Limine #6 RE: Expert Testimony of Dr. Parvesh Kumar

12/29/2021



Motion in Limine

Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc  
[84] Defendants' Motion in Limine No. 1: Limit the Testimony of Plaintiffs' "Bad Faith" Expert Stephen D. Prater

12/29/2021



Motion in Limine

Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc  
[85] Defendants' Motion in Limine No. 2: Exclude Evidence, Argument, and/or Testimony Relating to the Financial Condition of Non-Party UnitedHealth Group Incorporated

12/29/2021



Motion in Limine

Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc  
[86] Defendants' Motion in Limine No. 3: Exclude Evidence, Argument, and/or Testimony Relating to Pre-Contract Communications Concerning Coverage

12/29/2021



Motion in Limine

Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc  
[87] Defendants' Motion in Limine No. 4: Exclude Evidence, Argument, and/or Testimony Relating to the Preparation of the Deinal Letter

12/29/2021



Motion in Limine

Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc  
[88] Defendants' Motion in Limine No. 5: Exclude Evidence, Argument, and/or Testimony Relating to Opinions from Judge Scola

12/29/2021



Motion in Limine

Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc  
[89] Defendants' Motion in Limine No. 6: Exclude Evidence, Argument, and/or Testimony Relating to the New York Proton Center

12/29/2021



Clerk's Notice of Hearing

[90] Notice of Hearing

12/29/2021



Clerk's Notice of Hearing

[91] Notice of Hearing

12/29/2021



Clerk's Notice of Hearing

[92] Notice of Hearing

12/29/2021



Motion in Limine

Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc

**CASE SUMMARY**

**CASE NO. A-19-788630-C**

*[93] Defendants' Motion in Limine No. 7: Exclude Certain Photos*

12/29/2021



Motion in Limine

Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc

*[94] Defendants' Motion in Limine No. 8: Preclude Argument or Questioning Relating to Comparing Testimony Preparation Time With Prior Authorization Review Time*

12/29/2021



Motion in Limine

Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc

*[95] Defendants' Motion in Limine No. 9: Exclude Evidence, Argument, and/or Testimony Relating to Generalized Patient Numbers or Studies*

12/29/2021



Motion in Limine

Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc

*[96] Defendants' Motion in Limine No.10: Exclude Evidence, Argument, and/or Testimony Relating to Medicare Coverage*

12/29/2021



Motion in Limine

Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc

*[97] Defendants' Motion in Limine No. 11: Exclude Evidence, Argument, and/or Testimony Relating to Unqualified Opinions Regarding Medical Causation*

12/29/2021



Motion in Limine

Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc

*[98] Defendants' Motion in Limine No. 12: Exclude Testimony From Dr. Liao Regarding Matters Outside the Course and Scope of Her Treatment of Mr. Eskew*

12/29/2021



Motion in Limine

Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc

*[99] Defendants' Motion in Limine No. 13: Exclude Evidence, Argument, and/or Testimony Relating to Questioning Attempting to Alter the Scope of the Jury's Inquiry*

12/29/2021



Motion in Limine

Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc

*[100] Defendants' Motion in Limine No. 14: Exclude Evidence, Argument, and/or Testimony Relating to Inflammatory Questioning Regarding Personal Opinions*

12/29/2021



Motion in Limine

Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc

*[101] Defendants' Motion in Limine No. 15: Exclude Evidence, Argument, and/or Testimony Relating to Hypothetical Questioning, Regarding What Would Be Fairer*

12/29/2021



Motion in Limine











Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc

*[102] Defendants' Motion in Limine No. 16: Exclude Evidence, Argument, and/or Testimony Relating to Misleading Questioning Regarding the Nature of Insurance and Personal Experience With Insurance*

12/29/2021

# CASE SUMMARY

CASE NO. A-19-788630-C

	 Motion in Limine Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[103] Defendants' Motion in Limine No. 17: Exclude Evidence, Argument and/or Testimony Relating to Litigation Conduct</i>
12/29/2021	 Motion in Limine Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[104] Defendants' Motion in Limine No. 18: Exclude Evidence, Argument, and/or Testimony Relating to Other Cases</i>
12/29/2021	 Motion in Limine Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[105] Defendants' Motion in Limine No. 19: Exclude Evidence, Argument, and/or Testimony Relating to "Finally Day In Court" Assertions</i>
12/29/2021	 Motion in Limine Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[106] Defendants' Motion in Limine No. 20: Exclude Evidence, Argument, and/or Testimony Relating to Need for Industry Change Assertions</i>
12/29/2021	 Motion in Limine Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[107] Defendants' Motion in Limine No. 21: Preclude Improper and Inflammatory "Reptile" tactics and Arguments</i>
12/29/2021	 Motion for Summary Judgment Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[108] Defendants Motion for Summary Judgment Re: Claims</i>
12/29/2021	 Motion for Partial Summary Judgment Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[109] Defendants Motion for Partial Summary Judgment Re: UHC</i>
12/29/2021	 Motion for Partial Summary Judgment Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[110] Defendants Motion for Partial Summary Judgment Re: Damages</i>
12/29/2021	 Appendix Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[111] Appendix of Exhibits in Support of Defendants Motions for Summary Judgment and Partial Summary Judgment Volume 1</i>
12/29/2021	 Appendix Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[112] Appendix of Exhibits in Support of Defendants Motions for Summary Judgment and Partial Summary Judgment Volume 2</i>

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CASE NO. A-19-788630-C

12/29/2021	 Appendix Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[113] Appendix of Exhibits in Support of Defendants Motions for Summary Judgment and Partial Summary Judgment Volume 3</i>
12/29/2021	 Appendix Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[114] Appendix of Exhibits in Support of Defendants Motions for Summary Judgment and Partial Summary Judgment Volume 4</i>
12/29/2021	 Appendix Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[115] Appendix of Exhibits in Support of Defendants Motions for Summary Judgment and Partial Summary Judgment Volume 5</i>
12/29/2021	 Appendix Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[116] Appendix of Exhibits in Support of Defendants Motions for Summary Judgment and Partial Summary Judgment Volume 6</i>
12/30/2021	 Clerk's Notice of Hearing <i>[117] Notice of Hearing</i>
12/30/2021	 Clerk's Notice of Hearing <i>[118] Notice of Hearing</i>
12/30/2021	 Clerk's Notice of Hearing <i>[119] Notice of Hearing</i>
12/30/2021	 Clerk's Notice of Hearing <i>[120] Notice of Hearing</i>
12/30/2021	 Clerk's Notice of Nonconforming Document <i>[121] Clerk's Notice of Nonconforming Document</i>
12/30/2021	 Clerk's Notice of Nonconforming Document <i>[122] Clerk's Notice of Nonconforming Document</i>
12/30/2021	 Clerk's Notice of Nonconforming Document <i>[123] Clerk's Notice of Nonconforming Document</i>
01/04/2022	 Clerk's Notice of Hearing <i>[124] Notice of Hearing</i>
01/04/2022	 Clerk's Notice of Hearing <i>[125] Notice of Hearing</i>
01/04/2022	 Clerk's Notice of Hearing <i>[126] Notice of Hearing</i>

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01/06/2022	 Clerk's Notice of Nonconforming Document and Curative Action <i>[127] Clerk's Notice of Curative Action</i>
01/06/2022	 Clerk's Notice of Nonconforming Document and Curative Action <i>[128] Clerk's Notice of Curative Action</i>
01/06/2022	 Clerk's Notice of Nonconforming Document and Curative Action <i>[129] Clerk's Notice of Curative Action</i>
01/14/2022	 Opposition to Motion For Summary Judgment Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[130] Opposition to Defendants Motion for Partial Summary Judgment Re: Damages</i>
01/14/2022	 Opposition to Motion For Summary Judgment Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[131] Opposition to Defendants Motion for Partial Summary Judgment Re: Damages</i>
01/14/2022	 Opposition to Motion For Summary Judgment Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[132] Opposition to Defendants' Motion for Summary Judgment Re: Claims</i>
01/14/2022	 Opposition to Motion in Limine Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[133] Opposition to Defendants Motion in Limine No. 1</i>
01/14/2022	 Opposition to Motion in Limine Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[134] Opposition to Defendants' Motion in Limine No. 2</i>
01/14/2022	 Opposition to Motion in Limine Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[135] Opposition to Defendants Motion in Limine No. 3</i>
01/14/2022	 Opposition to Motion in Limine Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[136] Opposition to Defendants Motion in Limine No. 4</i>
01/14/2022	 Opposition to Motion in Limine Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[137] Opposition to Defendnats' Motion in Limine No. 5</i>
01/14/2022	 Opposition to Motion in Limine Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[138] Opposition to Defendants' Motion in Limine No 6</i>
01/14/2022	 Opposition to Motion in Limine

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CASE NO. A-19-788630-C

	<p>Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew  <i>[139] Opposition to Defendants Motion in Limine No. 7</i></p>
01/14/2022	<p> Opposition to Motion in Limine            Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew  <i>[140] Opposition to Defendants Motion in Limine No. 8</i></p>
01/14/2022	<p> Opposition to Motion in Limine            Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew  <i>[141] Opposition to Defendants Motion in Limine No. 9</i></p>
01/14/2022	<p> Opposition to Motion in Limine            Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew  <i>[142] Opposition to Defendants Motion in Limine No.10</i></p>
01/14/2022	<p> Opposition to Motion in Limine            Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew  <i>[143] Opposition to Defendants Motion in Limine No. 11</i></p>
01/14/2022	<p> Opposition to Motion in Limine            Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew  <i>[144] Opposition to Defendants Motion in Limine No.12</i></p>
01/14/2022	<p> Opposition to Motion in Limine            Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew  <i>[145] Opposition to Defendants Motion in Limine No. 13</i></p>
01/14/2022	<p> Opposition to Motion in Limine            Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew  <i>[146] Opposition to Defendants Motion in Limine No. 14</i></p>
01/14/2022	<p> Opposition to Motion in Limine            Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew  <i>[147] Opposition to Defendants Motion in Limine No.15</i></p>
01/14/2022	<p> Opposition to Motion in Limine            Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew  <i>[148] Opposition to Defendants Motion in Limine No. 16</i></p>
01/14/2022	<p> Opposition to Motion in Limine            Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew  <i>[149] Opposition to Defendants Motion in Limine No. 17</i></p>
01/14/2022	<p> Opposition to Motion in Limine            Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew,</p>

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CASE NO. A-19-788630-C

	William G, Jr.; Plaintiff Estate of William George Eskew <i>[150] Opposition to Defendants Motion in Limine No.18.</i>
01/14/2022	 Opposition to Motion in Limine Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[151] Opposition to Defendants Motion in Limine No.19</i>
01/14/2022	 Opposition to Motion in Limine Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[152] Opposition to Defendants Motion in Limine No. 20</i>
01/14/2022	 Opposition to Motion in Limine Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[153] Opposition to Defendants Motion in Limine No. 21</i>
01/14/2022	 Notice Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[154] NOTICE OF WITHDRAWAL OF CLAIMS</i>
01/14/2022	 Response Filed by: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[155] Response and Objections to Defendants' Asserted Undisputed Facts in Support of Motions for Summary Judgment/Partial Summary Judgment</i>
01/14/2022	 Statement Filed by: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[156] Consolidated Statement of Facts</i>
01/14/2022	 Declaration Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[157] Declaration of Matthew L. Sharp in Support of Plaintiffs' Consolidated Statement of Facts</i>
01/14/2022	 Appendix Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[158] APPENDIX OF EXHIBITS (VOLUME I) IN SUPPORT OF PLAINTIFFS CONSOLIDATED STATEMENT OF FACTS</i>
01/14/2022	 Appendix Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew <i>[159] APPENDIX OF EXHIBITS (VOLUME II) IN SUPPORT OF PLAINTIFFS CONSOLIDATED STATEMENT OF FACTS</i>
01/14/2022	 Opposition to Motion Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[160] Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment</i>



# CASE SUMMARY

CASE NO. A-19-788630-C

01/14/2022	 Opposition to Motion in Limine Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[161] Defendants' Opposition to Plaintiffs' Motion in Limine # 1 Re: Evidence of Appeal</i>
01/14/2022	 Opposition to Motion in Limine Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[162] Defendants' Opposition to Plaintiffs' Motion in Limine # 2 Re: Evidence of the Proton Beam Therapy Policy</i>
01/14/2022	 Opposition to Motion in Limine Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[163] Defendants' Opposition to Plaintiffs' Motion in Limine No. 3 Re: Evidence Not Relied Upon by UHC at the Time of the Subject Claim Denial</i>
01/14/2022	 Opposition Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[164] Defendants' Opposition to Plaintiffs' Motion in Limine No. 4 Re: Expert Testimony of Dr. Gary M. Owens</i>
01/14/2022	 Opposition to Motion in Limine Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[165] Defendants' Opposition to Plaintiffs' Motion in Limine No. 5 Re: Expert Testimony of Dr. Amitabh Chandra</i>
01/14/2022	 Opposition to Motion in Limine Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[166] Defendants' Opposition to Plaintiffs' Motion in Limine No. 6 Re: Expert Testimony of Dr. Parvesh Kumar</i>
01/18/2022	 Stipulation and Order <i>[167] Stipulation and Order to Dismiss Claims Under NRS 41.085</i>
01/18/2022	 Opposition to Motion Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[168] Defendants' Opposition to Plaintiffs' Motion for Sanctions</i>
01/18/2022	 Declaration Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[169] Declaration of Ryan T. Gormley in Support of Defendants' Opposition to Plaintiff's Motion for Sanctions</i>
01/20/2022	 Stipulation and Order Filed by: Special Administrator Eskew, Sandra L; Plaintiff Estate of William George Eskew <i>[170] Stipulation and Order Re: Plaintiffs' for Sanctions</i>
01/25/2022	 Reply to Opposition Filed by: Plaintiff Estate of William George Eskew <i>[171] Reply to Opposition to Motion In Limine # 1 Re: Evidence of Appeal</i>

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01/25/2022



Reply to Opposition

Filed by: Plaintiff Estate of William George Eskew

*[172] Reply to Opposition to Motion in Limine #2 Re: Evidence of the Proton Beam Therapy Policy*

01/25/2022



Reply to Opposition

Filed by: Plaintiff Estate of William George Eskew

*[173] Reply to Opposition to Motion in Limine #3 Re: Evidence not Relied Upon by UHC at the Time of the Subject Claim Denial*

01/25/2022



Reply to Opposition

Filed by: Plaintiff Estate of William George Eskew

*[174] Reply to Opposition to Motion in Limine #4 Re: Expert Testimony of Dr. Gary M. Owens*

01/25/2022



Reply to Opposition

Filed by: Plaintiff Estate of William George Eskew

*[175] Reply to Opposition to Motion in Limine #5 Re: Expert Testimony of Dr. Amitabh Chandra*

01/25/2022



Reply to Opposition

Filed by: Plaintiff Estate of William George Eskew

*[176] Reply to Opposition to Motion in Limine #6 Re: Expert Testimony of Dr. Parvesh Kumar*

01/25/2022



Reply to Opposition

Filed by: Plaintiff Estate of William George Eskew

*[177] Reply to Opposition to motion for Partial Summary Judgment*

01/25/2022



Declaration

Filed By: Plaintiff Estate of William George Eskew

*[178] Declaration Of Matthew L. Sharp In Support Of Reply To Defendants Opposition To Motion For Partial Summary Judgment*

01/25/2022



Reply to Opposition

Filed by: Plaintiff Estate of William George Eskew

*[179] Reply to Opposition to Motion for Sanctions*

01/25/2022



Declaration

Filed By: Plaintiff Estate of William George Eskew

*[180] Declaration of Matthew L. Sharp In Support of Reply to Defendants Opposition to Motion for Sanctions*

01/25/2022



Reply in Support

Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc

*[181] Reply in Support of Defendants Motion for Partial Summary Judgment Re: Claims*

01/25/2022



Reply in Support

Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc

*[182] Reply in Support of Defendants' Motion for Partial Summary Judgment Re: Damages*

01/25/2022












Reply in Support

Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United











# CASE SUMMARY

CASE NO. A-19-788630-C

	Healthcare, Inc <i>[183] Reply in Support of Defendants Motion for Partial Summary Judgment Re: UHC</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[184] Reply in Support of Defendants' Motion in Limine No. 1: Limit the Testimony of Plaintiffs' "Bad Faith" Expert Stephen D. Prater</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[185] Reply in Support of Defendants' Motion in Limine No. 2: Exclude Evidence, Argument, and/or Testimony Relating to the Financial Condition of Non-Party Unitedhealth Group Incorporated</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[186] Reply in Support of Defendants' Motion in Limine No. 3: Exclude Evidence, Argument, and/or Testimony Relating to Pre-Contract Communications Concerning Coverage</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[187] Reply in Support of Defendants' Motion in Limine No. 4: Exclude Evidence, Argument, and/or Testimony Relating to the Preparation of the Denial Letter</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[188] Reply in Support of Defendants' Motion in Limine No. 5: Exclude Evidence, Argument, and/or Testimony Relating to Opinions from Judge Scola</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[189] Reply in Support of Defendants' Motion in Limine No. 6: Exclude Evidence, Argument, and/or Testimony Relating to the New York Proton Center</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[190] Defendants' Reply in Support of Motion in Limine No. 7: Exclude Certain Photos</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[191] Defendants' Reply in Support of Motion in Limine No. 8: Preclude Argument or Questioning Relating to Comparing Testimony Preparation Time With Prior Authorization Review Time</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[192] Defendants' Reply in Support of Motion in Limine No. 9: Exclude Evidence, Argument, and/or Testimony Relating to Generalized Patient Numbers or Studies</i>












# CASE SUMMARY

CASE NO. A-19-788630-C

01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[193] Defendants' Reply in Support of Motion in Limine No. 10: Exclude Evidence, Argument, and/or Testimony Relating to Medicare Coverage</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[194] Defendants' Reply in Support of Motion in Limine No. 11: Exclude Evidence, Argument, and/or Testimony Relating to Unqualified Opinions Regarding Medical Causation</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[195] Defendants' Reply in Support of Motion in Limine No. 12: Exclude Testimony from Dr. Liao Regarding Matters Outside the Course and Scope of Her Treatment of Mr. Eskew</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[196] Reply in Support of Defendants' Motion in Limine No. 13: Exclude Evidence, Argument, and/or Testimony Relating to Questioning Attempting to Alter the Scope of the Jury's Inquiry</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[197] Reply in Support of Defendants' Motion in Limine No. 14: Exclude Evidence, Argument, and/or Testimony Relating to Inflammatory Questioning Regarding Personal Opinions</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[198] Reply in Support of Defendants' Motion in Limine No. 15: Exclude Evidence, Argument, and/or Testimony Relating to Hypothetical Questioning Regarding What Would Be Fairer</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[199] Reply in Support of Defendants' Motion in Limine No. 16: Exclude Evidence, Argument, and/or Testimony Relating to Misleading Questioning Regarding the Nature of Insurance and Personal Experience With Insurance</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[200] Defendants' Reply in Support of Motion in Limine No. 17: Exclude Evidence, Argument, and/or Testimony Relating to Litigation Conduct</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[201] Defendants Reply in Support of Motion in Limine No. 18: Exclude Evidence, Argument, and/or Testimony Relating to Other Cases</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United














# CASE SUMMARY

CASE NO. A-19-788630-C

	Healthcare, Inc <i>[202] Defendants' Reply in Support of Motion in Limine No. 19: Exclude Evidence, Argument, and/or Testimony Relating to Finally Day in Court Assertions</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[203] Defendants' Reply in Support of Motion in Limine No. 20: Exclude Evidence, Argument, and/or Testimony Relating to Need for Industry Change Assertions</i>
01/25/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[204] Defendants' Reply in Support of Motion in Limine No. 21: Preclude Improper and Inflammatory Reptile Tactics and Arguments</i>
01/27/2022	 Errata Filed By: Plaintiff Estate of William George Eskew <i>[205] Errata to Reply to Opposition to Motion for Partial Summary Judgment</i>
02/01/2022	 Supplement <i>[206] Supplement to Motion for Partial Summary Judgment and Opposition to Motion for Summary Judgment re: Claims</i>
02/04/2022	 Response Filed by: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[207] Defendants' Response to Plaintiff's Supplement to Motion for Partial Summary Judgment and Opposition to Motion for Summary Judgment Re: Claims</i>
02/11/2022	 Pre-Trial Disclosure Party: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[208] Defendants' NRCP 16.1(a)(3) Pretrial Disclosures</i>
02/11/2022	 Pre-Trial Disclosure Party: Plaintiff Estate of William George Eskew <i>[209] Plaintiff's Rule 16.1(a)(3) Pre-Trial Disclosures</i>
02/14/2022	 Pre-Trial Disclosure Party: Plaintiff Estate of William George Eskew <i>[210] Plaintiff's Rule 16.1(A)(3) Pretrial Disclosures (First Supplement)</i>
02/16/2022	 Pre Trial Information Filed by: Plaintiff Estate of William George Eskew <i>[211] Joint Pre Trial Information for Trial Scheduling Per Court's Request</i>
02/17/2022	 Pre-Trial Disclosure Party: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[212] First Supplement To Defendants NRCP 16.1(a)(3) Pretrial Disclosures</i>
02/18/2022	 Pre-Trial Disclosure Party: Plaintiff Estate of William George Eskew <i>[213] Plaintiff's Rule 16.1(A)(3) Pretrial Disclosures (Second Supplement)</i>

# CASE SUMMARY

CASE NO. A-19-788630-C

02/22/2022	 Joint Pre-Trial Memorandum Filed By: Plaintiff Estate of William George Eskew <i>[214] Joint Pre-Trial Memorandum</i>
02/22/2022	 Pre-Trial Disclosure Party: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[215] Defendants' Objections To Plaintiff's Rule 16.1(A)(3) Pretrial Disclosures</i>
02/22/2022	 Response Filed by: Plaintiff Estate of William George Eskew <i>[216] Plaintiff's Response to Defendants' Rule 16.1(a)(3) Pretrial Disclosures</i>
02/23/2022	 Recorders Transcript of Hearing <i>[217] Recorders Transcript of Hearing Re: All Pending Motions - February 10, 2022</i>
02/23/2022	 Recorders Transcript of Hearing <i>[218] Recorders Transcript of Hearing Re: All Pending Motions - February 11, 2022</i>
02/28/2022	 Pre-Trial Disclosure Party: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[219] First Supplement To Defendants Objections To Plaintiff's Rule 16.1(A)(3) Pretrial Disclosures</i>
02/28/2022	 Trial Subpoena Filed by: Plaintiff Estate of William George Eskew <i>[220] Trial Subpoena</i>
02/28/2022	 Joint Pre-Trial Memorandum Filed By: Plaintiff Estate of William George Eskew <i>[221] Joint Pre-Trial Memorandum (First Supplement)</i>
03/07/2022	 Trial Subpoena Filed by: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[222] Trial Subpoena: Andrew Cohen, MD</i>
03/09/2022	 Declaration Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[223] Declaration of Service</i>
03/14/2022	 Trial Brief Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc <i>[224] Defendants' Trial Brief Re: "No Hindsight" Rule</i>
03/14/2022	 Order Denying <i>[225] Order Denying Defendants' Motion for Partial Summary Judgment Re. Claims</i>
03/14/2022	 Order Denying <i>[226] Order Denying Defendants' Motion for Partial Summary Judgment Re. Damages</i>
















# CASE SUMMARY

CASE NO. A-19-788630-C

03/14/2022	 Order Denying <i>[227] Order Denying Defendants' Motion for Partial Summary Judgment Re. UHC</i>
03/14/2022	 Order <i>[228] Order on Plaintiff's Motions in Limine</i>
03/15/2022	 Jury List <i>[229]</i>
03/16/2022	 Order <i>[230] 2022-03-11 Defense MIL Order</i>
03/17/2022	 Notice of Entry of Order Filed By: Defendant Sierra Health and Life Insurance Company Inc <i>[231] Notice Of Entry Of Order Denying Defendants Motion For Summary Judgment Re: Claims</i>
03/17/2022	 Notice of Entry of Order Filed By: Defendant Sierra Health and Life Insurance Company Inc <i>[232] Notice Of Entry Of Order Denying Defendants Motion For Partial Summary Judgment Re: UHC</i>
03/17/2022	 Notice of Entry of Order <i>[233] Notice Of Entry Of Order Denying Defendants Motion For Partial Summary Judgment Re: Damages</i>
03/17/2022	 Notice of Entry of Order Filed By: Defendant Sierra Health and Life Insurance Company Inc <i>[234] Notice Of Entry Of Order Regarding Defendants Motions In Limine</i>
03/18/2022	 Notice of Entry of Order Filed By: Plaintiff Estate of William George Eskew <i>[235] Notice of Entry of Order on Plaintiff's Motion in Limine</i>
03/25/2022	 Motion for Judgment Filed By: Defendant Sierra Health and Life Insurance Company Inc <i>[236] Defendant's Motion for Judgment as a Matter of Law</i>
03/29/2022	 Clerk's Notice of Nonconforming Document <i>[237] Clerk s Notice of Nonconforming Document</i>
03/30/2022	 Motion Filed By: Plaintiff Estate of William George Eskew <i>[238] Motion for Judgment as a Matter of Law- Covered Service</i>
03/30/2022	 Jury Instructions Party: Defendant Sierra Health and Life Insurance Company Inc <i>[239] Defendant's Proposed Jury Instructions (Disputed)</i>
04/04/2022	 Verdict <i>[240]</i>
04/04/2022	 Jury Instructions

# CASE SUMMARY

CASE NO. A-19-788630-C

	[241]
04/04/2022	 Jury List [242] Amended Jury List
04/05/2022	 Clerk's Notice of Nonconforming Document [243] Clerk's Notice of Nonconforming Document
04/05/2022	 Verdict [244]
04/05/2022	 Jury Instructions [245]
04/06/2022	 Order to Statistically Close Case [246] Order to Statistically Close Case
04/07/2022	 Clerk's Notice of Nonconforming Document and Curative Action [247] Clerk's Notice of Nonconforming Document and Curative Action
04/12/2022	 Notice Filed By: Plaintiff Estate of William George Eskew [248] NOTICE OF DEPOSITION DESIGNATION USED AT TRIAL
04/12/2022	 Appendix Filed By: Plaintiff Estate of William George Eskew [249] Appendix Of Exhibits To The Notice Of Deposition Designation Used At Trial
04/12/2022	 Clerk's Notice of Hearing [250] Notice of Hearing
04/12/2022	 Appendix Filed By: Special Administrator Eskew, Sandra L [251] Appendix of Exhibits to the Notice of Deposition Designation Used at Trial
04/13/2022	 Court Recorders Invoice for Transcript [252] Transcriber's Billing Information, Hearing Date 3/14/22-4/5/22
04/18/2022	 Judgment Upon Jury Verdict [253] Judgment Upon Jury Verdict
04/18/2022	 Notice of Entry of Judgment Filed By: Plaintiff Estate of William George Eskew [254] Notice of Entry of Judgment Upon Jury Verdict
04/19/2022	 Memorandum of Costs and Disbursements Filed By: Plaintiff Estate of William George Eskew [255] PLAINTIFF'S VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS
04/19/2022	 Appendix Filed By: Plaintiff Estate of William George Eskew [256] APPENDIX OF EXHIBITS (VOLUME 1) TO PLAINTIFF'S VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS



# CASE SUMMARY

CASE NO. A-19-788630-C

04/19/2022



Appendix

Filed By: Plaintiff Estate of William George Eskew  
[257] APPENDIX OF EXHIBITS (VOLUME 2) TO PLAINTIFF'S VERIFIED  
MEMORANDUM OF COSTS AND DISBURSEMENTS

04/22/2022



Motion to Retax

Filed By: Defendant Sierra Health and Life Insurance Company Inc  
[258] Defendant's Motion to Retax Costs

04/25/2022



Clerk's Notice of Hearing

[259] Notice of Hearing

05/06/2022



Opposition to Motion

Filed By: Plaintiff Estate of William George Eskew  
[260] Plaintiff Opposition to Motion to Retax Costs

05/10/2022



Order

[261] ORDER ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

05/10/2022



Order

[262] Order Denying Motion for Sanctions final

05/16/2022



Motion for Judgment

Filed By: Defendant Sierra Health and Life Insurance Company Inc  
[263] Defendants Renewed Motion for Judgment as a Matter of Law

05/16/2022



Motion for New Trial

Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United  
Healthcare, Inc  
[264] Defendants Motion for a New Trial or Remittitur

05/16/2022



Appendix

Filed By: Defendant Sierra Health and Life Insurance Company Inc  
[265] Appendix To Motion For A New Trial Or Remittitur And Renewed Motion For Judgment  
As A Matter Of Law - Volume 1

05/16/2022



Appendix

[266] Appendix To Motion For A New Trial Or Remittitur And Renewed Motion For Judgment  
As A Matter Of Law - Volume 2

05/16/2022



Appendix

Filed By: Defendant Sierra Health and Life Insurance Company Inc  
[267] Appendix To Motion For A New Trial Or Remittitur And Renewed Motion For Judgment  
As A Matter Of Law - Volume 3

05/16/2022



Appendix

Filed By: Defendant Sierra Health and Life Insurance Company Inc  
[268] Appendix To Motion For A New Trial Or Remittitur And Renewed Motion For Judgment  
As A Matter Of Law - Volume 4

05/16/2022



Appendix

Filed By: Defendant Sierra Health and Life Insurance Company Inc  
[269] Appendix To Motion For A New Trial Or Remittitur And Renewed Motion For Judgment  
As A Matter Of Law - Volume 5

# CASE SUMMARY

CASE NO. A-19-788630-C

05/16/2022



Appendix

Filed By: Defendant Sierra Health and Life Insurance Company Inc  
[270] Appendix To Motion For A New Trial Or Remittitur And Renewed Motion For Judgment  
As A Matter Of Law - Volume 6

05/16/2022



Appendix

Filed By: Defendant Sierra Health and Life Insurance Company Inc  
[271] Appendix To Motion For A New Trial Or Remittitur And Renewed Motion For Judgment  
As A Matter Of Law - Volume 7

05/16/2022



Appendix

Filed By: Defendant Sierra Health and Life Insurance Company Inc  
[272] Appendix To Motion For A New Trial Or Remittitur And Renewed Motion For Judgment  
As A Matter Of Law - Volume 8

05/16/2022



Appendix

Filed By: Defendant Sierra Health and Life Insurance Company Inc  
[273] Appendix To Motion For A New Trial Or Remittitur And Renewed Motion For Judgment  
As A Matter Of Law - Volume 9

05/16/2022



Appendix

[274] Appendix To Motion For A New Trial Or Remittitur And Renewed Motion For Judgment  
As A Matter Of Law - Volume 10

05/16/2022



Appendix

Filed By: Defendant Sierra Health and Life Insurance Company Inc  
[275] Appendix To Motion For A New Trial Or Remittitur And Renewed Motion For Judgment  
As A Matter Of Law - Volume 11

05/16/2022



Appendix

Filed By: Defendant Sierra Health and Life Insurance Company Inc  
[276] Appendix To Motion For A New Trial Or Remittitur And Renewed Motion For Judgment  
As A Matter Of Law - Volume 12

05/17/2022



Clerk's Notice of Hearing

[277] Notice of Hearing

05/18/2022



Notice of Change of Hearing

[278] Notice of Change of Hearing

05/19/2022



Stipulation and Order for Dismissal With Prejudice

Filed By: Special Administrator Eskew, Sandra L  
[279] Stipulation and Order to Dismiss Claims Against United Healthcare Inc

05/23/2022



Stipulation and Order

[280] Stipulation and Order to Extend Stay on Execution of Judgment

05/23/2022



Stipulation and Order

[281] STIPULATION AND ORDER RE: DEFENDANT'S POST-TRIAL MOTIONS

06/06/2022



Notice of Entry of Order

Filed By: Defendant Sierra Health and Life Insurance Company Inc  
[282] Notice of Entry of Stipulation and Order to Extend Stay on Execution of Judgment









# CASE SUMMARY

CASE NO. A-19-788630-C

06/06/2022	 Motion to Associate Counsel Filed By: Defendant Sierra Health and Life Insurance Company Inc <i>[283] Motion to Associate Counsel (Thomas H. Dupree, Jr.)</i>
06/07/2022	 Clerk's Notice of Hearing <i>[284] Notice of Hearing</i>
06/08/2022	 Order Filed By: Special Administrator Eskew, Sandra L <i>[285] Order Granting in Part and Denying in Part Defendant's Motion to Retax</i>
06/09/2022	 Notice of Entry of Order Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr. <i>[286] Notice of Entry of Order Granting in Part and Denying in Part Defendant's Motion to Retax</i>
06/23/2022	 Stipulation and Order Filed by: Defendant Sierra Health and Life Insurance Company Inc <i>[287] Stipulation and Order to Stay Execution on Judgment Pending Disposition of Postjudgment Motions (03506938x9C8C6)</i>
06/27/2022	 Notice of Entry of Stipulation and Order Filed By: Defendant Sierra Health and Life Insurance Company Inc <i>[288] Notice of Entry of Stipulation and Order to Stay Execution On Judgment Pending Disposition of Postjudgment Motions</i>
06/29/2022	 Opposition to Motion Filed By: Special Administrator Eskew, Sandra L <i>[289] OPPOSITION TO DEFENDANTS MOTION FOR A NEW TRIAL OR REMITTITUR</i>
06/29/2022	 Opposition to Motion Filed By: Special Administrator Eskew, Sandra L <i>[290] OPPOSITION TO DEFENDANTS RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW</i>
07/06/2022	 Recorders Transcript of Hearing <i>[291] Recorders Transcript of Hearing Re: Jury Trial - Day 1 - Monday, March 14, 2022</i>
07/06/2022	 Recorders Transcript of Hearing <i>[292] Recorders Transcript of Hearing Re: Jury Trial - Day 2 - Tuesday, March 15 2022</i>
07/06/2022	 Recorders Transcript of Hearing <i>[293] Recorders Transcript of Hearing Re: Jury Trial - Day 3 - Wednesday, March 16 2022</i>
07/06/2022	 Recorders Transcript of Hearing <i>[294] Recorders Transcript of Hearing Re: Jury Trial - Day 4 - Monday, March 21 2022</i>
07/06/2022	 Recorders Transcript of Hearing <i>[295] Recorders Transcript of Hearing Re: Jury Trial - Day 5 - Tuesday, March 22 2022</i>
07/06/2022	 Recorders Transcript of Hearing <i>[296] Recorders Transcript of Hearing Re: Jury Trial - Day 6 - Wednesday, March 23 2022</i>















# CASE SUMMARY

CASE NO. A-19-788630-C

07/06/2022	 Recorders Transcript of Hearing [297] Recorders Transcript of Hearing Re: Jury Trial - Day 7 - Thursday, March 24 2022
07/06/2022	 Recorders Transcript of Hearing [298] Recorders Transcript of Hearing Re: Jury Trial - Day 8 - Friday, March 25 2022
07/06/2022	 Recorders Transcript of Hearing [299] Recorders Transcript of Hearing Re: Jury Trial - Day 9 - Monday, March 28 2022
07/06/2022	 Recorders Transcript of Hearing [300] Recorders Transcript of Hearing Re: Jury Trial - Day 10 - Tuesday, March 29 2022
07/06/2022	 Recorders Transcript of Hearing [301] Recorders Transcript of Hearing Re: Jury Trial - Day 11 - Wednesday, March 30 2022
07/06/2022	 Recorders Transcript of Hearing [302] Recorders Transcript of Hearing Re: Jury Trial - Day 12 - Monday, April 4 2022
07/06/2022	 Recorders Transcript of Hearing [303] Recorders Transcript of Hearing Re: Jury Trial - Day 13 - Tuesday, April 5 2022
07/12/2022	 Order Admitting to Practice Filed By: Defendant Sierra Health and Life Insurance Company Inc [304] Order Admitting to Practice -Thomas H. Dupree, Jr., Esq.
07/14/2022	 Notice of Entry of Order Filed By: Defendant Sierra Health and Life Insurance Company Inc [305] Notice of Entry of Order Admitting to Practice Thomas H. Dupree, Jr., Esq.
07/20/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc [306] Defendant's Reply in Support of Its Renewed Motion for Judgment as a Matter of Law
07/20/2022	 Reply in Support Filed By: Defendant Sierra Health and Life Insurance Company Inc [307] Defendant's Reply in Support of Its Motion for a New Trial or Remittitur
07/21/2022	 Motion to Associate Counsel Filed By: Special Administrator Eskew, Sandra L [308] Motion to Associate Counsel
07/21/2022	 Clerk's Notice of Hearing [309] Notice of Hearing
07/28/2022	 Motion to Associate Counsel Filed By: Special Administrator Eskew, Sandra L [310] Motion to Associate Counsel - Matthew W.H. Wessler
07/29/2022	 Clerk's Notice of Hearing [311] Notice of Hearing

# CASE SUMMARY

CASE NO. A-19-788630-C

08/10/2022	 Supplement Filed by: Defendant Sierra Health and Life Insurance Company Inc <i>[312] Defendants Motion For Leave To File Supplemental Authority And Supplemental Authority In Support Of Its Motion For A New Trial Or Remittitur</i>
08/14/2022	 Order Admitting to Practice <i>[313] Order Admitting Deepak Gupta</i>
08/14/2022	 Order Admitting to Practice <i>[314] Order Admitting Matthew Wessler</i>
08/15/2022	 Notice of Entry of Order Filed By: Special Administrator Eskew, Sandra L <i>[315] Notice of Entry of Order Admitting Deepak Gupta to Practice</i>
08/15/2022	 Notice of Entry of Order Filed By: Special Administrator Eskew, Sandra L <i>[316] Notice of Entry of Order Admitting Matthew W.H. Wessler to Practice</i>
08/30/2022	 Objection Filed By: Defendant Sierra Health and Life Insurance Company Inc <i>[317] Defendants Objection To Plaintiffs Proposed Findings Of Fact, Conclusions Of Law, And Orders Denying SHLs Motion For A New Trial Or Remittitur And Renewed Motion For Judgment As A Matter Of Law</i>
08/31/2022	 Objection Filed By: Defendant Sierra Health and Life Insurance Company Inc <i>[318] Defendants Further Objections To Plaintiffs Proposed Findings Of Fact, Conclusions Of Law, And Orders Denying SHLs Motion For A New Trial Or Remittitur And Renewed Motion For Judgment As A Matter Of Law</i>
09/14/2022	 Notice of Appeal Filed By: Defendant Sierra Health and Life Insurance Company Inc <i>[319] Notice of Appeal</i>
09/14/2022	 Case Appeal Statement Filed By: Defendant Sierra Health and Life Insurance Company Inc <i>[320] Case Appeal Statement</i>
10/05/2022	 Order <i>[321] Order Denying Defendant's Renewed Motion for Judgment as a Matter of Law</i>
10/05/2022	 Order <i>[322] Order Denying Defendant's Motion for a New Trial or Remittitur</i>
10/06/2022	 Motion Filed By: Special Administrator Eskew, Sandra L <i>[323] Motion for Entry of Express Findings as Required by Lioce v. Cohen</i>
10/07/2022	 Amended Judgment <i>[324] Amended Judgment on Verdict</i>
10/07/2022	 Order Shortening Time Filed By: Special Administrator Eskew, Sandra L

# CASE SUMMARY

CASE NO. A-19-788630-C

[325] Plaintiff's Motion to Consider Plaintiff's Motion for Entry of Express Findings as Required by Lioce v. Cohen on an Order Shortening Time Basis

10/13/2022



Opposition

Filed By: Defendant Sierra Health and Life Insurance Company Inc

[326] Defendants Opposition To Plaintiffs Motion For Entry Of Express Findings As Required By Lioce v. Cohen

10/14/2022



Reply in Support

Filed By: Special Administrator Eskew, Sandra L

[327] Reply in Support of Motion for Entry of Express Findings as Required by Lioce v. Cohen

10/21/2022



Court Recorders Invoice for Transcript

[328] 10/18/22 hearing

10/21/2022



Recorders Transcript of Hearing

[329] Recorders Transcript of Hearing Re: Plaintiff's Motion for Express Findings - 10/18/22

10/24/2022



Findings of Fact, Conclusions of Law and Judgment

[330] Findings of Fact, Conclusions of Law and Judgment

10/24/2022



Notice of Entry of Findings of Fact, Conclusions of Law

Filed By: Special Administrator Eskew, Sandra L

[331] Notice of Entry of Findings and Conclusions as to Allegations of Attorney Misconduct

10/24/2022



Notice of Entry of Order

Filed By: Special Administrator Eskew, Sandra L

[332] Notice of Entry of Amended Judgment Upon Jury Verdict

10/24/2022



Notice of Entry of Order

Filed By: Special Administrator Eskew, Sandra L

[333] Notice of Entry of Order Denying Renewed Motion for Judgment as a Matter of Law

10/24/2022



Notice of Entry of Order

Filed By: Special Administrator Eskew, Sandra L

[334] Notice of Entry of Order Denying Motion for a New Trial or Remittitur

10/31/2022



Amended Notice of Appeal

Party: Defendant Sierra Health and Life Insurance Company Inc

[335] Amended Notice of Appeal

10/31/2022



Amended Case Appeal Statement

[336] Amended Case Appeal Statement

## DISPOSITIONS

07/23/2019

**Order of Dismissal** (Judicial Officer: Cory, Kenneth)

Debtors: Sierra Health and Life Insurance Company Inc (Defendant)

Creditors: Sandra L Eskew (Special Administrator, Plaintiff), Tyler Eskew (Plaintiff), William G Eskew, JR. (Plaintiff), Estate of William George Eskew (Plaintiff)

Judgment: 07/23/2019, Docketed: 07/23/2019

Comment: In Part/ Certain Claim

01/18/2022

**Order of Dismissal With Prejudice** (Judicial Officer: Krall, Nadia)

Debtors: Sierra Health and Life Insurance Company Inc (Defendant), United Healthcare, Inc (Defendant)

Creditors: Sandra L Eskew (Plaintiff), Tyler Eskew (Plaintiff), William G Eskew, JR. (Plaintiff),

# CASE SUMMARY

CASE NO. A-19-788630-C

	<p>Estate of William George Eskew (Plaintiff)  Judgment: 01/18/2022, Docketed: 01/19/2022  Comment: Certain Claims</p>
04/04/2022	<p><b>Verdict</b> (Judicial Officer: Krall, Nadia)  Debtors: Sierra Health and Life Insurance Company Inc (Defendant)  Creditors: Estate of William George Eskew (Plaintiff)  Judgment: 04/04/2022, Docketed: 04/05/2022  Total Judgment: 40,000,000.00</p>
04/05/2022	<p><b>Verdict</b> (Judicial Officer: Krall, Nadia)  Debtors: Sierra Health and Life Insurance Company Inc (Defendant), United Healthcare, Inc (Defendant)  Creditors: Sandra L Eskew (Plaintiff), Estate of William George Eskew (Plaintiff)  Judgment: 04/05/2022, Docketed: 04/18/2022  Total Judgment: 160,000,000.00</p>
05/19/2022	<p><b>Order of Dismissal With Prejudice</b> (Judicial Officer: Krall, Nadia)  Debtors: United Healthcare, Inc (Defendant)  Creditors: Sandra L Eskew (Plaintiff, Special Administrator), Estate of William George Eskew (Plaintiff)  Judgment: 05/19/2022, Docketed: 05/20/2022</p>
10/07/2022	<p><b>Amended Judgment Upon the Verdict</b> (Judicial Officer: Krall, Nadia)  Debtors: Sierra Health and Life Insurance Company Inc (Defendant)  Creditors: Sandra L Eskew (Plaintiff), Estate of William George Eskew (Plaintiff)  Judgment: 10/07/2022, Docketed: 04/19/2022  Total Judgment: 206,676,922.29</p>
	<p><b>HEARINGS</b></p>
06/18/2019	<p> <b>Motion to Dismiss</b> (9:00 AM) (Judicial Officer: Cory, Kenneth)  Events: 05/10/2019 Motion to Dismiss  <i>Defendant SHL's Motion to Dismiss for Failure to State a Claim</i>  Granted in Part;  Journal Entry Details:  <i>Mr. Roberts stated this complaint arises out of the denial of a certain type of radiation treatment, proton beam therapy. This treatment has not been proven to show a higher rate of success to justify the cost. Mr. Roberts argued NRS 471.085, and the wrongful death cause of action. The complaint does not allege the negligence act of Sierra Health caused the death of the plaintiff. The plaintiff needs to clearly allege his death was caused by Sierra Health. The bad faith claim is only as to loss of property rights/economic loss. Mr. Roberts argued plaintiff has not stated a claim or alleged plaintiff suffered any economic loss. Mr. Roberts further argued as to breach of contract. Mr. Sharp argued as to the CA rule and the Supreme Court not adopting the denial of treatment as an economic loss. Sierra Health denied the treatment without investigating this as a covered benefit. It was medically necessary and the therapy would have prolonged the plaintiff's life. Mr. Roberts argued the policy's underling rule. Mr. Gromley argued none of the allegations match up with the statute. The plaintiff failed to submit a claim under NRS 686A.310(1)(d), 1(c), 1(a), and 1(e). The plaintiff ignored the principles of the statutory interpretation and the statutes general purpose. Mr. Sharp further argued as to the insurance company denying with out doing any investigation as to the treatment. COURT ORDERED, Defendant SHL's Motion to Dismiss for Failure to State a Claim GRANTED only as to failing to confirm coverage for the proton beam therapy within a reasonable time; DENIED as to the remaining with leave to amend. Mr. Sharp stated they would like to have an answer on file and start discovery before amending the complaint. COURT FURTHER ORDERED, Plaintiff has 20 DAYS to file an Amended Complaint and thereafter, Defendant to file an answer. Mr. Sharp to prepare the Order.;</i></p>
08/15/2019	<p> <b>Motion to Associate Counsel</b> (3:00 AM) (Judicial Officer: Cory, Kenneth)  <i>Motion to Associate Counsel</i>  Granted;  Journal Entry Details:</p>

# CASE SUMMARY

CASE NO. A-19-788630-C

*Motion having been duly filed and served, no opposition having been filed, pursuant to EDCR 2.20 and for good cause shown, COURT ORDERED, Motion to Associate Counsel GRANTED. Plaintiff to submit a proposed Order to chambers within 10 days. CLERK'S NOTE: A copy of this minute order was distributed via the E-Service list. / mlt;*

11/01/2019



**Mandatory Rule 16 Conference** (10:00 AM) (Judicial Officer: Cory, Kenneth)

Trial Date Set;

Journal Entry Details:

*Following colloquy, COURT ORDERED, Discovery and Depositions Cut off November 30, 2020; Settlement Conference Schedule Date September 28, 2020; Deadline to Amend Pleadings, Add Parties, and Initial Expert Disclosures August 28, 2020; Rebuttal Expert Disclosures September 28, 2020; Dispositive Motions Deadline December 30, 2020; Motions In Limine Deadline March 1, 2021; Trial Dates SET. 08/19/21 9:00 AM CALENDAR CALL 09/07/21 9:00 AM JURY TRIAL ;*

08/19/2021

**CANCELED Calendar Call** (9:00 AM) (Judicial Officer: Cory, Kenneth)

*Vacated - Superseding Order*

09/01/2021



**Motion** (9:00 AM) (Judicial Officer: Krall, Nadia)

*Joint Motion for Rule 16 Conference on OST*

Granted;

Journal Entry Details:

*Mr. Gromley stated he received an email from Plaintiff counsel who is unable to attend today's hearing due to scheduling issues and taking a deposition. COURT NOTED in the future parties can call the court and request a joint telephone conference, further noting the parties requested a pretrial conference after close of discovery and move trial to 2022. Court stated it is inclined to move the case to the March 2022 trial stack with the Motions in Limine 75 days prior to trial including dispositive motions. Colloquy in regards to trial stacks. COURT ORDERED, case SET on March 2022 trial stack; new trial order to issue. Mr. Gromley inquired if the discovery deadline will move with the new trial setting, and stated additional time would be appreciated. COURT FURTHER ORDERED, parties to submit Stipulation and Order and reference today's hearing, in addition to Motions in Limine and Dispositive Motion deadline 75 days prior to trial.;*

09/07/2021

**CANCELED Jury Trial** (9:00 AM) (Judicial Officer: Clark Newberry, Tara)

*Vacated - Superseding Order*

11/02/2021

**CANCELED Calendar Call** (11:00 AM) (Judicial Officer: Krall, Nadia)

*Vacated - per Judge*

11/15/2021

**CANCELED Jury Trial** (9:00 AM) (Judicial Officer: Krall, Nadia)

*Vacated - per Judge*

01/03/2022



**Minute Order** (8:00 AM) (Judicial Officer: Krall, Nadia)

Matter Heard;

Journal Entry Details:

*For purposes of judicial economy, COURT ORDERS, all pending Motions in Limine, Motions for Summary Judgment set in this case shall be heard on February 10, 2022 at 9:00 A.M. with the following briefing schedule: January 14, 2022: All Oppositions Due. January 25, 2022. All Replies Due. January 27, 2022. All Binders Due. February 10, 2022 @ 9:00 A.M. All hearings. CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Chad Johnson, to all registered parties for Odyssey File & Serve and/or served via facsimile. cj/1/3/22 ;*

02/10/2022

**Motion in Limine** (9:00 AM) (Judicial Officer: Krall, Nadia)

*Defendants' Motion in Limine No. 1: Limit the Testimony of Plaintiffs' "Bad Faith" Expert Stephen D. Prater*

Granted in Part;

02/10/2022

**Motion in Limine** (9:00 AM) (Judicial Officer: Krall, Nadia)

*Defendants' Motion in Limine No. 2: Exclude Evidence, Argument, and/or Testimony Relating*




**CASE SUMMARY****CASE NO. A-19-788630-C**

	<i>to the Financial Condition of Non-Party UnitedHealth Group Incorporated</i> Deferred Ruling;
02/10/2022	<b>Motion in Limine</b> (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Defendants' Motion in Limine No. 3: Exclude Evidence, Argument, and/or Testimony Relating to Pre-Contract Communications Concerning Coverage</i> Denied;
02/10/2022	<b>Motion in Limine</b> (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Defendants' Motion in Limine No. 4: Exclude Evidence, Argument, and/or Testimony Relating to the Preparation of the Deinal Letter</i> Denied;
02/10/2022	<b>Motion in Limine</b> (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Defendants' Motion in Limine No. 5: Exclude Evidence, Argument, and/or Testimony Relating to Opinions from Judge Scola</i> Granted;
02/10/2022	<b>Motion in Limine</b> (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Defendants' Motion in Limine No. 6: Exclude Evidence, Argument, and/or Testimony Relating to the New York Proton Center</i> Denied;
02/10/2022	<b>Motion in Limine</b> (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Defendants' Motion in Limine No. 7: Exclude Certain Photos</i> Granted in Part;
02/10/2022	<b>Motion in Limine</b> (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Defendants' Motion in Limine No. 8: Preclude Argument or Questioning Relating to Comparing Testimony Preparation Time With Prior Authorization Review Time</i> Denied;
02/10/2022	<b>Motion in Limine</b> (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Defendants' Motion in Limine No. 9: Exclude Evidence, Argument, and/or Testimony Relating to Generalized Patient Numbers or Studies</i> Denied;
02/10/2022	<b>Motion in Limine</b> (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Defendants' Motion in Limine No.10: Exclude Evidence, Argument, and/or Testimony Relating to Medicare Coverage</i> Denied;
02/10/2022	<b>Motion in Limine</b> (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Defendants' Motion in Limine No. 11: Exclude Evidence, Argument, and/or Testimony Relating to Unqualified Opinions Regarding Medical Causation</i> Granted;
02/10/2022	<b>Motion in Limine</b> (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Defendants' Motion in Limine No. 12: Exclude Testimony From Dr. Liao Regarding Matters Outside the Course and Scope of Her Treatment of Mr. Eskew</i> Denied;
02/10/2022	<b>Motion in Limine</b> (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Defendants' Motion in Limine No. 13: Exclude Evidence, Argument, and/or Testimony Relating to Questioning Attempting to Alter the Scope of the Jury's Inquiry</i> Granted;
02/10/2022	<b>Motion in Limine</b> (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Defendants' Motion in Limine No. 14: Exclude Evidence, Argument, and/or Testimony Relating to Inflammatory Questioning Regarding Personal Opinions</i>

# CASE SUMMARY

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	Granted in Part;
02/10/2022	<p><b>Motion in Limine</b> (9:00 AM) (Judicial Officer: Krall, Nadia)</p> <p><i>Defendants' Motion in Limine No. 15: Exclude Evidence, Argument, and/or Testimony Relating to Hypothetical Questioning, Regarding What Would Be Fairer</i></p> <p>Granted;</p>
02/10/2022	<p><b>Motion in Limine</b> (9:00 AM) (Judicial Officer: Krall, Nadia)</p> <p><b>02/10/2022-02/11/2022</b></p> <p><i>Defendants' Motion in Limine No. 16: Exclude Evidence, Argument, and/or Testimony Relating to Misleading Questioning Regarding the Nature of Insurance and Personal Experience With Insurance</i></p> <p>Matter Heard;</p> <p>Motion Granted;</p> <p>Matter Heard;</p> <p>Motion Granted;</p>
02/10/2022	<p><b>CANCELED All Pending Motions</b> (9:00 AM) (Judicial Officer: Krall, Nadia)</p> <p><i>Vacated - Duplicate Entry</i></p>
02/10/2022	<p> <b>All Pending Motions</b> (9:00 AM) (Judicial Officer: Krall, Nadia)</p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>Matthew Sharp Esq. and Douglas Terry Esq. present on behalf of Plaintiff. Robert Lee Esq. and Ryan Gormley Esq. present for Defendant. DEFENDANTS' MOTION IN LIMINE #1 LIMIT THE TESTIMONY OF PLAINTIFF S BAD FAITH EXPERT STEPHEN D. PRATER. Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion GRANTED IN PART. DEFENDANT'S MOTION IN LIMINE #2 EXCLUDE EVIDENCE, Argument, and/or TESTIMONY RELATING TO THE FINANCIAL CONDITION OF NON-PARTY UNITEDHEALTH GROUP INCORPORATED. Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Ruling DEFERRED DEFENDANT'S MOTION IN LIMINE #3 EXCLUDE EVIDENCE, ARGUMENT, and/or TESTIMONY RELATING TO PRE-CONTRACT COMMUNICATIONS CONCERNING COVERAGE Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion DENIED. DEFENDANT'S MOTION IN LIMINE #4 EXCLUDE EVIDENCE, ARGUMENT, and/or TESTIMONY RELATING TO THE PREPARATION OF THE DENIAL LETTER. Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion DENIED. DEFENDANT'S MOTION IN LIMINE #5 EXCLUDE EVIDENCE, ARGUMENT, and/or TESTIMONY RELATING TO OPINIONS FROM JUDGE SCOLA Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion GRANTED. DEFENDANT'S MOTION IN LIMINE #6 EXCLUDE EVIDENCE, ARGUMENT, and/or TESTIMONY RELATING TO THE NEW YORK PROTON CENTER Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion DENIED. DEFENDANT'S MOTION IN LIMINE #7 EXCLUDE CERTAIN PHOTOS Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion GRANTED IN PART. DEFENDANT'S MOTION IN LIMINE #8 PRECLUDE ARGUMENT OR QUESTIONING RELATING TO COMPARING TESTIMONY PREPARATION TIME WITH PRIOR AUTHORIZATION REVIEW TIME Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion DENIED. DEFENDANT'S MOTION IN LIMINE #9 EXCLUDE EVIDENCE, ARGUMENT, and/or TESTIMONY RELATING TO GENERALIZED PATIENT NUMBERS OR STUDIES. Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion DENIED. DEFENDANT'S MOTION IN LIMINE #10 EXCLUDE EVIDENCE, ARGUMENT, and/or TESTIMONY RELATING TO MEDICARE COVERAGE Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion DENIED. DEFENDANT'S MOTION IN LIMINE #11 EXCLUDE EVIDENCE, ARGUMENT, and/or TESTIMONY RELATING TO THE PREPARATION OF THE DENIAL LETTER. Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion GRANTED. DEFENDANT'S MOTION IN LIMINE #12 EXCLUDE TESTIMONY FROM DR. LIAO REGARDING MATTERS OUTSIDE THE COURSE AND SCOPE OF HER TREATMENT OF ME. ESKEW Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion DENIED. DEFENDANT'S MOTION IN LIMINE #13 EXCLUDE EVIDENCE, ARGUMENT, and/or TESTIMONY RELATING TO QUESTIONING ATTEMPTING TO ALTER THE SCOPE OF THE JURY S INQUIRY Arguments</i></p>


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	<p>by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion GRANTED. DEFENDANT'S MOTION IN LIMINE #14 EXCLUDE EVIDENCE, ARGUMENT, and/or TESTIMONY RELATING TO INFLAMMATORY QUESTIONING REGARDING PERSONAL OPINIONS Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion GRANTED IN PART. DEFENDANT'S MOTION IN LIMINE #15 EXCLUDE EVIDENCE, ARGUMENT, and/or TESTIMONY RELATING TO HYPOTHETICAL QUESTIONING REGARDING WHAT WOULD BE FAIRER Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion GRANTED DEFENDANT'S MOTION IN LIMINE #16 EXCLUDE EVIDENCE, ARGUMENT, and/or TESTIMONY RELATING TO MISLEADING WUESTIONING REGARDING THE NATURE OF INSURANCE AND PERSONAL EXPERIENCE WITH INSURANCE Arguments by Defense Counsel in regards to Motion. The Court noted it had a meeting and would have to continue this matter. Colloquy regarding the date and time this matter will resume. COURT ORDERED; MATTER CONTINUED. CONTINUED TO 2/11/2022 01:00 PM ;</p>
02/11/2022	<p><b>Motion in Limine</b> (1:00 PM) (Judicial Officer: Krall, Nadia)  <i>Defendants' Motion in Limine No. 17: Exclude Evidence, Argument and/or Testimony Relating to Litigation Conduct</i>            Granted in Part;</p>
02/11/2022	<p><b>Motion in Limine</b> (1:00 PM) (Judicial Officer: Krall, Nadia)  <i>Defendants' Motion in Limine No. 18: Exclude Evidence, Argument, and/or Testimony Relating to Other Cases</i>            Granted in Part;</p>
02/11/2022	<p><b>Motion in Limine</b> (1:00 PM) (Judicial Officer: Krall, Nadia)  <i>Defendants' Motion in Limine No. 19: Exclude Evidence, Argument, and/or Testimony Relating to "Finally Day In Court" Assertions</i>            Motion Denied;</p>
02/11/2022	<p><b>Motion in Limine</b> (1:00 PM) (Judicial Officer: Krall, Nadia)  <i>Defendants' Motion in Limine No. 20: Exclude Evidence, Argument, and/or Testimony Relating to Need for Industry Change Assertions</i>            Motion Denied;</p>
02/11/2022	<p><b>Motion in Limine</b> (1:00 PM) (Judicial Officer: Krall, Nadia)  <i>Defendants' Motion in Limine No. 21: Preclude Improper and Inflammatory "Reptile" tactics and Arguments</i>            Motion Denied;</p>
02/11/2022	<p><b>Motion for Summary Judgment</b> (1:00 PM) (Judicial Officer: Krall, Nadia)  <i>Defendants Motion for Summary Judgment Re: Claims</i>            Denied in Part;</p>
02/11/2022	<p><b>Motion for Partial Summary Judgment</b> (1:00 PM) (Judicial Officer: Krall, Nadia)  <i>Defendants Motion for Partial Summary Judgment Re: UHC</i>            Motion Denied;</p>
02/11/2022	<p><b>Motion for Partial Summary Judgment</b> (1:00 PM) (Judicial Officer: Krall, Nadia)  <i>Defendants Motion for Partial Summary Judgment Re: Damages</i>            Denied Without Prejudice;</p>
02/11/2022	<p><b>Motion for Sanctions</b> (1:00 PM) (Judicial Officer: Krall, Nadia)            Events: 12/29/2021 Motion for Sanctions            12/29/2021 Errata  <i>Plaintiffs' Motion for Sanctions</i>            Motion Denied;</p>
02/11/2022	<p><b>Motion for Partial Summary Judgment</b> (1:00 PM) (Judicial Officer: Krall, Nadia)            Events: 12/29/2021 Motion for Partial Summary Judgment</p>

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	<p>12/29/2021 Errata</p> <p><i>Plaintiffs' Motion for Partial Summary Judgment</i></p> <p>Motion Denied;</p>
02/11/2022	<p><b>Motion in Limine</b> (1:00 PM) (Judicial Officer: Krall, Nadia)</p> <p>Events: 12/29/2021 Motion in Limine</p> <p>12/29/2021 Errata</p> <p><i>Plaintiffs' Motion in Limine # 1 Re: Evidence of Appeal</i></p> <p>Motion Granted;</p>
02/11/2022	<p><b>Motion in Limine</b> (1:00 PM) (Judicial Officer: Krall, Nadia)</p> <p>Events: 12/29/2021 Motion in Limine</p> <p>12/29/2021 Errata</p> <p><i>Plaintiffs' Motion in Limine #2 Re: Evidence of the Proton Beam Therapy Policy</i></p> <p>Granted in Part;</p>
02/11/2022	<p><b>Motion in Limine</b> (1:00 PM) (Judicial Officer: Krall, Nadia)</p> <p>Events: 12/29/2021 Motion in Limine</p> <p>12/29/2021 Errata</p> <p><i>Plaintiffs' Motion in Limine #3 Re: Evidence Not Relied Upon by UHC at the Time of the Subject Claim Denial</i></p> <p>Motion Granted;</p>
02/11/2022	<p><b>Motion in Limine</b> (1:00 PM) (Judicial Officer: Krall, Nadia)</p> <p>Events: 12/29/2021 Motion in Limine</p> <p>12/29/2021 Errata</p> <p><i>Plaintiffs' Motion in Limine #4 Re: Expert Testimony of Dr. Gary M. Owens</i></p> <p>Withdrawn;</p>
02/11/2022	<p><b>Motion in Limine</b> (1:00 PM) (Judicial Officer: Krall, Nadia)</p> <p>Events: 12/29/2021 Motion in Limine</p> <p>12/29/2021 Errata</p> <p><i>Plaintiffs' Motion in Limine #5 Re: Expert Testimony of Dr. Amitabh Chandra</i></p> <p>Motion Denied;</p>
02/11/2022	<p><b>Motion in Limine</b> (1:00 PM) (Judicial Officer: Krall, Nadia)</p> <p>Events: 12/29/2021 Motion in Limine</p> <p>12/29/2021 Errata</p> <p><i>Plaintiffs' Motion in Limine #6 Re: Expert Testimony of Dr. Parvesh Kumar</i></p> <p>Denied in Part;</p>
02/11/2022	<p><b>Motion to Seal/Redact Records</b> (1:00 PM) (Judicial Officer: Krall, Nadia)</p> <p><i>Plaintiff's Motion to Seal Exhibits 18 and 19 to Plaintiff's Motion for Sanctions</i></p> <p>Motion Granted;</p>
02/11/2022	<p> <b>All Pending Motions</b> (1:00 PM) (Judicial Officer: Krall, Nadia)</p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>Matthew Sharp, Esq. and Douglas Terry, Esq. present via Blue Jeans. DEFENDANTS' MOTION IN LIMINE NO. 16: EXCLUDE EVIDENCE, ARGUMENT, AND/OR TESTIMONY RELATING TO MISLEADING QUESTIONING REGARDING THE NATURE OF INSURANCE AND PERSONAL EXPERIENCE WITH INSURANCE Arguments by counsel. COURT ORDERED the instant Motion was hereby GRANTED. DEFENDANT'S MOTION IN LIMINE NO. 17: EXCLUDE EVIDENCE, ARGUMENT AND/OR TESTIMONY RELATING TO LITIGATION CONDUCT Mr. Roberts argued in support of the Motion, stating that discovery issues should not be injected into the trial, as it would be highly prejudicial. Mr. Sharp argued in opposition, stating that he did not understand the purpose of the instant Motion. COURT ORDERED the Motion was hereby GRANTED IN PART / DENIED IN PART, FINDING and ORDERING the following: (1) the Motion was GRANTED IN PART as to litigation conduct, specifically what Mr. Roberts did, or did not do, during discovery; however, Plaintiff would not be precluded from arguing the facts, or the alleged unreasonableness of an expert's position;</i></p>

**CASE SUMMARY****CASE No. A-19-788630-C**

and (2) the Motion was DENIED IN PART, to the extent that the Court's ruling only applied to Mr Roberts himself. DEFENDANTS' MOTION IN LIMINE NO. 18: EXCLUDE EVIDENCE, ARGUMENT, AND/OR TESTIMONY RELATING TO OTHER CASES Arguments by counsel. COURT ORDERED the instant Motion was hereby GRANTED IN PART / DENIED IN PART, FINDING and ORDERING the following: (1) the Motion was GRANTED IN PART to the extent that Defendants did not raise the issues referenced in the Motion; and (2) DENIED IN PART if the Defendants opened the door on the issues; if the Defendants opened the door, Plaintiffs could address the issues. DEFENDANTS' MOTION IN LIMINE NO. 19: EXCLUDE EVIDENCE, ARGUMENT, AND/OR TESTIMONY RELATING TO "FINALLY DAY IN COURT" ASSERTIONS Arguments by counsel. COURT ORDERED the instant Motion was hereby DENIED; however, the Defense would not be prevented from informing the jury that they wanted to be in court. The COURT FURTHER ORDERED that it could inform the jury that any delays getting the case to trial, were due to COVID-19, not the conduct of the parties. DEFENDANTS' MOTION IN LIMINE NO. 20: EXCLUDE EVIDENCE, ARGUMENT, AND/OR TESTIMONY RELATING TO NEED FOR INDUSTRY CHANGE ASSERTIONS...DEFENDANTS' MOTION IN LIMINE NO. 21: PRECLUDE IMPROPER AND INFLAMMATORY "REPTILE" TACTICS AND ARGUMENTS The Court provided its initial thoughts and inclinations regarding the instant Motions. Arguments by counsel. COURT ORDERED the parties to review the holding in Lioce vs. Cohen, and if either party violated that holding, there would be sanctions. COURT ORDERED DEFENSE counsel to prepare the written Order(s) for Defendants' Motions in Limine. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: CLAIMS The Court noted that the only remaining claim was the breach of covenant of good faith and fair dealing claim, and inquired whether the parties had stipulated to dismiss the other claims. Mr. Sharp answered in the affirmative. Mr. Gormley submitted to the Court's discretion. Mr. Sharp argued in opposition, stating that there were questions of fact for the jury to decide. COURT ORDERED the instant Motion was hereby DENIED IN PART as to the breach of covenant of good faith and fair dealing, and breach of contract, claims; however, the RULING WAS DEFERRED as to the unfair claims practices act, until the time of trial. COURT ORDERED that the parties would be permitted to file a new brief regarding the unfair claims practices act, if they wished. DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE: DAMAGES Mr. Gormley argued in support of the instant Motion, stating that only punitive damages remained, and there was no evidence of malice, or intention to harm. Mr. Sharp argued in opposition to the Motion. COURT ORDERED the instant Motion was hereby DENIED WITHOUT PREJUDICE with respect to punitive damages; the wrongful death damages were MOOT, pursuant to the stipulation between the parties. DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE: UHC Mr. Gormley argued in support of the instant Motion, stating that Plaintiff did not have any standing to maintain the claim against United Healthcare, Inc. (UHC). Mr. Sharp argued in opposition, stating that Plaintiffs' counsel's arguments wa form over substance. COURT ORDERED the instant Motion was hereby DENIED. COURT ORDERED there was a question of fact as to the issue of personal jurisdiction. Defense counsel to prepare the written Order(s) on all of their Motions for Summary Judgment, and forward them to opposing counsel for approval as to form and content. PLAINTIFFS' MOTION IN LIMINE #1 RE: EVIDENCE OF APPEAL Mr. Terry argued in support of the instant Motion, stating that it would be fair game for Plaintiffs to introduce evidence regarding why the denial was not appealed, and it would be fair for Defendants to rebut that; however, arguments regarding Mr. Eskew having a duty to file the appeal, should be prohibited. Mr. Roberts indicated that there would be no arguments regarding a duty to appeal. COURT ORDERED the instant Motion was hereby GRANTED, FINDING that parties would not be permitted to argue that there was a duty to appeal. PLAINTIFFS' MOTION IN LIMINE #2 RE: EVIDENCE OF THE PROTON BEAM THERAPY POLICY Mr. Sharp argued in support of the instant Motion, stating that the reasonableness of the literature in the policy was not relevant, as the issue was UHC's state of mind. Mr. Roberts argued in opposition, stating that there was a disputed question of fact regarding whether the doctor relied only upon the first two pages of the policy; however, that did not mean that the rest of the policy should be excluded. COURT ORDERED the instant Motion was hereby GRANTED IN PART / DENIED IN PART, FINDING and ORDERING the following: (1) the Motion was GRANTED with respect to any policy not actually relied upon by UHC, or Sierra Health and Life Insurance, at the time the denial was made; and (2) the Motion was DENIED as to any policy that they did rely upon. The COURT FURTHER ORDERED that if an NRCP 30(b)(6) witness was not able to answer a question at the time of the deposition, they would not be able to answer that question at the time of trial, because they were bound by their deposition testimony. PLAINTIFFS' MOTION IN LIMINE #3 RE: EVIDENCE NOT RELIED UPON BY UHC AT THE TIME OF THE SUBJECT CLAIM DENIAL Mr. Sharp argued in support of the Motion. Mr. Gormley argued in opposition, stating that there was no case law supporting the relief requested in the instant Motion. COURT ORDERED the Motion was hereby GRANTED. PLAINTIFFS' MOTION IN LIMINE #4 RE: EXPERT TESTIMONY OF DR. GARY M. OWENS Mr. Sharp requested that the instant Motion be withdrawn. COURT

# CASE SUMMARY

CASE NO. A-19-788630-C

*ORDERED Motion WITHDRAWN. PLAINTIFFS' MOTION IN LIMINE #5 RE: EXPERT TESTIMONY OF DR. AMITABH CHANDRA* Mr. Sharp argued in support of the instant Motion, stating that, based upon the rulings on the Motions in Limine on February 10, 2022, Dr. Chandra should be permitted to argue regarding the CMS issues. Mr. Gormley argued in opposition. *COURT ORDERED the Motion was hereby DENIED. PLAINTIFFS' MOTION IN LIMINE #6 RE: EXPERT TESTIMONY OF DR. PARVESH KUMAR* Mr. Sharp argued in support of the instant Motion, stating that Dr. Kumar provided testimony relative to the terms of the policy related to Motion in Limine #3, which would also apply to Dr. Chang; however, the remainder of the Motion would be withdrawn. *COURT ORDERED the Motion was hereby GRANTED IN PART / DENIED IN PART, FINDING and ORDERING the following: (1) anything that Dr. Kumar relied upon in his report, or his testimony, that was not relied upon by UHC at the time, would not come in; however, everything else would come in; (2) the Motion was DENIED IN PART with respect to general testimony; and (3) the Motion was GRANTED IN PART with respect to anything UHC did not rely upon when making its denial. PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT* Mr. Sharp argued in support of the Motion, stating that the issue in the instant Motion would continue through the course of the trial. Mr. Roberts submitted on the pleadings. *COURT ORDERED the Motion was hereby DENIED. PLAINTIFFS' MOTION FOR SANCTIONS* Mr. Sharp argued in support of the instant Motion, stating that UHC was aware that their policy folder existed, and the knew about the documents contained in the policy folder; however, that folder was not produced. Mr. Roberts argued in opposition, stating that he was not aware of the policy folder until recently, and Defendants would be willing to reopen discovery for the limited purpose of allowing the Plaintiffs to review the policy folder. *COURT ORDERED the instant Motion was hereby DENIED, FINDING that the Motion must be denied on procedural grounds, as a Motion to Compel was not done. PLAINTIFFS' MOTION TO SEAL EXHIBITS 18 AND 19 TO PLAINTIFF'S MOTION FOR SANCTIONS* *COURT ORDERED the instant Motion was hereby GRANTED as UNOPPOSED.* Upon Court's inquiry, Mr. Sharp advised that three weeks would be needed for trial, if the punitive damages phase went forward. Mr. Roberts stated that the trial may go into a fourth week, if the punitive damages phase went forward. Colloquy regarding scheduling and exhibits. *COURT ORDERED the parties to have their verdict form, jury instructions, voir dire questions, and exhibits to the Court no later than 5:00 PM on February 22, 2022.;*

03/01/2022



**Calendar Call (11:00 AM)** (Judicial Officer: Krall, Nadia)

Trial Date Set;

Journal Entry Details:

*Court confirmed trial to last four (4) weeks with three (3) days maximum for jury selection. Colloquy regarding trial schedule. Parties stipulate to having four (4) alternates on jury. At Mr. Gormley's request, Court stated if parties agree, Court will allow counsel to use jury instruction in their opening or in voir dire. Court Colloquy regarding public access to Bluejeans link. Court provided a general schedule, noting three (3) hours of testimony in the morning and three (3) hours of testimony in the afternoon. Court confirmed standard admonishment to jurors regarding social media. COURT ORDERED, firm trial SET; counsel to bring joint exhibit binders by March 7, 2022; counsel to contact I.T. regarding audiovisual information needed; counsel to submit voir dire, jury instructions, and verdict form by March 4, 2022. JEA, Ms. Everett, will e-mail counsel information regarding trial. 03/14/2022 09:00 AM JURY TRIAL;*

03/14/2022

**CANCELED Jury Trial (9:00 AM)** (Judicial Officer: Krall, Nadia)

*Vacated - Duplicate Entry*

03/14/2022



**Jury Trial (9:00 AM)** (Judicial Officer: Krall, Nadia)

**03/14/2022-03/16/2022, 03/21/2022-03/25/2022, 03/28/2022-03/30/2022, 04/04/2022-04/05/2022**

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

# CASE SUMMARY

CASE NO. A-19-788630-C

Verdict for Plaintiff;

Verdict for Plaintiff;

Journal Entry Details:

*All parties present as before. Glen Stevens and David Crump, as a representatives of Defendant Sierra Health and Life Insurance Company Inc., also present via BlueJeans. OUTSIDE THE PRESENCE OF THE JURY: Discussion of the Jury Instructions For Phase 2 (Punitive Damages Phase). Parties stipulated to the net worth of Defendant Sierra Health and Life Insurance Company, Inc. Mr. Roberts requested jury clarify the 04/04/2022 Verdict and whether or not that included punitive damages; Mr. Sharp discussed the Wyatt case and stated would create potential error of the record; Mr. Roberts indicated plans to move for a new trial or mistrial. COURT ORDERED, that the parties meet and come up a proposed jury instruction, based on Mr. Sharp inclination during voir dire of asking the panel from between 15 million and 50 million and on Mr. Terry asking for 30 million. Counsel made objection to the instruction. Jury Instructions For Phase 2 (Punitive Damages Phase) SETTLED. JURY PRESENT: Plaintiff REST. Witnesses RECALLED, SWORN and TESTIFIED (See Worksheet.). Defense REST. Court instructed the jury on phase 2 (punitive damages). Arguments by Mr. Terry and Mr. Roberts. Mr. Roberts requested that the Court take judicial notice that pursuant to Administration Order 21-4 as modified by General Order 22-04, Mr. Crump, representative for Defendant Sierra Health and Life Insurance Company Inc. has been present via BlueJeans. With no objection from Mr. Terry, COURT ORDERED, the Court will take JUDICIAL NOTICE that the company representative has been listening to this proceeding via audio; even though the jury cannot see it, he has been present. Marshal and JEA SWORN. At the hour of 03:25 PM, the jury retired to deliberate. Court thanked and excused the alternates. At the hour of 04:07 PM, the jury returned with a verdict in favor of Plaintiff for punitive damages. Jury polled. Court thanked and excused the jury. CLERK'S NOTE: Minutes amended on April 15, 2022 for formatting purposes only./pb/4/15/22.;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Verdict for Plaintiff;

Journal Entry Details:

*All parties present as before. Glen Stevens, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present. David Crump, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present via BlueJeans. Mr. Gormley present via BlueJeans. JURY PRESENT: Court instructed the jury. Closing argument by Mr. Sharp. OUTSIDE THE PRESENCE OF THE JURY: Mr. Roberts requested a supplemental jury instruction to curate an inaccurate argument of the law made by Mr. Sharp. Mr. Sharp responded that was not his intent to mislead the jury and argued that a curative instruction would punish him and his integrity; suggested being able to clarify to the jury. Mr. Roberts stated that would be satisfied. COURT SO NOTED. JURY PRESENT: Mr. Sharp continued closing argument; closing argument by Mr. Roberts; and rebuttal argument by Mr. Terry. Marshal and Law Clerk SWORN. At the hour of 03:41 PM, the jury retired to deliberate. Court thanked and excused the alternates. At the hour of 04:57 PM, the jury returned with a verdict in favor of Plaintiff. Jury polled. OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding remaining trial schedule and punitive damages phase of trial. Court adjourned for the evening; trial to resume with punitive damages phase on April 5, 2022 at 1:00 PM. JURY TRIAL CONTINUED TO: 04/05/2022 01:00 PM CLERK'S NOTE: Minutes amended on April 15, 2022 for formatting purposes only./pb/4/15/22.;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

# CASE SUMMARY

CASE NO. A-19-788630-C

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Verdict for Plaintiff;

Journal Entry Details:

*All parties present as before. Glen Stevens, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present. Mr. Gormley present via BlueJeans. OUTSIDE THE PRESENCE OF THE JURY: Mr. Sharp alerted the Court of issues with portions of Ms. Sweet's deposition and upcoming witness testimony; informed the Court that Ms. Sweet was presented as a NRC 30(b)(6) representative and instructed to not answer questions about her communications with employees in preparation of her deposition regarding appeals and utilization management audits; stated attorney-client privilege for the objection at the time of the deposition. Mr. Roberts confirmed Ms. Sweet will not testify to appeals. Mr. Sharp argued that defense cannot use attorney-client privilege as the sword and the shield; and requested any objections made during upcoming testimony be discussed outside the presence of the jury. Mr. Roberts rebutted that Plaintiff did not seek a motion to compel to get the information and clarified that Ms. Sweet is not testifying as a NRC 30(b)(6) representative or what she learned in her investigation. COURT ORDERED, Ms. Sweet is not going to be able to testify as to anything she relied upon in discussing with other people at the deposition; Ms. Sweet cannot testify to it at the time of trial; and Ms. Sweet can only testify if she does not have personal knowledge. Mr. Roberts requested a few minutes to confer with Ms. Sweet. COURT SO NOTED. JURORS PRESENT: Continued testimony and exhibits presented. (See worksheets.) Mr. Roberts reminded the Court of his intention to move for judicial review; and requested outside the presence of the jury. COURT SO NOTED. Defense REST. OUTSIDE THE PRESENCE OF THE JURY: Mr. Sharp moved for a Rule 50 judgment on the first element. To make the record clear, counsel moved to publish the depositions of Mr. Palmer, Ms. Amogawin, and Dr. Liao. COURT ORDERED, all three (3) GRANTED. Matthew Palmer's October 22, 2021 Deposition and disc of played portion PUBLISHED. (See log.) Mr. Sharp argued his Motion for Judgment on the First Element as the insurance company did not relay on the insurance policy for its denial. Mr. Roberts argued procedure was unproven and not medically necessary as the reason for the denial in the insurance contract. Mr. Sharp rebutted that there was no consideration. COURT ORDERED, Motion for Judgment as a Matter of Law - Covered Service DENIED. Jury Instructions and Verdict Forms SETTLED. Mr. Roberts requested that the Court take judicial notice of NRS 695G.055, NRS 695G.040, NRS 695G.053, and NRS 695G.110. With no objection from Mr. Sharp, COURT ORDERED, the Court will take JUDICIAL NOTICE of NRS 695G.040, NRS 695G.053, and NRS 695G.110. Court adjourned for the day; to resume April 4, 2022 at 9:00 AM. JURY TRIAL CONTINUED TO: 04/04/22 09:00 AM;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Verdict for Plaintiff;

Journal Entry Details:

*All parties present as before. David Crump, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present. Mr. Gormley present via BlueJeans. OUTSIDE THE PRESENCE OF THE JURY: Mr. Terry informed the Court that parties are working with I.T. regarding displays for the jury. Mr. Terry prefaced the Court that parties have been discussing Dr. Kumar's upcoming testimony and potential gray area, due to complexity, of topics and questions allowed to be asked in compliance with the Court's ruling on Motion in Limine. Mr. Roberts argued that Dr. Kumar's purpose as a witness is to testify to causation; believed that Dr. Chang's testimony had opened the door. COURT NOTED that Plaintiff has open the door. JURORS PRESENT: Continued testimony and exhibits presented. (See worksheets.) OUTSIDE THE PRESENCE OF THE JURY: Mr. Roberts updated the Court on the proposed trial schedule regarding remaining witness testimony, video-taped deposition,*



# CASE SUMMARY

CASE NO. A-19-788630-C

and deposition to be read to the jury. Mr. Sharp suggested arguing the proposed jury instructions and verdict form tomorrow afternoon. COURT SO NOTED. Parties stipulate to exhibits. (See worksheet.) Mr. Roberts precluded to his intent to request judicial notice of additional Nevada statutes. JURORS PRESENT: Continued testimony. (See worksheet.) Lou Ann Amogawin's July 28, 2020 Deposition PUBLISHED. (See log.) OUTSIDE THE PRESENCE OF THE JURY: Mr. Smith requested that the Court explain that the questions being read from Ms. Amogawin's deposition were asked by Plaintiff's counsel, even though Mr. Smith is the one asking them now. With no objection from Plaintiff's counsel, COURT SO NOTED. Counsel argued two objections regarding the reading of Ms. Amogawin's deposition. With no foundation for these questions, COURT ORDERED, objections SUSTAINED. JURORS PRESENT: Continued testimony. (See worksheet.) Court expressed that witness testimony will wrap up tomorrow afternoon and counsel will make their closing arguments on Monday, April 4, 2022. Court adjourned for the day; to resume March 30, 2022 at 9:00 AM. JURY TRIAL CONTINUED TO: 03/30/22 09:00 AM;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Verdict for Plaintiff;

Journal Entry Details:

All parties present as before. David Crump, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present. Mr. Gormley present via BlueJeans. JURORS PRESENT: Continued testimony. (See worksheet.) Mr. Sharp moved for the Court to take judicial notice of NRS 686A.310. COURT ORDERED, the Court will take JUDICIAL NOTICE of NRS 686A.310. Mr. Sharp asked for the Court to take judicial notice of NAC 686A.660. COURT FURTHERED ORDERED, the Court will take JUDICIAL NOTICE of NAC 686A.660. Mr. Sharp sought judicial notice of NAC 686A.675 from the Court. COURT FURTHERED ORDERED, the Court will take JUDICIAL NOTICE of NAC 686A.675. OUTSIDE THE PRESENCE OF THE JURY: Mr. Sharp alerted the Court that witness has notes at the stand; requested to review said notes. With no objection from Mr. Roberts, COURT SO NOTED. Colloquy regarding remaining witness testimony scheduling. JURORS PRESENT: Continued testimony. OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding tomorrow's start time to accommodate rulings on counsel's objections regarding a deposition to be played in court and clarification on motion in limine ruling regarding witness testimony. COURT ORDERED, counsel to arrive at 8:30 AM. Court adjourned for the day; to resume March 29, 2022 at 8:30 AM. JURY TRIAL CONTINUED TO: 03/29/22 08:30 AM;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Verdict for Plaintiff;

Journal Entry Details:

All parties present as before. Glen Stevens, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present. Mr. Gormley present via BlueJeans. OUTSIDE THE PRESENCE OF THE JURY: Arguments from Mr. Sharp and Mr. Smith regarding upcoming anticipated testimony of Dr. Chandra, previously argued in Motion in Limine regarding his rebuttal expert report. Having ruled on this before, COURT DOES NOT FIND jury nullification in these statements of Dr. Chandra's report. COURT FINDS Plaintiff has

**CASE SUMMARY****CASE NO. A-19-788630-C**

brought up costs repeatedly, Plaintiff has brought up utilization management, and both parties have discussed it with the jury. *COURT FINDS* Plaintiff has asked the jury essentially to send a message to the community that the only way the insurance company is going to change is by a very large verdict, and that relates to money, so defense is allowed bring up money because Plaintiff has made money a huge part of what is allegedly driving the insurance company making these decisions. *COURT FINDS* with respect to Dr. Chandra's testimony whether treatment is proven or not, he can testify based upon the foundation that will be laid by Mr. Smith of any studies that he has reviewed and his experience. *JURORS PRESENT*: Continued testimony and exhibits presented. (See worksheets.) Plaintiff *REST*. Mr. Roberts moved for NRCP Rule 58 ruling, requested to postpone argument without the jury. *COURT SO NOTED*, argument will be outside the presence of the jury. *OUTSIDE THE PRESENCE OF THE JURY*: Colloquy regarding the order of calling witnesses due to witness availability. Mr. Sharp objected to Dr. Cohen testifying to the standard of care in 2016; excluded in Plaintiff's Motion in Limine. Mr. Roberts explained that Dr. Cohen was a treating physician of Mr. Eskew. Mr. Sharp rebutted a difference between disclosed and admissible. *COURT FINDS* Plaintiff opened the door during their case-in-chief. *COURT ORDERED*, Dr. Cohen will be allowed to testify. *JURORS PRESENT*: Continued testimony and exhibits presented. (See worksheets.) *OUTSIDE THE PRESENCE OF THE JURY*: Colloquy regarding witness scheduling and timing of closing arguments. *JURORS PRESENT*: Continued testimony. *OUTSIDE THE PRESENCE OF THE JURY*: Mr. Gormley argued Motion for Judgment as a Matter of Law. Argument from Mr. Sharp. *COURT FINDS* that there is an issue of fact whether the Defendant acted in conscious disregard of the Plaintiff's rights, preventing the granting of Defendant's motion for directed verdicts on bad faith and punitive damages. The Court bases this on the fact that the insurance policy states that therapeutic radiation was a covered service and proton therapy is a form of therapeutic radiation. *COURT FINDS* witnesses did testify that no one at the insurance company reviewed the insurance policy when this decision to deny coverage was made. *COURT FINDS* Dr. Chang clearly testified on his direct examination on the stand that within a ninety-five percent (95%) of medical probability, that the decedent Bill Eskew sustained a grade three (3) esophagitis due to the IMRT treatment. With respect the California case law preventing emotional distress when there is no accompanying economic loss, *COURT FINDS* those cases to be distinguishable, as because here, Plaintiff has alleged that Bill Eskew suffered physical injury and related emotional injury. On those bases, *COURT ORDERED*, Motions for Directed Verdict (Motion for Judgment as a Matter of Law) *DENIED*. Court adjourned for the day; to resume March 28, 2022 at 9:00 AM. *JURY TRIAL CONTINUED TO: 03/28/22 09:00 AM CLERK'S NOTE: Minutes amended on April 15, 2022 for formatting purposes only./pb/4/15/22.;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Verdict for Plaintiff;

Journal Entry Details:

All parties present as before. David Crump, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present. *JURORS PRESENT*: Continued testimony. (See worksheet.) *OUTSIDE THE PRESENCE OF THE JURY*: Mr. Sharp argued Defendants' Motion in Limine # 11 on not seeking unqualified opinions; expressed concern it coming out that Mr. Eskew was a party in this lawsuit during his testimony; requested admonition that defense counsel must follow their own Motion in Limine; stated that it was not an accident. Mr. Smith responded that Motion in Limine applies to medical causation and clarified that he asked Mr. Eskew about lawsuit was justified. Court can admonish the jury the fact that Mr. Eskew is no longer a party in the litigation is due to some procedural issues, as that his mother is a party, and the jury could accept that. Mr. Sharp proposed jury instruction tomorrow. Discussion regarding compliance with ruling on Motions in Limine regarding bringing in evidence through Ms. Eskew about Ms. Holland-Williams. *COURT SO NOTED*. *JURORS PRESENT*: Continued testimony. (See worksheet.) *OUTSIDE THE PRESENCE OF THE JURY*: Mr. Sharp argued that defense asked Mrs. Eskew about medical causation, opening the door for Plaintiff's counsel to cross. Upon Court's inquiry, Mr. Sharp clarified causation of death. Mr. Smith rebutted that Plaintiff's counsel asked at length on all three Eskew's state of

# CASE SUMMARY

CASE NO. A-19-788630-C

*mind, and defense thinks it is being embellished and needs to be accurate and truthful for the jury to award damages; it undermines creditability. Mr. Sharp argued that a line was crossed and state of mind is now at issue; lying about her belief. Upon Court's inquiry, Mr. Smith responded that Plaintiff is not being asked if IMRT killed her husband. Mr. Sharp argued that Mrs. Eskew has the right to defend herself. COURT ORDERED, Mr. Sharp will be allow to ask Plaintiff what she believed killed her husband, because defense has opened the door by asking her what killed her husband. Mr. Smith wanted to put on record that defense is not consenting to procedural turning this into a wrongful death case and Plaintiff to add a wrongful death claim. Mr. Sharp confirmed Plaintiff is not adding. COURT SO NOTED. JURORS PRESENT: Continued testimony and exhibits presented. (See worksheets.) Court adjourned for the day; to resume March 25, 2022 at 9:00 AM. JURY TRIAL CONTINUED TO: 03/25/22 09:00 AM;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Verdict for Plaintiff;

Journal Entry Details:

*All parties present as before. David Crump, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present. JURORS PRESENT: Continued testimony and exhibits presented. (See worksheets.) Mr. Roberts requested to use proposed Joint Exhibit 195, page 8 for demonstrative purposes only. COURT GRANTED, Mr. Roberts's request.*

*OUTSIDE THE PRESENCE OF THE JURY: Mr. Roberts renewed Motion in Limine to limit expert's testimony to exclude legal conclusions. Argument from Mr. Sharp regarding industry standards. Court reminded counsel that the Court did not DENY the motion. Counsel stated that they would discuss objections together over the break. Mr. Roberts clarified his objection is to the word "duty" as it implies that it's a legal duty or obligation as a matter of law; has no objection to the witness testifying to that standard of care requires or what the standard of care is. Mr. Sharp stated that he's asked Mr. Prater to refer to "industry standards". COURT SO NOTED. JURORS PRESENT: Continued testimony. (See worksheets.) Court instructed the jury to DISREGARD any statements by the witness (Mr. Prater) regarding his opinion of medical necessity. Mr. Sharp requested the Court take judicial notice of NRS 695G.150. With no objection from Mr. Roberts, COURT ORDERED, the COURT WILL TAKE JUDICIAL NOTICE. OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding schedule of remaining witnesses. Mr. Sharp indicated that Plaintiff's Case-in Chief is anticipated to finish tomorrow. JURORS PRESENT: Continued testimony. (See worksheets.) Court adjourned for the day; to resume March 24, 2022 at 10:45 AM. JURY TRIAL CONTINUED TO: 03/24/22 10:45 AM;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Verdict for Plaintiff;

Journal Entry Details:

*All parties present as before. David Crump, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present. JURORS PRESENT: Continued testimony and exhibits presented. (See worksheets.) OUTSIDE THE PRESENCE OF THE JURY: Discussions regarding witness scheduling and objections to the reading portions of Dr. Liao's deposition.*

# CASE SUMMARY

CASE NO. A-19-788630-C

*Zhongxing Liao, M.D.'s December 18, 2020 Deposition PUBLISHED. (See log.) JURORS PRESENT: Continued testimony presented. (See worksheets.) OUTSIDE THE PRESENCE OF THE JURY: Mr. Roberts objected to the method of reading of the deposition is handled; requested the Court instruct the reader to read the testimony as flat and neutral tone. COURT FINDS, witness's testimony is consistent with the testimony of Dr. Liao; the Court does not find that her intonation, voice, or body language is inappropriate in any manner; the Court finds it to be congruent with the testimony, and the objection is OVERRULED. JURORS PRESENT: Continued testimony presented. (See worksheets.) Court adjourned for the day; to resume March 23, 2022 at 9:00 AM. JURY TRIAL CONTINUED TO: 03/23/22 09:00 AM;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Verdict for Plaintiff;

Journal Entry Details:

*All parties present as before. David Crump, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present. JURORS PRESENT: Continued testimony and exhibits presented. (See worksheets.) CONFERENCE AT THE BENCH. JURORS PRESENT: Continued testimony and exhibits presented. (See worksheets.) Court alerted the Jury that parts of Mr. Gormely's cross-examination of Dr. Chang, regarding the line of questioning of Dr. Liao's July 1, 2018 article and the Report to the Congress, Medicare, and the Health Care Delivery System, MEDPAC, has no barring on the issue of bad faith, rather than for medical causation. OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding medical records exhibits. (See worksheet.) JURORS PRESENT: The Court informed the Jury of the trial schedule for the remainder of the trial. Continued testimony and exhibits presented. (See worksheets.) Court adjourned for the day; to resume March 22, 2022 at 9:00 AM. JURY TRIAL CONTINUED TO: 03/22/22 09:00 AM;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Verdict for Plaintiff;

Journal Entry Details:

*All parties present as before. David Crump, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present. OUTSIDE THE PRESENCE OF THE JURY: Preliminary Jury Instructions settled; COURT NOTED, changes "I" to "the Court": not using the word "I" as it is not a personal opinion, rather than what the Court and the law requires. Colloquy regarding anticipated witness testimony schedule; COURT NOTED, on Tuesday, April 5, 2022 trial will only be in the afternoon, after the Court's civil calendar. JURORS PRESENT: Parties WAIVED the reading of the pleadings. Parties INVOKED EXCLUSIONARY RULE. Court INSTRUCTED the jurors on the Agreed Preliminary Jury Instructions. Opening Statement made by Mr. Sharp. Opening Statement made by Mr. Smith. Testimony and exhibits presented. (See worksheets.) Court adjourned for the day; to resume March 21, 2022 at 9:00 AM. JURY TRIAL CONTINUED TO: 03/21/22 09:00 AM;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

# CASE SUMMARY

CASE NO. A-19-788630-C

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Verdict for Plaintiff;

Journal Entry Details:

*All parties present as before. David Crump, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Colloquy regarding jury selection and combining the prospective juror panels. PROSPECTIVE JURORS PRESENT: Prospective Jurors Panel # 2 SWORN. Voir Dire. Prospective Jurors Panel # 3 SWORN. Voir Dire. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Colloquy regarding number of jurors and alternates and number of jurors needed during the peremptory challenges. PROSPECTIVE JURORS PRESENT: Jurors Panels # 1-3 combined. Continued Voir Dire. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Record made for peremptory challenge. JURORS PRESENT: Jury SELECTED and SWORN. Court adjourned for the day; to resume March 16, 2022 at 9:00 AM. JURY TRIAL CONTINUED TO: 03/16/22 09:00 AM;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Verdict for Plaintiff;

Journal Entry Details:

*OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Colloquy regarding changing the Joint Statement in regard to how to introduce the case to the prospective jurors; Counsel had no objection to making the introduction simple. Parties STIPULATED to the DISMISSAL of Defendant United Healthcare, Inc. Mr. Roberts MOVED TO amend the caption and documents, such as Jury Instructions, that the juror will see. COURT SO NOTED. PROSPECTIVE JURORS PRESENT: Prospective jurors SWORN. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Colloquy regarding jury selection and multiple proposed juror panels between today and tomorrow. PROSPECTIVE JURORS PRESENT: Voir Dire. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Colloquy regarding defense's request to have a second court recorder present for the duration of the trial. COURT ORDERED, for appeal purposes, Ms. Burgener's transcript WILL BE the Court's official transcript. PROSPECTIVE JURORS PRESENT: Continued Voir Dire. COURT ORDERED, prospective jurors to RETURN on March 15, 2022 at 12:30 PM. Court adjourned for the day; to resume March 15, 2022 at 9:30 AM. JURY TRIAL CONTINUED TO: 03/15/22 09:30 AM CLERK'S NOTE: These Minutes were amended to correct the hearing type in its caption.//pb/3/16/22.;*

05/17/2022

**CANCELED Motion for Judgment (9:00 AM)** (Judicial Officer: Krall, Nadia)

*Vacated*

*Motion for Judgment as a Matter of Law - Covered Service*

05/25/2022



**Minute Order (3:00 AM)** (Judicial Officer: Krall, Nadia)

Minute Order - No Hearing Held;

Journal Entry Details:


*NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to secure efficient, just and inexpensive determinations in every action and proceeding. Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time with or without oral argument, and grant or deny it. Plaintiff's Verified Memorandum of Costs and*

## CASE SUMMARY


CASE NO. A-19-788630-C

Disbursements filed on 4/19/2022; Defendant's Motion to Retax Costs filed on 4/22/2022; Plaintiff's Opposition to Defendant's Motion to Retax Costs filed on 5/6/2022. The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on file. COURT ORDERED, Defendant's Motion to Retax Costs filed on 4/22/2022 is GRANTED IN PART and DENIED IN PART. Defendant's Motion to Retax is GRANTED consistent with Plaintiff's Opposition and is DENIED as to all other aspects. COURT FURTHER ORDERED, counsel for Plaintiff to draft and circulate a proposed order for opposing counsel's signature prior to submitting it to the Department 4 inbox for the Judge's review and signature within fourteen (14) days and distribute a filed copy to all parties involved in this matter. COURT FURTHER ORDERED, counsel for Plaintiff to include Findings of Fact and Conclusions of Law based upon the Memorandum of Points and Authorities set forth in Plaintiff's pleadings. COURT FURTHER ORDERED Defendant's Motion to Retax Costs filed on 4/22/2022 and scheduled for hearing on 6/1/2022 at 9:00 A.M. is VACATED. CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Pharan Burchfield, to all registered parties for Odyssey File & Serve.//pb/5/25/22.;

06/01/2022 CANCELED Motion to Retax (9:00 AM) (Judicial Officer: Krall, Nadia)  
 Vacated  
 Defendant's Motion to Retax Costs

07/07/2022  Minute Order (3:00 AM) (Judicial Officer: Krall, Nadia)  
 Minute Order - No Hearing Held;  
 Journal Entry Details:  
 NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to secure efficient, just and inexpensive determinations in every action and proceeding. Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time with or without oral argument, and grant or deny it. Defendant's Motion to Associate Counsel Thomas H. Dupree, Jr. filed on 6/6/2022. The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on file. COURT NOTES Eighth Judicial District Court Rule 2.20(e) states: "Within 14 days after the service of the motion, and 5 days after service of any joinder to the motion, the opposing party must serve and file written notice of non-opposition or opposition thereto, together with a memorandum of points and authorities and supporting affidavits, if any, stating facts showing why the motion and/or joinder should be denied. Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same." COURT FURTHER NOTES as of 7/5/2022 no opposition to Defendant's Motion to Associate Counsel Thomas H. Dupree, Jr. filed on 6/6/2022 has been filed. COURT ORDERED, Defendant's Motion to Associate Counsel Thomas H. Dupree, Jr. filed on 6/6/2022 is GRANTED pursuant to Eighth Judicial District Court Rule 2.20(e) and Nevada Supreme Court Rule 42. COURT FURTHER ORDERED, counsel for Defendant Sierra Health and Life Insurance Company, Inc. to draft and submit a proposed order to the Department 4 inbox for the Judge's review and signature within fourteen (14) days and distribute a filed copy to all parties involved in this matter. COURT FURTHER ORDERED, Defendant's Motion to Associate Counsel Thomas H. Dupree, Jr. filed on 6/6/2022 and scheduled for hearing on 7/12/2022 at 9:00 A.M. is VACATED. CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Pharan Burchfield, to all registered parties for Odyssey File & Serve.//pb/7/7/22.;

07/12/2022 CANCELED Motion to Associate Counsel (9:00 AM) (Judicial Officer: Krall, Nadia)  
 Vacated  
 Motion to Associate Counsel (Thomas H. Dupree, Jr.)

08/11/2022  Minute Order (3:00 AM) (Judicial Officer: Krall, Nadia)  
 Minute Order - No Hearing Held; Plaintiff's Motion to Associate Counsel Matthew W.H. Wessler, Esq.  
 Journal Entry Details:  
 NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to secure efficient, just and inexpensive determinations in every action and proceeding. Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time with or without oral argument, and grant or deny it. Plaintiff's Motion to Associate Counsel Matthew W.H. Wessler, Esq. filed on 7/28/2022. The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on file. COURT NOTES Eighth Judicial District Court Rule 2.20(e) states: "Within 14 days after the service of the motion, and 5 days after service of any joinder to the motion, the opposing party must serve and file written notice of non-opposition

# CASE SUMMARY

CASE NO. A-19-788630-C

or opposition thereto, together with a memorandum of points and authorities and supporting affidavits, if any, stating facts showing why the motion and/or joinder should be denied. Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same." COURT FURTHER NOTES as of 8/11/2022 no opposition to Plaintiff's Motion to Associate Counsel Matthew W.H. Wessler, Esq. filed on 7/28/2022 has been filed. COURT ORDERED, Plaintiff's Motion to Associate Counsel Matthew W.H. Wessler, Esq. filed on 7/28/2022 is GRANTED pursuant to Eighth Judicial District Court Rule 2.20(e) and Nevada Supreme Court Rule 42. COURT FURTHER ORDERED, counsel for Plaintiff to draft and circulate a proposed order for opposing counsel's signature prior to submitting it to the Department 4 inbox for the Judge's review and signature within fourteen (14) days and distribute a filed copy to all parties involved in this matter. COURT FURTHER ORDERED, Plaintiff's Motion to Associate Counsel Matthew W.H. Wessler, Esq. filed on 7/28/2022 and scheduled for hearing on 8/30/2022 at 9:00 A.M. is VACATED. CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Pharan Burchfield, to all registered parties for Odyssey File & Serve./pb/8/11/22.;

08/11/2022



## Minute Order (3:00 AM) (Judicial Officer: Krall, Nadia)

Minute Order - No Hearing Held; Plaintiff's Motion to Associate Counsel Depak Gupta, Esq. Journal Entry Details:

NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to secure efficient, just and inexpensive determinations in every action and proceeding. Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time with or without oral argument, and grant or deny it. Plaintiff's Motion to Associate Counsel Depak Gupta, Esq. filed on 7/21/2022. The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on file. COURT NOTES Eighth Judicial District Court Rule 2.20(e) states: "Within 14 days after the service of the motion, and 5 days after service of any joinder to the motion, the opposing party must serve and file written notice of non-opposition or opposition thereto, together with a memorandum of points and authorities and supporting affidavits, if any, stating facts showing why the motion and/or joinder should be denied. Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same." COURT FURTHER NOTES as of 8/11/2022 no opposition to Plaintiff's Motion to Associate Counsel Depak Gupta, Esq. filed on 7/21/2022 has been filed. COURT ORDERED, Plaintiff's Motion to Associate Counsel Depak Gupta, Esq. filed on 7/21/2022 is GRANTED pursuant to Eighth Judicial District Court Rule 2.20(e) and Nevada Supreme Court Rule 42. COURT FURTHER ORDERED, counsel for Plaintiff to draft and circulate a proposed order for opposing counsel's signature prior to submitting it to the Department 4 inbox for the Judge's review and signature within fourteen (14) days and distribute a filed copy to all parties involved in this matter. COURT FURTHER ORDERED, Plaintiff's Motion to Associate Counsel Depak Gupta, Esq. filed on 7/21/2022 and scheduled for hearing on 8/30/2022 at 9:00 A.M. is VACATED. CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Pharan Burchfield, to all registered parties for Odyssey File & Serve./pb/8/11/22.;

08/15/2022



## Minute Order (3:00 AM) (Judicial Officer: Krall, Nadia)

Minute Order - No Hearing Held; Defendant's Renewed Motion for Judgment as a Matter of Law

Journal Entry Details:

NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to secure efficient, just and inexpensive determinations in every action and proceeding. Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time with or without oral argument, and grant or deny it. Defendant's Renewed Motion for Judgment as a Matter of Law filed on 5/16/2022; Plaintiff's Opposition to Defendant's Renewed Motion for Judgment as a Matter of Law filed on 6/29/2022; and Defendant's Reply in Support of its Renewed Judgment as a Matter of Law filed on 7/20/2022. The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on file. COURT ORDERED, Defendant's Renewed Motion for Judgment as a Matter of Law filed on 5/16/2022 is DENIED pursuant to M.C. Multi-Family Development, L.L.C. v. Crestdale Associates, Ltd., 124 Nev. 901 (2008); Harrah's Las Vegas, LLC v. Muckridge, 473 P.3d 1020 (Nev. 2020); Broussard v. Hill, 100 Nev. 325 (1984); Ainsworth v. Combined Ins. Co. of Am., 104 Nev. 587 (1988); Albert v. H. Wohlers & Co. v. Bartgis, 114 Nev. 1249 (1998); Allstate Ins. Co. v. Miller, 125 Nev. 300 (2009); Guar. Nat. Ins. Co. v. Potter, 112 Nev. 199 (1996); Powers v. United Servs. Auto Ass'n, 114 Nev. 690 (1998); Century Sur. Co. v. Casino W., Inc., 130 Nev. 395 (2014); Powell v. Liberty Mut. Fire Ins. Co., 127 Nev. 156 (2011); Holcomb v. Georgia Pac., LLC, 128 Nev.

# CASE SUMMARY

CASE NO. A-19-788630-C

614 (2012); NRS 51.005; Countrywide Home Loans, Inc. v. Thitchener, 124 Nev. 725 (2008); Ainsworth v. Combined Ins. Co. of America, 104 Nev. 587 (1988); United Fire Ins. Co. v. McClelland, 105 Nev. 504 (1989); First Interstate Bank v. Jafros Auto Body, 106 Nev. 54 (1990); and Wreth v. Rowatt, 126 Nev. 446 (2010). COURT FURTHER ORDERED, counsel for Plaintiff to draft and circulate a proposed order for opposing counsel's signature prior to submitting it to the Department 4 inbox for the Judge's review and signature within fourteen (14) days and distribute a filed copy to all parties involved in this matter. COURT FURTHER ORDERED, counsel for Plaintiff to include Findings of Fact and Conclusions of Law based upon the Memorandum of Points and Authorities set forth in Plaintiff's pleadings. COURT FURTHER ORDERED, Defendant's Renewed Motion for Judgment as a Matter of Law filed on 5/16/2022 and scheduled for hearing on 8/17/2022 at 9:00 A.M. is VACATED. CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Pharan Burchfield, to all registered parties for Odyssey File & Serve./pb/8/15/22.;

08/15/2022



**Minute Order (3:00 AM)** (Judicial Officer: Krall, Nadia)

Minute Order - No Hearing Held; Defendant's Motion for a New Trial or Remittitur  
Journal Entry Details:

NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to secure efficient, just and inexpensive determinations in every action and proceeding. Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time with or without oral argument, and grant or deny it. Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022; Plaintiff's Opposition to Defendant's Motion for a New Trial or Remittitur filed on 6/29/2022; Defendant's Reply in Support of Its Motion for a New Trial or Remittitur filed on 7/20/2022; and Defendant's Motion for Leave to File Supplemental Authority in Support of its Motion for a New Trial or Remittitur filed on 8/10/2022. The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on file. COURT ORDERED, Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022 is DENIED pursuant to Bahena v. Goodyear Tire & Rubber Co., 126 Nev. 243 (2010); NRCP 59(a)(1)(B) & (F); Wyeth v. Rowatt, 126 Nev. 446 (2010); Bayerische Motoren Werke Aktiengesellschaft v. Roth, 127 Nev. 122 (2011); Grosjean v. Imperial Palace, 125 Nev. 349 (2009); Cox v. Copperfield, 138 Nev. Adv. Op. 27 (2022); Pizarro-Ortega v. Cervantes-Lopez, 133 Nev. 261 (2017); Lioce v. Cohen, 124 Nev. 1 (2008); Ringle v. Bruton, 120 Nev. 82 (2004); Walker v. State, 78 Nev. 463 (1962); Born v. Eisenman, 114 Nev. 854 (1998); Satackiewicz v. Nissan Motor Corp. in U.S.A., 100 Nev. 443 (1983); Guaranty Nat. Ins. Co. v. Potter, 112 Nev. 199 (1996); Automatic Merchandisers, Inc. v. Ward, 98 Nev. 282 (1982); Hernancez v. City of Salt Lake, 100 Nev. 504 (1984); Dejesus v. Flick, 116 Nev. 812 (2000); Wells, Inc. v. Shoemaker, 64 Nev. 57 (1947); Nevada Independent Broadcasting Corporation v. Allen, 99 Nev. 404 (1983); Quintero v. McDonald, 116 Nev. 1181 (2000); Barmettler v. Reno, Air, Inc., 114 Nev. 441 (1998); State v. Eaton, 101 Nev. 705 (1985); State v. Eaton, 101 Nev. 705 (1985); Jacobson v. Manfredi, 100 Nev. 226 (1984); BMW of N. Am. Inc. v. Gore, 517 U.S. 559 (1996); State Farm Mut. Aut. Ins. Co. v. Campbell, 538 U.S. 408 (2003); TXO Prod. Corp. v. Alliance Res. Corp., 509 U.S. 443 (1993); Merrick v. Paul Revere Life Ins. Co., 594 F.Supp.2d 1168 (Nev. Dis. 2008); and Campbell v. State Farm. Mut. Auto Ins. Co., 98 P.3d 409 (Utah 2004). COURT FURTHER ORDERED, counsel for Plaintiff to draft and circulate a proposed order for opposing counsel's signature prior to submitting it to the Department 4 inbox for the Judge's review and signature within fourteen (14) days and distribute a filed copy to all parties involved in this matter. COURT FURTHER ORDERED, counsel for Plaintiff to include Findings of Fact and Conclusions of Law based upon the Memorandum of Points and Authorities set forth in Plaintiff's pleadings. COURT FURTHER ORDERED, Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022 and scheduled for hearing on 8/17/2022 at 9:00 A.M. is VACATED. CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Pharan Burchfield, to all registered parties for Odyssey File & Serve./pb/8/15/22.;

08/17/2022

**CANCELED Motion for Judgment (9:00 AM)** (Judicial Officer: Krall, Nadia)

Vacated

Defendants' Renewed Motion for Judgment as a Matter of Law

08/17/2022

**CANCELED Motion for New Trial (9:00 AM)** (Judicial Officer: Krall, Nadia)

Vacated

Defendants' Motion for a New Trial or Remittitur

08/30/2022

**CANCELED Motion to Associate Counsel (9:00 AM)** (Judicial Officer: Krall, Nadia)

Vacated


Plaintiff's Motion to Associate Counsel



EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**

**CASE NO. A-19-788630-C**

08/30/2022	<b>CANCELED Motion to Associate Counsel</b> (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Vacated</i> <i>Plaintiff's Motion to Associate Counsel - Matthew W.H. Wessler</i>
10/18/2022	 <b>Motion</b> (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Plaintiff's Motion for Entry of Express Findings as Required by Lioce v. Cohen</i> Granted; Plaintiff's Motion for Entry of Express Findings as Required by Lioce v. Cohen Journal Entry Details: <i>COURT thanked counsel for the courtesy binders and NOTED having read everything. Arguments by Mr. Sharp and Mr. Gormley regarding the merits of and oppositions to Plaintiff's Motion for Entry of Express Findings as Required by Lioce v. Cohen. COURT ORDERED, Plaintiff's Motion for Entry of Express Findings as Required by Lioce v. Cohen GRANTED. COURT NOTED having rejected the 65-page proposed Findings of Facts and Conclusions of Law and Order as to being too broad and beyond the scope; after the rejection, Plaintiff did pare it down to 12-pages with input from defense counsel, and defense counsel submitted their own proposal. COURT FURTHER NOTED having to review the objections under the plain error standard, STATED its FINDINGS, and FURTHER ORDERED, both parties submit a Word version of their current proposed Findings of Facts and Conclusions of Law and Order to the Court by e-mailing Law Clerk Mr. Sorensen; and the Court will make any changes it deems necessary.;</i>

DATE

FINANCIAL INFORMATION

<b>Defendant</b> United Healthcare, Inc	
Total Charges	3.50
Total Payments and Credits	3.50
<b>Balance Due as of 11/2/2022</b>	<b>0.00</b>
<b>Defendant</b> Sierra Health and Life Insurance Company Inc	
Total Charges	3,561.50
Total Payments and Credits	3,561.50
<b>Balance Due as of 11/2/2022</b>	<b>0.00</b>
<b>Special Administrator</b> Eskew, Sandra L	
Total Charges	635.07
Total Payments and Credits	635.07
<b>Balance Due as of 11/2/2022</b>	<b>0.00</b>
<b>Defendant</b> Sierra Health and Life Insurance Company Inc	
Appeal Bond Balance as of 11/2/2022	<b>500.00</b>

## DISTRICT COURT CIVIL COVER SHEET

A-19-788630-C

Clark County, Nevada

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

Department 14

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone):

Sandra L. Eskew, individually and as Special Administrator of the  
Estate of William George Eskew, Tyler Eskew, and William G. Eskew, Jr.

Defendant(s) (name/address/phone):

Sierra Health and Life Insurance Company, Inc.

Attorney (name/address/phone):

Matthew L. Sharp, Esq.

432 Ridge Street

Reno, NV 89501

(775) 321-1500

Attorney (name/address/phone):

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

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input checked="" type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate</b> (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract
<b>Civil Writ</b> <b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant	<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

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

February 1, 2019

Date

/s/ Matthew L. Sharp

Signature of initiating party or representative

See other side for family-related case filings.

*Heather S. Smith*

CLERK OF THE COURT

JUV

MATTHEW L. SHARP, ESQ.

Nevada State Bar #4746

Matthew L. Sharp, Ltd.

432 Ridge St.

Reno, NV 89501

(775) 324-1500

[matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)

Doug Terry, Esq.

*Admitted PHV*

DOUG TERRY LAW, PLLC.

200 E. 10<sup>th</sup> St. Plaza, Ste. 200

Edmond, OK 73013

(405) 463-6362

[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)

*Attorney for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,

Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

Defendant.

Case No. A-19-788630-C

Dept. No. 4

**JUDGMENT UPON THE JURY VERDICT**

THIS MATTER came for trial by jury from March 14, 2022 through April 5, 2022. Plaintiff Sandra L. Eskew, as Special Administrator of the Estate of William George Eskew, appeared in person and by and through her counsel Matthew L Sharp, Esq. and Douglas Terry, Esq. Defendant Sierra Health and Life Insurance Company appeared in person and by and through its counsel, Lee Roberts, Esq., Ryan Gormley, Esq., and Phillip Smith, Esq., of the law firm of Weinberg, Wheeler, Hudgins, Gunn, & Dial, LLC. Testimony was taken. Evidence was admitted. Counsel argued the merits of the case. Pursuant to NRS 42.005(3), the trial was held in two phases.

1 On April 4, 2022, in phase one, the jury unanimously rendered a verdict for Plaintiff Sandra  
2 L. Eskew as Special Administrator of the Estate of William George Eskew and against Defendant  
3 Sierra Health and Life Insurance Company and awarded compensatory damages in the amount of  
4 \$40,000,000. The jury unanimously found grounds to award punitive damages.

5 Phase two for punitive damages was held on April 5, 2022. The jury unanimously rendered a  
6 verdict for Plaintiff Sandra L. Eskew as Special Administrator of the Estate of William George  
7 Eskew and against Defendant Sierra Health and Life Insurance Company and awarded punitive  
8 damages in the amount of \$160,000,000.

9 Pursuant to NRS 17.130, Plaintiff Sandra L. Eskew, as Special Administrator of the Estate of  
10 William George Eskew, is entitled prejudgment interest of \$6,363,287.67 for past compensatory  
11 damages awarded of \$40,000,000, from April 9, 2019 through entry of judgment of April 18, 2022,  
12 based upon a pre-judgment interest rate of 5.25 percent.<sup>1</sup>

13 IT IS SO ORDERED AND ADJUDGED that Plaintiff Sandra L. Eskew, as Special  
14 Administrator of the Estate of William Georg Eskew, be given and granted judgment against  
15 Defendant Sierra Health and Life Insurance Company in the total amount of \$206,363,287.67, plus  
16 taxable costs as determined by this Court, all to bear interest as provided by NRS 17.130(2) from the  
17 date of entry of judgment until paid in full.

18 DATED this \_\_ day of April 2022.

19 Dated this 18th day of April, 2022

20 

21 DISTRICT COURT JUDGE

22 53A 8A7 E0AC A706

23 Nadia Krall

24 District Court Judge

25  
26  
27 <sup>1</sup> <https://www.washoecourts.com/toprequests/interestrates>. The pre-judgment interest rate is 5.25  
28 percent. \$40,000,000 times 5.25 percent and divided by 365 days equals a daily rate of interest of  
\$5,753.42. April 9, 2019 through April 18, 2022 is 1106 days for \$6,363,287.67.

1 **CSERV**

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3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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5  
6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 4/18/2022

15 Audra Bonney

abonney@wwhgd.com

16 Cindy Bowman

cbowman@wwhgd.com

17 D. Lee Roberts

lroberts@wwhgd.com

18 Raiza Anne Torrenueva

rtorrenueva@wwhgd.com

19 Matthew Sharp

matt@mattsharplaw.com

20 Cristin Sharp

cristin@mattsharplaw.com

21 Ryan Gormley

rgormley@wwhgd.com

22 Flor Gonzalez-Pacheco

FGonzalez-Pacheco@wwhgd.com

23 Kelly Gaez

kgaez@wwhgd.com

24 Suzy Thompson

suzy@mattsharplaw.com

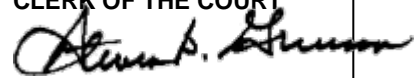
25 Marjan Hajimirzaee

mhajimirzaee@wwhgd.com

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Maxine Rosenberg	Mrosenberg@wwhgd.com
Stephanie Glantz	sglantz@wwhgd.com
Douglas Terry	doug@dougterrylaw.com



NJUD  
MATTHEW L. SHARP, ESQ.  
Nevada State Bar #4746  
Matthew L. Sharp, Ltd.  
432 Ridge St.  
Reno, NV 89501  
(775) 324-1500  
[matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)

Doug Terry, Esq.  
*Admitted PHV*  
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Edmond, OK 73013  
(405) 463-6362  
[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)

*Attorney for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,  
  
Plaintiffs,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,  
  
Defendant.

Case No. A-19-788630-C

Dept. No. 4

**NOTICE OF ENTRY OF JUDGMENT UPON JURY VERDICT**

PLEASE TAKE NOTICE that the Judgment Upon Jury Verdict was filed herein on April 18,  
2022, in the above-captioned matter.

///

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1 A copy of the Judgment Upon Jury Verdict is attached hereto as Exhibit 1.

2 DATED this 18<sup>th</sup> day of April 2022.

3 MATTHEW L. SHARP, LTD.

4  
5 /s/ Matthew L. Sharp

6 MATTHEW L. SHARP, ESQ.

7 Nevada Bar No. 4746

8 432 Ridge Street

9 Reno NV 89501

(775) 324-1500

[matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)

*Attorneys for Plaintiffs*

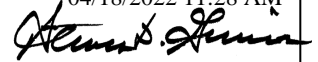


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D. Lee Roberts, Jr. Esq.; [lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)  
Marjan Hajimirzaee, Esq.; [mhajimirzaee@wwhgd.com](mailto:mhajimirzaee@wwhgd.com)  
Ryan T. Gormley, Esq.; [rgormley@wwhgd.com](mailto:rgormley@wwhgd.com)  
WEINBERG WHEELER HUDGINS GUNN & DIAL LLC  
6385 S. Rainbow Blvd., Ste. 400  
Las Vegas, NV 89118  
*Attorneys for Defendants*

/s/ Cristin B. Sharp  
An employee of Matthew L. Sharp, Ltd.

# EXHIBIT 1

  
CLERK OF THE COURT

JUV

MATTHEW L. SHARP, ESQ.

Nevada State Bar #4746

Matthew L. Sharp, Ltd.

432 Ridge St.

Reno, NV 89501

(775) 324-1500

[matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)

Doug Terry, Esq.

*Admitted PHV*

DOUG TERRY LAW, PLLC.

200 E. 10<sup>th</sup> St. Plaza, Ste. 200

Edmond, OK 73013

(405) 463-6362

[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)

*Attorney for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,

Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

Defendant.

Case No. A-19-788630-C

Dept. No. 4

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4 \$40,000,000. The jury unanimously found grounds to award punitive damages.

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12 based upon a pre-judgment interest rate of 5.25 percent.<sup>1</sup>

13 IT IS SO ORDERED AND ADJUDGED that Plaintiff Sandra L. Eskew, as Special  
14 Administrator of the Estate of William Georg Eskew, be given and granted judgment against  
15 Defendant Sierra Health and Life Insurance Company in the total amount of \$206,363,287.67, plus  
16 taxable costs as determined by this Court, all to bear interest as provided by NRS 17.130(2) from the  
17 date of entry of judgment until paid in full.

18 DATED this \_\_ day of April 2022.

19 Dated this 18th day of April, 2022

20 

21 \_\_\_\_\_  
DISTRICT COURT JUDGE

22 53A 8A7 E0AC A706

23 Nadia Krall

24 District Court Judge

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CLARK COUNTY, NEVADA

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6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

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*Attorney for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,  
  
Plaintiff,

Case No. A-19-788630-C

Dept. No. 4

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,  
  
Defendant.

**AMENDED JUDGMENT UPON THE JURY VERDICT**

THIS MATTER came for trial by jury from March 14, 2022 through April 5, 2022. Plaintiff Sandra L. Eskew, as Special Administrator of the Estate of William George Eskew, appeared in person and by and through her counsel Matthew L Sharp, Esq. and Douglas Terry, Esq. Defendant Sierra Health and Life Insurance Company appeared in person and by and through its counsel, Lee Roberts, Esq., Ryan Gormley, Esq., and Phillip Smith, Esq., of the law firm of Weinberg, Wheeler, Hudgins, Gunn, & Dial, LLC. Testimony was taken. Evidence was admitted. Counsel argued the merits of the case. Pursuant to NRS 42.005(3), the trial was held in two phases.

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4 \$40,000,000. The jury unanimously found grounds to award punitive damages.

5 Phase two for punitive damages was held on April 5, 2022. The jury unanimously rendered a  
6 verdict for Plaintiff Sandra L. Eskew as Special Administrator of the Estate of William George  
7 Eskew and against Defendant Sierra Health and Life Insurance Company and awarded punitive  
8 damages in the amount of \$160,000,000.

9 Pursuant to NRS 17.130, Plaintiff Sandra L. Eskew, as Special Administrator of the Estate of  
10 William George Eskew, is entitled prejudgment interest of \$6,363,287.67 for past compensatory  
11 damages awarded of \$40,000,000, from April 9, 2019 through entry of judgment of April 18, 2022,  
12 based upon a pre-judgment interest rate of 5.25 percent.<sup>1</sup>

13 On June 8, 2022, this Court issued an order awarding taxable costs to Plaintiff Sandra L.  
14 Eskew as Special Administrator of the Estate of William George Eskew in the amount \$313,634.62.

15 IT IS SO ORDERED AND ADJUDGED that Plaintiff Sandra L. Eskew, as Special  
16 Administrator of the Estate of William Georg Eskew, be given and granted judgment against  
17 Defendant Sierra Health and Life Insurance Company in the total amount of \$206,363,287.67, plus  
18 taxable costs of \$313,634.62, all to bear interest as provided by NRS 17.130(2) from the date of  
19 entry of judgment of April 18, 2022 until paid in full.

20 DATED this \_\_\_ day of October 2022.

21 Dated this 7th day of October, 2022

22 

23 DISTRICT COURT JUDGE

24 6F8 956 5BA9 9FA7

25 Nadia Krall

26 District Court Judge

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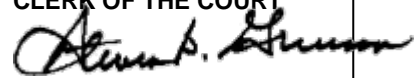
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*Attorney for Plaintiffs*

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**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
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vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,  
  
Defendant.

Case No. A-19-788630-C

Dept. No. 4

**NOTICE OF ENTRY OF AMENDED JUDGMENT UPON JURY VERDICT**

PLEASE TAKE NOTICE that the Amended Judgment Upon Jury Verdict was filed herein on  
October 7, 2022 in the above-captioned matter.

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1 A copy of the Amended Judgment Upon Jury Verdict is attached hereto as Exhibit 1.

2 DATED this 24<sup>th</sup> day of October 2022.

3 MATTHEW L. SHARP, LTD.

4  
5 /s/ Matthew L. Sharp

6 MATTHEW L. SHARP, ESQ.

7 Nevada Bar No. 4746

8 432 Ridge Street

9 Reno NV 89501

10 (775) 324-1500

11 [matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)

12 *Attorneys for Plaintiffs*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Matthew L. Sharp, Ltd., and that on this date, a true  
3 and correct copy of the foregoing was electronically filed and served on counsel through the Court's  
4 electronic service system pursuant to Administrative Order 14-2 and NEFCR 9, via the electronic mail  
5 address noted below:

6 D. Lee Roberts, Jr. Esq.; [lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)  
7 Phillip N. Smith, Esq.; [psmith@wwhgd.com](mailto:psmith@wwhgd.com)  
8 Ryan T. Gormley, Esq.; [rgormley@wwhgd.com](mailto:rgormley@wwhgd.com)  
9 WEINBERG WHEELER HUDGINS GUNN & DIAL LLC  
6385 S. Rainbow Blvd., Ste. 400  
Las Vegas, NV 89118

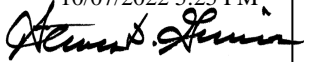
10 Thomas H. Dupree Jr., Esq.; [TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)  
11 GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036

12 *Attorneys for Defendants*

13 DATED this 24<sup>th</sup> day of October 2022.

14  
15 /s/ Suzy Thompson  
16 An employee of Matthew L. Sharp, Ltd.  
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# EXHIBIT 1

  
CLERK OF THE COURT

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**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
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Case No. A-19-788630-C

Dept. No. 4

vs.

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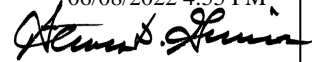
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Case No. A-19-788630-C

Dept. No. 4

**ORDER GRANTING IN PART AND DENYING IN PART**  
**DEFENDANT'S MOTION TO RETAX**

On April 22, 2022, Defendant filed its Motion to Retax Costs. This Court has reviewed Plaintiff's Memorandum of Costs, Defendant's Motion to Retax Costs, and Plaintiff's Opposition to Defendant's Motion to Retax Costs with a Declaration of Matthew L. Sharp in Support of Plaintiff's Memorandum of Costs. This Court grants Defendant's Motion to Retax Costs in part and denies the motion in part consistent with the modification to Plaintiff's Memorandum of Costs as set forth in Plaintiff's Opposition to Motion to Retax Costs.

**I. LEGAL STANDARDS FOR MOTION TO RETAX COSTS**

1. NRS 18.020(3) provides costs must be allowed to “the prevailing party against any adverse party against whom judgment is rendered...[i]n an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.”

2. The prevailing party is “entitled to recover all costs as a matter of right.” *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 431, 132 P.3d 1022, 1036-37 (2006). NRS 18.005 defines the costs that are recoverable.

3. NRS 18.110(1) provides that the party seeking costs must provide a memorandum of costs setting forth the recoverable costs that have been necessarily incurred. The requirements of NRS 18.110(1) are not jurisdictional. *Eberle v. State ex rel. Redfield Trust*, 108 Nev. 587, 590, 836 P.2d 67, 69 (1992).

4. This Court has the discretion to determine the allowable costs under NRS 18.020. *Motor Coach Indus., Inc. v. Khiabani by & through Rigaud*, 137 Nev. Adv. Op. 42, 493 P.3d 1007, 1017 (2021).

5. NRS 18.005(5) governs the recovery of expert witness fees. It provides, “Reasonable fees of not more than five expert witnesses of not more than \$1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert’s testimony were of such necessity as to require the larger fee.” In evaluating a request for expert fees over \$1,500 per witness, this Court should “carefully evaluate a request for excess fees.” *Motor Coach Indus. v. Khiabani*, 492 P.3d at 1017. This Court should recognize the importance of expert witnesses and consider the factors set forth in *Frazier v. Drake*, 131 Nev. 632, 650-51, 357 P.3d 365, 377-78 (Ct. App. 2015). Those factors include: (1) the importance of the expert’s testimony to the case; (2) the degree that the expert aided the jury in deciding the case; (3) whether the expert’s testimony was repetitive of other experts; (4) the extent and nature of the work performed by the expert; (5) the amount of time the expert spent in court, preparing a report, and testifying at trial; (6) the expert’s area of expertise; (7) the expert’s education and training; (8) the fees charged by the expert; (9) the fees traditionally charged by the expert on related matters; (10) comparable expert fees charged in similar cases; and (11) the fees that

1 would have been charged to hire a comparable expert in Las Vegas, Nevada. *Id.* Whether a particular  
2 factor is applicable depends upon the facts of the case.

## 3 **II. FINDINGS OF FACT**

4 1. This case proceeded to trial on March 14, 2022.

5 2. On April 4, 2022, a verdict in phase one was rendered in favor of Plaintiff.

6 3. On April 5, 2022, a verdict on phase two was rendered in favor of Plaintiff.

7 4. On April 18, 2022, this Court filed a judgment in favor of Plaintiff.

8 5. On April 18, 2022, Plaintiff filed a Notice of Entry of Judgment.

9 6. On April 19, 2022, Plaintiff filed a Memorandum of Costs with supporting documentation to  
10 support each item of costs requested.

11 7. On April 22, 2022, Defendant filed its Motion to Retax Costs (“Motion”).

12 8. On May 6, 2022, Plaintiff filed its Opposition to Motion to Retax Costs (“Opposition”) with  
13 the Declaration of Matthew L. Sharp in Support to Plaintiff’s Opposition to Motion to Retax Costs  
14 (“Declaration”).

15 9. Defendant challenged the Memorandum of Costs on the basis that the attorneys for Plaintiff  
16 did not include a sworn declaration to verify the costs. Memorandum of Costs, which was signed by  
17 counsel as an officer of the Court, included the bills showing each item of costs requested were  
18 incurred, and Declaration verified the Memorandum of Costs as well as addressing each item of cost  
19 that Defendant sought to retax. The Memorandum of Costs, Opposition, and Declaration provided the  
20 information sufficient for this Court to evaluate the reasonableness of Plaintiff’s costs.

21 10. Pursuant to NRS 18.005(1), Plaintiff submitted filings fees of \$560. The Defendants did not  
22 contest the filing fees. Filing fees of \$560 were necessarily incurred in this action.

23 11. Pursuant to NRS 18.005(2), Plaintiff submitted \$24,162 for court reporter fees for depositions.  
24 In its Motion, Defendant asked to re-tax costs by \$8,187.40 on basis that: (1) jury trial transcripts of  
25 \$2,798.50 are not taxable; (2) \$3,230.16 for duplicate charges; and (3) video deposition charges of  
26 \$1,092.20. In the Opposition, Plaintiff omitted the duplicate charges of \$3,230, and jury trial  
27 transcripts charges of \$2,798.50.

12. Based upon Plaintiff's Opposition and Declaration, it is common practice generally in a case to videotape the deposition of a witness, and it is the common practice specifically in this case to videotape the deposition of a witness as evidenced, in part, that Defendant videotaped each of the seven depositions it took.

13. Reporter fees for depositions of \$16,840.20, represented as reporter fees of \$15,748 and video depositions of \$1,092.20, were necessarily incurred in this action

14. Pursuant to NRS 18.005(4), Plaintiff submitted jury fees and expenses of \$5,079.09. The fees were not contested by Defendant. The Defendants did not contest the jury fees and expenses. The jury fees and expenses of \$5,079.09 were necessarily incurred in this action.

15. Plaintiff submitted witness fees of \$48. The witness fees were not contested by Defendant. Witness fees of \$48 were necessarily incurred in this action.

16. Pursuant to NRS 18.005(5), Plaintiff submitted expert witness fees of \$229,490.49. Those fees were allocated as follows: (1) Dr. Andrew Chang for \$115,184.38; (2) Stephen Prater for \$105,355.06; (3) Elliot Flood for \$6,888.55; and (4) Dr. Clark Jean for \$2,062.50. In its motion, Defendant asked to re-tax costs for each expert as follows: (1) Dr. Andrew Chang from \$115,184.38 to between \$30,000 to \$58,184.38; (2) Stephen Prater from \$105,355.06 to \$64,104; (3) Elliott Flood from \$6,888.55 to \$5,473.55; and (4) Dr. Clark Jean from \$2,062.50 to zero. In the Opposition, Plaintiff withdrew the charges for Dr. Jean of \$2,062.50 and agreed to reduce the recovery of Mr. Flood's fee to \$5,473.55.

17. With respect to Dr. Chang, he is a well-qualified radiation oncologist who specializes in proton beam therapy ("PBT"). Without Dr. Chang's testimony, Plaintiff could not have prevailed in this case. His testimony involved a complicated subject matter and was necessary for Plaintiff to prevail on liability, causation, and damages. Dr. Chang explained radiation oncology generally. Dr. Chang testified about PBT. Dr. Chang testified about Mr. Eskew's condition, including the location of the tumors that needed to be radiated. Dr. Chang explained why PBT was the best radiation treatment available to Mr. Eskew and why IMRT posed a significant risk of injury to Mr. Eskew's esophagus. Dr. Chang testified about how IMRT injured Mr. Eskew's esophagus, the development of chronic esophagitis, and how that impacted Mr. Eskew.

1 18. In applying the relevant factors in *Frazier*, Dr. Chang's testimony was very important. There  
2 is a high degree of certainty his testimony assisted the jury. While Dr. Liao also testified, Dr. Chang's  
3 testimony was not repetitive of her testimony and dealt with different aspects of why PBT was  
4 necessary for Mr. Eskew and the injuries he sustained from IMRT including the development of the  
5 chronic esophagitis. The charges of \$115,184.38 were consistent with the work Dr. Chang performed.  
6 Dr. Chang hourly rate \$750 per hour was consistent with Dr. Chang's standard rate and consistent  
7 with what a doctor with his expertise would charge. Dr. Chang's fees were consistent with the amount  
8 of work he did preparing his report, preparing for trial, and testifying at trial. PBT is not a therapy  
9 offered in Las Vegas, so it was not practical to find an expert on PBT from Las Vegas. Dr. Kumar,  
10 SHL's radiation oncologist and who, at one-time lived in Las Vegas, charged more than Dr. Chang at  
11 \$800 per hour. Dr. Chang's total fee of \$115,184.38 was consistent with a case of this complexity  
12 and consistent with Dr. Chang's qualifications, the complexity of his testimony, and the importance  
13 of his testimony.

14 19. Pursuant to the relevant *Frazier* factors, Dr. Chang's expert witness fees of \$115,184.38 were  
15 necessarily incurred in this action.

16 20. With respect to Mr. Prater, he was used as an expert in insurance claims handling practices.  
17 Mr. Prater's testimony was necessary on the issue of liability for breach of the implied covenant of  
18 good faith and fair dealing and implied malice and oppression for purposes of punitive damages.

19 21. In applying the *Frazier* factors, Mr. Prater's testimony was very important. Given the verdict,  
20 the degree to which Mr. Prater assisted the jury was high. Mr. Prater has a high degree of expertise  
21 with over 35 years of experience studying insurance claims practices, training insurance companies  
22 on complying with industry standards and the duty of good faith and fair dealing, and years of  
23 testifying experience. For 30 years, Mr. Prater taught insurance law as a professor of law at Santa  
24 Clara University. Mr. Prater utilized his vast experience to explain insurance industry principals and  
25 standards for fair claims handling. He utilized the facts of the case to assist in explaining Plaintiff's  
26 theory of the case including how SHL violated industry standards and consciously disregarded Mr.  
27 Eskew's rights. Mr. Prater explained complex concepts to the jury, including: (1) how a reasonable  
28 insurer would interpret the insurance policy generally; (2) how SHL should have interpreted the policy

1 with respect to Mr. Eskew's claim; (3) how an insurer investigates and evaluates a claim generally;  
2 (4) how SHL investigated and evaluated Mr. Eskew's claim; and (5) how SHL should have  
3 investigated and evaluated Mr. Eskew's claim. Mr. Prater charged his customary fee of \$750 per hour  
4 which was consistent with his background and expertise.

5 22. While Defendant seeks to reduce Mr. Prater's fees by 55 hours, Mr. Prater spent the time billed,  
6 and the tasks for which he billed were necessary to the case. The charges reflect the time spent to  
7 provide an extensive report, review of discovery materials, preparation for deposition, extensive  
8 preparation for trial, and trial testimony.

9 23. Pursuant to the relevant *Frazier* factors, Mr. Prater's expert witness fee of \$105,355.06 were  
10 necessarily incurred in this action.

11 24. With respect to Mr. Flood, he was retained as an insurance expert to testify about two aspects:  
12 (1) the corporate relationship between United Health Group, Sierra Heath, Optum, ProHealth Proton  
13 Center Management, New York Proton Management LLC, and UHG's management of the New York  
14 Proton Center and the investment into the New York Proton Center; and (2) the Defendant's value  
15 for purposes of punitive damages. At trial, Mr. Flood's testimony established the foundation to put  
16 into evidence that, as early as 2015, United Health Group, through ProHealth Proton, invested into a  
17 proton center in New York City, in part, to use PBT to treat lung cancer. In applying the *Frazier*  
18 factors, Mr. Flood's testimony was important. He aided the jury in understanding the corporate  
19 structure of United Health Group. New York Proton Center was an important part of Plaintiff's theory  
20 in challenging the Defendant's position and credibility of its position that PBT for lung cancer was  
21 unproven and not medically necessary.

22 25. In applying the relevant *Frazier* factors, Mr. Flood's charges to \$5,473.55 were necessarily  
23 incurred in this action.

24 26. Pursuant to NRS 18.005(7), Plaintiff submitted process service fees of \$95. The process  
25 service fees were not contested by Defendant. The process service fees of \$95 were necessarily  
26 incurred in this action.

27 ///

28 ///



1 27. Pursuant to NRS 18.005(8), Plaintiff submitted \$8,071 in costs for compensation for the  
2 official reporter. Defendant does not contest those costs. The \$8,071 for compensation for the official  
3 reporter were necessarily incurred in this action.

4 28. Pursuant to NRS 18.005(12), Plaintiff submitted photocopy costs of \$5,013.85 split out as  
5 follows: (1) medical record copies of \$3,193.92; (2) in-house photocopies \$1,626 for 6,504 copies at  
6 \$.25 per copy; (3) FedEx copy costs of \$193.93 for trial. Defendant asked to re-tax costs for the in-  
7 house copy costs of \$1,626.

8 29. This case was extensively litigated, involved thousands of pages of documents, many expert  
9 witnesses, many pretrial motions, hundreds of trial exhibits, and a 13-day trial. Plaintiff charged copy  
10 costs only for those charges necessary to the preparation of the case. \$1,626 for 6,504 copies at \$.25  
11 per copy is reasonable for a case of this size. In-house copying costs of \$1,626 were necessarily  
12 incurred in this action.

13 30. The photocopy costs of \$5,013.85 were necessarily incurred in this action.

14 31. Pursuant to NRS 18.005(14), Plaintiff submitted postage charges of \$420.21 as: (1) United  
15 States postage of \$49.84 and (2) Federal Express charge of \$370.34. The Defendant moved to re-tax  
16 Federal Express charges of \$370.34.

17 32. Plaintiff utilized Federal Express charges for establishing the Estate of William Eskew and  
18 charges for providing binders to this Court for the pre-trial hearings. Those charges were necessarily  
19 incurred as postage or other reasonable expenses under NRS 18.005(17).

20 33. Postage expense of \$420.21 were necessarily incurred in this action.

21 34. Pursuant to NRS 18.005(17), Plaintiff sought miscellaneous expenses as follows: (1) legal  
22 research of \$2,475.83; (2) runner services fees of \$211; (3) Tyler Technologies e-filing service fees of  
23 \$170.80; (4) Focus Graphics for medical illustrations of \$7,510; (5) E-deposition trial technician fees  
24 of \$25,614.80; (6) Empirical Jury for focus groups of \$20,000; (7) HOLO Discovery for trial copying  
25 and Bates-stamping exhibits of \$2,970.29; (8) Nikki McCabe to read deposition designations of Dr.  
26 Liao of \$831.36; and (3) pro hac vice fees of \$1,550. In its Motion, the Defendant contested the legal  
27 research fees, the runner service fees, Focus Graphic charges, E-deposition trial technician fees, the  
28 Empirical Jury's fee, and Ms. McCabe's charges.

35. The charges of \$170.80 for Tyler Technologies e-filing service fees, \$2,970.29 for HOLO Discovery and \$1,550 for pro hac vice fees were charges necessarily incurred in this action.

36. With respect to the legal research expenses, this was an insurance bad faith case that involved many legal issues including research to respond to the various pre-trial motions, prepare and review of jury instructions and address legal issues raised in trial. Plaintiff utilized the internal practices to assure the charges were for research were appropriately allocated to this case. The legal research charges of \$2,475.83 were necessarily incurred in this action.

37. With respect to the Focus Graphic charges, Focus Graphics, with the Plaintiff's attorneys and Dr. Chang, prepared demonstrative exhibits to assist in explaining why PBT was the best treatment for Mr. Eskew. Those demonstrative exhibits were used in Dr. Chang's testimony as well as in closing arguments. The demonstrative exhibits assisted the jury to understand Plaintiff's position that PBT was the best treatment for Mr. Eskew. Focus Graphic charges of \$4,335 to prepare the demonstrative exhibits were necessarily incurred in this action.

38. With respect to E-depositions' charges, E-depositions provided the courtroom technology to the Plaintiff during trial. Defendant asserts courtroom technology services is not a necessary expense. This case involved many trial exhibits. Courtroom technology services during trial are necessary as evidenced, in part, by the fact Defendant had its own person providing courtroom technology. The services of E-depositions were important to assist Plaintiff in presenting evidence to the jury and to assist the jury in understanding the evidence. The E-depositions charges of \$25,614.80 were necessarily incurred in this action.

39. With respect Empirical Jury, Plaintiff retained Empirical Jury to conduct focus groups. Defendant contests the charge on the basis that jury consulting services were not necessary. Based upon Plaintiff's Opposition, jury consulting services in a case of this nature were necessary, and Empirical Jury's charges of \$20,000 were necessarily incurred in this action.

40. With respect Nikki McCabe, she was retained to read deposition designations of Dr. Liao. Defendant asserts that her charges were not necessary. Dr. Liao was a critical witness for the Plaintiff. Ms. McCabe performed a necessary role in the case. Ms. McCabe's fee of \$831.36 was an amount necessarily incurred in this action.

1 **III. CONCLUSIONS OF LAW**

2 1. Pursuant to NRS 18.0202(3), the Plaintiff is the prevailing party.

3 2. Through the Memorandum of Costs, the Oppositions and Declaration, Plaintiff complied with  
4 NRS 18.110(1) and provided the information necessary for this Court to determine the costs that were  
5 necessarily incurred in this action.

6 3. Defendant's Motion was timely filed.

7 4. This Court grants Defendant's Motion as follows: (1) court reporter fees are reduced by  
8 \$2,798.50 for jury trial transcripts and \$3,230.16 for duplicate court reporter charges; (2) expert  
9 charges for Elliot Flood are reduced from \$6,888.55 to \$5,473.55; (3) charges for Dr. Clark Jean are  
10 not allowed. In all other respects, Defendant's Motion is denied as the remaining costs challenged by  
11 the Defendant were necessarily incurred in this action.

12 5. Pursuant to NRS 18.020, this Court awards Plaintiff's taxable costs of \$313,634.62 and  
13 itemized as follows:

14 **1) Clerks' Fees**

15 Filing Fees and Charges Pursuant to NRS 19.0335 ..... \$560.00

16 **2) Reporters' Fees for Depositions, including videography** ..... \$16,840.20

17 **3) Juror fees and expenses** ..... \$5,079.09

18 **4) Witness Fees**..... \$48.00

19 **5) Expert Witness Fees**..... \$226,012.99

20 **6) Process Service** ..... \$95.00

21 **7) Compensation for the Official Reporter** ..... \$8,071.00

22 **8) Photocopies** ..... \$5,013.85

23 (1) Medical records copies (\$3,193.92)

24 (2) In-house photocopies 6,504 copies at \$.25 per copy (\$1,626)

25 (3) FedEx copy costs from trial (\$193.93)

26 **9) Postage/Federal Express**..... \$420.21

27 (1) Postage (\$49.87)

28 (2) Federal Express shipping charges (\$370.34)

10) Other Necessary and Reasonable Expenses

Legal Research ..... \$2,475.83  
Runner services ..... \$211.00  
Tyler Technologies (e-filing service fees) ..... \$170.80  
Trial Related, Jury Fees, and Support Services..... \$47,086.65  
• Focus Graphics – medical illustrations (\$4,335)  
• E-Depositions – trial technician (\$25,614.80)  
• Empirical Jury – focus groups (\$20,100)  
• HOLO Discovery – trial exhibits & bates stamping (\$2,970.29)  
• Nikki McCabe – voice actress to read depo designation (\$831.36)  
• Out-of-State Association and Pro Hac Vice Fees..... \$1,550.00  
**TOTAL COSTS ..... \$313,634.62**

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

Dated this 8th day of June, 2022



DISTRICT JUDGE

939 71A 6FB3 9590

Nadia Krall

District Court Judge

Approved as to form:

WEINBERG WHEELER HUDGINS  
GUNN & DIAL LLC

/s/ Ryan T. Gormley

Ryan T. Gormley, Esq.

Nevada Bar No. 13494

6385 S. Rainbow Blvd., Ste. 400

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(702) 938-3838

[rgormley@wwhgd.com](mailto:rgormley@wwhgd.com)

*Attorneys for Defendants*

Matt Sharp <[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)>

---

**RE: Eskew v. Sierra**

1 message

**Gormley, Ryan** <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>

Mon, Jun 6, 2022 at 3:07 PM

To: Matt Sharp <[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)>, "Roberts, Lee" <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>Cc: Doug Terry <[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)>

That is fine, you can add my e-signature on the approval as to form.

Thank you,



Ryan Gormley, Attorney

**Weinberg Wheeler Hudgins Gunn & Dial**

[6385 South Rainbow Blvd.](#) | [Suite 400](#) | [Las Vegas, NV](#)  
89118

D: 702.938.3813 | F: 702.938.3864

[www.wwhgd.com](http://www.wwhgd.com) | vCard

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**From:** Matt Sharp <[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)>**Sent:** Monday, June 6, 2022 2:57 PM**To:** Gormley, Ryan <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>; Roberts, Lee <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>**Cc:** Doug Terry <[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)>**Subject:** Eskew v. Sierra

**This Message originated outside your organization.**

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Ryan,

I accepted all changes but the first change. Let me know if I have your authority to submit the order.

Thanks.

Matthew Sharp

[432 Ridge St.](#)

[Reno, NV 89501](#)

[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)

775-324-1500

Past-President Nevada Justice Association  
Board of Governors American Association for Justice  
Leaders Forum American Association for Justice

The information contained in this message may contain privileged client confidential information. If you have received this message in error, please delete it and any copies immediately.

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/8/2022

15 Audra Bonney

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16 Cindy Bowman

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17 D. Lee Roberts

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21 Ryan Gormley

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22 Flor Gonzalez-Pacheco

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23 Kelly Gaez

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24 Suzy Thompson

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25 Marjan Hajimirzaee

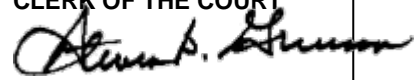
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*Attorney for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,  
  
Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,  
  
Defendant.

Case No. A-19-788630-C

Dept. No. 4

**NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART  
DEFENDANT'S MOTION TO RETAX**

PLEASE TAKE NOTICE that an Order Granting in Part and Denying in Part Defendant's  
Motion to Retax was filed on June 8, 2022, in the above-captioned matter.

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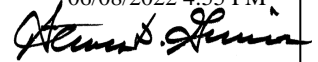
1 A copy of the Order is attached hereto.

2 DATED this 9<sup>th</sup> day of June 2022.

3 MATTHEW L. SHARP, LTD.

4  
5  
6 /s/ Matthew L. Sharp  
7 MATTHEW L. SHARP, ESQ.  
8 Nevada Bar No. 4746  
9 432 Ridge Street  
10 Reno NV 89501  
11 (775) 324-1500  
12 [matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)  
13 *Attorneys for Plaintiffs*  
14  
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CLERK OF THE COURT

ORDR  
MATTHEW L. SHARP, ESQ.  
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*Attorney for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,  
  
Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,  
  
Defendant.

Case No. A-19-788630-C

Dept. No. 4

**ORDER GRANTING IN PART AND DENYING IN PART**  
**DEFENDANT'S MOTION TO RETAX**

On April 22, 2022, Defendant filed its Motion to Retax Costs. This Court has reviewed Plaintiff's Memorandum of Costs, Defendant's Motion to Retax Costs, and Plaintiff's Opposition to Defendant's Motion to Retax Costs with a Declaration of Matthew L. Sharp in Support of Plaintiff's Memorandum of Costs. This Court grants Defendant's Motion to Retax Costs in part and denies the motion in part consistent with the modification to Plaintiff's Memorandum of Costs as set forth in Plaintiff's Opposition to Motion to Retax Costs.

**I. LEGAL STANDARDS FOR MOTION TO RETAX COSTS**

1. NRS 18.020(3) provides costs must be allowed to “the prevailing party against any adverse party against whom judgment is rendered...[i]n an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.”

2. The prevailing party is “entitled to recover all costs as a matter of right.” *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 431, 132 P.3d 1022, 1036-37 (2006). NRS 18.005 defines the costs that are recoverable.

3. NRS 18.110(1) provides that the party seeking costs must provide a memorandum of costs setting forth the recoverable costs that have been necessarily incurred. The requirements of NRS 18.110(1) are not jurisdictional. *Eberle v. State ex rel. Redfield Trust*, 108 Nev. 587, 590, 836 P.2d 67, 69 (1992).

4. This Court has the discretion to determine the allowable costs under NRS 18.020. *Motor Coach Indus., Inc. v. Khiabani by & through Rigaud*, 137 Nev. Adv. Op. 42, 493 P.3d 1007, 1017 (2021).

5. NRS 18.005(5) governs the recovery of expert witness fees. It provides, “Reasonable fees of not more than five expert witnesses of not more than \$1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert’s testimony were of such necessity as to require the larger fee.” In evaluating a request for expert fees over \$1,500 per witness, this Court should “carefully evaluate a request for excess fees.” *Motor Coach Indus. v. Khiabani*, 492 P.3d at 1017. This Court should recognize the importance of expert witnesses and consider the factors set forth in *Frazier v. Drake*, 131 Nev. 632, 650-51, 357 P.3d 365, 377-78 (Ct. App. 2015). Those factors include: (1) the importance of the expert’s testimony to the case; (2) the degree that the expert aided the jury in deciding the case; (3) whether the expert’s testimony was repetitive of other experts; (4) the extent and nature of the work performed by the expert; (5) the amount of time the expert spent in court, preparing a report, and testifying at trial; (6) the expert’s area of expertise; (7) the expert’s education and training; (8) the fees charged by the expert; (9) the fees traditionally charged by the expert on related matters; (10) comparable expert fees charged in similar cases; and (11) the fees that

1 would have been charged to hire a comparable expert in Las Vegas, Nevada. *Id.* Whether a particular  
2 factor is applicable depends upon the facts of the case.

## 3 **II. FINDINGS OF FACT**

4 1. This case proceeded to trial on March 14, 2022.

5 2. On April 4, 2022, a verdict in phase one was rendered in favor of Plaintiff.

6 3. On April 5, 2022, a verdict on phase two was rendered in favor of Plaintiff.

7 4. On April 18, 2022, this Court filed a judgment in favor of Plaintiff.

8 5. On April 18, 2022, Plaintiff filed a Notice of Entry of Judgment.

9 6. On April 19, 2022, Plaintiff filed a Memorandum of Costs with supporting documentation to  
10 support each item of costs requested.

11 7. On April 22, 2022, Defendant filed its Motion to Retax Costs (“Motion”).

12 8. On May 6, 2022, Plaintiff filed its Opposition to Motion to Retax Costs (“Opposition”) with  
13 the Declaration of Matthew L. Sharp in Support to Plaintiff’s Opposition to Motion to Retax Costs  
14 (“Declaration”).

15 9. Defendant challenged the Memorandum of Costs on the basis that the attorneys for Plaintiff  
16 did not include a sworn declaration to verify the costs. Memorandum of Costs, which was signed by  
17 counsel as an officer of the Court, included the bills showing each item of costs requested were  
18 incurred, and Declaration verified the Memorandum of Costs as well as addressing each item of cost  
19 that Defendant sought to retax. The Memorandum of Costs, Opposition, and Declaration provided the  
20 information sufficient for this Court to evaluate the reasonableness of Plaintiff’s costs.

21 10. Pursuant to NRS 18.005(1), Plaintiff submitted filings fees of \$560. The Defendants did not  
22 contest the filing fees. Filing fees of \$560 were necessarily incurred in this action.

23 11. Pursuant to NRS 18.005(2), Plaintiff submitted \$24,162 for court reporter fees for depositions.  
24 In its Motion, Defendant asked to re-tax costs by \$8,187.40 on basis that: (1) jury trial transcripts of  
25 \$2,798.50 are not taxable; (2) \$3,230.16 for duplicate charges; and (3) video deposition charges of  
26 \$1,092.20. In the Opposition, Plaintiff omitted the duplicate charges of \$3,230, and jury trial  
27 transcripts charges of \$2,798.50.

1 12. Based upon Plaintiff's Opposition and Declaration, it is common practice generally in a case  
2 to videotape the deposition of a witness, and it is the common practice specifically in this case to  
3 videotape the deposition of a witness as evidenced, in part, that Defendant videotaped each of the  
4 seven depositions it took.

5 13. Reporter fees for depositions of \$16,840.20, represented as reporter fees of \$15,748 and video  
6 depositions of \$1,092.20, were necessarily incurred in this action

7 14. Pursuant to NRS 18.005(4), Plaintiff submitted jury fees and expenses of \$5,079.09. The fees  
8 were not contested by Defendant. The Defendants did not contest the jury fees and expenses. The  
9 jury fees and expenses of \$5,079.09 were necessarily incurred in this action.

10 15. Plaintiff submitted witness fees of \$48. The witness fees were not contested by Defendant.  
11 Witness fees of \$48 were necessarily incurred in this action.

12 16. Pursuant to NRS 18.005(5), Plaintiff submitted expert witness fees of \$229,490.49. Those fees  
13 were allocated as follows: (1) Dr. Andrew Chang for \$115,184.38; (2) Stephen Prater for \$105,355.06;  
14 (3) Elliot Flood for \$6,888.55; and (4) Dr. Clark Jean for \$2,062.50. In its motion, Defendant asked  
15 to re-tax costs for each expert as follows: (1) Dr. Andrew Chang from \$115,184.38 to between \$30,000  
16 to \$58,184.38; (2) Stephen Prater from \$105,355.06 to \$64,104; (3) Elliott Flood from \$6,888.55 to  
17 \$5,473.55; and (4) Dr. Clark Jean from \$2,062.50 to zero. In the Opposition, Plaintiff withdrew the  
18 charges for Dr. Jean of \$2,062.50 and agreed to reduce the recovery of Mr. Flood's fee to \$5,473.55.

19 17. With respect to Dr. Chang, he is a well-qualified radiation oncologist who specializes in proton  
20 beam therapy ("PBT"). Without Dr. Chang's testimony, Plaintiff could not have prevailed in this case.  
21 His testimony involved a complicated subject matter and was necessary for Plaintiff to prevail on  
22 liability, causation, and damages. Dr. Chang explained radiation oncology generally. Dr. Chang  
23 testified about PBT. Dr. Chang testified about Mr. Eskew's condition, including the location of the  
24 tumors that needed to be radiated. Dr. Chang explained why PBT was the best radiation treatment  
25 available to Mr. Eskew and why IMRT posed a significant risk of injury to Mr. Eskew's esophagus.  
26 Dr. Chang testified about how IMRT injured Mr. Eskew's esophagus, the development of chronic  
27 esophagitis, and how that impacted Mr. Eskew.

1 18. In applying the relevant factors in *Frazier*, Dr. Chang's testimony was very important. There  
2 is a high degree of certainty his testimony assisted the jury. While Dr. Liao also testified, Dr. Chang's  
3 testimony was not repetitive of her testimony and dealt with different aspects of why PBT was  
4 necessary for Mr. Eskew and the injuries he sustained from IMRT including the development of the  
5 chronic esophagitis. The charges of \$115,184.38 were consistent with the work Dr. Chang performed.  
6 Dr. Chang hourly rate \$750 per hour was consistent with Dr. Chang's standard rate and consistent  
7 with what a doctor with his expertise would charge. Dr. Chang's fees were consistent with the amount  
8 of work he did preparing his report, preparing for trial, and testifying at trial. PBT is not a therapy  
9 offered in Las Vegas, so it was not practical to find an expert on PBT from Las Vegas. Dr. Kumar,  
10 SHL's radiation oncologist and who, at one-time lived in Las Vegas, charged more than Dr. Chang at  
11 \$800 per hour. Dr. Chang's total fee of \$115,184.38 was consistent with a case of this complexity  
12 and consistent with Dr. Chang's qualifications, the complexity of his testimony, and the importance  
13 of his testimony.

14 19. Pursuant to the relevant *Frazier* factors, Dr. Chang's expert witness fees of \$115,184.38 were  
15 necessarily incurred in this action.

16 20. With respect to Mr. Prater, he was used as an expert in insurance claims handling practices.  
17 Mr. Prater's testimony was necessary on the issue of liability for breach of the implied covenant of  
18 good faith and fair dealing and implied malice and oppression for purposes of punitive damages.

19 21. In applying the *Frazier* factors, Mr. Prater's testimony was very important. Given the verdict,  
20 the degree to which Mr. Prater assisted the jury was high. Mr. Prater has a high degree of expertise  
21 with over 35 years of experience studying insurance claims practices, training insurance companies  
22 on complying with industry standards and the duty of good faith and fair dealing, and years of  
23 testifying experience. For 30 years, Mr. Prater taught insurance law as a professor of law at Santa  
24 Clara University. Mr. Prater utilized his vast experience to explain insurance industry principals and  
25 standards for fair claims handling. He utilized the facts of the case to assist in explaining Plaintiff's  
26 theory of the case including how SHL violated industry standards and consciously disregarded Mr.  
27 Eskew's rights. Mr. Prater explained complex concepts to the jury, including: (1) how a reasonable  
28 insurer would interpret the insurance policy generally; (2) how SHL should have interpreted the policy



1 with respect to Mr. Eskew's claim; (3) how an insurer investigates and evaluates a claim generally;  
2 (4) how SHL investigated and evaluated Mr. Eskew's claim; and (5) how SHL should have  
3 investigated and evaluated Mr. Eskew's claim. Mr. Prater charged his customary fee of \$750 per hour  
4 which was consistent with his background and expertise.

5 22. While Defendant seeks to reduce Mr. Prater's fees by 55 hours, Mr. Prater spent the time billed,  
6 and the tasks for which he billed were necessary to the case. The charges reflect the time spent to  
7 provide an extensive report, review of discovery materials, preparation for deposition, extensive  
8 preparation for trial, and trial testimony.

9 23. Pursuant to the relevant *Frazier* factors, Mr. Prater's expert witness fee of \$105,355.06 were  
10 necessarily incurred in this action.

11 24. With respect to Mr. Flood, he was retained as an insurance expert to testify about two aspects:  
12 (1) the corporate relationship between United Health Group, Sierra Heath, Optum, ProHealth Proton  
13 Center Management, New York Proton Management LLC, and UHG's management of the New York  
14 Proton Center and the investment into the New York Proton Center; and (2) the Defendant's value  
15 for purposes of punitive damages. At trial, Mr. Flood's testimony established the foundation to put  
16 into evidence that, as early as 2015, United Health Group, through ProHealth Proton, invested into a  
17 proton center in New York City, in part, to use PBT to treat lung cancer. In applying the *Frazier*  
18 factors, Mr. Flood's testimony was important. He aided the jury in understanding the corporate  
19 structure of United Health Group. New York Proton Center was an important part of Plaintiff's theory  
20 in challenging the Defendant's position and credibility of its position that PBT for lung cancer was  
21 unproven and not medically necessary.

22 25. In applying the relevant *Frazier* factors, Mr. Flood's charges to \$5,473.55 were necessarily  
23 incurred in this action.

24 26. Pursuant to NRS 18.005(7), Plaintiff submitted process service fees of \$95. The process  
25 service fees were not contested by Defendant. The process service fees of \$95 were necessarily  
26 incurred in this action.

27 ///

28 ///

1 27. Pursuant to NRS 18.005(8), Plaintiff submitted \$8,071 in costs for compensation for the  
2 official reporter. Defendant does not contest those costs. The \$8,071 for compensation for the official  
3 reporter were necessarily incurred in this action.

4 28. Pursuant to NRS 18.005(12), Plaintiff submitted photocopy costs of \$5,013.85 split out as  
5 follows: (1) medical record copies of \$3,193.92; (2) in-house photocopies \$1,626 for 6,504 copies at  
6 \$.25 per copy; (3) FedEx copy costs of \$193.93 for trial. Defendant asked to re-tax costs for the in-  
7 house copy costs of \$1,626.

8 29. This case was extensively litigated, involved thousands of pages of documents, many expert  
9 witnesses, many pretrial motions, hundreds of trial exhibits, and a 13-day trial. Plaintiff charged copy  
10 costs only for those charges necessary to the preparation of the case. \$1,626 for 6,504 copies at \$.25  
11 per copy is reasonable for a case of this size. In-house copying costs of \$1,626 were necessarily  
12 incurred in this action.

13 30. The photocopy costs of \$5,013.85 were necessarily incurred in this action.

14 31. Pursuant to NRS 18.005(14), Plaintiff submitted postage charges of \$420.21 as: (1) United  
15 States postage of \$49.84 and (2) Federal Express charge of \$370.34. The Defendant moved to re-tax  
16 Federal Express charges of \$370.34.

17 32. Plaintiff utilized Federal Express charges for establishing the Estate of William Eskew and  
18 charges for providing binders to this Court for the pre-trial hearings. Those charges were necessarily  
19 incurred as postage or other reasonable expenses under NRS 18.005(17).

20 33. Postage expense of \$420.21 were necessarily incurred in this action.

21 34. Pursuant to NRS 18.005(17), Plaintiff sought miscellaneous expenses as follows: (1) legal  
22 research of \$2,475.83; (2) runner services fees of \$211; (3) Tyler Technologies e-filing service fees of  
23 \$170.80; (4) Focus Graphics for medical illustrations of \$7,510; (5) E-deposition trial technician fees  
24 of \$25,614.80; (6) Empirical Jury for focus groups of \$20,000; (7) HOLO Discovery for trial copying  
25 and Bates-stamping exhibits of \$2,970.29; (8) Nikki McCabe to read deposition designations of Dr.  
26 Liao of \$831.36; and (3) pro hac vice fees of \$1,550. In its Motion, the Defendant contested the legal  
27 research fees, the runner service fees, Focus Graphic charges, E-deposition trial technician fees, the  
28 Empirical Jury's fee, and Ms. McCabe's charges.

1 35. The charges of \$170.80 for Tyler Technologies e-filing service fees, \$2,970.29 for HOLO  
2 Discovery and \$1,550 for pro hac vice fees were charges necessarily incurred in this action.

3 36. With respect to the legal research expenses, this was an insurance bad faith case that involved  
4 many legal issues including research to respond to the various pre-trial motions, prepare and review  
5 of jury instructions and address legal issues raised in trial. Plaintiff utilized the internal practices to  
6 assure the charges were for research were appropriately allocated to this case. The legal research  
7 charges of \$2,475.83 were necessarily incurred in this action.

8 37. With respect to the Focus Graphic charges, Focus Graphics, with the Plaintiff's attorneys and  
9 Dr. Chang, prepared demonstrative exhibits to assist in explaining why PBT was the best treatment  
10 for Mr. Eskew. Those demonstrative exhibits were used in Dr. Chang's testimony as well as in closing  
11 arguments. The demonstrative exhibits assisted the jury to understand Plaintiff's position that PBT  
12 was the best treatment for Mr. Eskew. Focus Graphic charges of \$4,335 to prepare the demonstrative  
13 exhibits were necessarily incurred in this action.

14 38. With respect to E-depositions' charges, E-depositions provided the courtroom technology to  
15 the Plaintiff during trial. Defendant asserts courtroom technology services is not a necessary expense.  
16 This case involved many trial exhibits. Courtroom technology services during trial are necessary as  
17 evidenced, in part, by the fact Defendant had its own person providing courtroom technology. The  
18 services of E-depositions were important to assist Plaintiff in presenting evidence to the jury and to  
19 assist the jury in understanding the evidence. The E-depositions charges of \$25,614.80 were  
20 necessarily incurred in this action.

21 39. With respect Empirical Jury, Plaintiff retained Empirical Jury to conduct focus groups.  
22 Defendant contests the charge on the basis that jury consulting services were not necessary. Based  
23 upon Plaintiff's Opposition, jury consulting services in a case of this nature were necessary, and  
24 Empirical Jury's charges of \$20,000 were necessarily incurred in this action.

25 40. With respect Nikki McCabe, she was retained to read deposition designations of Dr. Liao.  
26 Defendant asserts that her charges were not necessary. Dr. Liao was a critical witness for the Plaintiff.  
27 Ms. McCabe performed a necessary role in the case. Ms. McCabe's fee of \$831.36 was an amount  
28 necessarily incurred in this action.

1 **III. CONCLUSIONS OF LAW**

2 1. Pursuant to NRS 18.0202(3), the Plaintiff is the prevailing party.

3 2. Through the Memorandum of Costs, the Oppositions and Declaration, Plaintiff complied with  
4 NRS 18.110(1) and provided the information necessary for this Court to determine the costs that were  
5 necessarily incurred in this action.

6 3. Defendant's Motion was timely filed.

7 4. This Court grants Defendant's Motion as follows: (1) court reporter fees are reduced by  
8 \$2,798.50 for jury trial transcripts and \$3,230.16 for duplicate court reporter charges; (2) expert  
9 charges for Elliot Flood are reduced from \$6,888.55 to \$5,473.55; (3) charges for Dr. Clark Jean are  
10 not allowed. In all other respects, Defendant's Motion is denied as the remaining costs challenged by  
11 the Defendant were necessarily incurred in this action.

12 5. Pursuant to NRS 18.020, this Court awards Plaintiff's taxable costs of \$313,634.62 and  
13 itemized as follows:

14 **1) Clerks' Fees**

15 Filing Fees and Charges Pursuant to NRS 19.0335 ..... \$560.00

16 **2) Reporters' Fees for Depositions, including videography** ..... \$16,840.20

17 **3) Juror fees and expenses** ..... \$5,079.09

18 **4) Witness Fees**..... \$48.00

19 **5) Expert Witness Fees**..... \$226,012.99

20 **6) Process Service** ..... \$95.00

21 **7) Compensation for the Official Reporter** ..... \$8,071.00

22 **8) Photocopies** ..... \$5,013.85

23 (1) Medical records copies (\$3,193.92)

24 (2) In-house photocopies 6,504 copies at \$.25 per copy (\$1,626)

25 (3) FedEx copy costs from trial (\$193.93)

26 **9) Postage/Federal Express**..... \$420.21

27 (1) Postage (\$49.87)

28 (2) Federal Express shipping charges (\$370.34)

10) Other Necessary and Reasonable Expenses

Legal Research..... \$2,475.83  
Runner services..... \$211.00  
Tyler Technologies (e-filing service fees) ..... \$170.80  
Trial Related, Jury Fees, and Support Services..... \$47,086.65  
• Focus Graphics – medical illustrations (\$4,335)  
• E-Depositions – trial technician (\$25,614.80)  
• Empirical Jury – focus groups (\$20,100)  
• HOLO Discovery – trial exhibits & bates stamping (\$2,970.29)  
• Nikki McCabe – voice actress to read depo designation (\$831.36)  
• Out-of-State Association and Pro Hac Vice Fees..... \$1,550.00  
**TOTAL COSTS ..... \$313,634.62**

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

Dated this 8th day of June, 2022



DISTRICT JUDGE

939 71A 6FB3 9590

Nadia Krall

District Court Judge

Approved as to form:

WEINBERG WHEELER HUDGINS  
GUNN & DIAL LLC

/s/ Ryan T. Gormley

Ryan T. Gormley, Esq.

Nevada Bar No. 13494

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[rgormley@wwhgd.com](mailto:rgormley@wwhgd.com)

*Attorneys for Defendants*



Matt Sharp &lt;matt@mattsharplaw.com&gt;

---

**RE: Eskew v. Sierra**

1 message

**Gormley, Ryan** <RGormley@wwhgd.com>

Mon, Jun 6, 2022 at 3:07 PM

To: Matt Sharp &lt;matt@mattsharplaw.com&gt;, "Roberts, Lee" &lt;LRoberts@wwhgd.com&gt;

Cc: Doug Terry &lt;doug@dougterrylaw.com&gt;

That is fine, you can add my e-signature on the approval as to form.

Thank you,



Ryan Gormley, Attorney

**Weinberg Wheeler Hudgins Gunn & Dial**

6385 South Rainbow Blvd. | Suite 400 | Las Vegas, NV  
89118

D: 702.938.3813 | F: 702.938.3864

[www.wwhgd.com](http://www.wwhgd.com) | vCard

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**From:** Matt Sharp <matt@mattsharplaw.com>**Sent:** Monday, June 6, 2022 2:57 PM**To:** Gormley, Ryan <RGormley@wwhgd.com>; Roberts, Lee <LRoberts@wwhgd.com>**Cc:** Doug Terry <doug@dougterrylaw.com>**Subject:** Eskew v. Sierra

**This Message originated outside your organization.**

---

Ryan,

I accepted all changes but the first change. Let me know if I have your authority to submit the order.

Thanks.

Matthew Sharp

[432 Ridge St.](#)

[Reno, NV 89501](#)

[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)

775-324-1500

Past-President Nevada Justice Association  
Board of Governors American Association for Justice  
Leaders Forum American Association for Justice

The information contained in this message may contain privileged client confidential information. If you have received this message in error, please delete it and any copies immediately.

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/8/2022

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25 Marjan Hajimirzaee

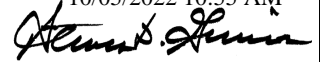
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Stephanie Glantz	sglantz@wwhgd.com
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CLERK OF THE COURT

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*Attorneys for Defendant*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SANDRA L. ESKEW, as special administrator  
of the Estate of William George Eskew,

Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

Defendant.

Case No.: A-19-788630-C

Dept. No.: 4

**ORDER DENYING DEFENDANT'S  
RENEWED MOTION FOR JUDGMENT  
AS A MATTER OF LAW**

1 NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to  
2 secure efficient, just and inexpensive determinations in every action and proceeding.

3 Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time  
4 with or without oral argument, and grant or deny it.  
5

6 The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on  
7 file: Defendant's Renewed Motion for Judgment as a Matter of Law filed on 5/16/2022; Plaintiff's  
8 Opposition to Defendant's Renewed Motion for Judgment as a Matter of Law filed on 6/29/2022;  
9 and Defendant's Reply in Support of its Renewed Judgment as a Matter of Law filed on 7/20/2022.

10 Defendant's Renewed Motion for Judgment as a Matter of Law filed on 5/16/2022 is  
11 DENIED pursuant to *M.C. Multi-Family Development, L.L.C. v. Crestdale Associates, Ltd.*, 124  
12 Nev. 901 (2008); *Harrah's Las Vegas, LLC v. Muckridge*, 473 P.3d 1020 (Nev. 2020); *Broussard*  
13 *v. Hill*, 100 Nev. 325 (1984); *Ainsworth v. Combined Ins. Co. of Am.*, 104 Nev. 587 (1988); *Albert*  
14 *v. H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249 (1998); *Allstate Ins. Co. v. Miller*, 125 Nev. 300  
15 (2009); *Guar. Nat. Ins. Co. v. Potter*, 112 Nev. 199 (1996); *Powers v. United Servs. Auto Ass'n*,  
16 114 Nev. 690 (1998); *Century Sur. Co. v. Casino W., Inc.*, 130 Nev. 395 (2014); *Powell v. Liberty*  
17 *Mut. Fire Ins. Co.*, 127 Nev. 156 (2011); *Holcomb v. Georgia Pac., LLC*, 128 Nev. 614 (2012);  
18 NRS 51.005; *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725 (2008); *Ainsworth v.*  
19 *Combined Ins. Co. of America*, 104 Nev. 587 (1988); *United Fire Ins. Co. v. McClelland*, 105 Nev.  
20 504 (1989); *First Interstate Bank v. Jafbro's Auto Body*, 106 Nev. 54 (1990); and *Wreth v. Rowatt*,  
21 126 Nev. 446 (2010).  
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1 For the foregoing reasons, Defendant's Renewed Motion for Judgment as a Matter of Law  
2 is denied.

3  
4 DATED this \_\_\_\_ day of \_\_\_\_\_ 2022.

5 Dated this 5th day of October, 2022

6 

7 DISTRICT COURT JUDGE

8 4AA A72 41E3 4A93

Nadia Krall

District Court Judge

Submitted by:

9  
10 /s/ Ryan T. Gormley

D. Lee Roberts, Jr., Esq.

11 Phillip N. Smith, Esq.

Ryan T. Gormley, Esq.

12 WEINBERG, WHEELER, HUDGINS,

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13 6385 South Rainbow Blvd., Suite 400

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14  
15 Thomas H. Dupree Jr., Esq.

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16 1050 Connecticut Avenue, N.W.

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17 *Attorneys for Defendant*  
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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 10/5/2022

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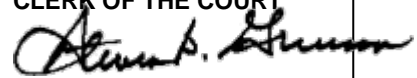
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*Attorney for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,  
  
Plaintiffs,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,  
  
Defendant.

Case No. A-19-788630-C

Dept. No. 4

**NOTICE OF ENTRY OF ORDER DENYING RENEWED MOTION FOR JUDGMENT AS**  
**A MATTER OF LAW**

PLEASE TAKE NOTICE that the Order Denying Renewed Motion for Judgment as a Matter  
of Law was filed herein on October 5, 2022, in the above-captioned matter.

///

///

///

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1 A copy of the Order Denying Renewed Motion for Judgment as a Matter of Law is attached  
2 hereto as Exhibit 1.

3 DATED this 24<sup>th</sup> day of October 2022.

4 MATTHEW L. SHARP, LTD.

5  
6 /s/ Matthew L. Sharp  
7 MATTHEW L. SHARP, ESQ.  
8 Nevada Bar No. 4746  
9 432 Ridge Street  
10 Reno NV 89501  
11 (775) 324-1500  
12 [matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)  
13 *Attorneys for Plaintiffs*  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Matthew L. Sharp, Ltd., and that on this date, a true  
3 and correct copy of the foregoing was electronically filed and served on counsel through the Court's  
4 electronic service system pursuant to Administrative Order 14-2 and NEFCR 9, via the electronic mail  
5 address noted below:

6 D. Lee Roberts, Jr. Esq.; [lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)  
7 Phillip N. Smith, Esq.; [psmith@wwhgd.com](mailto:psmith@wwhgd.com)  
8 Ryan T. Gormley, Esq.; [rgormley@wwhgd.com](mailto:rgormley@wwhgd.com)  
9 WEINBERG WHEELER HUDGINS GUNN & DIAL LLC  
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Las Vegas, NV 89118

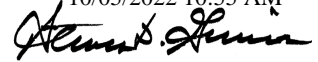
10 Thomas H. Dupree Jr., Esq.; [TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)  
11 GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036

12 *Attorneys for Defendants*

13 DATED this 24<sup>th</sup> day of October 2022.

14  
15  
16 /s/ Suzy Thompson  
An employee of Matthew L. Sharp, Ltd.

# EXHIBIT 1

  
CLERK OF THE COURT

**ORDD**

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Facsimile: (202) 530-9670

*Attorneys for Defendant*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SANDRA L. ESKEW, as special administrator  
of the Estate of William George Eskew,

Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

Defendant.

Case No.: A-19-788630-C

Dept. No.: 4

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11 DENIED pursuant to *M.C. Multi-Family Development, L.L.C. v. Crestdale Associates, Ltd.*, 124  
12 Nev. 901 (2008); *Harrah's Las Vegas, LLC v. Muckridge*, 473 P.3d 1020 (Nev. 2020); *Broussard*  
13 *v. Hill*, 100 Nev. 325 (1984); *Ainsworth v. Combined Ins. Co. of Am.*, 104 Nev. 587 (1988); *Albert*  
14 *v. H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249 (1998); *Allstate Ins. Co. v. Miller*, 125 Nev. 300  
15 (2009); *Guar. Nat. Ins. Co. v. Potter*, 112 Nev. 199 (1996); *Powers v. United Servs. Auto Ass'n*,  
16 114 Nev. 690 (1998); *Century Sur. Co. v. Casino W., Inc.*, 130 Nev. 395 (2014); *Powell v. Liberty*  
17 *Mut. Fire Ins. Co.*, 127 Nev. 156 (2011); *Holcomb v. Georgia Pac., LLC*, 128 Nev. 614 (2012);  
18 NRS 51.005; *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725 (2008); *Ainsworth v.*  
19 *Combined Ins. Co. of America*, 104 Nev. 587 (1988); *United Fire Ins. Co. v. McClelland*, 105 Nev.  
20 504 (1989); *First Interstate Bank v. Jafbro's Auto Body*, 106 Nev. 54 (1990); and *Wreth v. Rowatt*,  
21 126 Nev. 446 (2010).  
22  
23

24 ///

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27 ///

1 For the foregoing reasons, Defendant's Renewed Motion for Judgment as a Matter of Law  
2 is denied.

3  
4 DATED this \_\_\_\_ day of \_\_\_\_\_ 2022.

5 Dated this 5th day of October, 2022

6 

7 DISTRICT COURT JUDGE

8 4AA A72 41E3 4A93

Nadia Krall

District Court Judge

Submitted by:

9  
10 /s/ Ryan T. Gormley

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11 Phillip N. Smith, Esq.

Ryan T. Gormley, Esq.

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17 *Attorneys for Defendant*  
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1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

10  
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*Attorneys for Defendant*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SANDRA L. ESKEW, as special administrator  
of the Estate of William George Eskew,

Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

Defendant.

Case No.: A-19-788630-C

Dept. No.: 4

**ORDER DENYING DEFENDANT'S  
MOTION FOR A NEW TRIAL OR  
REMITTITUR**

1           NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to  
2 secure efficient, just and inexpensive determinations in every action and proceeding.

3           Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time  
4 with or without oral argument, and grant or deny it.

5  
6           The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on  
7 file: Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022; Plaintiff's Opposition  
8 to Defendant's Motion for a New Trial or Remittitur filed on 6/29/2022; Defendant's Reply in  
9 Support of Its Motion for a New Trial or Remittitur filed on 7/20/2022; and Defendant's Motion  
10 for Leave to File Supplemental Authority in Support of its Motion for a New Trail or Remittitur  
11 filed on 8/10/2022.

12           Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022 is DENIED pursuant  
13 to *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243 (2010); NRCP 59(a)(1)(B) & (F); *Wyeth*  
14 *v. Rowatt*, 126 Nev. 446 (2010); *Bayerische Moteren Werke Aktiengesellschaft v. Roth*, 127 Nev.  
15 122 (2011); *Grosjean v. Imperial Palace*, 125 Nev. 349 (2009); *Cox v. Copperfield*, 138 Nev. Adv.  
16 Op. 27 (2022); *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261 (2017); *Lioce v. Cohen*, 124  
17 Nev. 1 (2008); *Ringle v. Bruton*, 120 Nev. 82 (2004); *Walker v. State*, 78 Nev. 463 (1962); *Born*  
18 *v. Eisenman*, 114 Nev. 854 (1998); *Satackiewicz v. Nissan Motor Corp. in U.S.A.*, 100 Nev. 443  
19 (1983); *Guaranty Nat. Ins. Co. v. Potter*, 112 Nev. 199 (1996); *Automatic Merchandisers, Inc. v.*  
20 *Ward*, 98 Nev. 282 (1982); *Hernancez v. City of Salt Lake*, 100 Nev. 504 (1984); *Dejesus v. Flick*,  
21 116 Nev. 812 (2000); *Wells, Inc. v. Shoemake*, 64 Nev. 57 (1947); *Nevada Independent*  
22 *Broadcasting Corporation v. Allen*, 99 Nev. 404 (1983); *Quintero v. McDonald*, 116 Nev. 1181  
23 (2000); *Barmettler v. Reno, Air, Inc.*, 114 Nev. 441 (1998); *State v. Eaton*, 101 Nev. 705 (1985);  
24 *Jacobson v. Manfredi*, 100 Nev. 226 (1984); *BMW of N. Am. Inc. v. Gore*, 517 U.S. 559 (1996);  
25 *State Farm Mut. Aut. Ins. Co. v. Campbell*, 538 U.S. 408 (2003); *TXO Prod. Corp. v. Alliance Res.*  
26  
27  
28

1 *Corp.*, 509 U.S. 443 (1993); *Merrick v. Paul Revere Life Ins. Co.*, 594 F.Supp.2d 1168 (Nev. Dis.  
2 2008); and *Campbell v. State Farm. Mut. Auto Ins. Co.*, 98 P.3d 409 (Utah 2004).

3 For the foregoing reasons, Defendant's Motion for a New Trial or Remittitur is denied.

4  
5 DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

6 Dated this 5th day of October, 2022

7 

8 

---

DISTRICT COURT JUDGE

4FA E0A 2FD9 0D46

Nadia Krall

District Court Judge

9 Submitted by:

10 /s/ Ryan T. Gormley

11 D. Lee Roberts, Jr., Esq.

Phillip N. Smith, Esq.

12 Ryan T. Gormley, Esq.

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18 *Attorneys for Defendant*

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1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
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6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

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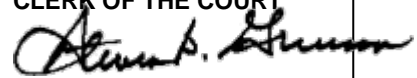
25 Marjan Hajimirzaee

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*Attorney for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,  
  
Plaintiffs,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,  
  
Defendant.

Case No. A-19-788630-C

Dept. No. 4

**NOTICE OF ENTRY OF ORDER DENYING MOTION FOR A NEW TRIAL OR**  
**REMITTITUR**

PLEASE TAKE NOTICE that the Order Denying Motion for a New Trial or Remittitur was  
filed herein on October 5, 2022, in the above-captioned matter.

///

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1 A copy of the Order Denying Motion for a New Trial or Remittitur is attached hereto as  
2 Exhibit 1.

3 DATED this 24<sup>th</sup> day of October 2022.

4 MATTHEW L. SHARP, LTD.

5  
6 /s/ Matthew L. Sharp  
7 MATTHEW L. SHARP, ESQ.  
8 Nevada Bar No. 4746  
9 432 Ridge Street  
10 Reno NV 89501  
11 (775) 324-1500  
12 [matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)  
13 *Attorneys for Plaintiff*  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Matthew L. Sharp, Ltd., and that on this date, a true  
3 and correct copy of the foregoing was electronically filed and served on counsel through the Court's  
4 electronic service system pursuant to Administrative Order 14-2 and NEFCR 9, via the electronic mail  
5 address noted below:

6 D. Lee Roberts, Jr. Esq.; [lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)  
7 Phillip N. Smith, Esq.; [psmith@wwhgd.com](mailto:psmith@wwhgd.com)  
8 Ryan T. Gormley, Esq.; [rgormley@wwhgd.com](mailto:rgormley@wwhgd.com)  
9 WEINBERG WHEELER HUDGINS GUNN & DIAL LLC  
6385 S. Rainbow Blvd., Ste. 400  
Las Vegas, NV 89118

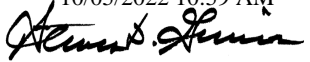
10 Thomas H. Dupree Jr., Esq.; [TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)  
11 GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036

12 *Attorneys for Defendants*

13 DATED this 24<sup>th</sup> day of October 2022.

14  
15  
16 /s/ Suzy Thompson  
An employee of Matthew L. Sharp, Ltd.

# EXHIBIT 1

  
CLERK OF THE COURT

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*Attorneys for Defendant*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SANDRA L. ESKEW, as special administrator  
of the Estate of William George Eskew,

Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

Defendant.

Case No.: A-19-788630-C

Dept. No.: 4

**ORDER DENYING DEFENDANT'S  
MOTION FOR A NEW TRIAL OR  
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1           NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to  
2 secure efficient, just and inexpensive determinations in every action and proceeding.

3           Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time  
4 with or without oral argument, and grant or deny it.

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6           The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on  
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8 to Defendant's Motion for a New Trial or Remittitur filed on 6/29/2022; Defendant's Reply in  
9 Support of Its Motion for a New Trial or Remittitur filed on 7/20/2022; and Defendant's Motion  
10 for Leave to File Supplemental Authority in Support of its Motion for a New Trail or Remittitur  
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12           Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022 is DENIED pursuant  
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1 *Corp.*, 509 U.S. 443 (1993); *Merrick v. Paul Revere Life Ins. Co.*, 594 F.Supp.2d 1168 (Nev. Dis.  
2 2008); and *Campbell v. State Farm. Mut. Auto Ins. Co.*, 98 P.3d 409 (Utah 2004).

3 For the foregoing reasons, Defendant's Motion for a New Trial or Remittitur is denied.

4  
5 DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

6 Dated this 5th day of October, 2022

7 

8 

---

DISTRICT COURT JUDGE

4FA E0A 2FD9 0D46

Nadia Krall

District Court Judge

9 Submitted by:

10 /s/ Ryan T. Gormley

11 D. Lee Roberts, Jr., Esq.

Phillip N. Smith, Esq.

12 Ryan T. Gormley, Esq.

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18 *Attorneys for Defendant*

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1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

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*Heather S. Linn*

CLERK OF THE COURT

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*Attorneys for Plaintiff*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate  
of William George Eskew,

Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

Defendant.

Case No. A-19-788630-C

Dept. No. 4

**PLAINTIFF'S MOTION TO CONSIDER PLAINTIFF'S MOTION FOR ENTRY OF  
EXPRESS FINDINGS AS REQUIRED BY LIOCE V. COHEN ON  
AN ORDER SHORTENING TIME BASIS**

1 Plaintiff Sandra Eskew, as the Special Administrator of the Estate of William George Eskew  
2 (“Estate”) filed a Motion for Entry of Express Findings as Required by *Lioce v. Cohen* (“Motion for  
3 Express Findings”) on October 6, 2022. Plaintiff asks this Court to consider the Motion for Express  
4 Findings on an order shortening time basis. Exhibit 1 is the Motion for Express Findings with  
5 exhibits. An order shortening time is supported by the following: (1) the Declaration of Matthew L.  
6 Sharp; (2) the Motion for Express Findings with the supporting exhibits, (3) *Lioce v. Cohen* requires  
7 express factual findings and conclusions by the district court in its order denying a motion for new  
8 trial on the basis of alleged attorney misconduct; and (4) the order denying the Defendant’s Motion  
9 for New Trial or Remittitur and Renewed Motion for Judgment Notwithstanding the Verdict, which  
10 was submitted by the Defendant, does not include express factual findings and conclusion on the  
11 denial of Defendant’s Motion for New Trial on the basis of alleged attorney misconduct.

12 DATED this 6<sup>th</sup> day of October 2022.

13 MATTHEW L. SHARP, LTD.

14  
15 /s/ Matthew L. Sharp  
16 MATTHEW L. SHARP, ESQ.  
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21 [matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)  
22 *Attorneys for Plaintiffs*

23 ///

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1 **ORDER SHORTENING TIME**

2 Pursuant to the Declaration of Matthew L. Sharp Esq. below in support of the Motion for  
3 Order Shortening Time and good cause demonstrated:

4 IT IS ORDERED that the hearing on Plaintiff's Motion for Entry of Express Findings as  
5 Required by *Lioce v. Cohen* be set before this Department 4 at the hour of \_\_\_\_ a.m. on the  
6 10/18/2022 at 9:00 A.M.  
\_\_\_\_ day of \_\_\_\_\_ 2022.

7 IT IS FURTHER ORDERED that Defendant shall have to and including 5:00 p.m. on  
8 10/13/2022 to file any opposition to this motion.

Dated this 7th day of October, 2022



9 Dated this \_\_\_\_ day of October 2022.

10 F98 2F6 1CCD 83F6  
Nadia Krall  
District Court Judge

11 \_\_\_\_\_  
DISTRICT JUDGE NADIA KRALL

12 **DECLARATION OF MATTHEW L. SHARP IN SUPPORT**  
13 **OF ORDER SHORTENING TIME**

14 Under penalty of perjury, Matthew L. Sharp, Esq does declare under penalty of perjury as  
15 follows:

16 1. I am one of the attorneys who represents Sandra Eskew as the Administrator of the  
17 Estate of William George Eskew.

18 2. My understanding of *Lioce v. Cohen*, 124 Nev. 1, 7, 174 P.3d 970, 974 (2008)  
19 requires that the district court make express findings and conclusions when it denies a motion for  
20 new trial that requests a new trial upon the basis of alleged attorney misconduct.

21 3. Defendant filed a Motion for New Trial or Remittitur requesting a new trial, in part,  
22 upon the basis of alleged attorney misconduct.

23 4. On August 15, 2022, this Court entered a minute order denying the Defendant's  
24 Motion for New Trial or Remittitur and directed the Plaintiff to draft a proposed order which were to  
25 include Findings of Fact and Conclusions of Law.

26 5. On August 29, 2022, I submitted to chambers Plaintiff's proposed Findings of Fact  
27 and Conclusions of Law, and Order Denying Defendant's Motion for New Trial or Remittitur.  
28 Section IV at pages 14-22 contained findings consistent with the requirements of *Lioce v. Cohen*.

1           6.       On September 14, 2022, this Court requested that Defendant submit a competing  
2 order and a redline version of Plaintiff's proposed order.

3           7.       On September 22, 2022, Defendant submitted a proposed Order that mirrored the  
4 Court's minute order but removed the requirements for findings of fact and conclusions of law. A  
5 true and correct of the email string relating to the order that I received and maintain in the ordinary  
6 course of business is attached as Exhibit 4 to the Motion for Express Findings.

7           8.       On October 5, 2022, this Court signed the proposed order submitted by the  
8 Defendant.

9           9.       The order submitted by the Defendant does not contain the findings required by *Lioce*  
10 *v. Cohen*.

11          10.      On October 5, 2022, I spoke with Ryan Gormley indicating that we intended to file a  
12 motion to request findings under *Lioce v. Cohen*.

13          11.      On October 6, 2022, I filed the Motion for Entry of Express Findings as Required by  
14 *Lioce v. Cohen* which is attached as Exhibit 1.

15          12.      Thereafter, on October 6, 2022, I informed Mr. Gormley that I would be filing this  
16 Motion for Order Shortening Time.

17          13.      Exhibit 1 to the Motion for Entry of Express Findings as Required by *Lioce v. Cohen*  
18 is Plaintiff's proposed order which is substantively the same as Section IV to Plaintiff's proposed  
19 Findings of Fact and Conclusions of Law and Order Denying Defendant's Motion for New Trial or  
20 Remittitur.

21          14.      In the proposed order, I removed the language Defendant objected to relating to the  
22 findings on alleged attorney misconduct that were contained in Section IV to Plaintiff's proposed  
23 Findings of Fact and Conclusions of Law and Order Denying Defendant's Motion for New Trial or  
24 Remittitur.

25          15.      Given that this case will be and has been appealed by the Defendant and given the  
26 nature of the case, it is in all parties' interest to have findings of fact entered relating to the denial of  
27 the Motion for New Trial or Remittitur on the basis of alleged attorney misconduct. Otherwise, I  
28

1 believe the Nevada Supreme Court will remand the case to direct this Court to make findings  
2 consistent with the requirements of *Lioce v. Cohen*.

3 16. I believe good cause exist to hear the Motion for Entry of Express Findings as  
4 Required by *Lioce v. Cohen* on an order shortening time basis to facilitate a meaningful appellate  
5 review and to avoid unnecessary delay of a remand and successive appeal.

6 DATED this 6<sup>th</sup> day of October 2022.

7 MATTHEW L. SHARP, LTD.  
8

9 /s/ Matthew L Sharp

10 Matthew L. Sharp  
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12 432 Ridge Street  
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14 (775) 324-1500  
15 [matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)  
16 Attorney for Plaintiff  
17  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Matthew L. Sharp, Ltd., and that on this date, a true  
3 and correct copy of the foregoing was electronically filed and served on counsel through the Court's  
4 electronic service system pursuant to Administrative Order 14-2 and NEFCR 9, via the electronic  
5 mail address noted below:

6 D. Lee Roberts, Jr. Esq.; [lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)  
7 Phillip N. Smith, Esq.; [psmith@wwhgd.com](mailto:psmith@wwhgd.com)  
8 Ryan T. Gormley, Esq.; [rgormley@wwhgd.com](mailto:rgormley@wwhgd.com)  
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11 GIBSON, DUNN & CRUTCHER LLP  
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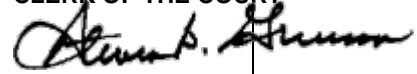
12 *Attorneys for Defendants*

13 DATED this 6<sup>th</sup> day of October 2022.

14  
15  
16 /s/ Cristin B. Sharp  
An employee of Matthew L. Sharp, Ltd.

# EXHIBIT 1





**MOT**

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*Attorneys for Plaintiff*

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,

Plaintiff,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,

Defendant.

Case No. A-19-788630-C

Dept. No. 4

**HEARING REQUESTED**

**MOTION FOR ENTRY OF EXPRESS FINDINGS AS  
REQUIRED BY LIOCE V. COHEN**

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Exhibit 1 are proposed findings and conclusions consistent with requirement of *Lioce*. To facilitate meaningful appellate review now—and to avoid the unnecessary delay of a remand and successive appeal—Plaintiff requests this Court to enter specific written findings under *Lioce* as set forth in Exhibit 1.<sup>1</sup>

1 The Nevada appellate courts have consistently remanded cases for factual findings when the order denying new trial on the basis of misconduct does not include findings of fact. *ee, e.g., Carr v. Paredes* 130 Nev. 1161, 2014 WL 549715 (Unpub. Nev. Feb. 10, 2014) (“[T]he district court failed to make the necessary findings; therefore, we vacate the court’s order denying Carr’s motion and remand this matter to the district court”); *Carr v. Paredes*, 133 Nev. 993, 387 P.3d 215 (Unpub. Nev. January 13, 2017) (“This court previously vacated the district court’s order denying the motion for a new trial and remanded the matter to the district court to make specific findings regarding attorney misconduct pursuant to *Lioce v. Cohen*, 124 Nev. 1, 19–20, 174 P.3d 970, 982 (2008)) (finding no misconduct the second time around); *Jimenez v. Blue Martini Las Vegas, LLC*, 134 Nev. 963, 2018 WL 3912241, at \*1 (Unpub. Nev. App., July 27, 2018) (holding that “a remand is necessary for the district court to make specific findings on the record regarding attorney misconduct, as required by the supreme court and this court’s jurisprudence.”); *Jimenez v. Blue Martini Las Vegas, LLC*, 2019 WL 5681078, at \*1 (Unpub. Nev. App., Oct. 31, 2019) (finding no misconduct in a second appeal a year later, after the district court had made the requisite findings); *see also Wynn Las Vegas, LLC v. Blankenship*, 131 Nev. 1366, 2015 WL 4503211 (Unpub. Nev. App. July 17, 2015) (“Without reasoning supporting the district court’s decision, we are unable to determine whether the district court abused its discretion in denying Wynn’s motion for a new trial based on attorney misconduct. As such, we vacate the district court’s order denying that motion and remand this matter to the district court for a decision applying the standards set forth in *Lioce*.”). Ex. 2.

1 under *Lioce*. Plaintiff's proposed Findings of Fact explained (page 14 ¶ 44) that, under *Lioce*,  
2 "the Court is required to make specific findings" on the issue of alleged attorney misconduct.

3 The Defendant filed written objections to Plaintiff's proposed Findings of Fact. The  
4 Defendant's objection with respect to attorney misconduct was to a single sentence: "And in  
5 the Court's view, counsel's subsequent remarks that counsel was 'not here pointing the fingers  
6 at people like' the witness defeat any inference that counsel intended to impugn the witness's  
7 credibility." See Defendants Further Objections, filed August 31, 2022 at 6:23-25.

8 After Plaintiff submitted her proposed Findings, this Court requested that the Defendant  
9 submit a competing order and a strikethrough. The Defendant submitted a proposed order that  
10 mirrored the Court's minute orders but omitted the request that Plaintiff submit findings of  
11 fact. Ex. 4, e-mail string. The Defendant's order omitted any findings mandated by *Lioce*.

12 Exhibit 1 to this Motion sets forth proposed Findings of Fact and Conclusions  
13 consistent with the requirements by *Lioce*. Exhibit 1 is substantively the same as Section IV to  
14 Plaintiff's proposed Findings of Fact, and the objected to language from the Defendant to the  
15 proposed Findings of Fact with respect to the findings on attorney misconduct has been  
16 removed.<sup>2</sup>

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<sup>2</sup>Ex. 1 at ¶ 11 and compared to Findings of Fact at ¶ 52:7-9.

1 To facilitate meaningful appellate review Plaintiff requests this Court to enter specific  
2 written findings under *Lioce* as set forth in Exhibit 1.

3 DATED this 6<sup>th</sup> day of October 2022.

4  
5 /s/ Matthew L. Sharp

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27 *Attorneys for Plaintiff*

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*Attorneys for Defendants*

/s/ Suzy Thompson  
An employee of Matthew L. Sharp, Ltd.

# EXHIBIT 1

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*Attorneys for Plaintiffs*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,

Plaintiffs,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC., UNITED HEALTHCARE,  
INC.

Defendants.

Case No. A-19-788630-C

Dept. No. 4

**FINDINGS AND CONCLUSIONS AS TO**  
**ALLEGATIONS OF ATTORNEY MISCONDUCT**

Following an eleven-day trial, a jury found Defendant Sierra Health & Life Insurance Company (“SHL”) liable for breaching the duty of good faith and fair dealing and awarded \$40 million in compensatory damages and \$160 million in punitive damages to Plaintiff Sandra Eskew, who is proceeding individually and as Special Administrator of the Estate of William George Eskew. SHL filed a Motion for New Trial or Remittitur. The Court denied the motion.

1 As part of its Motion for New Trial, SHL asked for new trial based upon the allegation of  
2 attorney misconduct. With respect to the order denying SHL’s Motion for New Trial on the basis of  
3 alleged attorney misconduct, this Court makes express findings as a required by *Lioce v. Cohen*, 124  
4 Nev. 1, 174 P.3d 970 (2008).

5 1. When a party makes a motion for a new trial on the basis of allegations of attorney  
6 misconduct at trial, the district court must apply the detailed, sliding-scale standard first articulated by  
7 the Nevada Supreme Court in *Lioce v. Cohen*, 124 Nev. at 16, 174 P.3d at 980. Under *Lioce*, when  
8 ruling on a motion for a new trial based on attorney misconduct, “district courts must make express  
9 factual findings.” *Id.*

10 2. As this Court observed at the end of the trial, counsel for both parties conducted  
11 themselves with exemplary professionalism throughout the trial in this matter. *See App–2832*. This  
12 was not a trial marred by persistent misconduct or lapses in decorum. The record cannot support a  
13 finding of prejudicial misconduct. At trial, neither party conveyed a contrary view. Though both  
14 parties leveled ordinary courtroom objections to one another’s conduct, SHL raised only a few  
15 objections to Mrs. Eskew’s counsel’s conduct on misconduct grounds and did not seek a single  
16 curative admonishment.

17 3. Only after the jury returned a verdict against it did SHL claim for the first time, in its  
18 post-trial briefing, that the trial was tainted by misconduct. SHL’s motion for a new trial quotes  
19 numerous statements from the trial out of context and attempts to portray them as attorney misconduct  
20 that undermined the trial. But after carefully considering each statement identified by SHL, based on  
21 its vantage point presiding over the entire trial, the Court is unable to find any instance of attorney  
22 misconduct, let alone misconduct that would warrant a new trial under the exacting prejudice standards  
23 outlined by the Nevada Supreme Court.

24 **A. Nevada law places a heavy burden on objecting parties to establish that**  
25 **misconduct warrants a new trial.**

26 4. Nevada law permits a district court to grant a new trial based on a prevailing party’s  
27 misconduct only if the movant can show misconduct affecting its “substantial rights.” *Gunderson v.*  
28 *D.R. Horton, Inc.*, 130 Nev. 67, 74, 319 P.3d 606, 611 (2014). This requires showing that misconduct



1 occurred. *See Id.* And in addition, “[t]o justify a new trial, as opposed to some other sanction, unfair  
2 prejudice affecting the reliability of the verdict must be shown.” *Bayerische Motoren Werke*  
3 *Aktiengesellschaft v. Roth*, 127 Nev. 122, 132–33, 252 P.3d 649, 656 (2011).

4         5. As a general matter, counsel “enjoy[] wide latitude in arguing facts and drawing  
5 inferences from the evidence.” *Grosjean v. Imperial Palace*, 125 Nev. 349, 364, 212 P.3d 1068, 1078  
6 (2009). What they may not do is “make improper or inflammatory arguments that appeal solely to the  
7 emotions of the jury.” *Id.* Thus, statements “cross[] the line between advocacy and misconduct” when  
8 they “ask[] the jury to step outside the relevant facts” and reach a verdict based on its “emotions”  
9 rather than the evidence. *Cox v. Copperfield*, 138 Nev. Adv. Op. 27, 507 P.3d 1216, 1227 (2022). An  
10 attorney’s argument may urge the jury to “send a message,” but it cannot ask the jury to “ignore the  
11 evidence.” *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 269, 396 P.3d 783, 790 (2017).

12         6. Even when a party engages in misconduct, whether that misconduct results in “unfair  
13 prejudice” warranting a new trial depends on the context in which the misconduct occurred. *Roth*,  
14 127 Nev. at 132–33, 252 P.3d at 656. Most importantly, it depends on whether the moving party  
15 “competently and timely” stated its objections and sought to correct “any potential prejudice.” *Lioce*,  
16 124 Nev. at 16, 174 P.3d at 980. That is because “the failure to object to allegedly prejudicial remarks  
17 at the time an argument is made . . . strongly indicates that the party moving for a new trial did not  
18 consider the arguments objectionable at the time they were delivered, but made that claim as an  
19 afterthought.” *Ringle v. Bruton*, 120 Nev. 82, 95, 86 P.3d 1032, 1040 (2004). Nor is simply objecting  
20 enough. Parties must also “promptly” request that the court admonish the offending counsel and the  
21 jury. *Gunderson*, 130 Nev. at 77, 319 P.3d at 613.

22         7. The Supreme Court thus has adopted a sliding scale for assessing prejudice. When the  
23 moving party fails to object, it bears a particularly high burden: It must show “plain error”—that is,  
24 that the misconduct “amounted to irreparable and fundamental error” resulting “in a substantial  
25 impairment of justice or denial of fundamental rights,” such that “it is plain and clear that no other  
26 reasonable explanation for the verdict exists.” *Id.*, 130 Nev. at 75, 319 P.3d at 612. When, by contrast,  
27 the moving party *does* object, the question becomes what steps the party took to cure any prejudice.  
28 If the court sustained an objection and admonished counsel and the jury, the moving party must show

1 that the misconduct was “so extreme that the objection and admonishment could not remove the  
2 misconduct’s effect.” *Lioce*, 124 Nev. at 17, 174 P.3d at 981. If the moving party never sought an  
3 admonishment, it must instead show that the misconduct was “so extreme” that what did occur—  
4 objection and sustainment—“could not have removed the misconduct’s effect.” *Gunderson*, 130 Nev.  
5 at 77, 319 P.3d at 613. Meanwhile, if the moving party objected but its objection was overruled, it  
6 bears the burden of showing that it was error to overrule the objection and that an admonition would  
7 have affected the verdict in its favor. *Lioce*, 124 Nev. at 18, 174 P.3d at 981.

8 **B. Viewed in context, and applying the proper legal standards, none of counsel’s**  
9 **conduct constituted misconduct warranting a new trial.**

10 8. SHL points to three types of statements that it says amount to misconduct warranting  
11 a new trial. It says that counsel improperly injected their “personal beliefs into the proceedings,”  
12 improperly leveled personal “attack[s]” on SHL’s counsel, and improperly questioned one SHL  
13 witness. Counsel may not state “to the jury a personal opinion as to the justness of a cause, the  
14 credibility of a witness, or the culpability of a civil litigant.” *Lioce*, 124 Nev. at 21, 174 P.3d at 983.  
15 And they may not impugn parties or witnesses with a stream of offensive epithets. *See Born v.*  
16 *Eisenman*, 114 Nev. 854, 861–62, 962 P.2d 1227, 1231–32 (1998). In the Court’s view, counsel did  
17 not violate either of these proscriptions here.

18 **i. Counsel did not improperly state a personal opinion as to the justness of**  
19 **a cause, credibility of a witness, or culpability of a civil litigant when they**  
20 **observed that various facts were “remarkable” or “tragic.”**

21 9. Counsel did not offer a personal opinion as to the justness of a cause, credibility of a  
22 witness, or culpability of a civil litigant when they described Jury Instruction 24 as “remarkable.”  
23 App-2531. Instruction 24 explained to the jury that (1) an insurer is “not liable for bad faith for being  
24 incorrect about policy coverage as long as the insurer had a reasonable basis to take the position that  
25 it did” and (2) bad faith “requires an awareness that no reasonable basis exists to deny the insurance  
26 claims.” Jury Ins. No. 24. In calling the instruction “remarkable,” counsel was observing the  
27 relationship between the instruction and the evidence at trial: The instruction, they argued, did not set  
28 a high bar, yet the evidence showed SHL nevertheless fell short. App-2531–32. The remark thus was  
not a personal opinion on one of the prohibited topics at all. The Court finds that it was an

1 inconsequential observation in the course of a detailed, fact bound explanation of why the evidence at  
2 trial reflected bad faith.

3       10. Nor did counsel offer such a prohibited personal opinion when, shortly thereafter, they  
4 described as “remarkable” which policies SHL had adopted in light of its obligations not to violate the  
5 duty of good faith. App-2532. The Court finds that the observation offered only mild emphasis as  
6 counsel explained the relationship of the evidence to the duty.

7       11. Counsel likewise did not offer an improper personal opinion when they remarked that  
8 it was “tragic” that a particular witness had not heard of the duty of good faith. App-2543. As above,  
9 this statement is not a personal opinion as to the justness of a cause, credibility of a witness, or  
10 culpability of a civil litigant. It was a stray observation on the extent of the witness’s knowledge.

11       12. Counsel did not offer an improper personal opinion when they said it was “remarkable”  
12 that SHL failed to put on a particular witness. App-2543–44. Like the statements above, the comment  
13 is not a personal opinion as to the justness of a cause, credibility of a witness, or culpability of a civil  
14 litigant. In context, the Court finds that it was an ordinary trial argument about the evidence that SHL  
15 decided to present at trial.

16       13. Counsel did not offer a personal opinion as to the justness of a cause, credibility of a  
17 witness, or culpability of a civil litigant when they used the adverb “amazingly” to characterize SHL’s  
18 lack of supervision over reviewers like Dr. Ahmad. App-2545. At most, the Court finds that the  
19 adverb was argumentative language deployed to characterize the evidence.

20       14. Even if any of the comments just listed could be deemed personal opinions as to the  
21 justness of a cause, credibility of a witness, or culpability of a civil litigant, they would not warrant a  
22 new trial. SHL did not object to a single one at trial—either contemporaneously or when the Court  
23 explicitly asked if the parties had any issues to raise outside the presence of the jury. *See* App-2535–  
24 41. They are thus reviewed for plain error.

25       15. There was no plain error here. There are “other reasonable explanation[s]” for the  
26 jury’s verdict, *Gunderson*, 130 Nev. at 75, 319 P.3d at 612, than the “few sentences” SHL identifies,  
27 *Cox*, 507 P.3d at 1228, because the evidence at trial, viewed in the light most favorable to Mrs. Eskew,  
28 was overwhelming. The jury heard evidence that SHL sold Mr. Eskew a platinum health insurance

1 policy that expressly covered therapeutic radiation services like proton-beam therapy. App-1035–40,  
2 1057. It heard evidence that Mr. Eskew’s doctor, a leading expert, determined that proton-beam  
3 therapy was necessary to treat his lung cancer while sparing critical nearby organs. Liao Dep. 48–49,  
4 69–75, 84–88; App-531–33, 539–40, 1067–68, 1106. But, the jury learned, SHL refused to approve  
5 the treatment, instead applying its corporate medical policy of refusing to approve proton-beam  
6 treatment for lung cancer in any circumstances. App-331–33, 813–18, 837–45. It sent Mr. Eskew’s  
7 claim to a reviewer who had no expertise in radiation oncology and who did not investigate his claim,  
8 instead taking only 12 minutes to deny it. App-247–48, 250, 319–21, 337–41, 463, 1083–84, 1114.  
9 SHL defended its policy on the ground that proton-beam therapy was not medically necessary, but the  
10 overwhelming evidence showed otherwise. *See* App-106, 116–17, 331–41 (SHL policy  
11 acknowledging benefits of PBT); App-660–61 (studies cited in SHL policies support use of PBT);  
12 App-720–22, 901–11 (SHL’s sister company operated a proton-beam therapy center).

13         16. The jury heard evidence that the IMRT treatment Mr. Eskew had to receive instead  
14 caused great harm to his physical and emotional health. It learned that the intensive radiation generated  
15 by IMRT caused “Grade III esophagitis”—meaning that Mr. Eskew spent the last months of his life  
16 weak, unable to eat or drink, vomiting daily, and losing weight or unable to keep it on. App-594–606,  
17 680–83, 709–11, 719–20, 1203–08, 1256–58, 1324, 1401–13; Liao Dep. 76–77, 81–83, 155. And it  
18 learned that Mr. Eskew became withdrawn, isolated, and unhappy, unable to enjoy the company of  
19 his family or the activities he previously enjoyed. App-1200–02, 1256, 1259–60, 1416–18, 1610.

20         17. The Court thus cannot find that the record supports SHL’s claim that counsel’s  
21 statements made a meaningful difference.

22                 **ii. Counsel did not improperly state a personal opinion as to the justness of**  
23                 **a cause, credibility of a witness, or culpability of a civil litigant when they**  
24                 **invited the jury to consider SHL’s contradictory behavior.**

25         18. Counsel likewise did not state a personal opinion on a prohibited topic when they  
26 encouraged the jury to consider the hypocrisy in SHL’s behavior. App-2655. Counsel’s remarks  
27 arose in the context of a detailed, fact bound argument that, even while SHL took the position that  
28 proton-beam therapy for lung cancer was unproven and medically unnecessary, its sister company  
promoted the use of the treatment to avoid exactly the same complications Mr. Eskew experienced.

1 App-2653–55. In describing this conduct as hypocritical, counsel was “invit[ing] the jury to consider  
2 the contradiction” in SHL’s behavior. *Cox*, 507 P.3d at 1227. That “amount[s] to advocacy, not  
3 misconduct,” and does not “establish grounds for a new trial.” *Id.*

4 19. Towards the end of his delivery, counsel’s remarks edged towards excessive,  
5 unnecessarily personal rhetoric on this point. *See* App-2655. SHL objected and the Court sustained  
6 the objection. *Id.* But SHL did not request an admonishment, so the statements are reviewed for  
7 whether the misconduct was so extreme that objection and sustainment could not have removed any  
8 prejudicial effect. *See Gundersen*, 130 Nev. at 77, 319 P.3d at 613. And viewed in context, the Court  
9 finds that the statements fall far below this bar. Immediately following the Court’s sustainment, Mrs.  
10 Eskew’s counsel corrected his emphasis, explaining that his point was not personal at all, but rather  
11 about what would be “unbelievable to somebody listening.” App-2655. Sustainment thus easily  
12 removed any prejudicial effect.

13 20. That is especially so because not only did counsel correct himself, but the jury was  
14 explicitly instructed that counsel’s statements, arguments, and opinions were not evidence and that it  
15 should disregard evidence to which an objection was sustained. Jury Ins. No. 8. Juries presumptively  
16 follow such instructions, *Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006), and a  
17 sustained objection under these circumstances generally precludes a finding of prejudice, *see Walker*  
18 *v. State*, 78 Nev. 463, 467–68, 376 P.2d 137, 139 (1962).

19 **iii. Counsel did not improperly state a personal opinion as to the justness of**  
20 **a cause, credibility of a witness, or culpability of a civil litigant when they**  
21 **described Dr. Parvesh Kumar’s testimony.**

22 21. Counsel’s statements concerning Dr. Parvesh Kumar’s testimony during closing are  
23 also not improper personal opinions. In describing the testimony, counsel’s argument was that the  
24 jury should reject Dr. Kumar’s testimony because he was not the subject-matter expert he and SHL  
25 both held him out to be. App-2511. In addition, although counsel at one point compared Dr. Kumar  
26 to other witnesses he had observed, his argument remained about how the *jury* should assess Dr.  
Kumar’s credibility, not about how counsel personally did so.

27 22. Counsel’s statements thus are far afield from the sorts of statements Nevada courts  
28 have held amount to prohibited personal opinions. Those statements typically ask jurors to “step

1 outside the relevant facts” and instead reach a verdict based on their emotions. *Cox*, 507 P.3d at 1227  
2 (statements were improper “because they asked the jury to step outside the relevant facts” and hold a  
3 party not liable because of its bad motivations; while statements that simply invited the jury to consider  
4 the contradiction between different statements were not improper personal opinions); *Grosjean*, 125  
5 Nev. at 368–69, 212 P.3d at 1081–82 (attorney committed misconduct by appealing to jury’s emotions  
6 rather than facts in evidence); *Lioce*, 124 Nev. at 21–22, 174 P.3d at 983–84 (attorney committed  
7 misconduct by calling a plaintiff’s case frivolous and worthless). Here, by contrast, counsel’s  
8 statements were closely tied to and about the evidence the jury did see—that Dr. Kumar could not  
9 “uphold the opinions he gave.” App-2512.

10 23. Even if these statements amounted to misconduct, they would not warrant a new trial.  
11 Because SHL failed to object to them, they are reviewed for plain error. And it is not “plain and clear  
12 that no other reasonable explanation for the verdict exists.” *Gunderson*, 130 Nev. at 75, 319 P.3d at  
13 612. As above, the strong evidence supporting the plaintiff’s case easily supplies that explanation,  
14 and the Court finds no reason to conclude that counsel’s characterization of one witness’s testimony  
15 made a difference to the jury.

16 **iv. Counsel did not improperly state a personal opinion as to the justness of**  
17 **a cause, credibility of a witness, or culpability of a civil litigant when they**  
18 **discussed the verdict form.**

19 24. Counsel’s statements concerning the verdict the jury should reach also do not amount  
20 to a prohibited personal opinion. SHL contends that counsel committed misconduct by stating that  
21 they would not request a particular award if they were not “convinced” it was “the right thing to do.”  
22 App-2692. SHL’s argument is that this comment conveyed an impermissible, moralistic commentary  
23 on the evidence. But, viewed in context, the statement is just as easily understood as telling the jury  
24 that the requested verdict was the right thing to do according to the law as embodied in the Court’s  
instructions and the evidence at trial.

25 25. In any event, even if the statement amounts to a personal opinion, the Court cannot find  
26 that the record reflects any prejudice. Although SHL leveled a successful objection to the comments,  
27 it did not seek an admonishment, and so the statement is reviewed for whether the misconduct was so  
28 extreme that objection and sustainment could not have removed any prejudicial effect. *See Gunderson*,

1 130 Nev. at 77, 319 P.3d at 613. The record does not meet this standard. Nothing about the comment  
2 was “extreme,” and, in any event, counsel again promptly corrected any impression that they were  
3 conveying a personal opinion: Following objection and sustainment, counsel emphasized that the  
4 argument was about what the jury should do, not what counsel thought. *See* App-2692 (“It’s the right  
5 thing to do.”). Thus, if there was any prejudicial effect here, it was modest in light of the powerful  
6 evidence on the plaintiff’s case, and it was immediately cured. Accordingly, the comment does not  
7 warrant a new trial.

8 **v. Counsel did not level improper personal attacks, and even if they had, a**  
9 **new trial would not be warranted.**

10 26. SHL also contends that Mrs. Eskew’s counsel committed misconduct because they  
11 “falsely accused” SHL’s counsel “of calling Mrs. Eskew a liar.” The Court finds that the record does  
12 not support either SHL’s version of the facts or the conclusion it draws from them.

13 27. The statements that SHL identifies were not meaningfully false, because the company’s  
14 strategy at trial was to impugn the Eskews’ motivations and to cast doubt on the truthfulness of their  
15 testimony. *See* App-1448–49 (suggesting testimony was driven by what was “helpful for your case”  
16 rather than the truth); App-1489–90 (asking for agreement that “memories can sometimes fade” or be  
17 “influenced” because people can have “an intent to say certain things, a reason, a motive”); *see also*  
18 App-1221–24, 1239–43, 1342, 1346–52, 1484–1526, 1529–41. At trial, witnesses and the parties  
19 understood this to be SHL’s argument. *See, e.g.,* App-1549–50 (Q: “And you would agree that [the  
20 monetary recovery in this case provides] an incentive for you to say what you’re saying; correct?” A:  
21 “No. I did not lie.”). Indeed, at a break, when plaintiff’s counsel noted that SHL was suggesting that  
22 Mrs. Eskew was “lying or magnifying her problems,” counsel for SHL agreed: “And yes, obviously  
23 it’s my client’s position that it shouldn’t be a surprise to anyone in this room that Mrs. Eskew is  
24 embellishing on her husband’s condition.” App-1458–59; *see also* App-1460 (claiming the “right” to  
25 “cross-examine and challenge whether or not she is being accurate and truthful”).

26 28. SHL objects that the statements are “improper” because the company only “implied”  
27 that the Eskews were lying and that Mrs. Eskew’s counsel exaggerated the effect. But Nevada law  
28 does not hold that an exaggerated characterization of counsel’s arguments or conduct is improper at

1 all, let alone so improper as to amount to misconduct. The only supportive authority SHL identifies  
2 concerns “abusive language,” “derogatory remarks,” and offensive epithets. *See Born*, 114 Nev. at  
3 861–62, 962 P.2d at 1231–32 (counsel engaged in repeated, incendiary outbursts, including describing  
4 opposing counsel and witnesses with offensive epithets in the jury’s hearing and exclaiming that  
5 requests for a sidebar were “outrageous”); *Fineman v. Armstrong World Indus., Inc.*, 774 F. Supp.  
6 266, 272 (D.N.J. 1991) (closing argument focused on claims that “counsel had lied to the jury, had  
7 suborned perjury from witnesses (flavoring these comments with [] titillating remarks . . . ), and had  
8 done it for money”). Nothing like that happened here. And the cases have no bearing on the propriety  
9 of one counsel’s commenting on another’s behavior in questioning a witness.

10         29. Even if counsel’s remarks could amount to misconduct, they were not prejudicial. SHL  
11 made only one objection on these grounds and never sought an admonishment. But that objection,  
12 and the Court’s decision to sustain it, was more than sufficient to cure any possible prejudice.  
13 Following the objection, counsel immediately and plainly clarified his meaning—that SHL had at  
14 minimum suggested that Mrs. Eskew was “embellishing” what happened to her. App-2509. SHL says  
15 it made a second objection, but that objection, viewed in context, went to a different issue—whether  
16 there was evidence supporting Mrs. Eskew’s argument that SHL had not been able to dissuade Mrs.  
17 Eskew from pursuing her case. *See App-2690*. In any event, the Court finds no reason in the record  
18 to treat either objection and its sustainment as inadequate to remove any modest prejudicial effect that  
19 could have resulted.

20         30. SHL also argues that counsel’s conduct was improper because it violated a motion in  
21 limine excluding evidence, argument, or testimony relating to litigation conduct. But that motion in  
22 limine was issued for an unrelated reason: to bar the parties from introducing evidence or argument  
23 concerning litigation conduct during the discovery process. And in any event, SHL failed to object to  
24 any of Mrs. Eskew’s counsel’s conduct on these grounds. *See Roth*, 127 Nev. at 136–38, 252 P.3d at  
25 658–59 (parties are obligated to make “contemporaneous objections to claimed violations of an order  
26 produced by a motion in limine . . . to prevent litigants from wasting judicial, party, and citizen-juror  
27 resources”). It thus waived any objection except in an instance of plain error, which the Court cannot  
28 find. *See Id.*



1                    **vi. Counsel’s questioning of SHL’s witness was not misconduct warranting a**  
2                    **new trial.**

3                    31. SHL also argues that Mrs. Eskew’s counsel committed misconduct when they  
4 questioned SHL’s director of pre-service reviews during the damages phase. According to SHL, their  
5 questioning amounted to a “blatant and shocking violation” of the “norms” of American law. The  
6 Court finds otherwise. During the challenged questioning, SHL’s director testified that, in response  
7 to the jury’s verdict, the company was going to begin offering annual training on the duty of good  
8 faith and fair dealing. App-2774–75. To examine whether the company was as contrite as she  
9 suggested, counsel for Mrs. Eskew urged the director to tell the jury her true view of its verdict. App-  
10 2778–79. SHL takes issue with that question because it says the question was given as a “command”  
11 and was therefore “demeaning” and necessarily improper. The Court finds no reason to agree. It is  
12 not misconduct to phrase a question as a statement rather than a question, especially in the context in  
13 which this exchange arose. SHL has offered no authority to the contrary.

14                    32. SHL did not object on these grounds at trial, saying only that the “form” of the question  
15 was “too broad.” App-2779. And even then, it did not request an admonishment. *Id.* In any event, even  
16 if reviewed for whether an admonishment could have changed the verdict, the record here leaves no  
17 reason to conclude that this line of questioning had any impact, let alone that it warrants a new trial.

18                    **C. Cumulative review of counsel’s conduct makes no difference.**

19                    33. SHL urges the Court to weigh its assorted misconduct claims together and conclude  
20 that even if they were not individually prejudicial misconduct, they rise to that level as a whole. But  
21 however SHL’s allegations are weighed, the Court can find no basis to grant a new trial.

22                    34. The Court finds that SHL cannot meet the standard that applies to grant a new trial  
23 “based on the cumulative effect of attorney misconduct.” *Gunderson*, 130 Nev. at 78, 319 P.3d at  
24 614. To obtain that result, a party “must demonstrate that no other reasonable explanation for the  
25 verdict exists.” *Id.* That generally requires identifying “multiple severe instances of attorney  
26 misconduct as determined by their context.” *Id.* Yet as explained above, in the context of this trial,  
27 the Court cannot find that SHL has identified a single “severe instance[]” of attorney misconduct. *Id.*  
28 At best, it has pointed to a smattering of rhetorical and hyperbolic comments that pale in comparison  
to the extensive evidence marshaled at trial. In the Court’s view, the “scope, nature, and quantity” of

1 this alleged misconduct had no appreciable impact on the “verdict’s reliability.” *Id.* The handful of  
2 assorted statements SHL has identified thus fall far short of explaining the jury’s verdict.

3 35. The Court is particularly inclined to reach that finding in light of SHL’s failure to object  
4 to the lion’s share of the asserted misconduct—and, where it did object, to even once seek an  
5 admonishment. While it is true that counsel are not required to repeat objections that have already  
6 been made and sustained and failed to change counsel’s behavior, *see Lioce*, 124 Nev. at 18, 174 P.3d  
7 at 981, it is equally true that the failure to object “strongly indicates that the party moving for a new  
8 trial did not consider the arguments objectionable at the time they were delivered, but made that claim  
9 as an afterthought,” *Ringle*, 120 Nev. at 95, 86 P.3d at 1040. The Court finds that the record in this  
10 case is more consistent with the latter concern than the former, and thus undermines any inference that  
11 SHL would have been penalized for objecting or requesting admonishments.

12 For the foregoing reasons, the above findings and conclusions are hereby ENTERED.

13 DATED this \_\_\_\_ day of \_\_\_\_\_ 2022.

14  
15 \_\_\_\_\_  
DISTRICT COURT JUDGE

16 **Prepared and submitted by:**

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# EXHIBIT 2

130 Nev. 1161

Unpublished Disposition

This is an unpublished disposition. See Nevada Rules of Appellate Procedure, Rule 36(c) before citing. Supreme Court of Nevada.

John CARR, Appellant,

v.

Gustavo PAREDES; and Kayla D. Paredes,  
Respondents.

John Carr, Appellant,

v.

Gustavo Paredes; and Kayla D. Paredes,  
Respondents.

Nos. 60318, 61301.

|

Feb. 10, 2014.

#### Attorneys and Law Firms

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#### ORDER VACATING IN PART AND REMANDING

\*1 These are consolidated appeals from district court orders entering judgment on a jury verdict, awarding costs, and denying a motion for a new trial based on attorney misconduct. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

After the conclusion of appellant John Carr's personal injury suit against respondent Gustavo Paredes, Carr filed a motion for a new trial based on attorney misconduct. Carr provided three grounds to support his claim, and the parties fully briefed the issue. The district court denied Carr's motion, but failed to explain the reasoning behind its decision.

Now, we must determine if the district court's unexplained denial was an abuse of discretion. *See Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 362, 212 P.3d 1068, 1077 (2009)

(this court reviews a ruling on a motion for a new trial for an abuse of discretion).

When a district court rules on a motion for a new trial based on attorney misconduct, it “*must* make specific findings, both on the record during oral proceedings and in its order, with regard to its application of the standards” enumerated in *Lioce v. Co hen*, 124 Nev. 1, 174 P.3d 970 (2008). *Lioce* at 19–20, 174 P.3d at 982 (emphasis added).

Here, the district court failed to make the necessary findings; therefore, we vacate the court's order denying Carr's motion and remand this matter to the district court. Carr raised additional issues on appeal,\* however, our decision regarding the district court's denial of Carr's motion for a new trial could render the other issues moot. Accordingly, we refrain from making a determination regarding the additional issues at this time. Also, we note that the record in this matter is inadequate. Large portions of transcripts from various court proceedings are missing. This inadequacy will hinder this court's review and should be immediately corrected. Accordingly, we

VACATE the district court's order denying the motion for a new trial and REMAND this matter to the district court for proceedings consistent with this order.



133 Nev. 993

Unpublished Disposition

This is an unpublished disposition. See Nevada Rules of Appellate Procedure, Rule 36(c) before citing. Supreme Court of Nevada.

John CARR, Appellant,

v.

Gustavo PAREDES; and Kayla D. Paredes,  
Respondents.

John Carr, Appellant,

v.

Gustavo Paredes; and Kayla D. Paredes,  
Respondents.

No. 60318, No. 61301

|

FILED JANUARY 13, 2017

**Attorneys and Law Firms**

Phillip Aurbach, Settlement Judge

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Pyatt Silvestri

**ORDER OF AFFIRMANCE**

\*1 These are consolidated appeals from a district court order entering judgment on a jury verdict in a tort action and post-judgment orders awarding costs and denying a motion for a new trial. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Senior Judge; Kerry Louise Earley, Judge.

Appellant John Carr sued respondent Gustavo Paredes for injuries allegedly sustained when Paredes's car slid into Carr's on a snowy day. The jury returned a verdict for Paredes and Carr moved for a new trial, which the district court denied.

Carr appeals, seeking reversal and remand for a new trial. He raises four issues: (1) the jury manifestly disregarded its instructions, (2) the district court erred when it allowed Dr. Duke to testify as an expert rebuttal witness, (3) the district court erred when it refused to allow Dr. Grover and Dr. Leon to surrebut Dr. Duke, and (4) Paredes's attorney's improper remarks warrant a new trial. We affirm.

*Whether the jury manifestly disregarded its instructions*

NRCP 59(a)(5) authorizes a district court to grant a new trial if there has been a “[m]anifest disregard by the jury of the instructions of the court.” To meet this demanding standard, the movant must establish “that, had the jurors properly applied the instructions of the court, it would have been impossible for [the jury] to reach the verdict” they did. *Weaver Bros., Ltd. v. Misskelley*, 98 Nev. 232, 234, 645 P.2d 438, 439 (1981) (emphasis added). Denial of a motion for a new trial is reviewed for abuse of discretion. *Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 362, 212 P.3d 1068, 1077 (2009). Although the evidence was in sharp dispute, the record demonstrates that it was not impossible for the jury to find Carr failed to prove that Paredes's negligence caused the injuries and consequent damages he claimed. Thus, the district court did not abuse its discretion in denying Carr's motion for a new trial under NRCP 59(a)(5).

*Dr. Duke's designation and testimony as an expert rebuttal witness*

The admissibility of expert rebuttal testimony lies within the sound discretion of the trial court. *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008). Expert rebuttal witnesses are proper if they contradict or rebut the subject matter of the original expert witness. *Downs v. River City Grp., LLC*, No. 3:11-cv-00885-LRH-WGC, 2014 WL 814303, at \*2 (D. Nev. Feb. 28, 2014). Harmless error does not warrant a new trial. See NRCP 61. For error in the admission or exclusion of evidence to merit a new trial, “the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached.” *Wyeth v. Rowatt*, 126 Nev.

446, 465, 244 P.3d 765, 778 (2010); *see also* *Bongiovi v. Sullivan*, 122 Nev. 556, 575, 138 P.3d 433, 447 (2006) (“an error in the admission of evidence is not grounds for a new trial or for setting aside a verdict unless the error is inconsistent with substantial justice”).

Carr's discussion of Dr. Duke's designation and trial testimony confuses expert rebuttal witnesses, who are designated pretrial “to contradict or rebut” case-in-chief experts, *see* NRC 16.1(a)(2)(C) (2011), with lay rebuttal witnesses, who may be called at trial to rebut new or unforeseen evidence offered by the adverse party, *see Morgan v. Commercial Union Assurance Cos.*, 606 F.2d 554 (5th Cir. 1979). While an expert rebuttal witness cannot testify to matters beyond the scope and subject matter of the case-in-chief expert's opinions, a rebuttal expert is designated pretrial to refute a designated case-in-chief expert's expected testimony. The standards for rebutting surprise lay witness testimony at trial differ from the standards that apply to designated rebuttal experts.

\*2 Here, Dr. Duke was designated during discovery to rebut the expected opinions of the treating physicians Carr designated. Both in his designation and at trial, Dr. Duke largely confined his testimony to the opinions offered by Carr's treating-physician experts, Dr. Shang, Dr. Leon, and Dr. Grover, the scope and subject matter of whose testimony concerned: (1) the diagnosis, (2) treatment, (3) response, and (4) medical billing of Carr. Since Dr. Duke stayed within the scope and subject matter of Carr's treating physicians' expected and actual trial testimony, the district court did not abuse its discretion in allowing Dr. Duke to testify as a rebuttal expert.<sup>1</sup> While we question whether Dr. Duke exceeded the scope of a true rebuttal expert in remarking upon Carr's psychological factors, the error in allowing this testimony, if any, did not affect Carr's substantial rights because it does not reasonably appear likely to have changed the outcome at trial.

<sup>1</sup> We note that Paredes timely designated a case-in-chief expert, whom he did not call at trial, but whose designation covered some of the same subjects as Dr. Duke and Carr's treating physicians did.

#### *Dr. Grover's and Dr. Leon's surrebuttal testimony*

To preserve excluded testimony for appeal, the party must make a specific offer of proof to the trial court on the record. *Van Valkenberg v. State*, 95 Nev. 317, 318, 594 P.2d 707, 708 (1979); *see also* NRS 47.040(1)(b). The specific offer of proof affords a basis for both the district court and this court to determine if the surrebuttal testimony would be cumulative or if it moved past treatment to subjects that would have required a pretrial disclosure, even from a treating physician. Because Carr did not make an offer of proof respecting the proffered surrebuttal, and each of the proposed surrebuttal witnesses had already testified in Carr's case in chief, it is unclear that their testimony on surrebuttal would not have been merely cumulative. Rather than address this point, Carr merely argued that his expert witnesses should be allowed to surrebut Dr. Duke because their rebuttal would be based upon their personal treatment of Carr. While the district court's ruling excluding the surrebuttal may have been error because treating physicians are not required to submit a report unless their testimony exceeds their personal treatment of the patient, *FCHI, LLC v. Rodriguez*, 130 Nev., Adv. Op. 46, 335 P.3d 183, 189 (2014), we cannot resolve the matter due to the failure to specify the substance of the proffered surrebuttal testimony on the record. The error, if any, in denying surrebuttal thus was waived and appears harmless in any event.

#### *Paredes's attorney's improper remarks*

Finally, Carr complains that the opposing counsel's misconduct requires a new trial. This court previously vacated the district court's order denying the motion for a new trial and remanded the matter to the district court to make specific findings regarding attorney misconduct pursuant to *Lioce v. Cohen*, 124 Nev. 1, 19–20, 174 P.3d 970, 982 (2008). *See Carr v. Paredes*, Docket Nos. 60318 & 61301 (Order Vacating In Part and Remanding, February 10, 2014). The district court subsequently found that Paredes's attorney (1) did not violate the order in limine prohibiting her from referring to the accident as unavoidable, and (2) the improper comments to which Carr failed to object did not amount to plain error. Because Carr's motion for new trial did not

challenge Paredes's counsel's golden rule arguments or interjection of personal opinion, the district court did not rule on those two issues.

When a party objects to attorney misconduct and the objection is sustained, the misconduct must be “so extreme that the objection and admonishment could not remove the misconduct's effect.” *Lioce*, 124 Nev. at 17, 174 P.3d at 981. If the objection is overruled, then the overruling must be in error and the court's admonishment would have likely changed the verdict. *Id.* at 18, 174 P.3d at 981. If there was no objection, then there must be no other reasonable explanation for the verdict, i.e., plain error. *Id.* at 19, 174 P.3d at 981–82, *Grosjean*, 125 Nev. at 364, 212 P.3d at 1079. “Whether an attorney's comments are misconduct” is reviewed de novo; “however, we will give deference to the district court's factual findings and application of the standards to the facts.” *Lioce*, 124 Nev. at 20, 174 P.3d at 982.

\*3 The unobjected-to conduct did not constitute plain error because there was another reasonable explanation for the verdict: the jury simply could have found that Carr did not suffer compensable injury as a result of a breach of duty by Paredes. Turning to the conduct that was objected to but overruled, we conclude that an admonishment was unlikely to have changed the verdict. Finally, Carr has not met his burden of proving that the objected-to misconduct had an effect upon the jury. While certain of Paredes's attorney's comments were improper, they were not of the severity and pervasiveness as found in *Lioce*, and did not encourage the jury to ignore the facts and decide the case based upon their personal prejudices and opinions.

Accordingly, we ORDER the judgments of the district court AFFIRMED.

#### All Citations

133 Nev. 993, 387 P.3d 215 (Table), 2017 WL 176591



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134 Nev. 963

This is an unpublished disposition. See Nevada Rules of Appellate Procedure, Rule 36(c) before citing.

Court of Appeals of Nevada.

Blanca Esthela JIMENEZ, an Individual, Appellant,

v.

BLUE MARTINI LAS VEGAS, LLC, d/b/a Blue  
Martini, Respondent.

Blanca Esthela Jimenez, an Individual, Appellant,

v.

Blue Martini Las Vegas, LLC, d/b/a Blue Martini,  
Respondent.

No. 72539, No. 73953

FILED JULY 27, 2018

Attorneys and Law Firms

Law Office of Neal Hyman

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ORDER VACATING POST-TRIAL ORDER AND  
REMANDING

\*1 Blanca Esthela Jimenez appeals from a judgment entered pursuant to a jury verdict in a tort action, from a post-trial order denying Jimenez's motion for a new trial, from an order granting attorney fees and costs, and from an order staying the execution of judgment pending appeal. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.<sup>1</sup>

<sup>1</sup> Although Judge Miley presided over the trial and post-trial motions, Senior Judge J. Charles Thompson, signed the judgment on the jury verdict.

Appellant Jimenez fell down a small two-step-high stairway, injuring her wrist, knee, and ankle, while patronizing the Blue Martini nightclub.<sup>2</sup> Jimenez sued Blue Martini for her injuries. After a nine-day jury trial, the jury returned a defense verdict in favor of Blue Martini. Jimenez moved for a new trial, arguing that the verdict was not supported by substantial evidence, that Blue Martini's attorney committed misconduct by calling Jimenez a liar repeatedly in his closing argument, and that the district court committed several errors in pre-trial and trial rulings. Blue Martini opposed the motion, arguing that a new trial was not warranted. The district court denied Jimenez's motion for a new trial, finding that the jury's verdict was supported by substantial evidence, Blue Martini's attorney did not commit misconduct, and the district court did not err in its rulings. Thereafter, Blue Martini filed a motion for attorney fees and costs, which the district court granted. Jimenez filed a motion to stay the execution of judgment pending appeal and requested the district court waive any bond requirement. The district granted Jimenez's motion to stay the judgment execution but required Jimenez to post a \$50,000 bond.

<sup>2</sup> We do not recount the facts except as necessary to the disposition.

On appeal, Jimenez asserts various errors. However, because the district court failed to properly analyze Jimenez's claims of attorney misconduct we need only address that contention, and we conclude a remand is necessary for the district court to make specific findings on the record regarding attorney misconduct, as required by the supreme court and this court's jurisprudence.<sup>3</sup> See *Lioce v. Cohen*, 124 Nev. 1, 19-20, 174 P.3d 970, 982 (2008); *Michaels v. Pentair Water Pool & Spa, Inc.*, 131 Nev. 804, 813-14, 357 P.3d 387, 394 (Ct. App. 2015).

<sup>3</sup> We note that Jimenez also contends a new trial is warranted due to the district court's interlocutory rulings admitting evidence that Jimenez had a prior back condition and knee injury, allowing Blue Martini to show its expert a silent video of Jimenez testifying, giving a comparative fault jury instruction, denying Jimenez leave to amend to seek punitive damages, admitting a witness'

deposition testimony, and declining to sanction Blue Martini for failing to preserve certain surveillance video. However, we conclude Jimenez's arguments are unpersuasive, as the district court's rulings were proper. *See* NRS 48.025 ("All relevant evidence is admissible ...."); NRS 50.285 (allowing an expert to base an opinion or inference on facts "made known to the expert at the hearing"); NRCP 32(a)(3)(D) (stating that a party may introduce a deposition into evidence if the party cannot procure the witness by subpoena); *MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev. —, —, 31, 416 P.3d 249, 254-55 (2018) (affirming a district court's denial of a motion to amend a complaint for undue delay); *FGA, Inc. v. Giglio*, 128 Nev. 271, 283, 285, 278 P.3d 490, 498, 499 (2012) (holding that evidence of prior injury is admissible to show "a causal connection between the prior injury and the injury at issue," and that "[e]vidence of a party's possible intoxication may be probative of the issues of causation and comparative negligence"); *Bass-Davis v. Davis*, 122 Nev. 442, 447-48, 134 P.3d 103, 106-07 (2006) (addressing sanctions for spoliation). Finally, to the extent Jimenez challenges the verdict form, we deem that argument waived because Jimenez did not object to the verdict form below. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

\*2 Jimenez argues that Blue Martini's counsel committed misconduct, which led to jury nullification, when he repeatedly accused Jimenez of lying on the stand and asked the jury whether they should reward a person who lies.

"Whether an attorney's comments are misconduct is a question of law" reviewed de novo; but we will defer "to the district court's factual findings and application of the [legal] standards to the facts." *Lioce*, 124 Nev. at 20, 174 P.3d at 982; *see also* NRCP 59(a)(2) (stating that misconduct may warrant

a new trial). And, we review unobjected to attorney misconduct for plain error, *Lioce*, 124 Nev. at 19, 174 P.3d at 982. "[D]etermining whether 'plain error' has occurred as a result of unobjected-to misconduct requires the court to closely examine the record, weigh the severity and persistence of the misconduct against the evidence presented, and assess what role, if any, the misconduct likely played in the jury's verdict." *Pentair Water Pool & Spa*, 131 Nev. at 817, 357 P.3d at 397. Under *Lioce*, a district court resolving a motion for a new trial based on unobjected to attorney misconduct is required to make specific findings on the record during the oral proceedings and also in its written order, as to whether the misconduct amounts to plain error, and whether the party moving for a new trial has demonstrated that the misconduct rises to the level of irreparable and fundamental error. *Lioce*, 124 Nev. at 19-20, 174 P.3d at 982. When district court fails to provide reasoning for its decision such that this court cannot determine whether the district court abused its discretion in denying the motion for a new trial, we must remand for a decision on the motion based upon the standards set forth in *Lioce*. *See id.* at 24-25, 174 P.3d at 985.

Here, Jimenez's motion for a new trial detailed incidents of purported misconduct. But, in its order the district court denied Jimenez's motion for new trial without setting forth adequate specific findings under *Lioce*'s plain error standards for evaluating attorney misconduct. The district court merely stated, briefly, that it found nothing in the record to indicate Blue Martini's counsel was acting inappropriately in its closing argument. Yet, the record includes numerous instances wherein Blue Martini's counsel accused Jimenez of lying. *Cf. id.* at 21-22. 174 P.3d at 983 (noting that "an attorney's statements of personal opinion as to the justness of a cause, the credibility of a witness, or the culpability of a litigant is ... improper in civil cases and may amount to prejudicial misconduct necessitating a new trial"); NRCP 3.4(e). Thus, these findings are deficient under *Lioce* and we are unable to determine whether the district court abused its discretion. The district court must revisit Jimenez's NRCP 59(a)(2) motion for a new trial and, in so doing, make specific findings about the alleged attorney misconduct under the standards set forth in *Lioce*. As a result, we vacate the district court's denial of Jimenez's attorney misconduct based request for new trial, and remand this matter for further proceedings.

Accordingly we,

**\*3** ORDER the post-trial order of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>4</sup>

<sup>4</sup> We decline to resolve other issues raised in this appeal regarding the district court's denial of the motion for a new trial in light of this remand for additional findings.

#### **All Citations**

Not Reported in Pac. Rptr., 134 Nev. 963, 2018 WL 3912241

**Jimenez v. Blue Martini Las Vegas, LLC, Not Reported in Pac. Rptr. (2018)**

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134 Nev. 963, 2018 WL 3912241

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2019 WL 5681078

Only the Westlaw citation is currently available.

This is an unpublished disposition. See Nevada Rules of Appellate Procedure, Rule 36(c) before citing.

Court of Appeals of Nevada.

Blanca Esthela JIMENEZ, Appellant,

v.

BLUE MARTINI LAS VEGAS, LLC, d/b/a Blue Martini, Respondent.

No. 77226-COA

|

FILED OCTOBER 31, 2019

**Attorneys and Law Firms**

Law Office of Neal Hyman

Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas

**ORDER OF AFFIRMANCE<sup>1</sup>**

<sup>1</sup> The Honorable Bonnie A. Bulla, Judge, voluntarily recused herself from participation in the decision of this matter.

\*1 Blanca Jimenez appeals from a district court order denying a motion for a new trial in a tort action and an order awarding fees and costs. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Jimenez sued Blue Martini nightclub for negligence, alleging she suffered injuries when she fell down a two-step staircase at Blue Martini.<sup>2</sup> During a nine day jury trial, Jimenez and Blue Martini presented conflicting evidence concerning the cause of Jimenez's injuries. For example, Jimenez called an expert who testified Blue Martin's steps were shorter than building codes required. Conversely, Blue Martini's building expert disputed Jimenez's expert's measurements, and testified

that, in his opinion, the steps did not cause Jimenez's fall. Jimenez also called an expert who testified the lighting levels were below the required levels in an egress area. However, Blue Martini's lighting expert testified the building code referenced by Jimenez's experts was not applicable, because it was the fighting requirement for residential structures.

<sup>2</sup> We do not recount the facts except as necessary to our disposition.

Likewise, Jimenez and Blue Martini presented conflicting evidence and expert testimony regarding both the extent and treatment of Jimenez's injuries. One of Jimenez's treating physicians testified a fall that causes injuries to a tibia and knee could "easily... hurt [Jimenez's] back." On the other hand, Blue Martini's orthopedic expert testified that after examining Jimenez and her medical records, he did not believe the fall injured her back. Further, Jimenez's knee and wrist doctor admitted to retroactively modifying Jimenez's medical records to show an initial complaint of back pain six months after her initial visit. After one of Jimenez's treating physicians testified of the treatment Jimenez needed and would require in the future, Blue Martini called a doctor who testified that the extent of treatment for Jimenez's knee injury was excessive.

During her testimony, Jimenez gave contradictory statements regarding her prior injury and her previous course of treatment. To discredit Jimenez's testimony, Blue Martini admitted into evidence the deposition of Aurora Alvarez, Jimenez's roommate. In her deposition, Alvarez testified that Jimenez had complained of back and knee pain prior to her fall at the Blue Martini.

During closing argument, Blue Martini's counsel emphasized the contradictory testimony of the experts who testified at trial, Jimenez's modified medical records, and inconsistencies in Jimenez's own testimony. Specifically, Blue Martini stated Jimenez's knee and wrist doctor had "fake[d]" medical records and Jimenez had lied about her prior injuries. After the jury returned a verdict in favor of Blue Martini, Jimenez moved for a new trial, arguing that the verdict was inconsistent with the evidence and that Blue Martini committed attorney misconduct. The district court denied the motion.

Subsequently, Jimenez appealed the verdict, the order denying Jimenez's motion for a new trial based on attorney misconduct, and the award of attorney fees and cost. This court considered Jimenez's initial appeal, and vacated and remanded the district court's order for failure to make specific findings under *Lioce v. Cohen*, 124 Nev. 1, 174 P.3d 970 (2008). On remand, the district court found that, under the standards set forth in *Lioce*, Blue Martini did not commit attorney misconduct. Jimenez appealed the district court's findings again.

**\*2** On appeal, Jimenez argues that the district court abused its discretion in denying her motion for new trial under NRCP 59 because Blue Martini's counsel committed attorney misconduct during closing arguments. Jimenez further argues the district court abused its discretion by awarding attorney fees and costs to Blue Martini.

As a starting point, Jimenez asserts a number of trial errors, such as the giving of an improper negligence per se instruction; the erroneous giving of a comparative fault instruction; and errors associated with the parties' opening statements. However, these alleged errors were either previously raised and resolved in Jimenez's prior appeal, or should have been raised in that prior appeal. Issues already raised and previously decided by this court become the "law of the case" and cannot be reargued, *Hsu v. Cty. of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (quoting *Wickliffe v. Sunrise Hosp.*, 104 Nev. 777, 780, 766 P.2d 1322, 1324 (1988)). Issues that were not raised but could and should have been raised in that prior appeal are now waived. For example, Jimenez again argues that the court erred in its "negligence per se" and "comparative fault" jury instructions and that these errors were compounded when the jury used the short verdict form instead of the long one. Jimenez's argument is not that either instruction was wrongly phrased as a matter of law, but rather that the jury verdict form indicates that the jury did not accept those legal theories and therefore the instructions were unnecessary. But Jimenez raised this exact argument in his prior briefing and this court already considered and rejected all of Jimenez's arguments arising from the jury verdict form in footnote 3 of our prior order. *Jimenez v. Blue Martini Las Vegas, LLC*, Docket Nos. 72539

& 73953 (Order Vacating Post-Trial Order and Remanding, Ct. App., July 27, 2018).

Thus, the only district court actions that can be properly challenged in this appeal are any new district court determinations that took place following the prior remand or any issue that this court chose not to reach in the prior appeal, namely, the district court's resolution of the question of attorney misconduct and its award of attorney fees and costs following trial. Therefore, these are the only issues that can now be the proper subject of this appeal.

This court reviews a district court's decision to grant or deny a motion for a new trial for an abuse of discretion, viewing the evidence and all inferences favorably to the party against whom the motion was made. *Michaels v. Pentair Water Pool & Spa, Inc.*, 131 Nev. 804, 814, 357 P.3d 387, 395 (Ct. App. 2015). "Under NRCP 59(a)(2), the district court may grant a new trial if the prevailing party's counsel] committed misconduct that affected the aggrieved party's substantial rights." *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 74, 319 P.3d 606, 611 (2014). An attorney commits misconduct when he or she "encourage[s] the jurors to look beyond the law and the relevant facts in deciding the case[ ] before them." *Lioce v. Cohen*, 124 Nev. 1, 6, 174 P.3d 970, 973 (2008).

To determine whether attorney misconduct warrants a new trial, this court must apply a three-step analysis. *Michaels*, 131 Nev. at 815, 357 P.3d at 395. We must first determine whether an attorney's comments constitute misconduct, which is a question of law reviewed de novo. *Id.* If there was misconduct, we must then decide which legal standard to apply to determine whether the misconduct warrants a new trial—a question resolved by determining whether the party alleging misconduct timely objected to it below. *Id.* Finally, we "must determine whether the district court abused its discretion in applying that standard." *Id.*

**\*3** If the party claiming misconduct did not object at trial, "the district court shall first conclude that the failure to object is critical and ... treat the attorney misconduct issue as having been waived, unless plain error exists." *Lioce*, 124 Nev. at 19, 174 P.3d at 982. Plain error exists only where misconduct occurred and "no other reasonable explanation for the verdict

exists.” *Michaels*, 131 Nev. at 816, 357 P.3d at 396 (quoting *Lioce*, 124 Nev. at 19, 174 P.3d at 982).

Here, Jimenez failed to object to Blue Martini's closing argument below. Accordingly, the jury's verdict must stand unless Jimenez can demonstrate both that misconduct occurred and that misconduct is the only reasonable explanation for the verdict. We conclude that there would still be a reasonable explanation for the jury's verdict in favor of Blue Martini apart from any alleged misconduct. Thus, we conclude that plain error does not exist, and we uphold the district court's denial of Jimenez's motion for a new trial.

Next, we consider whether the district court abused its discretion by awarding fees and costs to Blue Martini. Jimenez argues that the district court failed to consider the *Beattie* factors because Blue Martini's offer was not reasonable and Jimenez's rejection of the offer was reasonable. Blue Martini argues the district court fully considered the *Beattie* factors and the fees and costs were appropriate under *Brunzell*.

This court reviews the district court's decision regarding attorney fees for an abuse of discretion. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 80, 319 P.3d 606, 615 (2014). When awarding attorney fees, the district court must consider the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 311 (1969). *Miller v. Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005). When awarding attorney fees in the offer of judgment context under NRCP 68, the district court must consider the factors set forth in *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983), and *Brunzell*.

Here, before awarding attorney fees and costs in favor of Blue Martini, the district fully considered the factors set forth in *Beattie* and *Brunzell*. The district court found that while Jimenez filed and maintained her claim in good faith, her rejection of the offer of judgment was unreasonable. Prior to trial, Blue Martini offered several times the value of Jimenez's medical costs and claimed lost wages despite evidence of prior injury, comparative negligence, and the disputed causation of Jimenez's fall. Accordingly, we conclude the district court did not abuse its discretion by granting Blue Martini's motion for attorney fees and costs.

Lastly, we consider Jimenez's appeal of the supersedeas bond. Jimenez argues that the district court abused its discretion by failing to consider her financial circumstances and imposing an excessive bond. A district court may use its discretion to set a supersedeas bond that will permit full satisfaction of the judgment. *Nelson v. Heer*, 121 Nev. 832, 834-35, 122 P.3d 1252, 1253 (2005). Thus, we conclude the district court did not abuse its discretion when it set the bond well below the judgment against Jimenez.

Based on the foregoing, we

Order the judgment of the district court AFFIRMED.

#### All Citations

Not Reported in Pac. Rptr., 2019 WL 5681078



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131 Nev. 1366

Only the Westlaw citation is currently available.

This is an unpublished decision. See Nevada Rules of Appellate Procedure, Rule 36(c) before citing.

Court of Appeals of Nevada.

WYNN LAS VEGAS, LLC, Appellant,

v.

Frances Ann BLANKENSHIP, Respondent.

No. 65615.

|

July 17, 2015.

**Attorneys and Law Firms**

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Richard Harris Law Firm.

Before GIBBONS, C.J., TAO and SILVER, JJ.

**ORDER AFFIRMING IN PART, VACATING IN PART, AND REMANDING**

**\*1** This is an appeal from a district court judgment on the jury verdict in a personal injury action and from a post-judgment order denying a new trial. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

This appeal arises from a jury verdict in a personal injury claim for damages following a trip-and-fall in May 2009. Respondent Frances Ann Blankenship was on the premises of appellant Wynn Las Vegas, LLC (“Wynn”) when she tripped over a curb. As a result of the fall, Blankenship suffered a broken arm and other injuries. Blankenship filed a complaint against Wynn alleging, as relevant to this appeal, negligence.

On the night of the incident, Blankenship ate dinner with her family and friends at the Botero restaurant at the Encore at Wynn Las Vegas, which is owned by Wynn. After finishing dinner, the group ordered dessert and coffee, and, while waiting to be served, Blankenship and her husband decided to leave the restaurant to smoke a cigarette. Blankenship and her husband exited the restaurant through the front doors, proceeded down some steps, and walked between two large columns that mark the restaurant's entrance. They then turned left and proceeded down a walkway that runs alongside the restaurant's patio area. A curb separates the walkway from the patio. Blankenship and her husband followed the walkway, passing alongside the curb, until they reached the Encore's pool area where they smoked their cigarettes.

After finishing their cigarettes, Blankenship and her husband did not use the walkway to return to the restaurant. Instead, they attempted to reach the restaurant's front doors by passing through its patio area. But, Blankenship tripped over the curb surrounding the patio area and fell.

Photographs were introduced at trial depicting the patio area, curb, walkway, and lighting in the area. The photographs show a number of tables and chairs inside the patio area and arranged alongside the curb. The photographs were taken during the day, however, and do not necessarily depict the tables and chairs as they were positioned on the night of the incident. The photographs also show overhead lighting in the patio area's canopy and lighting in the landscaping along the walkway.

At trial, Blankenship testified she did not see the curb or any indication she could not cross through the patio area, and she would have used an alternate route if she saw the curb. Blankenship also testified she recalled the space between the tables being larger than depicted in the photographs. According to Blankenship, her chosen route appeared to be a safe, direct route to the entrance that would not intrude on other patrons' dining experience. Blankenship testified she did not know what part of her foot hit the curb, but “she fell flat and it knocked [her] out.”<sup>1</sup>

<sup>1</sup> Blankenship's medical records from the night of the incident states Blankenship saw the curb and was stepping over it, suggesting she knew the curb was there and attempted to navigate it. Blankenship testified she did not recall making that statement, and she was groggy when she went to the hospital.

Blankenship acknowledged she purchased four alcoholic beverages on the day of the incident: two beers during the day, a scotch and water at the bar before dinner, and a scotch and water at dinner. But, Blankenship also testified she did not recall whether she drank the entire scotch and water at the bar, and she did not drink the entire scotch and water at dinner. Blankenship further acknowledged she was wearing two and one-half inch heels when she fell.

\*2 Blankenship retained an expert to testify regarding the curb, but the district court granted Wynn's motion to strike that expert because the expert relied upon photographs of the curb to form an opinion.<sup>2</sup> Thus, Blankenship did not adduce expert testimony regarding the curb.

<sup>2</sup> Blankenship alleges Wynn redesigned the curb before offering her an opportunity to inspect it. To the extent Blankenship argues Wynn spoliated evidence, that argument fails on appeal because she did not raise it before the district court. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“[a] point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”).

Wynn's expert, Deruyter Orlando Butler, testified the building code required Wynn to install a barrier between the patio area and the walkway due to a small elevation difference between the two surfaces. Mr. Butler further testified the curb was compliant with the building code, but other barriers, including a planter, rails, or glass would have also been compliant. Mr. Butler acknowledged the curb was not the safest possible barrier, Wynn has used different barriers at other properties, Wynn selected the curb for aesthetic purposes, and other barriers would have also served those aesthetic purposes. Finally, Mr. Butler testified Wynn painted the curb a

contrasting color to promote guest safety and the lighting in the area was code compliant.

The jury returned a verdict in favor of Blankenship, awarding \$100,000 in damages, but that amount was reduced to \$60,000 because the jury also found Blankenship forty percent liable for the incident. Thereafter, Wynn brought a post-trial motion for judgment as a matter of law, or, in the alternative, a motion for a new trial, which the district court denied. This appeal followed.

On appeal, Wynn challenges the district court's determination on several bases. First, Wynn contends substantial evidence did not support the jury's verdict. Second, Wynn argues the jury manifestly disregarded the district court's instructions, and, therefore, the district court abused its discretion by denying Wynn's motion for a new trial. Third, Wynn asserts the district court abused its discretion by denying Wynn's motion for a new trial because Blankenship's counsel encouraged jury nullification during voir dire.

*Whether substantial evidence supported the jury's verdict*

Wynn maintains the present case concerned the design and construction of a curb. Wynn argues the standard applicable to the design and construction of a curb is not within the common knowledge of laypersons, and, therefore, Blankenship was required to present expert testimony regarding the standard of care. Because Blankenship did not present expert testimony, Wynn asserts substantial evidence did not support the jury's verdict. By contrast, Blankenship contends the case was not about the design and construction of the curb, but rather, whether the Wynn unreasonably placed it at the location of the fall. Blankenship further argues expert testimony regarding the standard of care was not required because the reasonableness of the curb at the location of the fall was within the common knowledge of laypersons. Thus, Blankenship maintains substantial evidence supported the jury's verdict.

We will not overturn a jury's verdict if it is supported by substantial evidence, unless, “it was clearly wrong from all the evidence presented.” *Allstate Ins. Co. v. Miller*, 125 Nev. 300, 308, 212 P.3d 318, 324 (2009). “Substantial evidence is that

which a reasonable mind might accept as adequate to support a conclusion.” *Yamaha Motor Co. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998) (internal quotation marks omitted). In reviewing a jury's verdict, we are “not at liberty to weigh the evidence anew, and where conflicting evidence exists, [we draw] all favorable inferences ... towards the prevailing party.” *Id.*

\*3 It is well-established in Nevada “that the standard of care must be determined by expert testimony unless the conduct involved is within the common knowledge of laypersons.” *Daniel, Mann, Johnson & Mendenhall v. Hilton Hotels Corp.*, 98 Nev. 113, 115, 642 P.2d 1086, 1087 (1982). “Where ... the service rendered does not involve esoteric knowledge or uncertainty that calls for [a] professional's judgment, it is not beyond the knowledge of the jury to determine the adequacy of the performance.” *Id.* (citing *Aetna Ins. Co. v. Hellmuth, Obata & Kassabaum, Inc.*, 392 F.2d 472, 478 (8th Cir.1968) (“general rule requiring expert testimony to establish a reasonable standard of professional care ... is not necessary in passing on commonplace factual situations that the ordinary jury layman can readily grasp and understand.”)).

Wynn cites *Woodward v. Chirco Constr. Co.*, 687 P.2d 1275 (Ariz.Ct.App.1984), *Miller v. Los Angeles Cnty. Flood Control Dist.*, 505 P.2d 193 (Cal.1973), *Lemay v. Burnett*, 660 A.2d 1116 (N.H.1995), and *Nat'l Cash Register Co. v. Haak*, 335 A.2d 407 (Pa.Super.Ct.1975) for the proposition that the standard of care associated with the design and construction of the curb is not within the common knowledge of laypersons. We are not persuaded by Wynn's argument. Even if those cases were binding, which they are not, they are distinguishable because Blankenship's underlying claim was not limited to negligent construction or design. Instead, Blankenship tried the case on the theory that the curb presented an unreasonable risk of harm at the location of the fall.

Given Blankenship's theory of the case, the jury was not charged with assessing the structural integrity of the curb or whether a design defect was present in the curb. It was asked to consider whether Wynn, by placing the curb at the location of the fall, created an unreasonable risk of harm—specifically, a tripping hazard. Because that issue falls within the common

knowledge of laypersons, we conclude Blankenship was not required to present expert testimony regarding the standard of care. See *Daniel*, 98 Nev. at 115, 642 P.2d at 1087; see also *Foster v. Costco Wholesale Corp.*, 128 Nev. —, —, 291 P.3d 150, 156 (2012) (holding where a dangerous condition is open and obvious, the jury must decide whether a landowner breaches its duty of care by permitting the condition to exist and allowing a guest to encounter the condition). Given our conclusion, we turn to whether substantial evidence supports the jury's verdict.

At trial, Blankenship presented photographs depicting the area in which the fall took place. Thus, the jury was able to view the curb, walkway, and patio area; the lighting in the area; and the lack of warnings regarding the curb. Blankenship and her husband both testified they did not see the curb or any indication that they could not walk from the walkway through the patio area. Wynn's expert testified the building code required a barrier between the walkway and patio area due to a small elevation change. But, Wynn's expert also testified (1) a curb was not the only option for the location, (2) Wynn selected the curb for aesthetic purposes, and (3) other barriers may have been safer options for the location. Based on the record and given our conclusion that Blankenship was not required to present expert testimony regarding the standard of care, we conclude substantial evidence supported the jury's verdict.

*Whether the jury manifestly disregarded the district courts instructions*

\*4 Wynn contends that without expert testimony regarding the standard of care, the jury could not have found in favor of Blankenship unless it manifestly disregarded the district court's instructions. Thus, Wynn maintains the district court abused its discretion by denying Wynn's motion for a new trial. Blankenship counters she was not required to present expert testimony regarding the standard of care. Hence, Blankenship asserts the district court did not abuse its discretion by denying Wynn's motion for a new trial because the jury did not manifestly disregard the district court's instructions.

A district court's decision granting or denying a motion for a new trial will not be reversed absent a palpable abuse of discretion. *Krause, Inc. v. Little*, 117 Nev. 929, 933, 34 P.3d 566, 569 (2001). Under NRCP 59(a)(5), a district court may grant a new trial if there has been a “[m]anifest disregard by the jury of the instructions of the court.” Our Supreme Court has held “[t]his basis for granting a new trial may only be used if the jury, as a matter of law, could not have reached the conclusion that it reached.” *Carlson v. Locatelli*, 109 Nev. 257, 261, 849 P.2d 313, 315 (1993). In considering whether the jury manifestly disregarded the district court's instructions, we must “assume that the jury understood the instructions and correctly applied them to the evidence.” *McKenna v. Ingersoll*, 76 Nev. 169, 175, 350 P.2d 725, 728 (1960).

We already concluded Blankenship was not required to present expert testimony regarding the standard of care, and, therefore, Wynn's argument that the jury must have manifestly disregarded the district court's instructions fails. Moreover, nothing in the record suggests the jury's verdict is based on a misunderstanding or misapplication of the district court's instructions. The district court properly instructed the jury, without objection from the Wynn, that “a property owner is not an insurer of the safety of a person on its premises[.]” but a property owner still “owes its patrons a duty to keep the premises in a reasonably safe condition for its intended use.” The district court also properly instructed the jury, once again without objection from the Wynn, to use common sense and draw reasonable inferences in considering the evidence. Based on the district court's instructions as well as the evidence and testimony presented at trial, it cannot be said, as a matter of law, the jury could not have reached the conclusion that it reached.

#### *Whether Blankenship's counsel encouraged jury nullification*

We next turn to Wynn's contention that a new trial is warranted because Blankenship's counsel engaged in misconduct by encouraging jury nullification. A district court has discretion to grant or deny a motion for new trial based on attorney misconduct, and we will not reverse that decision absent an abuse of discretion. *See Lioce v. Cohen*, 124 Nev. 1, 20, 174 P.3d 970, 982 (2008).

\*5 Our Supreme Court has held when a district court rules on a motion for a new trial based on attorney misconduct, “the district court *must* make specific findings, both on the record during oral proceedings and in its order, with regard to its application of the standards described [in *Lioce* ] to the facts of the case before it.” *Id.* at 19–20, 174 P.3d at 982 (emphasis added).

In the present case, the district court failed to make the necessary findings—both during oral proceedings and in its written order. Without reasoning supporting the district court's decision, we are unable to determine whether the district court abused its discretion in denying Wynn's motion for a new trial based on attorney misconduct. As such, we vacate the district court's order denying that motion and remand this matter to the district court for a decision applying the standards set forth in *Lioce*. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

#### All Citations

Not Reported in P.3d, 131 Nev. 1366, 2015 WL 4503211

**Wynn Las Vegas, LLC v. Blankenship, Not Reported in P.3d (2015)**

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131 Nev. 1366, 2015 WL 4503211

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# EXHIBIT 3

A-19-788630-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**August 15, 2022**

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A-19-788630-C      Sandra Eskew, Plaintiff(s)  
vs.  
Sierra Health and Life Insurance Company Inc, Defendant(s)

---

**August 15, 2022      3:00 AM      Minute Order      Defendant's Motion for a  
New Trial or Remittitur**

**HEARD BY:** Krall, Nadia      **COURTROOM:** Chambers

**COURT CLERK:** Pharan Burchfield

**JOURNAL ENTRIES**

- NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to secure efficient, just and inexpensive determinations in every action and proceeding.

Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time with or without oral argument, and grant or deny it.

Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022; Plaintiff's Opposition to Defendant's Motion for a New Trial or Remittitur filed on 6/29/2022; Defendant's Reply in Support of Its Motion for a New Trial or Remittitur filed on 7/20/2022; and Defendant's Motion for Leave to File Supplemental Authority in Support of its Motion for a New Trail or Remittitur filed on 8/10/2022.

The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on file.

COURT ORDERED, Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022 is DENIED pursuant to Bahena v. Goodyear Tire & Rubber Co., 126 Nev. 243 (2010); NRCP 59(a)(1)(B) & (F); Wyeth v. Rowatt, 126 Nev. 446 (2010); Bayerische Motoren Werke Aktiengesellschaft v. Roth, 127 Nev. 122 (2011); Grosjean v. Imperial Palace, 125 Nev. 349 (2009); Cox v. Copperfield, 138 Nev. Adv. Op. 27 (2022); Pizarro-Ortega v. Cervantes-Lopez, 133 Nev. 261 (2017); Lioce v. Cohen, 124 Nev. 1 (2008); Ringle v. Bruton, 120 Nev. 82 (2004); Walker v. State, 78 Nev. 463 (1962); Born v. Eisenman, 114 Nev. 854 (1998); Satackiewicz v. Nissan Motor Corp. in U.S.A., 100 Nev. 443 (1983); Guaranty Nat. Ins. Co. v. Potter, 112 Nev. 199 (1996); Automatic Merchandisers, Inc. v. Ward, 98 Nev. 282 (1982); Hernancez v. City of Salt Lake, 100 Nev. 504 (1984); Dejesus v. Flick, 116 Nev. 812 (2000); Wells, Inc.

PRINT DATE: 08/15/2022

Page 1 of 2

Minutes Date: August 15, 2022



v. Shoemake, 64 Nev. 57 (1947); Nevada Independent Broadcasting Corporation v. Allen, 99 Nev. 404 (1983); Quintero v. McDonald, 116 Nev. 1181 (2000); Barmettler v. Reno, Air, Inc., 114 Nev. 441 (1998); State v. Eaton, 101 Nev. 705 (1985); Jacobson v. Manfredi, 100 Nev. 226 (1984); BMW of N. Am. Inc. v. Gore, 517 U.S. 559 (1996); State Farm Mut. Aut. Ins. Co. v. Campbell, 538 U.S. 408 (2003); TXO Prod. Corp. v. Alliance Res. Corp., 509 U.S. 443 (1993); Merrick v. Paul Revere Life Ins. Co., 594 F.Supp.2d 1168 (Nev. Dis. 2008); and Campbell v. State Farm. Mut. Auto Ins. Co., 98 P.3d 409 (Utah 2004).

COURT FURTHER ORDERED, counsel for Plaintiff to draft and circulate a proposed order for opposing counsel's signature prior to submitting it to the Department 4 inbox for the Judge's review and signature within fourteen (14) days and distribute a filed copy to all parties involved in this matter.

COURT FURTHER ORDERED, counsel for Plaintiff to include Findings of Fact and Conclusions of Law based upon the Memorandum of Points and Authorities set forth in Plaintiff's pleadings.

COURT FURTHER ORDERED, Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022 and scheduled for hearing on 8/17/2022 at 9:00 A.M. is VACATED.

CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Pharan Burchfield, to all registered parties for Odyssey File & Serve.//pb/8/15/22.

# EXHIBIT 4

**Subject:** RE: A-19-788630-FCCO-Eskew vs. Sierra Health  
**Date:** Monday, September 19, 2022 at 11:59:47 AM Pacific Daylight Time  
**From:** Gormley, Ryan  
**To:** Sorensen, David  
**CC:** 'Deepak Gupta', 'Doug Terry', 'Matthew Wessler', Roberts, Lee, 'Dupree Jr., Thomas H.', 'Cristin Sharp', 'suzy@mattsharplaw.com', Everett, Tia, 'Matt Sharp', Everett, Tia  
**Attachments:** image001.jpg, image002.png, e-sig2022final\_ba5cc7df-d101-455c-b785-e4dfc6477db3.png, SHL\_s Proposed Order Denying JAML\_105727195\_1 (002).docx, SHL\_s Proposed Order Denying New Trial\_105727199\_1 (002).docx, SHL\_s Proposed Order Denying New Trial\_105727199\_1 (002).pdf, SHL\_s Proposed Order Denying JAML\_105727195\_1 (002).pdf

Please find attached Defendant's proposed orders in PDF and word format.

Thank you,

---

**From:** Sorensen, David <Dept04LC@clarkcountycourts.us>  
**Sent:** Monday, September 19, 2022 7:47 AM  
**To:** Gormley, Ryan <RGormley@wwhgd.com>  
**Cc:** 'Deepak Gupta' <deepak@guptawessler.com>; 'Doug Terry' <doug@dougterrylaw.com>; 'Matthew Wessler' <matt@guptawessler.com>; Roberts, Lee <LRoberts@wwhgd.com>; 'Dupree Jr., Thomas H.' <TDupree@gibsondunn.com>; 'Cristin Sharp' <cristin@mattsharplaw.com>; 'suzy@mattsharplaw.com' <suzy@mattsharplaw.com>; Everett, Tia <EverettT@clarkcountycourts.us>; 'Matt Sharp' <matt@mattsharplaw.com>; Everett, Tia <EverettT@clarkcountycourts.us>  
**Subject:** RE: A-19-788630-FCCO-Eskew vs. Sierra Health

**This Message originated outside your organization.**

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Mr. Gormley,

Per my previous email and per the request of the Judge, please provide your proposed orders to me no later than today at noon.

Regards,



DAVID S. SORENSEN, Esq.  
Law Clerk to the Honorable Nadia Krall  
Eighth Judicial District Court – Department 4  
Phone – (702) 671-0513  
[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)

**From:** Gormley, Ryan <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>  
**Sent:** Friday, September 16, 2022 4:03 PM  
**To:** Sorensen, David <[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)>  
**Cc:** 'Deepak Gupta' <[deepak@guptawessler.com](mailto:deepak@guptawessler.com)>; 'Doug Terry' <[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)>; 'Matthew Wessler' <[matt@guptawessler.com](mailto:matt@guptawessler.com)>; Roberts, Lee <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>; 'Dupree Jr., Thomas H.' <[TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)>; 'Cristin Sharp' <[cristin@mattsharplaw.com](mailto:cristin@mattsharplaw.com)>; 'suzy@mattsharplaw.com' <[suzy@mattsharplaw.com](mailto:suzy@mattsharplaw.com)>; Everett, Tia <[EverettT@clarkcountycourts.us](mailto:EverettT@clarkcountycourts.us)>; 'Matt Sharp' <[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)>; Everett, Tia <[EverettT@clarkcountycourts.us](mailto:EverettT@clarkcountycourts.us)>  
**Subject:** RE: A-19-788630-FCCO-Eskew vs. Sierra Health

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Thank you, Mr. Sorensen. While we would be pleased to submit anything the Court desires, we presented our objections to plaintiff's proposed orders in writing and did not plan to submit anything further. Redlined documents would not assist the Court because we cannot agree to virtually anything in the plaintiff's proposed orders. We suggest that the Court simply issue short orders that track the language in the Court's August 15 minute orders denying defendant's post-trial motions, rather than adopt plaintiff's overlength, argumentative, and inaccurate proposals.

Thank you,

---

**From:** Sorensen, David <[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)>  
**Sent:** Wednesday, September 14, 2022 2:54 PM  
**To:** Gormley, Ryan <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>  
**Cc:** 'Deepak Gupta' <[deepak@guptawessler.com](mailto:deepak@guptawessler.com)>; 'Doug Terry' <[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)>; 'Matthew Wessler' <[matt@guptawessler.com](mailto:matt@guptawessler.com)>; Roberts, Lee <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>; 'Dupree Jr., Thomas H.' <[TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)>; 'Cristin Sharp' <[cristin@mattsharplaw.com](mailto:cristin@mattsharplaw.com)>; 'suzy@mattsharplaw.com' <[suzy@mattsharplaw.com](mailto:suzy@mattsharplaw.com)>; Everett, Tia <[EverettT@clarkcountycourts.us](mailto:EverettT@clarkcountycourts.us)>; 'Matt Sharp' <[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)>; Everett, Tia <[EverettT@clarkcountycourts.us](mailto:EverettT@clarkcountycourts.us)>  
**Subject:** RE: A-19-788630-FCCO-Eskew vs. Sierra Health

**This Message originated outside your organization.**

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Mr. Gormley,

Judge is requesting that you submit your competing orders and strike-through/redline versions of both of Plaintiffs proposed orders no later than next Monday(9/19/2022 at noon).

Regards,



DAVID S. SORENSEN, Esq.  
Law Clerk to the Honorable Nadia Krall  
Eighth Judicial District Court – Department 4  
Phone – (702) 671-0513  
[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)

---

**From:** Gormley, Ryan <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>  
**Sent:** Wednesday, August 31, 2022 4:35 PM  
**To:** Sorensen, David <[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)>  
**Cc:** 'Deepak Gupta' <[deepak@guptawessler.com](mailto:deepak@guptawessler.com)>; 'Doug Terry' <[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)>; 'Matthew Wessler' <[matt@guptawessler.com](mailto:matt@guptawessler.com)>; Roberts, Lee <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>; 'Dupree Jr., Thomas H.' <[TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)>; 'Cristin Sharp' <[cristin@mattsharplaw.com](mailto:cristin@mattsharplaw.com)>; 'suzy@mattsharplaw.com' <[suzy@mattsharplaw.com](mailto:suzy@mattsharplaw.com)>; Everett, Tia <[EverettT@clarkcountycourts.us](mailto:EverettT@clarkcountycourts.us)>; 'Matt Sharp' <[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)>  
**Subject:** RE: A-19-788630-FCCO-Eskew vs. Sierra Health

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Good afternoon Mr. Sorensen,

With respect to the proposed orders submitted by Plaintiff, Defendant filed an objection and further objection. They are attached here. At this time, Defendant does not intend to file or submit anything further in relation to the proposed orders. Please let us know if you have any questions.

Thank you,



LITIGATION DEPARTMENT  
OF THE YEAR ALM'S DAILY REPORT  
2022 - 2020 - 2019 - 2018 - 2017 - 2016 - 2014

Ryan Gormley, Attorney  
**Weinberg Wheeler Hudgins Gunn & Dial**  
6385 South Rainbow Blvd. | Suite 400 | Las Vegas, NV 89118  
D: 702.938.3813 | F: 702.938.3864  
[www.wwhgd.com](http://www.wwhgd.com) | [vCard](#)

**From:** Sorensen, David <[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)>  
**Sent:** Tuesday, August 30, 2022 12:04 PM  
**To:** 'suzy@mattsharplaw.com' <[suzy@mattsharplaw.com](mailto:suzy@mattsharplaw.com)>  
**Cc:** 'Deepak Gupta' <[deepak@guptawessler.com](mailto:deepak@guptawessler.com)>; 'Doug Terry' <[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)>; 'Matthew Wessler' <[matt@guptawessler.com](mailto:matt@guptawessler.com)>; Roberts, Lee <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>; 'Dupree Jr., Thomas H.' <[TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)>; Gormley, Ryan <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>; 'Cristin Sharp' <[cristin@mattsharplaw.com](mailto:cristin@mattsharplaw.com)>; Everett, Tia <[EverettT@clarkcountycourts.us](mailto:EverettT@clarkcountycourts.us)>; 'Matt Sharp' <[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)>  
**Subject:** RE: A-19-788630-FCCO-Eskew vs. Sierra Health

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Suzy and Counsel for Defendants,  
You need to attach that to the back of the order so that it is all one document and resend it to me. It appears that all of these are going to be competing orders. If opposing counsel can  
Email me their version in both Word and PDF no later than close of business tomorrow I would appreciate it. Additionally, please redline/strikethrough any language that is not agreed upon.

Regards,



DAVID S. SORENSEN, Esq.  
Law Clerk to the Honorable Nadia Krall  
Eighth Judicial District Court – Department 4  
Phone – (702) 671-0513  
[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)

---

**From:** [suzy@mattsharplaw.com](mailto:suzy@mattsharplaw.com) <[suzy@mattsharplaw.com](mailto:suzy@mattsharplaw.com)>  
**Sent:** Tuesday, August 30, 2022 11:40 AM  
**To:** Sorensen, David <[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)>  
**Cc:** 'Deepak Gupta' <[deepak@guptawessler.com](mailto:deepak@guptawessler.com)>; 'Doug Terry' <[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)>; 'Matthew Wessler' <[matt@guptawessler.com](mailto:matt@guptawessler.com)>; 'Lee Roberts' <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>; 'Dupree Jr., Thomas H.' <[TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)>; 'Ryan Gormley' <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>; 'Cristin Sharp' <[cristin@mattsharplaw.com](mailto:cristin@mattsharplaw.com)>; Everett, Tia <[EverettT@clarkcountycourts.us](mailto:EverettT@clarkcountycourts.us)>; 'Matt Sharp' <[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)>  
**Subject:** RE: A-19-788630-FCCO-Eskew vs. Sierra Health

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David,

Here is the email communication not approving the proposed order that didn't get attached previously.

Suzy Thompson  
Legal Assistant  
Matthew L. Sharp, Ltd.  
432 Ridge Street  
Reno, NV 89501  
[Suzy@mattsharpplaw.com](mailto:Suzy@mattsharpplaw.com)  
(775) 324-1500  
(775) 284-0675 fax

---

**From:** Sorensen, David <[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)>  
**Sent:** Tuesday, August 30, 2022 8:31 AM  
**To:** 'Matt Sharp' <[matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)>  
**Cc:** Deepak Gupta <[deepak@guptawessler.com](mailto:deepak@guptawessler.com)>; Doug Terry <[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)>; Matthew Wessler <[matt@guptawessler.com](mailto:matt@guptawessler.com)>; Lee Roberts <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>; Dupree Jr., Thomas H. <[TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)>; Ryan Gormley <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>; Suzy Thompson <[suzy@mattsharpplaw.com](mailto:suzy@mattsharpplaw.com)>; Cristin Sharp <[cristin@mattsharpplaw.com](mailto:cristin@mattsharpplaw.com)>; Everett, Tia <[EverettT@clarkcountycourts.us](mailto:EverettT@clarkcountycourts.us)>  
**Subject:** RE: A-19-788630-FCCO-Eskew vs. Sierra Health

Counsel,

I am unable to print the PDF versions of your proposed orders. An error message appears when I try to print it.

Additionally, if counsel for Defendant intends on providing their own versions of these orders, please do so by the end of business tomorrow. Please email me Word and PDF versions of your competing orders with redlines/strikethroughs of the language that you do not agree with.

Regards,



DAVID S. SORENSEN, Esq.  
Law Clerk to the Honorable Nadia Krall  
Eighth Judicial District Court – Department 4  
Phone – (702) 671-0513  
[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)

**From:** Matt Sharp <[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)>  
**Sent:** Monday, August 29, 2022 8:56 PM  
**To:** Sorensen, David <[Dept04LC@clarkcountycourts.us](mailto:Dept04LC@clarkcountycourts.us)>  
**Cc:** Deepak Gupta <[deepak@guptawessler.com](mailto:deepak@guptawessler.com)>; Doug Terry <[doug@dougterrylaw.com](mailto:doug@dougterrylaw.com)>; Matthew Wessler <[matt@guptawessler.com](mailto:matt@guptawessler.com)>; Lee Roberts <[LRoberts@wwhgd.com](mailto:LRoberts@wwhgd.com)>; Dupree Jr., Thomas H. <[TDupree@gibsondunn.com](mailto:TDupree@gibsondunn.com)>; Ryan Gormley <[RGormley@wwhgd.com](mailto:RGormley@wwhgd.com)>; Suzy Thompson <[suzy@mattsharplaw.com](mailto:suzy@mattsharplaw.com)>; Cristin Sharp <[cristin@mattsharplaw.com](mailto:cristin@mattsharplaw.com)>  
**Subject:** Re: A-19-788630-FCCO-Eskew vs. Sierra Health

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT

David,

Per the clerks request, I am attaching the proposed orders denying the Renewed Motion for Judgment Notwithstanding the Verdict and Motion for New Trial or Remittitur

We have attached a PDF of the proposed and a Microsoft Word version of the proposed order.

The defendant has not approved the proposed order. The email communication is attached to the PDF of the proposed order.

Matthew Sharp  
432 Ridge St.  
Reno, NV 89501  
[matt@mattsharplaw.com](mailto:matt@mattsharplaw.com)  
775-324-1500  
Past-President Nevada Justice Association  
Board of Governors American Association for Justice  
Leaders Forum American Association for Justice

The information contained in this message may contain privileged client confidential information. If you have received this message in error, please delete it and any copies immediately.



1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/7/2022

15 Audra Bonney

abonney@wwhgd.com

16 Cindy Bowman

cbowman@wwhgd.com

17 D. Lee Roberts

lroberts@wwhgd.com

18 Raiza Anne Torrenueva

rtorrenueva@wwhgd.com

19 Matthew Sharp

matt@mattsharplaw.com

20 Cristin Sharp

cristin@mattsharplaw.com

21 Thomas Dupree

TDupree@gibsondunn.com

22 Ryan Gormley

rgormley@wwhgd.com

23 Flor Gonzalez-Pacheco

FGonzalez-Pacheco@wwhgd.com

24 Suzy Thompson

suzy@mattsharplaw.com

25 Marjan Hajimirzaee

mhajimirzaee@wwhgd.com

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Maxine Rosenberg	Mrosenberg@wwhgd.com
Stephanie Glantz	sglantz@wwhgd.com
Douglas Terry	doug@dougterrylaw.com

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,

Plaintiffs,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC., UNITED HEALTHCARE,  
INC.

Defendants.

Case No. A-19-788630-C

Dept. No. 4

**FINDINGS AND CONCLUSIONS AS TO**  
**ALLEGATIONS OF ATTORNEY MISCONDUCT**

Following an eleven-day trial, a jury found Defendant Sierra Health & Life Insurance Company (“SHL”) liable for breaching the duty of good faith and fair dealing and awarded \$40 million in compensatory damages and \$160 million in punitive damages to Plaintiff Sandra Eskew, who is proceeding individually and as Special Administrator of the Estate of William George Eskew. SHL filed a Motion for New Trial or Remittitur. The Court denied the motion.

As part of its Motion for New Trial, SHL asked for new trial based upon the allegation of attorney misconduct. With respect to the order denying SHL’s Motion for New Trial on the basis of alleged attorney misconduct, this Court makes express findings as a required by *Lioce v. Cohen*, 124 Nev. 1, 174 P.3d 970 (2008).

1. When a party makes a motion for a new trial on the basis of allegations of attorney misconduct at trial, the district court must apply the detailed, sliding-scale standard first articulated by the Nevada Supreme Court in *Lioce v. Cohen*, 124 Nev. at 16, 174 P.3d at 980. Under *Lioce*, when ruling on a motion for a new trial based on attorney misconduct, “district courts must make express factual findings.” *Id.*

1           2.       As this Court observed at the end of the trial, counsel for both parties conducted  
2 themselves with exemplary professionalism throughout the trial in this matter. *See App–2832*. This  
3 was not a trial marred by persistent misconduct or lapses in decorum. The record cannot support a  
4 finding of prejudicial misconduct. At trial, neither party conveyed a contrary view. Though both  
5 parties leveled ordinary courtroom objections to one another’s conduct, SHL raised only a few  
6 objections to Mrs. Eskew’s counsel’s conduct on misconduct grounds and did not seek a single  
7 curative admonishment.

8           3.       Only after the jury returned a verdict against it did SHL claim for the first time, in its  
9 post-trial briefing, that the trial was tainted by misconduct. SHL’s motion for a new trial quotes  
10 numerous statements from the trial out of context and attempts to portray them as attorney  
11 misconduct that undermined the trial. But after carefully considering each statement identified by  
12 SHL, based on its vantage point presiding over the entire trial, the Court is unable to find any  
13 instance of attorney misconduct, let alone misconduct that would warrant a new trial under the  
14 exacting prejudice standards outlined by the Nevada Supreme Court.

15           SHL’s motion identifies certain statements by Plaintiff’s counsel that SHL argues, taken  
16 individually or cumulatively, allegedly amount to misconduct warranting a new trial. These  
17 statements include:

- 18           • Plaintiff’s counsel stated “I will tell you, I have seen a lot in a courtroom. I have never  
19           seen a witness implode like Dr. Kumar.” *App. Vol. 11 (4/4 Tr.) at 2511.*
- 20           • Plaintiff’s counsel stated that a jury instruction was “remarkable to me.” *Id. at 2531.*
- 21           • Plaintiff’s counsel stated that “it’s remarkable to me that [SHL] would adopt policies and  
22           programs to violate the duty of good faith when they know if they give their best effort,  
23           we wouldn’t be here. That’s a statement of arrogance on their part.” *Id. at 2532.*
- 24           • Plaintiff’s counsel commented on “[w]hat I find remarkable” and “what I think is  
25           remarkable” about this case. *Id. at 2543, 2544.*
- 26           • Plaintiff’s counsel commented on what was “amazing[] to [him]” about the case. *Id. at*  
27           2545.  
28

- 1 • Plaintiff's counsel stated "I think that's tragic." *Id.* at 2543.
- 2 • Plaintiff's counsel stated "Mr. Terry and I . . . want you" to hold SHL liable and that "Mr.
- 3 Terry and I would put in" an award of \$30 million in compensatory damages when filling
- 4 out the verdict form. *Id.* at 2578.
- 5 • Plaintiff's counsel commented on alleged "hypocrisy" concerning proton beam therapy,
- 6 stating "it's breathtaking to me. The hypocrisy of that just knocks the wind out of me.
- 7 Sometimes I can't believe it. And the funny thing is, the part I'm just God smacked by—"
- 8 *Id.* at 2655.
- 9 • Plaintiff's counsel stated SHL was "speaking out of both sides of [its] mouth" about
- 10 proton beam therapy and told the jury: "I think it renders everything they say about that
- 11 topic unbelievable." *Id.* at 2655–56.
- 12 • Plaintiff's counsel stated "[s]o here's what we ask you to do. Check yes on No. 1 on the
- 13 verdict form. Write in \$30 million and do it with your chest stuck out proudly. Don't
- 14 hesitate. It's the right thing to do. We wouldn't ask you to do it if we weren't convinced
- 15 it was the right thing to do." *Id.* at 2692.
- 16 • Plaintiff's counsel asked if Ms. Eskew had been "lying" and suggested SHL's counsel
- 17 "called her a liar." *See* App. Vol. 7 (3/24 Tr.) at 1543.
- 18 • Plaintiff's counsel then stated "[s]o, Sandy, that guy just said that you have an incentive to
- 19 get on that stand and lie. How does that make you feel?" *Id.*
- 20 • Plaintiff's counsel stated "[s]o this incentive, this money incentive that these people are
- 21 accusing you of having to come here, do you think they have an incentive to come in here
- 22 and call the widow of Bill Eskew and his children liars[?]" *Id.* at 1547.
- 23 • Plaintiff's counsel stated "Did that incentive call you and BJ . . . and Tyler liars? . . . Right
- 24 here in the courthouse in front of people that you don't know?" *Id.*
- 25
- 26
- 27
- 28

- 1 • Plaintiff’s counsel stated “I never thought that an insurance company . . . would stoop to  
2 that, what happened in front of you, to call honest people liars.” App. Vol. 11 (4/4 Tr.) at  
3 2509.
- 4 • Plaintiff’s counsel stated that Ms. Eskew was “a 69-year-old woman” and that SHL’s  
5 counsel “haven’t been able to beat her down no matter what they do to her and her kids on  
6 the stand.” *Id.* at 2690.
- 7 • Plaintiff’s counsel told Shelean Sweet, SHL’s claims manager “to turn to the jury and say,  
8 on behalf of the utilization review manager for Sierra Health and Life, that you agree with  
9 their verdict.” App. Vol. 12 (4/5 Tr.) at 2778.
- 10 • Plaintiff’s counsel told Ms. Sweet to “turn to the jury and tell them that on behalf of Sierra  
11 Health and Life, as a utilization management director, whether or not you accept the  
12 amount?” *Id.* at 2778–79.
- 13 • Plaintiff’s counsel told Ms. Sweet that “[t]here was an amount of money that was awarded  
14 by this jury in the amount of \$40 million to Mr. Eskew for his compensatory  
15 damages . . . . [T]urn to that jury and tell them whether you accept that finding.” *Id.* at  
16 2779.

17  
18 The Court finds that none of the above statements amounts to attorney misconduct warranting  
19 a new trial under the standards set forth in *Lioce*.

20 **A. Nevada law places a heavy burden on objecting parties to establish that**  
21 **misconduct warrants a new trial.**

22 4. Nevada law permits a district court to grant a new trial based on a prevailing party’s  
23 misconduct only if the movant can show misconduct affecting its “substantial rights.” *Gunderson v.*  
24 *D.R. Horton, Inc.*, 130 Nev. 67, 74, 319 P.3d 606, 611 (2014). This requires showing that  
25 misconduct occurred. *See Id.* And in addition, “[t]o justify a new trial, as opposed to some other  
26 sanction, unfair prejudice affecting the reliability of the verdict must be shown.” *Bayerische*  
27 *Motoren Werke Aktiengesellschaft v. Roth*, 127 Nev. 122, 132–33, 252 P.3d 649, 656 (2011).

1           5.       As a general matter, counsel “enjoy[] wide latitude in arguing facts and drawing  
2 inferences from the evidence.” *Grosjean v. Imperial Palace*, 125 Nev. 349, 364, 212 P.3d 1068,  
3 1078 (2009). What they may not do is “make improper or inflammatory arguments that appeal  
4 solely to the emotions of the jury.” *Id.* Thus, statements “cross[] the line between advocacy and  
5 misconduct” when they “ask[] the jury to step outside the relevant facts” and reach a verdict based  
6 on its “emotions” rather than the evidence. *Cox v. Copperfield*, 138 Nev. Adv. Op. 27, 507 P.3d  
7 1216, 1227 (2022). An attorney’s argument may urge the jury to “send a message,” but it cannot ask  
8 the jury to “ignore the evidence.” *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 269, 396 P.3d  
9 783, 790 (2017).

10           6.       Even when a party engages in misconduct, whether that misconduct results in “unfair  
11 prejudice” warranting a new trial depends on the context in which the misconduct occurred. *Roth*,  
12 127 Nev. at 132–33, 252 P.3d at 656. Most importantly, it depends on whether the moving party  
13 “competently and timely” stated its objections and sought to correct “any potential prejudice.” *Lioce*,  
14 124 Nev. at 16, 174 P.3d at 980. That is because “the failure to object to allegedly prejudicial  
15 remarks at the time an argument is made . . . strongly indicates that the party moving for a new trial  
16 did not consider the arguments objectionable at the time they were delivered, but made that claim as  
17 an afterthought.” *Ringle v. Bruton*, 120 Nev. 82, 95, 86 P.3d 1032, 1040 (2004). Nor is simply  
18 objecting enough. Parties must also “promptly” request that the court admonish the offending  
19 counsel and the jury. *Gunderson*, 130 Nev. at 77, 319 P.3d at 613.

20           7.       The Supreme Court thus has adopted a sliding scale for assessing prejudice. When  
21 the moving party fails to object, it bears a particularly high burden: It must show “plain error”—that  
22 is, that the misconduct “amounted to irreparable and fundamental error” resulting “in a substantial  
23 impairment of justice or denial of fundamental rights,” such that “it is plain and clear that no other  
24 reasonable explanation for the verdict exists.” *Id.*, 130 Nev. at 75, 319 P.3d at 612. When, by  
25 contrast, the moving party *does* object, the question becomes what steps the party took to cure any  
26 prejudice. If the court sustained an objection and admonished counsel and the jury, the moving party  
27 must show that the misconduct was “so extreme that the objection and admonishment could not  
28 remove the misconduct’s effect.” *Lioce*, 124 Nev. at 17, 174 P.3d at 981. If the moving party never

sought an admonishment, it must instead show that the misconduct was “so extreme” that what did occur—objection and sustainment—“could not have removed the misconduct’s effect.” *Gunderson*, 130 Nev. at 77, 319 P.3d at 613. Meanwhile, if the moving party objected but its objection was overruled, it bears the burden of showing that it was error to overrule the objection and that an admonition would have affected the verdict in its favor. *Lioce*, 124 Nev. at 18, 174 P.3d at 981.

**B. Viewed in context, and applying the proper legal standards, none of counsel’s conduct constituted misconduct warranting a new trial.**

8. SHL points to three types of statements that it says amount to misconduct warranting a new trial. It says that counsel improperly injected their “personal beliefs into the proceedings,” improperly leveled personal “attack[s]” on SHL’s counsel, and improperly questioned one SHL witness. Counsel may not state “to the jury a personal opinion as to the justness of a cause, the credibility of a witness, or the culpability of a civil litigant.” *Lioce*, 124 Nev. at 21, 174 P.3d at 983. And they may not impugn parties or witnesses with a stream of offensive epithets. *See Born v. Eisenman*, 114 Nev. 854, 861–62, 962 P.2d 1227, 1231–32 (1998). In the Court’s view, counsel did not violate either of these proscriptions here.

**i. Counsel did not improperly state a personal opinion as to the justness of a cause, credibility of a witness, or culpability of a civil litigant when they observed that various facts were “remarkable” or “tragic.”**

9. Counsel did not offer a personal opinion as to the justness of a cause, credibility of a witness, or culpability of a civil litigant when they described Jury Instruction 24 as “remarkable.” App-2531. Instruction 24 explained to the jury that (1) an insurer is “not liable for bad faith for being incorrect about policy coverage as long as the insurer had a reasonable basis to take the position that it did” and (2) bad faith “requires an awareness that no reasonable basis exists to deny the insurance claims.” Jury Ins. No. 24. In calling the instruction “remarkable,” counsel was observing the relationship between the instruction and the evidence at trial: The instruction, they argued, did not set a high bar, yet the evidence showed SHL nevertheless fell short. App-2531–32. The remark thus was not a personal opinion on one of the prohibited topics at all. The Court finds that it was an inconsequential observation in the course of a detailed, fact bound explanation of why the evidence at trial reflected bad faith.



1           10. Nor did counsel offer such a prohibited personal opinion when, shortly thereafter,  
2 they described as “remarkable” which policies SHL had adopted in light of its obligations not to  
3 violate the duty of good faith. App-2532. The Court finds that the observation offered only mild  
4 emphasis as counsel explained the relationship of the evidence to the duty.

5           11. Counsel likewise did not offer an improper personal opinion when they remarked that  
6 it was “tragic” that a particular witness had not heard of the duty of good faith. App-2543. As  
7 above, this statement is not a personal opinion as to the justness of a cause, credibility of a witness,  
8 or culpability of a civil litigant. It was a stray observation on the extent of the witness’s knowledge.

9           12. Counsel did not offer an improper personal opinion when they said it was  
10 “remarkable” that SHL failed to put on a particular witness. App-2543–44. Like the statements  
11 above, the comment is not a personal opinion as to the justness of a cause, credibility of a witness, or  
12 culpability of a civil litigant. In context, the Court finds that it was an ordinary trial argument about  
13 the evidence that SHL decided to present at trial.

14           13. Counsel did not offer a personal opinion as to the justness of a cause, credibility of a  
15 witness, or culpability of a civil litigant when they used the adverb “amazingly” to characterize  
16 SHL’s lack of supervision over reviewers like Dr. Ahmad. App-2545. At most, the Court finds that  
17 the adverb was argumentative language deployed to characterize the evidence.

18           14. Even if any of the comments just listed could be deemed personal opinions as to the  
19 justness of a cause, credibility of a witness, or culpability of a civil litigant, they would not warrant a  
20 new trial. SHL did not object to a single one at trial—either contemporaneously or when the Court  
21 explicitly asked if the parties had any issues to raise outside the presence of the jury. *See App-*  
22 *2535–41*. They are thus reviewed for plain error.

23           15. There was no plain error here. There are “other reasonable explanation[s]” for the  
24 jury’s verdict, *Gunderson*, 130 Nev. at 75, 319 P.3d at 612, than the “few sentences” SHL identifies,  
25 *Cox*, 507 P.3d at 1228, because the evidence at trial, viewed in the light most favorable to Mrs.  
26 Eskew, was overwhelming. The jury heard evidence that SHL sold Mr. Eskew a platinum health  
27 insurance policy that expressly covered therapeutic radiation services like proton-beam therapy.  
28 App-1035–40, 1057. It heard evidence that Mr. Eskew’s doctor, a leading expert, determined that

1 proton-beam therapy was necessary to treat his lung cancer while sparing critical nearby organs.  
2 Liao Dep. 48–49, 69–75, 84–88; App-531–33, 539–40, 1067–68, 1106. But, the jury learned, SHL  
3 refused to approve the treatment, instead applying its corporate medical policy of refusing to  
4 approve proton-beam treatment for lung cancer in any circumstances. App-331–33, 813–18, 837–  
5 45. It sent Mr. Eskew’s claim to a reviewer who had no expertise in radiation oncology and who did  
6 not investigate his claim, instead taking only 12 minutes to deny it. App-247–48, 250, 319–21, 337–  
7 41, 463, 1083–84, 1114. SHL defended its policy on the ground that proton-beam therapy was not  
8 medically necessary, but the overwhelming evidence showed otherwise. *See* App-106, 116–17, 331–  
9 41 (SHL policy acknowledging benefits of PBT); App-660–61 (studies cited in SHL policies support  
10 use of PBT); App-720–22, 901–11 (SHL’s sister company operated a proton-beam therapy center).

11 16. The jury heard evidence that the IMRT treatment Mr. Eskew had to receive instead  
12 caused great harm to his physical and emotional health. It learned that the intensive radiation  
13 generated by IMRT caused “Grade III esophagitis”—meaning that Mr. Eskew spent the last months  
14 of his life weak, unable to eat or drink, vomiting daily, and losing weight or unable to keep it on.  
15 App-594–606, 680–83, 709–11, 719–20, 1203–08, 1256–58, 1324, 1401–13; Liao Dep. 76–77, 81–  
16 83, 155. And it learned that Mr. Eskew became withdrawn, isolated, and unhappy, unable to enjoy  
17 the company of his family or the activities he previously enjoyed. App-1200–02, 1256, 1259–60,  
18 1416–18, 1610.

19 17. The Court thus cannot find that the record supports SHL’s claim that counsel’s  
20 statements made a meaningful difference.

21 **ii. Counsel did not improperly state a personal opinion as to the justness of**  
22 **a cause, credibility of a witness, or culpability of a civil litigant when they**  
**invited the jury to consider SHL’s contradictory behavior.**

23 18. Counsel likewise did not state a personal opinion on a prohibited topic when they  
24 encouraged the jury to consider the hypocrisy in SHL’s behavior. App-2655. Counsel’s remarks  
25 arose in the context of a detailed, fact bound argument that, even while SHL took the position that  
26 proton-beam therapy for lung cancer was unproven and medically unnecessary, its sister company  
27 promoted the use of the treatment to avoid exactly the same complications Mr. Eskew experienced.  
28 App-2653–55. In describing this conduct as hypocritical, counsel was “invit[ing] the jury to consider

1 the contradiction” in SHL’s behavior. *Cox*, 507 P.3d at 1227. That “amount[s] to advocacy, not  
2 misconduct,” and does not “establish grounds for a new trial.” *Id.*

3 19. Towards the end of his delivery, counsel’s remarks edged towards excessive,  
4 unnecessarily personal rhetoric on this point. *See* App-2655. SHL objected and the Court sustained  
5 the objection. *Id.* But SHL did not request an admonishment, so the statements are reviewed for  
6 whether the misconduct was so extreme that objection and sustainment could not have removed any  
7 prejudicial effect. *See Gunderson*, 130 Nev. at 77, 319 P.3d at 613. And viewed in context, the  
8 Court finds that the statements fall far below this bar. Immediately following the Court’s  
9 sustainment, Mrs. Eskew’s counsel corrected his emphasis, explaining that his point was not  
10 personal at all, but rather about what would be “unbelievable to somebody listening.” App-2655.  
11 Sustainment thus easily removed any prejudicial effect.

12 20. That is especially so because not only did counsel correct himself, but the jury was  
13 explicitly instructed that counsel’s statements, arguments, and opinions were not evidence and that it  
14 should disregard evidence to which an objection was sustained. Jury Ins. No. 8. Juries  
15 presumptively follow such instructions, *Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783  
16 (2006), and a sustained objection under these circumstances generally precludes a finding of  
17 prejudice, *see Walker v. State*, 78 Nev. 463, 467–68, 376 P.2d 137, 139 (1962).

18 **iii. Counsel did not improperly state a personal opinion as to the justness of**  
19 **a cause, credibility of a witness, or culpability of a civil litigant when they**  
20 **described Dr. Parvesh Kumar’s testimony.**

21 21. Counsel’s statements concerning Dr. Parvesh Kumar’s testimony during closing are  
22 also not improper personal opinions. In describing the testimony, counsel’s argument was that the  
23 jury should reject Dr. Kumar’s testimony because he was not the subject-matter expert he and SHL  
24 both held him out to be. App-2511. In addition, although counsel at one point compared Dr. Kumar  
25 to other witnesses he had observed, his argument remained about how the *jury* should assess Dr.  
Kumar’s credibility, not about how counsel personally did so.

26 22. Counsel’s statements thus are far afield from the sorts of statements Nevada courts  
27 have held amount to prohibited personal opinions. Those statements typically ask jurors to “step  
28 outside the relevant facts” and instead reach a verdict based on their emotions. *Cox*, 507 P.3d at

1 1227 (statements were improper “because they asked the jury to step outside the relevant facts” and  
2 hold a party not liable because of its bad motivations; while statements that simply invited the jury  
3 to consider the contradiction between different statements were not improper personal opinions);  
4 *Grosjean*, 125 Nev. at 368–69, 212 P.3d at 1081–82 (attorney committed misconduct by appealing  
5 to jury’s emotions rather than facts in evidence); *Lioce*, 124 Nev. at 21–22, 174 P.3d at 983–84  
6 (attorney committed misconduct by calling a plaintiff’s case frivolous and worthless). Here, by  
7 contrast, counsel’s statements were closely tied to and about the evidence the jury did see—that Dr.  
8 Kumar could not “uphold the opinions he gave.” App-2512.

9 23. Even if these statements amounted to misconduct, they would not warrant a new trial.  
10 Because SHL failed to object to them, they are reviewed for plain error. And it is not “plain and  
11 clear that no other reasonable explanation for the verdict exists.” *Gunderson*, 130 Nev. at 75, 319  
12 P.3d at 612. As above, the strong evidence supporting the plaintiff’s case easily supplies that  
13 explanation, and the Court finds no reason to conclude that counsel’s characterization of one  
14 witness’s testimony made a difference to the jury.

15 **iv. Counsel did not improperly state a personal opinion as to the justness of**  
16 **a cause, credibility of a witness, or culpability of a civil litigant when they**  
17 **discussed the verdict form.**

18 24. Counsel’s statements concerning the verdict the jury should reach also do not amount  
19 to a prohibited personal opinion. SHL contends that counsel committed misconduct by stating that  
20 they would not request a particular award if they were not “convinced” it was “the right thing to do.”  
21 App-2692. SHL’s argument is that this comment conveyed an impermissible, moralistic  
22 commentary on the evidence. But, viewed in context, the statement is just as easily understood as  
23 telling the jury that the requested verdict was the right thing to do according to the law as embodied  
24 in the Court’s instructions and the evidence at trial.

25 25. In any event, even if the statement amounts to a personal opinion, the Court cannot  
26 find that the record reflects any prejudice. Although SHL leveled a successful objection to the  
27 comments, it did not seek an admonishment, and so the statement is reviewed for whether the  
28 misconduct was so extreme that objection and sustainment could not have removed any prejudicial  
effect. *See Gunderson*, 130 Nev. at 77, 319 P.3d at 613. The record does not meet this standard.

1 Nothing about the comment was “extreme,” and, in any event, counsel again promptly corrected any  
2 impression that they were conveying a personal opinion: Following objection and sustainment,  
3 counsel emphasized that the argument was about what the jury should do, not what counsel thought.  
4 *See* App-2692 (“It’s the right thing to do.”). Thus, if there was any prejudicial effect here, it was  
5 modest in light of the powerful evidence on the plaintiff’s case, and it was immediately cured.  
6 Accordingly, the comment does not warrant a new trial.

7                   **v.       Counsel did not level improper personal attacks, and even if they had, a**  
8                   **new trial would not be warranted.**

9           26.     SHL also contends that Mrs. Eskew’s counsel committed misconduct because they  
10 “falsely accused” SHL’s counsel “of calling Mrs. Eskew a liar.” The Court finds that the record  
11 does not support either SHL’s version of the facts or the conclusion it draws from them.

12           27.     The statements that SHL identifies were not meaningfully false, because the  
13 company’s strategy at trial was to impugn the Eskews’ motivations and to cast doubt on the  
14 truthfulness of their testimony. *See* App-1448–49 (suggesting testimony was driven by what was  
15 “helpful for your case” rather than the truth); App-1489–90 (asking for agreement that “memories  
16 can sometimes fade” or be “influenced” because people can have “an intent to say certain things, a  
17 reason, a motive”); *see also* App-1221–24, 1239–43, 1342, 1346–52, 1484–1526, 1529–41. At trial,  
18 witnesses and the parties understood this to be SHL’s argument. *See, e.g.,* App-1549–50 (Q: “And  
19 you would agree that [the monetary recovery in this case provides] an incentive for you to say what  
20 you’re saying; correct?” A: “No. I did not lie.”). Indeed, at a break, when plaintiff’s counsel noted  
21 that SHL was suggesting that Mrs. Eskew was “lying or magnifying her problems,” counsel for SHL  
22 agreed: “And yes, obviously it’s my client’s position that it shouldn’t be a surprise to anyone in this  
23 room that Mrs. Eskew is embellishing on her husband’s condition.” App-1458–59; *see also* App-  
24 1460 (claiming the “right” to “cross-examine and challenge whether or not she is being accurate and  
25 truthful”).

26           28.     SHL objects that the statements are “improper” because the company only “implied”  
27 that the Eskews were lying and that Mrs. Eskew’s counsel exaggerated the effect. But Nevada law  
28 does not hold that an exaggerated characterization of counsel’s arguments or conduct is improper at

1 all, let alone so improper as to amount to misconduct. The only supportive authority SHL identifies  
2 concerns “abusive language,” “derogatory remarks,” and offensive epithets. *See Born*, 114 Nev. at  
3 861–62, 962 P.2d at 1231–32 (counsel engaged in repeated, incendiary outbursts, including  
4 describing opposing counsel and witnesses with offensive epithets in the jury’s hearing and  
5 exclaiming that requests for a sidebar were “outrageous”); *Fineman v. Armstrong World Indus., Inc.*,  
6 774 F. Supp. 266, 272 (D.N.J. 1991) (closing argument focused on claims that “counsel had lied to  
7 the jury, had suborned perjury from witnesses (flavoring these comments with [] titillating remarks  
8 . . . ), and had done it for money”). Nothing like that happened here. And the cases have no bearing  
9 on the propriety of one counsel’s commenting on another’s behavior in questioning a witness.

10         29. Even if counsel’s remarks could amount to misconduct, they were not prejudicial.  
11 SHL made only one objection on these grounds and never sought an admonishment. But that  
12 objection, and the Court’s decision to sustain it, was more than sufficient to cure any possible  
13 prejudice. Following the objection, counsel immediately and plainly clarified his meaning—that  
14 SHL had at minimum suggested that Mrs. Eskew was “embellishing” what happened to her. App-  
15 2509. SHL says it made a second objection, but that objection, viewed in context, went to a different  
16 issue—whether there was evidence supporting Mrs. Eskew’s argument that SHL had not been able  
17 to dissuade Mrs. Eskew from pursuing her case. *See App-2690*. In any event, the Court finds no  
18 reason in the record to treat either objection and its sustainment as inadequate to remove any modest  
19 prejudicial effect that could have resulted.

20         30. SHL also argues that counsel’s conduct was improper because it violated a motion in  
21 limine excluding evidence, argument, or testimony relating to litigation conduct. But that motion in  
22 limine was issued for an unrelated reason: to bar the parties from introducing evidence or argument  
23 concerning litigation conduct during the discovery process. And in any event, SHL failed to object  
24 to any of Mrs. Eskew’s counsel’s conduct on these grounds. *See Roth*, 127 Nev. at 136–38, 252  
25 P.3d at 658–59 (parties are obligated to make “contemporaneous objections to claimed violations of  
26 an order produced by a motion in limine . . . to prevent litigants from wasting judicial, party, and  
27 citizen-juror resources”). It thus waived any objection except in an instance of plain error, which the  
28 Court cannot find. *See Id.*

1                    **vi. Counsel’s questioning of SHL’s witness was not misconduct warranting a**  
2                    **new trial.**

3                    31. SHL also argues that Mrs. Eskew’s counsel committed misconduct when they  
4 questioned SHL’s director of pre-service reviews during the damages phase. According to SHL,  
5 their questioning amounted to a “blatant and shocking violation” of the “norms” of American law.  
6 The Court finds otherwise. During the challenged questioning, SHL’s director testified that, in  
7 response to the jury’s verdict, the company was going to begin offering annual training on the duty  
8 of good faith and fair dealing. App-2774–75. To examine whether the company was as contrite as  
9 she suggested, counsel for Mrs. Eskew urged the director to tell the jury her true view of its verdict.  
10 App-2778–79. SHL takes issue with that question because it says the question was given as a  
11 “command” and was therefore “demeaning” and necessarily improper. The Court finds no reason to  
12 agree. It is not misconduct to phrase a question as a statement rather than a question, especially in  
13 the context in which this exchange arose. SHL has offered no authority to the contrary.

14                    32. SHL did not object on these grounds at trial, saying only that the “form” of the  
15 question was “too broad.” App-2779. And even then, it did not request an admonishment. *Id.* In any  
16 event, even if reviewed for whether an admonishment could have changed the verdict, the record  
17 here leaves no reason to conclude that this line of questioning had any impact, let alone that it  
18 warrants a new trial.

19                    **C. Cumulative review of counsel’s conduct makes no difference.**

20                    33. SHL urges the Court to weigh its assorted misconduct claims together and conclude  
21 that even if they were not individually prejudicial misconduct, they rise to that level as a whole. But  
22 however SHL’s allegations are weighed, the Court can find no basis to grant a new trial.

23                    34. The Court finds that SHL cannot meet the standard that applies to grant a new trial  
24 “based on the cumulative effect of attorney misconduct.” *Gunderson*, 130 Nev. at 78, 319 P.3d at  
25 614. To obtain that result, a party “must demonstrate that no other reasonable explanation for the  
26 verdict exists.” *Id.* That generally requires identifying “multiple severe instances of attorney  
27 misconduct as determined by their context.” *Id.* Yet as explained above, in the context of this trial,  
28 the Court cannot find that SHL has identified a single “severe instance[]” of attorney misconduct.  
*Id.* At best, it has pointed to a smattering of rhetorical and hyperbolic comments that pale in

1 comparison to the extensive evidence marshaled at trial. In the Court’s view, the “scope, nature, and  
2 quantity” of this alleged misconduct had no appreciable impact on the “verdict’s reliability.” *Id.*  
3 The handful of assorted statements SHL has identified thus fall far short of explaining the jury’s  
4 verdict.

5 35. The Court is particularly inclined to reach that finding in light of SHL’s failure to  
6 object to the lion’s share of the asserted misconduct—and, where it did object, to even once seek an  
7 admonishment. While it is true that counsel are not required to repeat objections that have already  
8 been made and sustained and failed to change counsel’s behavior, *see Lioce*, 124 Nev. at 18, 174  
9 P.3d at 981, it is equally true that the failure to object “strongly indicates that the party moving for a  
10 new trial did not consider the arguments objectionable at the time they were delivered, but made that  
11 claim as an afterthought,” *Ringle*, 120 Nev. at 95, 86 P.3d at 1040. The Court finds that the record  
12 in this case is more consistent with the latter concern than the former, and thus undermines any  
13 inference that SHL would have been penalized for objecting or requesting admonishments.

14 For the foregoing reasons, the above findings and conclusions are hereby ENTERED.

15  
16 Dated this 24th day of October, 2022

17 

18 43A B64 EC33 3CFB  
19 Nadia Krall  
20 District Court Judge  
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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the  
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
15 case as listed below:

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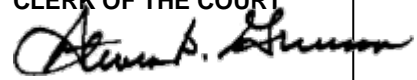
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**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,  
  
Plaintiffs,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.,  
  
Defendant.

Case No. A-19-788630-C

Dept. No. 4

**NOTICE OF ENTRY OF FINDINGS AND CONCLUSIONS AS TO ALLEGATIONS OF**  
**ATTORNEY MISCONDUCT**

PLEASE TAKE NOTICE that the Findings and Conclusions as to Allegations of Attorney  
Misconduct was filed herein on October 24, 2022, in the above-captioned matter.

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1 A copy of the Findings and Conclusions as to Allegations of Attorney Misconduct is attached  
2 hereto as Exhibit 1.

3 DATED this 24<sup>th</sup> day of October 2022.

4 MATTHEW L. SHARP, LTD.

5  
6 /s/ Matthew L. Sharp  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Matthew L. Sharp, Ltd., and that on this date, a true  
3 and correct copy of the foregoing was electronically filed and served on counsel through the Court's  
4 electronic service system pursuant to Administrative Order 14-2 and NEFCR 9, via the electronic mail  
5 address noted below:

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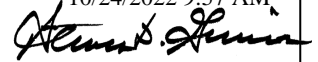
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12 *Attorneys for Defendants*

13 DATED this 24<sup>th</sup> day of October 2022.

14  
15  
16 /s/ Suzy Thompson  
An employee of Matthew L. Sharp, Ltd.

# EXHIBIT 1

  
CLERK OF THE COURT

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

SANDRA L. ESKEW, as Special  
Administrator of the Estate of  
William George Eskew,

Plaintiffs,

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC., UNITED HEALTHCARE,  
INC.

Defendants.

Case No. A-19-788630-C

Dept. No. 4

**FINDINGS AND CONCLUSIONS AS TO**  
**ALLEGATIONS OF ATTORNEY MISCONDUCT**

Following an eleven-day trial, a jury found Defendant Sierra Health & Life Insurance Company (“SHL”) liable for breaching the duty of good faith and fair dealing and awarded \$40 million in compensatory damages and \$160 million in punitive damages to Plaintiff Sandra Eskew, who is proceeding individually and as Special Administrator of the Estate of William George Eskew. SHL filed a Motion for New Trial or Remittitur. The Court denied the motion.

As part of its Motion for New Trial, SHL asked for new trial based upon the allegation of attorney misconduct. With respect to the order denying SHL’s Motion for New Trial on the basis of alleged attorney misconduct, this Court makes express findings as a required by *Lioce v. Cohen*, 124 Nev. 1, 174 P.3d 970 (2008).

1. When a party makes a motion for a new trial on the basis of allegations of attorney misconduct at trial, the district court must apply the detailed, sliding-scale standard first articulated by the Nevada Supreme Court in *Lioce v. Cohen*, 124 Nev. at 16, 174 P.3d at 980. Under *Lioce*, when ruling on a motion for a new trial based on attorney misconduct, “district courts must make express factual findings.” *Id.*

1           2.       As this Court observed at the end of the trial, counsel for both parties conducted  
2 themselves with exemplary professionalism throughout the trial in this matter. *See App–2832*. This  
3 was not a trial marred by persistent misconduct or lapses in decorum. The record cannot support a  
4 finding of prejudicial misconduct. At trial, neither party conveyed a contrary view. Though both  
5 parties leveled ordinary courtroom objections to one another’s conduct, SHL raised only a few  
6 objections to Mrs. Eskew’s counsel’s conduct on misconduct grounds and did not seek a single  
7 curative admonishment.

8           3.       Only after the jury returned a verdict against it did SHL claim for the first time, in its  
9 post-trial briefing, that the trial was tainted by misconduct. SHL’s motion for a new trial quotes  
10 numerous statements from the trial out of context and attempts to portray them as attorney  
11 misconduct that undermined the trial. But after carefully considering each statement identified by  
12 SHL, based on its vantage point presiding over the entire trial, the Court is unable to find any  
13 instance of attorney misconduct, let alone misconduct that would warrant a new trial under the  
14 exacting prejudice standards outlined by the Nevada Supreme Court.

15           SHL’s motion identifies certain statements by Plaintiff’s counsel that SHL argues, taken  
16 individually or cumulatively, allegedly amount to misconduct warranting a new trial. These  
17 statements include:

- 18           • Plaintiff’s counsel stated “I will tell you, I have seen a lot in a courtroom. I have never  
19           seen a witness implode like Dr. Kumar.” *App. Vol. 11 (4/4 Tr.) at 2511*.
- 20           • Plaintiff’s counsel stated that a jury instruction was “remarkable to me.” *Id. at 2531*.
- 21           • Plaintiff’s counsel stated that “it’s remarkable to me that [SHL] would adopt policies and  
22           programs to violate the duty of good faith when they know if they give their best effort,  
23           we wouldn’t be here. That’s a statement of arrogance on their part.” *Id. at 2532*.
- 24           • Plaintiff’s counsel commented on “[w]hat I find remarkable” and “what I think is  
25           remarkable” about this case. *Id. at 2543, 2544*.
- 26           • Plaintiff’s counsel commented on what was “amazing[] to [him]” about the case. *Id. at*  
27           2545.



- 1 • Plaintiff's counsel stated "I think that's tragic." *Id.* at 2543.
- 2 • Plaintiff's counsel stated "Mr. Terry and I . . . want you" to hold SHL liable and that "Mr.
- 3 Terry and I would put in" an award of \$30 million in compensatory damages when filling
- 4 out the verdict form. *Id.* at 2578.
- 5 • Plaintiff's counsel commented on alleged "hypocrisy" concerning proton beam therapy,
- 6 stating "it's breathtaking to me. The hypocrisy of that just knocks the wind out of me.
- 7 Sometimes I can't believe it. And the funny thing is, the part I'm just God smacked by—"
- 8 *Id.* at 2655.
- 9 • Plaintiff's counsel stated SHL was "speaking out of both sides of [its] mouth" about
- 10 proton beam therapy and told the jury: "I think it renders everything they say about that
- 11 topic unbelievable." *Id.* at 2655–56.
- 12 • Plaintiff's counsel stated "[s]o here's what we ask you to do. Check yes on No. 1 on the
- 13 verdict form. Write in \$30 million and do it with your chest stuck out proudly. Don't
- 14 hesitate. It's the right thing to do. We wouldn't ask you to do it if we weren't convinced
- 15 it was the right thing to do." *Id.* at 2692.
- 16 • Plaintiff's counsel asked if Ms. Eskew had been "lying" and suggested SHL's counsel
- 17 "called her a liar." *See* App. Vol. 7 (3/24 Tr.) at 1543.
- 18 • Plaintiff's counsel then stated "[s]o, Sandy, that guy just said that you have an incentive to
- 19 get on that stand and lie. How does that make you feel?" *Id.*
- 20 • Plaintiff's counsel stated "[s]o this incentive, this money incentive that these people are
- 21 accusing you of having to come here, do you think they have an incentive to come in here
- 22 and call the widow of Bill Eskew and his children liars[?]" *Id.* at 1547.
- 23 • Plaintiff's counsel stated "Did that incentive call you and BJ . . . and Tyler liars? . . . Right
- 24 here in the courthouse in front of people that you don't know?" *Id.*
- 25
- 26
- 27
- 28

- 1 • Plaintiff’s counsel stated “I never thought that an insurance company . . . would stoop to  
2 that, what happened in front of you, to call honest people liars.” App. Vol. 11 (4/4 Tr.) at  
3 2509.
- 4 • Plaintiff’s counsel stated that Ms. Eskew was “a 69-year-old woman” and that SHL’s  
5 counsel “haven’t been able to beat her down no matter what they do to her and her kids on  
6 the stand.” *Id.* at 2690.
- 7 • Plaintiff’s counsel told Shelean Sweet, SHL’s claims manager “to turn to the jury and say,  
8 on behalf of the utilization review manager for Sierra Health and Life, that you agree with  
9 their verdict.” App. Vol. 12 (4/5 Tr.) at 2778.
- 10 • Plaintiff’s counsel told Ms. Sweet to “turn to the jury and tell them that on behalf of Sierra  
11 Health and Life, as a utilization management director, whether or not you accept the  
12 amount?” *Id.* at 2778–79.
- 13 • Plaintiff’s counsel told Ms. Sweet that “[t]here was an amount of money that was awarded  
14 by this jury in the amount of \$40 million to Mr. Eskew for his compensatory  
15 damages . . . . [T]urn to that jury and tell them whether you accept that finding.” *Id.* at  
16 2779.

17  
18 The Court finds that none of the above statements amounts to attorney misconduct warranting  
19 a new trial under the standards set forth in *Lioce*.

20 **A. Nevada law places a heavy burden on objecting parties to establish that**  
21 **misconduct warrants a new trial.**

22 4. Nevada law permits a district court to grant a new trial based on a prevailing party’s  
23 misconduct only if the movant can show misconduct affecting its “substantial rights.” *Gunderson v.*  
24 *D.R. Horton, Inc.*, 130 Nev. 67, 74, 319 P.3d 606, 611 (2014). This requires showing that  
25 misconduct occurred. *See Id.* And in addition, “[t]o justify a new trial, as opposed to some other  
26 sanction, unfair prejudice affecting the reliability of the verdict must be shown.” *Bayerische*  
27 *Motoren Werke Aktiengesellschaft v. Roth*, 127 Nev. 122, 132–33, 252 P.3d 649, 656 (2011).

1           5.       As a general matter, counsel “enjoy[] wide latitude in arguing facts and drawing  
2 inferences from the evidence.” *Grosjean v. Imperial Palace*, 125 Nev. 349, 364, 212 P.3d 1068,  
3 1078 (2009). What they may not do is “make improper or inflammatory arguments that appeal  
4 solely to the emotions of the jury.” *Id.* Thus, statements “cross[] the line between advocacy and  
5 misconduct” when they “ask[] the jury to step outside the relevant facts” and reach a verdict based  
6 on its “emotions” rather than the evidence. *Cox v. Copperfield*, 138 Nev. Adv. Op. 27, 507 P.3d  
7 1216, 1227 (2022). An attorney’s argument may urge the jury to “send a message,” but it cannot ask  
8 the jury to “ignore the evidence.” *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 269, 396 P.3d  
9 783, 790 (2017).

10           6.       Even when a party engages in misconduct, whether that misconduct results in “unfair  
11 prejudice” warranting a new trial depends on the context in which the misconduct occurred. *Roth*,  
12 127 Nev. at 132–33, 252 P.3d at 656. Most importantly, it depends on whether the moving party  
13 “competently and timely” stated its objections and sought to correct “any potential prejudice.” *Lioce*,  
14 124 Nev. at 16, 174 P.3d at 980. That is because “the failure to object to allegedly prejudicial  
15 remarks at the time an argument is made . . . strongly indicates that the party moving for a new trial  
16 did not consider the arguments objectionable at the time they were delivered, but made that claim as  
17 an afterthought.” *Ringle v. Bruton*, 120 Nev. 82, 95, 86 P.3d 1032, 1040 (2004). Nor is simply  
18 objecting enough. Parties must also “promptly” request that the court admonish the offending  
19 counsel and the jury. *Gunderson*, 130 Nev. at 77, 319 P.3d at 613.

20           7.       The Supreme Court thus has adopted a sliding scale for assessing prejudice. When  
21 the moving party fails to object, it bears a particularly high burden: It must show “plain error”—that  
22 is, that the misconduct “amounted to irreparable and fundamental error” resulting “in a substantial  
23 impairment of justice or denial of fundamental rights,” such that “it is plain and clear that no other  
24 reasonable explanation for the verdict exists.” *Id.*, 130 Nev. at 75, 319 P.3d at 612. When, by  
25 contrast, the moving party *does* object, the question becomes what steps the party took to cure any  
26 prejudice. If the court sustained an objection and admonished counsel and the jury, the moving party  
27 must show that the misconduct was “so extreme that the objection and admonishment could not  
28 remove the misconduct’s effect.” *Lioce*, 124 Nev. at 17, 174 P.3d at 981. If the moving party never

sought an admonishment, it must instead show that the misconduct was “so extreme” that what did occur—objection and sustainment—“could not have removed the misconduct’s effect.” *Gunderson*, 130 Nev. at 77, 319 P.3d at 613. Meanwhile, if the moving party objected but its objection was overruled, it bears the burden of showing that it was error to overrule the objection and that an admonition would have affected the verdict in its favor. *Lioce*, 124 Nev. at 18, 174 P.3d at 981.

**B. Viewed in context, and applying the proper legal standards, none of counsel’s conduct constituted misconduct warranting a new trial.**

8. SHL points to three types of statements that it says amount to misconduct warranting a new trial. It says that counsel improperly injected their “personal beliefs into the proceedings,” improperly leveled personal “attack[s]” on SHL’s counsel, and improperly questioned one SHL witness. Counsel may not state “to the jury a personal opinion as to the justness of a cause, the credibility of a witness, or the culpability of a civil litigant.” *Lioce*, 124 Nev. at 21, 174 P.3d at 983. And they may not impugn parties or witnesses with a stream of offensive epithets. *See Born v. Eisenman*, 114 Nev. 854, 861–62, 962 P.2d 1227, 1231–32 (1998). In the Court’s view, counsel did not violate either of these proscriptions here.

**i. Counsel did not improperly state a personal opinion as to the justness of a cause, credibility of a witness, or culpability of a civil litigant when they observed that various facts were “remarkable” or “tragic.”**

9. Counsel did not offer a personal opinion as to the justness of a cause, credibility of a witness, or culpability of a civil litigant when they described Jury Instruction 24 as “remarkable.” App-2531. Instruction 24 explained to the jury that (1) an insurer is “not liable for bad faith for being incorrect about policy coverage as long as the insurer had a reasonable basis to take the position that it did” and (2) bad faith “requires an awareness that no reasonable basis exists to deny the insurance claims.” Jury Ins. No. 24. In calling the instruction “remarkable,” counsel was observing the relationship between the instruction and the evidence at trial: The instruction, they argued, did not set a high bar, yet the evidence showed SHL nevertheless fell short. App-2531–32. The remark thus was not a personal opinion on one of the prohibited topics at all. The Court finds that it was an inconsequential observation in the course of a detailed, fact bound explanation of why the evidence at trial reflected bad faith.

1           10. Nor did counsel offer such a prohibited personal opinion when, shortly thereafter,  
2 they described as “remarkable” which policies SHL had adopted in light of its obligations not to  
3 violate the duty of good faith. App-2532. The Court finds that the observation offered only mild  
4 emphasis as counsel explained the relationship of the evidence to the duty.

5           11. Counsel likewise did not offer an improper personal opinion when they remarked that  
6 it was “tragic” that a particular witness had not heard of the duty of good faith. App-2543. As  
7 above, this statement is not a personal opinion as to the justness of a cause, credibility of a witness,  
8 or culpability of a civil litigant. It was a stray observation on the extent of the witness’s knowledge.

9           12. Counsel did not offer an improper personal opinion when they said it was  
10 “remarkable” that SHL failed to put on a particular witness. App-2543–44. Like the statements  
11 above, the comment is not a personal opinion as to the justness of a cause, credibility of a witness, or  
12 culpability of a civil litigant. In context, the Court finds that it was an ordinary trial argument about  
13 the evidence that SHL decided to present at trial.

14           13. Counsel did not offer a personal opinion as to the justness of a cause, credibility of a  
15 witness, or culpability of a civil litigant when they used the adverb “amazingly” to characterize  
16 SHL’s lack of supervision over reviewers like Dr. Ahmad. App-2545. At most, the Court finds that  
17 the adverb was argumentative language deployed to characterize the evidence.

18           14. Even if any of the comments just listed could be deemed personal opinions as to the  
19 justness of a cause, credibility of a witness, or culpability of a civil litigant, they would not warrant a  
20 new trial. SHL did not object to a single one at trial—either contemporaneously or when the Court  
21 explicitly asked if the parties had any issues to raise outside the presence of the jury. *See App-*  
22 *2535–41*. They are thus reviewed for plain error.

23           15. There was no plain error here. There are “other reasonable explanation[s]” for the  
24 jury’s verdict, *Gunderson*, 130 Nev. at 75, 319 P.3d at 612, than the “few sentences” SHL identifies,  
25 *Cox*, 507 P.3d at 1228, because the evidence at trial, viewed in the light most favorable to Mrs.  
26 Eskew, was overwhelming. The jury heard evidence that SHL sold Mr. Eskew a platinum health  
27 insurance policy that expressly covered therapeutic radiation services like proton-beam therapy.  
28 App-1035–40, 1057. It heard evidence that Mr. Eskew’s doctor, a leading expert, determined that

1 proton-beam therapy was necessary to treat his lung cancer while sparing critical nearby organs.  
2 Liao Dep. 48–49, 69–75, 84–88; App-531–33, 539–40, 1067–68, 1106. But, the jury learned, SHL  
3 refused to approve the treatment, instead applying its corporate medical policy of refusing to  
4 approve proton-beam treatment for lung cancer in any circumstances. App-331–33, 813–18, 837–  
5 45. It sent Mr. Eskew’s claim to a reviewer who had no expertise in radiation oncology and who did  
6 not investigate his claim, instead taking only 12 minutes to deny it. App-247–48, 250, 319–21, 337–  
7 41, 463, 1083–84, 1114. SHL defended its policy on the ground that proton-beam therapy was not  
8 medically necessary, but the overwhelming evidence showed otherwise. *See* App-106, 116–17, 331–  
9 41 (SHL policy acknowledging benefits of PBT); App-660–61 (studies cited in SHL policies support  
10 use of PBT); App-720–22, 901–11 (SHL’s sister company operated a proton-beam therapy center).

11 16. The jury heard evidence that the IMRT treatment Mr. Eskew had to receive instead  
12 caused great harm to his physical and emotional health. It learned that the intensive radiation  
13 generated by IMRT caused “Grade III esophagitis”—meaning that Mr. Eskew spent the last months  
14 of his life weak, unable to eat or drink, vomiting daily, and losing weight or unable to keep it on.  
15 App-594–606, 680–83, 709–11, 719–20, 1203–08, 1256–58, 1324, 1401–13; Liao Dep. 76–77, 81–  
16 83, 155. And it learned that Mr. Eskew became withdrawn, isolated, and unhappy, unable to enjoy  
17 the company of his family or the activities he previously enjoyed. App-1200–02, 1256, 1259–60,  
18 1416–18, 1610.

19 17. The Court thus cannot find that the record supports SHL’s claim that counsel’s  
20 statements made a meaningful difference.

21 **ii. Counsel did not improperly state a personal opinion as to the justness of**  
22 **a cause, credibility of a witness, or culpability of a civil litigant when they**  
**invited the jury to consider SHL’s contradictory behavior.**

23 18. Counsel likewise did not state a personal opinion on a prohibited topic when they  
24 encouraged the jury to consider the hypocrisy in SHL’s behavior. App-2655. Counsel’s remarks  
25 arose in the context of a detailed, fact bound argument that, even while SHL took the position that  
26 proton-beam therapy for lung cancer was unproven and medically unnecessary, its sister company  
27 promoted the use of the treatment to avoid exactly the same complications Mr. Eskew experienced.  
28 App-2653–55. In describing this conduct as hypocritical, counsel was “invit[ing] the jury to consider

1 the contradiction” in SHL’s behavior. *Cox*, 507 P.3d at 1227. That “amount[s] to advocacy, not  
2 misconduct,” and does not “establish grounds for a new trial.” *Id.*

3 19. Towards the end of his delivery, counsel’s remarks edged towards excessive,  
4 unnecessarily personal rhetoric on this point. *See* App-2655. SHL objected and the Court sustained  
5 the objection. *Id.* But SHL did not request an admonishment, so the statements are reviewed for  
6 whether the misconduct was so extreme that objection and sustainment could not have removed any  
7 prejudicial effect. *See Gunderson*, 130 Nev. at 77, 319 P.3d at 613. And viewed in context, the  
8 Court finds that the statements fall far below this bar. Immediately following the Court’s  
9 sustainment, Mrs. Eskew’s counsel corrected his emphasis, explaining that his point was not  
10 personal at all, but rather about what would be “unbelievable to somebody listening.” App-2655.  
11 Sustainment thus easily removed any prejudicial effect.

12 20. That is especially so because not only did counsel correct himself, but the jury was  
13 explicitly instructed that counsel’s statements, arguments, and opinions were not evidence and that it  
14 should disregard evidence to which an objection was sustained. Jury Ins. No. 8. Juries  
15 presumptively follow such instructions, *Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783  
16 (2006), and a sustained objection under these circumstances generally precludes a finding of  
17 prejudice, *see Walker v. State*, 78 Nev. 463, 467–68, 376 P.2d 137, 139 (1962).

18 **iii. Counsel did not improperly state a personal opinion as to the justness of**  
19 **a cause, credibility of a witness, or culpability of a civil litigant when they**  
20 **described Dr. Parvesh Kumar’s testimony.**

21 21. Counsel’s statements concerning Dr. Parvesh Kumar’s testimony during closing are  
22 also not improper personal opinions. In describing the testimony, counsel’s argument was that the  
23 jury should reject Dr. Kumar’s testimony because he was not the subject-matter expert he and SHL  
24 both held him out to be. App-2511. In addition, although counsel at one point compared Dr. Kumar  
25 to other witnesses he had observed, his argument remained about how the *jury* should assess Dr.  
Kumar’s credibility, not about how counsel personally did so.

26 22. Counsel’s statements thus are far afield from the sorts of statements Nevada courts  
27 have held amount to prohibited personal opinions. Those statements typically ask jurors to “step  
28 outside the relevant facts” and instead reach a verdict based on their emotions. *Cox*, 507 P.3d at

1 1227 (statements were improper “because they asked the jury to step outside the relevant facts” and  
2 hold a party not liable because of its bad motivations; while statements that simply invited the jury  
3 to consider the contradiction between different statements were not improper personal opinions);  
4 *Grosjean*, 125 Nev. at 368–69, 212 P.3d at 1081–82 (attorney committed misconduct by appealing  
5 to jury’s emotions rather than facts in evidence); *Lioce*, 124 Nev. at 21–22, 174 P.3d at 983–84  
6 (attorney committed misconduct by calling a plaintiff’s case frivolous and worthless). Here, by  
7 contrast, counsel’s statements were closely tied to and about the evidence the jury did see—that Dr.  
8 Kumar could not “uphold the opinions he gave.” App-2512.

9 23. Even if these statements amounted to misconduct, they would not warrant a new trial.  
10 Because SHL failed to object to them, they are reviewed for plain error. And it is not “plain and  
11 clear that no other reasonable explanation for the verdict exists.” *Gunderson*, 130 Nev. at 75, 319  
12 P.3d at 612. As above, the strong evidence supporting the plaintiff’s case easily supplies that  
13 explanation, and the Court finds no reason to conclude that counsel’s characterization of one  
14 witness’s testimony made a difference to the jury.

15 **iv. Counsel did not improperly state a personal opinion as to the justness of**  
16 **a cause, credibility of a witness, or culpability of a civil litigant when they**  
17 **discussed the verdict form.**

18 24. Counsel’s statements concerning the verdict the jury should reach also do not amount  
19 to a prohibited personal opinion. SHL contends that counsel committed misconduct by stating that  
20 they would not request a particular award if they were not “convinced” it was “the right thing to do.”  
21 App-2692. SHL’s argument is that this comment conveyed an impermissible, moralistic  
22 commentary on the evidence. But, viewed in context, the statement is just as easily understood as  
23 telling the jury that the requested verdict was the right thing to do according to the law as embodied  
24 in the Court’s instructions and the evidence at trial.

25 25. In any event, even if the statement amounts to a personal opinion, the Court cannot  
26 find that the record reflects any prejudice. Although SHL leveled a successful objection to the  
27 comments, it did not seek an admonishment, and so the statement is reviewed for whether the  
28 misconduct was so extreme that objection and sustainment could not have removed any prejudicial  
effect. *See Gunderson*, 130 Nev. at 77, 319 P.3d at 613. The record does not meet this standard.



1 Nothing about the comment was “extreme,” and, in any event, counsel again promptly corrected any  
2 impression that they were conveying a personal opinion: Following objection and sustainment,  
3 counsel emphasized that the argument was about what the jury should do, not what counsel thought.  
4 *See* App-2692 (“It’s the right thing to do.”). Thus, if there was any prejudicial effect here, it was  
5 modest in light of the powerful evidence on the plaintiff’s case, and it was immediately cured.  
6 Accordingly, the comment does not warrant a new trial.

7                   **v.       Counsel did not level improper personal attacks, and even if they had, a**  
8                   **new trial would not be warranted.**

9           26.     SHL also contends that Mrs. Eskew’s counsel committed misconduct because they  
10 “falsely accused” SHL’s counsel “of calling Mrs. Eskew a liar.” The Court finds that the record  
11 does not support either SHL’s version of the facts or the conclusion it draws from them.

12           27.     The statements that SHL identifies were not meaningfully false, because the  
13 company’s strategy at trial was to impugn the Eskews’ motivations and to cast doubt on the  
14 truthfulness of their testimony. *See* App-1448–49 (suggesting testimony was driven by what was  
15 “helpful for your case” rather than the truth); App-1489–90 (asking for agreement that “memories  
16 can sometimes fade” or be “influenced” because people can have “an intent to say certain things, a  
17 reason, a motive”); *see also* App-1221–24, 1239–43, 1342, 1346–52, 1484–1526, 1529–41. At trial,  
18 witnesses and the parties understood this to be SHL’s argument. *See, e.g.,* App-1549–50 (Q: “And  
19 you would agree that [the monetary recovery in this case provides] an incentive for you to say what  
20 you’re saying; correct?” A: “No. I did not lie.”). Indeed, at a break, when plaintiff’s counsel noted  
21 that SHL was suggesting that Mrs. Eskew was “lying or magnifying her problems,” counsel for SHL  
22 agreed: “And yes, obviously it’s my client’s position that it shouldn’t be a surprise to anyone in this  
23 room that Mrs. Eskew is embellishing on her husband’s condition.” App-1458–59; *see also* App-  
24 1460 (claiming the “right” to “cross-examine and challenge whether or not she is being accurate and  
25 truthful”).

26           28.     SHL objects that the statements are “improper” because the company only “implied”  
27 that the Eskews were lying and that Mrs. Eskew’s counsel exaggerated the effect. But Nevada law  
28 does not hold that an exaggerated characterization of counsel’s arguments or conduct is improper at

1 all, let alone so improper as to amount to misconduct. The only supportive authority SHL identifies  
2 concerns “abusive language,” “derogatory remarks,” and offensive epithets. *See Born*, 114 Nev. at  
3 861–62, 962 P.2d at 1231–32 (counsel engaged in repeated, incendiary outbursts, including  
4 describing opposing counsel and witnesses with offensive epithets in the jury’s hearing and  
5 exclaiming that requests for a sidebar were “outrageous”); *Fineman v. Armstrong World Indus., Inc.*,  
6 774 F. Supp. 266, 272 (D.N.J. 1991) (closing argument focused on claims that “counsel had lied to  
7 the jury, had suborned perjury from witnesses (flavoring these comments with [] titillating remarks  
8 . . . ), and had done it for money”). Nothing like that happened here. And the cases have no bearing  
9 on the propriety of one counsel’s commenting on another’s behavior in questioning a witness.

10       29. Even if counsel’s remarks could amount to misconduct, they were not prejudicial.  
11 SHL made only one objection on these grounds and never sought an admonishment. But that  
12 objection, and the Court’s decision to sustain it, was more than sufficient to cure any possible  
13 prejudice. Following the objection, counsel immediately and plainly clarified his meaning—that  
14 SHL had at minimum suggested that Mrs. Eskew was “embellishing” what happened to her. App-  
15 2509. SHL says it made a second objection, but that objection, viewed in context, went to a different  
16 issue—whether there was evidence supporting Mrs. Eskew’s argument that SHL had not been able  
17 to dissuade Mrs. Eskew from pursuing her case. *See App-2690*. In any event, the Court finds no  
18 reason in the record to treat either objection and its sustainment as inadequate to remove any modest  
19 prejudicial effect that could have resulted.

20       30. SHL also argues that counsel’s conduct was improper because it violated a motion in  
21 limine excluding evidence, argument, or testimony relating to litigation conduct. But that motion in  
22 limine was issued for an unrelated reason: to bar the parties from introducing evidence or argument  
23 concerning litigation conduct during the discovery process. And in any event, SHL failed to object  
24 to any of Mrs. Eskew’s counsel’s conduct on these grounds. *See Roth*, 127 Nev. at 136–38, 252  
25 P.3d at 658–59 (parties are obligated to make “contemporaneous objections to claimed violations of  
26 an order produced by a motion in limine . . . to prevent litigants from wasting judicial, party, and  
27 citizen-juror resources”). It thus waived any objection except in an instance of plain error, which the  
28 Court cannot find. *See Id.*

1                    **vi. Counsel’s questioning of SHL’s witness was not misconduct warranting a**  
2                    **new trial.**

3                    31. SHL also argues that Mrs. Eskew’s counsel committed misconduct when they  
4 questioned SHL’s director of pre-service reviews during the damages phase. According to SHL,  
5 their questioning amounted to a “blatant and shocking violation” of the “norms” of American law.  
6 The Court finds otherwise. During the challenged questioning, SHL’s director testified that, in  
7 response to the jury’s verdict, the company was going to begin offering annual training on the duty  
8 of good faith and fair dealing. App-2774–75. To examine whether the company was as contrite as  
9 she suggested, counsel for Mrs. Eskew urged the director to tell the jury her true view of its verdict.  
10 App-2778–79. SHL takes issue with that question because it says the question was given as a  
11 “command” and was therefore “demeaning” and necessarily improper. The Court finds no reason to  
12 agree. It is not misconduct to phrase a question as a statement rather than a question, especially in  
13 the context in which this exchange arose. SHL has offered no authority to the contrary.

14                    32. SHL did not object on these grounds at trial, saying only that the “form” of the  
15 question was “too broad.” App-2779. And even then, it did not request an admonishment. *Id.* In any  
16 event, even if reviewed for whether an admonishment could have changed the verdict, the record  
17 here leaves no reason to conclude that this line of questioning had any impact, let alone that it  
18 warrants a new trial.

19                    **C. Cumulative review of counsel’s conduct makes no difference.**

20                    33. SHL urges the Court to weigh its assorted misconduct claims together and conclude  
21 that even if they were not individually prejudicial misconduct, they rise to that level as a whole. But  
22 however SHL’s allegations are weighed, the Court can find no basis to grant a new trial.

23                    34. The Court finds that SHL cannot meet the standard that applies to grant a new trial  
24 “based on the cumulative effect of attorney misconduct.” *Gunderson*, 130 Nev. at 78, 319 P.3d at  
25 614. To obtain that result, a party “must demonstrate that no other reasonable explanation for the  
26 verdict exists.” *Id.* That generally requires identifying “multiple severe instances of attorney  
27 misconduct as determined by their context.” *Id.* Yet as explained above, in the context of this trial,  
28 the Court cannot find that SHL has identified a single “severe instance[]” of attorney misconduct.  
*Id.* At best, it has pointed to a smattering of rhetorical and hyperbolic comments that pale in

1 comparison to the extensive evidence marshaled at trial. In the Court’s view, the “scope, nature, and  
2 quantity” of this alleged misconduct had no appreciable impact on the “verdict’s reliability.” *Id.*  
3 The handful of assorted statements SHL has identified thus fall far short of explaining the jury’s  
4 verdict.

5 35. The Court is particularly inclined to reach that finding in light of SHL’s failure to  
6 object to the lion’s share of the asserted misconduct—and, where it did object, to even once seek an  
7 admonishment. While it is true that counsel are not required to repeat objections that have already  
8 been made and sustained and failed to change counsel’s behavior, *see Lioce*, 124 Nev. at 18, 174  
9 P.3d at 981, it is equally true that the failure to object “strongly indicates that the party moving for a  
10 new trial did not consider the arguments objectionable at the time they were delivered, but made that  
11 claim as an afterthought,” *Ringle*, 120 Nev. at 95, 86 P.3d at 1040. The Court finds that the record  
12 in this case is more consistent with the latter concern than the former, and thus undermines any  
13 inference that SHL would have been penalized for objecting or requesting admonishments.

14 For the foregoing reasons, the above findings and conclusions are hereby ENTERED.

15  
16 Dated this 24th day of October, 2022

17 

18 43A B64 EC33 3CFB  
19 Nadia Krall  
20 District Court Judge  
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1 **CSERV**

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3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

7 vs.

DEPT. NO. Department 4

8 Sierra Health and Life Insurance  
9 Company Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the  
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
15 case as listed below:

Service Date: 10/24/2022

16 Audra Bonney

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20 Matthew Sharp

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21 Cristin Sharp

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort****COURT MINUTES****June 18, 2019**

A-19-788630-C      Sandra Eskew, Plaintiff(s)  
    vs.  
    Sierra Health and Life Insurance Company Inc, Defendant(s)

**June 18, 2019                      9:00 AM                      Motion to Dismiss**

**HEARD BY:** Cory, Kenneth                      **COURTROOM:** RJC Courtroom 16A

**COURT CLERK:** Michele Tucker

**RECORDER:** Lisa Lizotte

**REPORTER:**

**PARTIES**

**PRESENT:**      Gormley, Ryan                      Attorney  
    Roberts, D Lee, Jr.                      Attorney  
    Sharp, Matthew L.                      Attorney

**JOURNAL ENTRIES**

- Mr. Roberts stated this complaint arises out of the denial of a certain type of radiation treatment, proton beam therapy. This treatment has not been proven to show a higher rate of success to justify the cost. Mr. Roberts argued NRS 471.085, and the wrongful death cause of action. The complaint does not allege the negligence act of Sierra Health caused the death of the plaintiff. The plaintiff needs to clearly allege his death was caused by Sierra Health. The bad faith claim is only as to loss of property rights/economic loss. Mr. Roberts argued plaintiff has not stated a claim or alleged plaintiff suffered any economic loss. Mr. Roberts further argued as to breach of contract. Mr. Sharp argued as to the CA rule and the Supreme Court not adopting the denial of treatment as an economic loss. Sierra Health denied the treatment without investigating this as a covered benefit. It was medically necessary and the therapy would have prolonged the plaintiff's life. Mr. Roberts argued the policy's underling rule. Mr. Gormley argued none of the allegations match up with the statute. The plaintiff failed to submit a claim under NRS 686A.310(1)(d), 1(c), 1(a), and 1(e). The plaintiff ignored the principles of the statutory interpretation and the statutes general purpose. Mr. Sharp further argued as to the insurance company denying with out doing any investigation as to the treatment. COURT ORDERED, Defendant SHL's Motion to Dismiss for Failure to State a Claim GRANTED only as to failing to confirm coverage for the proton beam therapy within a reasonable time; DENIED as to the

remaining with leave to amend. Mr. Sharp stated they would like to have an answer on file and start discovery before amending the complaint. COURT FURTHER ORDERED, Plaintiff has 20 DAYS to file an Amended Complaint and thereafter, Defendant to file an answer. Mr. Sharp to prepare the Order.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**August 15, 2019**

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A-19-788630-C      Sandra Eskew, Plaintiff(s)  
vs.  
Sierra Health and Life Insurance Company Inc, Defendant(s)

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**August 15, 2019      3:00 AM      Motion to Associate  
Counsel**

**HEARD BY:** Cory, Kenneth      **COURTROOM:** RJC Courtroom 16A

**COURT CLERK:** Michele Tucker

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Motion having been duly filed and served, no opposition having been filed, pursuant to EDCR 2.20 and for good cause shown, COURT ORDERED, Motion to Associate Counsel GRANTED. Plaintiff to submit a proposed Order to chambers within 10 days.

CLERK'S NOTE: A copy of this minute order was distributed via the E-Service list. / mlt

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**November 01, 2019**

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A-19-788630-C      Sandra Eskew, Plaintiff(s)  
vs.  
Sierra Health and Life Insurance Company Inc, Defendant(s)

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**November 01, 2019      10:00 AM      Mandatory Rule 16  
Conference**

**HEARD BY:** Cory, Kenneth

**COURTROOM:** RJC Courtroom 16A

**COURT CLERK:** Michele Tucker

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**      Gormley, Ryan      Attorney  
                     Roberts, D Lee, Jr.      Attorney  
                     Sharp, Matthew L.      Attorney

**JOURNAL ENTRIES**

- Following colloquy, COURT ORDERED, Discovery and Depositions Cut off November 30, 2020; Settlement Conference Schedule Date September 28, 2020; Deadline to Amend Pleadings, Add Parties, and Initial Expert Disclosures August 28, 2020; Rebuttal Expert Disclosures September 28, 2020; Dispositive Motions Deadline December 30, 2020; Motions In Limine Deadline March 1, 2021; Trial Dates SET.

08/19/21 9:00 AM CALENDAR CALL

09/07/21 9:00 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**September 01, 2021**

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A-19-788630-C      Sandra Eskew, Plaintiff(s)  
vs.  
Sierra Health and Life Insurance Company Inc, Defendant(s)

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**September 01, 2021      9:00 AM      Motion**

**HEARD BY:** Krall, Nadia      **COURTROOM:** RJC Courtroom 03C

**COURT CLERK:** Sandra Matute

**RECORDER:** Melissa Burgener

**REPORTER:**

**PARTIES**

**PRESENT:**      Gormley, Ryan      Attorney  
                         Roberts, D Lee, Jr.      Attorney

**JOURNAL ENTRIES**

- Mr. Gromley stated he received an email from Plaintiff counsel who is unable to attend today's hearing due to scheduling issues and taking a deposition. COURT NOTED in the future parties can call the court and request a joint telephone conference, further noting the parties requested a pretrial conference after close of discovery and move trial to 2022. Court stated it is inclined to move the case to the March 2022 trial stack with the Motions in Limine 75 days prior to trial including dispositive motions. Colloquy in regards to trial stacks. COURT ORDERED, case SET on March 2022 trial stack; new trial order to issue. Mr. Gromley inquired if the discovery deadline will move with the new trial setting, and stated additional time would be appreciated. COURT FURTHER ORDERED, parties to submit Stipulation and Order and reference today's hearing, in addition to Motions in Limine and Dispositive Motion deadline 75 days prior to trial.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**January 03, 2022**

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A-19-788630-C	Sandra Eskew, Plaintiff(s)
	vs.
	Sierra Health and Life Insurance Company Inc, Defendant(s)

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**January 03, 2022      8:00 AM      Minute Order**

**HEARD BY:** Krall, Nadia      **COURTROOM:** Chambers

**COURT CLERK:** Chad Johnson

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- For purposes of judicial economy, COURT ORDERS, all pending Motions in Limine, Motions for Summary Judgment set in this case shall be heard on February 10, 2022 at 9:00 A.M. with the following briefing schedule:

January 14, 2022: All Oppositions Due.

January 25, 2022. All Replies Due.

January 27, 2022. All Binders Due.

February 10, 2022 @ 9:00 A.M. All hearings.

CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Chad Johnson, to all registered parties for Odyssey File & Serve and/or served via facsimile. cj/1/3/22

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**February 10, 2022**

---

A-19-788630-C      Sandra Eskew, Plaintiff(s)  
vs.  
Sierra Health and Life Insurance Company Inc, Defendant(s)

---

**February 10, 2022      9:00 AM      All Pending Motions**

**HEARD BY:** Krall, Nadia      **COURTROOM:** RJC Courtroom 03C

**COURT CLERK:** Jessica Mason

**RECORDER:** Melissa Burgener

**REPORTER:**

**PARTIES**

**PRESENT:**      Gormley, Ryan      Attorney  
                 Roberts, D Lee, Jr.      Attorney  
                 Sharp, Matthew L.      Attorney  
                 Terry, Douglas A.      Attorney

**JOURNAL ENTRIES**

- Matthew Sharp Esq. and Douglas Terry Esq, present on behalf of Plaintiff. Robert Lee Esq. and Ryan Gormley Esq. present for Defendant.

DEFENDANTS' MOTION IN LIMINE #1 LIMIT THE TESTIMONY OF PLAINTIFF S BAD FAITH EXPERT STEPHEN D. PRATER.

Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion GRANTED IN PART.

DEFENDANT'S MOTION IN LIMINE #2 EXCLUDE EVIDENCE, Argument, and/or TESTIMONY RELATING TO THE FINANCIAL CONDITION OF NON-PARTY UNITEDHEALTH GROUP INCORPORATED.

Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Ruling DEFERRED

DEFENDANT'S MOTION IN LIMINE #3 EXCLUDE EVIDENCE, ARGUMENT, and/or

TESTIMONY RELATING TO PRE-CONTRACT COMMUNICATIONS CONCERNING COVERAGE  
Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion  
DENIED.

DEFENDANT'S MOTION IN LIMINE #4 EXCLUDE EVIDENCE, ARGUMENT, and/or  
TESTIMONY RELATING TO THE PREPARATION OF THE DENIAL LETTER.  
Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion  
DENIED.

DEFENDANT'S MOTION IN LIMINE #5 EXCLUDE EVIDENCE, ARGUMENT, and/or  
TESTIMONY RELATING TO OPINIONS FROM JUDGE SCOLA  
Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion  
GRANTED.

DEFENDANT'S MOTION IN LIMINE #6 EXCLUDE EVIDENCE, ARGUMENT, and/or  
TESTIMONY RELATING TO THE NEW YORK PROTON CENTER  
Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion  
DENIED.

DEFENDANT'S MOTION IN LIMINE #7 EXCLUDE CERTAIN PHOTOS  
Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion  
GRANTED IN PART.

DEFENDANT'S MOTION IN LIMINE #8 PRECLUDE ARGUMENT OR QUESTIONING  
RELATING TO COMPARING TESTIMONY PREPARATION TIME WITH PRIOR  
AUTHORIZATION REVIEW TIME  
Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion  
DENIED.

DEFENDANT'S MOTION IN LIMINE #9 EXCLUDE EVIDENCE, ARGUMENT, and/or  
TESTIMONY RELATING TO GENERALIZED PATIENT NUMBERS OR STUDIES.  
Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion  
DENIED.

DEFENDANT'S MOTION IN LIMINE #10 EXCLUDE EVIDENCE, ARGUMENT, and/or  
TESTIMONY RELATING TO MEDICARE COVERAGE  
Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion  
DENIED.

DEFENDANT'S MOTION IN LIMINE #11 EXCLUDE EVIDENCE, ARGUMENT, and/or  
TESTIMONY RELATING TO THE PREPARATION OF THE DENIAL LETTER.  
Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion  
GRANTED.

DEFENDANT'S MOTION IN LIMINE #12 EXCLUDE TESTIMONY FROM DR. LIAO REGARDING MATTERS OUTSIDE THE COURSE AND SCOPE OF HER TREATMENT OF ME. ESKEW  
Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion DENIED.

DEFENDANT'S MOTION IN LIMINE #13 EXCLUDE EVIDENCE, ARGUMENT, and/or TESTIMONY RELATING TO QUESTIONING ATTEMPTING TO ALTER THE SCOPE OF THE JURY S INQUIRY  
Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion GRANTED.

DEFENDANT'S MOTION IN LIMINE #14 EXCLUDE EVIDENCE, ARGUMENT, and/or TESTIMONY RELATING TO INFLAMMATORY QUESTIONING REGARDING PERSONAL OPINIONS  
Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion GRANTED IN PART.

DEFENDANT'S MOTION IN LIMINE #15 EXCLUDE EVIDENCE, ARGUMENT, and/or TESTIMONY RELATING TO HYPOTHETICAL QUESTIONING REGARDING WHAT WOULD BE FAIRER  
Arguments by counsel in regards to Motion. COURT STATED its FINDINGS and ORDERED, Motion GRANTED

DEFENDANT'S MOTION IN LIMINE #16 EXCLUDE EVIDENCE, ARGUMENT, and/or TESTIMONY RELATING TO MISLEADING WUESTIONING REGARDING THE NATURE OF INSURANCE AND PERSONAL EXPERIENCE WITH INSURANCE  
Arguments by Defense Counsel in regards to Motion.

The Court noted it had a meeting and would have to continue this matter. Colloquy regarding the date and time this matter will resume. COURT ORDERED; MATTER CONTINUED.

CONTINUED TO 2/11/2022 01:00 PM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**February 11, 2022**

---

A-19-788630-C      Sandra Eskew, Plaintiff(s)  
vs.  
Sierra Health and Life Insurance Company Inc, Defendant(s)

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**February 11, 2022      1:00 PM      All Pending Motions**

**HEARD BY:** Krall, Nadia      **COURTROOM:** RJC Courtroom 03C

**COURT CLERK:** Kristin Duncan

**RECORDER:** Melissa Burgener

**REPORTER:**

**PARTIES**

**PRESENT:**      Glantz, Stephanie J.      Attorney  
                         Gormley, Ryan      Attorney  
                         Roberts, D Lee, Jr.      Attorney  
                         Sharp, Matthew L.      Attorney  
                         Terry, Douglas A.      Attorney

**JOURNAL ENTRIES**

- Matthew Sharp, Esq. and Douglas Terry, Esq. present via Blue Jeans.

DEFENDANTS' MOTION IN LIMINE NO. 16: EXCLUDE EVIDENCE, ARGUMENT, AND/OR TESTIMONY RELATING TO MISLEADING QUESTIONING REGARDING THE NATURE OF INSURANCE AND PERSONAL EXPERIENCE WITH INSURANCE

Arguments by counsel. COURT ORDERED the instant Motion was hereby GRANTED.

DEFENDANT'S MOTION IN LIMINE NO. 17: EXCLUDE EVIDENCE, ARGUMENT AND/OR TESTIMONY RELATING TO LITIGATION CONDUCT

Mr. Roberts argued in support of the Motion, stating that discovery issues should not be injected into



the trial, as it would be highly prejudicial. Mr. Sharp argued in opposition, stating that he did not understand the purpose of the instant Motion. COURT ORDERED the Motion was hereby GRANTED IN PART / DENIED IN PART, FINDING and ORDERING the following: (1) the Motion was GRANTED IN PART as to litigation conduct, specifically what Mr. Roberts did, or did not do, during discovery; however, Plaintiff would not be precluded from arguing the facts, or the alleged unreasonableness of an expert's position; and (2) the Motion was DENIED IN PART, to the extent that the Court's ruling only applied to Mr Roberts himself.

DEFENDANTS' MOTION IN LIMINE NO. 18: EXCLUDE EVIDENCE, ARGUMENT, AND/OR TESTIMONY RELATING TO OTHER CASES

Arguments by counsel. COURT ORDERED the instant Motion was hereby GRANTED IN PART / DENIED IN PART, FINDING and ORDERING the following: (1) the Motion was GRANTED IN PART to the extent that Defendants did not raise the issues referenced in the Motion; and (2) DENIED IN PART if the Defendants opened the door on the issues; if the Defendants opened the door, Plaintiffs could address the issues.

DEFENDANTS' MOTION IN LIMINE NO. 19: EXCLUDE EVIDENCE, ARGUMENT, AND/OR TESTIMONY RELATING TO "FINALLY DAY IN COURT" ASSERTIONS

Arguments by counsel. COURT ORDERED the instant Motion was hereby DENIED; however, the Defense would not be prevented from informing the jury that they wanted to be in court. The COURT FURTHER ORDERED that it could inform the jury that any delays getting the case to trial, were due to COVID-19, not the conduct of the parties.

DEFENDANTS' MOTION IN LIMINE NO. 20: EXCLUDE EVIDENCE, ARGUMENT, AND/OR TESTIMONY RELATING TO NEED FOR INDUSTRY CHANGE ASSERTIONS...DEFENDANTS' MOTION IN LIMINE NO. 21: PRECLUDE IMPROPER AND INFLAMMATORY "REPTILE" TACTICS AND ARGUMENTS

The Court provided its initial thoughts and inclinations regarding the instant Motions. Arguments by counsel. COURT ORDERED the parties to review the holding in Lioce vs. Cohen, and if either party violated that holding, there would be sanctions.

COURT ORDERED DEFENSE counsel to prepare the written Order(s) for Defendants' Motions in Limine.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: CLAIMS

The Court noted that the only remaining claim was the breach of covenant of good faith and fair dealing claim, and inquired whether the parties had stipulated to dismiss the other claims. Mr. Sharp answered in the affirmative. Mr. Gormley submitted to the Court's discretion. Mr. Sharp argued in opposition, stating that there were questions of fact for the jury to decide. COURT ORDERED the instant Motion was hereby DENIED IN PART as to the breach of covenant of good faith and fair dealing, and breach of contract, claims; however, the RULING WAS DEFERRED as to the unfair claims practices act, until the time of trial. COURT ORDERED that the parties would be permitted to file a new brief regarding the unfair claims practices act, if they wished.

#### DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE: DAMAGES

Mr. Gormley argued in support of the instant Motion, stating that only punitive damages remained, and there was no evidence of malice, or intention to harm. Mr. Sharp argued in opposition to the Motion. COURT ORDERED the instant Motion was hereby DENIED WITHOUT PREJUDICE with respect to punitive damages; the wrongful death damages were MOOT, pursuant to the stipulation between the parties.

#### DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE: UHC

Mr. Gormley argued in support of the instant Motion, stating that Plaintiff did not have any standing to maintain the claim against United Healthcare, Inc. (UHC). Mr. Sharp argued in opposition, stating that Plaintiffs' counsel's arguments were form over substance. COURT ORDERED the instant Motion was hereby DENIED. COURT ORDERED there was a question of fact as to the issue of personal jurisdiction.

Defense counsel to prepare the written Order(s) on all of their Motions for Summary Judgment, and forward them to opposing counsel for approval as to form and content.

#### PLAINTIFFS' MOTION IN LIMINE #1 RE: EVIDENCE OF APPEAL

Mr. Terry argued in support of the instant Motion, stating that it would be fair game for Plaintiffs to introduce evidence regarding why the denial was not appealed, and it would be fair for Defendants to rebut that; however, arguments regarding Mr. Eskew having a duty to file the appeal, should be prohibited. Mr. Roberts indicated that there would be no arguments regarding a duty to appeal. COURT ORDERED the instant Motion was hereby GRANTED, FINDING that parties would not be permitted to argue that there was a duty to appeal.

#### PLAINTIFFS' MOTION IN LIMINE #2 RE: EVIDENCE OF THE PROTON BEAM THERAPY POLICY

Mr. Sharp argued in support of the instant Motion, stating that the reasonableness of the literature in the policy was not relevant, as the issue was UHC's state of mind. Mr. Roberts argued in opposition, stating that there was a disputed question of fact regarding whether the doctor relied only upon the first two pages of the policy; however, that did not mean that the rest of the policy should be excluded. COURT ORDERED the instant Motion was hereby GRANTED IN PART / DENIED IN PART, FINDING and ORDERING the following: (1) the Motion was GRANTED with respect to any policy not actually relied upon by UHC, or Sierra Health and Life Insurance, at the time the denial was made; and (2) the Motion was DENIED as to any policy that they did rely upon. The COURT FURTHER ORDERED that if an NRCP 30(b)(6) witness was not able to answer a question at the time of the deposition, they would not be able to answer that question at the time of trial, because they were bound by their deposition testimony.

PLAINTIFFS' MOTION IN LIMINE #3 RE: EVIDENCE NOT RELIED UPON BY UHC AT THE TIME OF THE SUBJECT CLAIM DENIAL

Mr. Sharp argued in support of the Motion. Mr. Gormley argued in opposition, stating that there was no case law supporting the relief requested in the instant Motion. COURT ORDERED the Motion was hereby GRANTED.

PLAINTIFFS' MOTION IN LIMINE #4 RE: EXPERT TESTIMONY OF DR. GARY M. OWENS

Mr. Sharp requested that the instant Motion be withdrawn. COURT ORDERED Motion WITHDRAWN.

PLAINTIFFS' MOTION IN LIMINE #5 RE: EXPERT TESTIMONY OF DR. AMITABH CHANDRA

Mr. Sharp argued in support of the instant Motion, stating that, based upon the rulings on the Motions in Limine on February 10, 2022, Dr. Chandra should be permitted to argue regarding the CMS issues. Mr. Gormley argued in opposition. COURT ORDERED the Motion was hereby DENIED.

PLAINTIFFS' MOTION IN LIMINE #6 RE: EXPERT TESTIMONY OF DR. PARVESH KUMAR

Mr. Sharp argued in support of the instant Motion, stating that Dr. Kumar provided testimony relative to the terms of the policy related to Motion in Limine #3, which would also apply to Dr. Chang; however, the remainder of the Motion would be withdrawn. COURT ORDERED the Motion was hereby GRANTED IN PART / DENIED IN PART, FINDING and ORDERING the following: (1) anything that Dr. Kumar relied upon in his report, or his testimony, that was not relied upon by UHC at the time, would not come in; however, everything else would come in; (2) the Motion was DENIED

IN PART with respect to general testimony; and (3) the Motion was GRANTED IN PART with respect to anything UHC did not rely upon when making its denial.

#### PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Mr. Sharp argued in support of the Motion, stating that the issue in the instant Motion would continue through the course of the trial. Mr. Roberts submitted on the pleadings. COURT ORDERED the Motion was hereby DENIED.

#### PLAINTIFFS' MOTION FOR SANCTIONS

Mr. Sharp argued in support of the instant Motion, stating that UHC was aware that their policy folder existed, and the knew about the documents contained in the policy folder; however, that folder was not produced. Mr. Roberts argued in opposition, stating that he was not aware of the policy folder until recently, and Defendants would be willing to reopen discovery for the limited purpose of allowing the Plaintiffs to review the policy folder. COURT ORDERED the instant Motion was hereby DENIED, FINDING that the Motion must be denied on procedural grounds, as a Motion to Compel was not done.

#### PLAINTIFFS' MOTION TO SEAL EXHIBITS 18 AND 19 TO PLAINTIFF'S MOTION FOR SANCTIONS

COURT ORDERED the instant Motion was hereby GRANTED as UNOPPOSED.

Upon Court's inquiry, Mr. Sharp advised that three weeks would be needed for trial, if the punitive damages phase went forward. Mr. Roberts stated that the trial may go into a fourth week, if the punitive damages phase went forward. Colloquy regarding scheduling and exhibits. COURT ORDERED the parties to have their verdict form, jury instructions, voir dire questions, and exhibits to the Court no later than 5:00 PM on February 22, 2022.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**March 01, 2022**

---

A-19-788630-C      Sandra Eskew, Plaintiff(s)  
vs.  
Sierra Health and Life Insurance Company Inc, Defendant(s)

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**March 01, 2022      11:00 AM      Calendar Call**

**HEARD BY:** Krall, Nadia      **COURTROOM:** RJC Courtroom 03C

**COURT CLERK:** Pharan Burchfield

**RECORDER:** Melissa Burgener

**REPORTER:**

**PARTIES**

**PRESENT:**      Gormley, Ryan      Attorney  
Sharp, Matthew L.      Attorney  
Terry, Douglas A.      Attorney

**JOURNAL ENTRIES**

- Court confirmed trial to last four (4) weeks with three (3) days maximum for jury selection. Colloquy regarding trial schedule. Parties stipulate to having four (4) alternates on jury. At Mr. Gormley's request, Court stated if parties agree, Court will allow counsel to use jury instruction in their opening or in voir dire. Court Colloquy regarding public access to Bluejeans link. Court provided a general schedule, noting three (3) hours of testimony in the morning and three (3) hours of testimony in the afternoon. Court confirmed standard admonishment to jurors regarding social media. COURT ORDERED, firm trial SET; counsel to bring joint exhibit binders by March 7, 2022; counsel to contact I.T. regarding audiovisual information needed; counsel to submit voir dire, jury instructions, and verdict form by March 4, 2022. JEA, Ms. Everett, will e-mail counsel information regarding trial.

03/14/2022 09:00 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**March 14, 2022**

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A-19-788630-C      Sandra Eskew, Plaintiff(s)  
vs.  
Sierra Health and Life Insurance Company Inc, Defendant(s)

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**March 14, 2022      9:00 AM      Jury Trial**

**HEARD BY:** Krall, Nadia      **COURTROOM:** RJC Courtroom 03C

**COURT CLERK:** Pharan Burchfield

**RECORDER:** Melissa Burgener

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Gormley, Ryan	Attorney
	Roberts, D Lee, Jr.	Attorney
	Sharp, Matthew L.	Attorney
	Smith, Phillip N.	Attorney
	Terry, Douglas A.	Attorney

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Colloquy regarding changing the Joint Statement in regard to how to introduce the case to the prospective jurors; Counsel had no objection to making the introduction simple. Parties STIPULATED to the DISMISSAL of Defendant United Healthcare, Inc. Mr. Roberts MOVED TO amend the caption and documents, such as Jury Instructions, that the juror will see. COURT SO NOTED.

PROSPECTIVE JURORS PRESENT: Prospective jurors SWORN.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Colloquy regarding jury selection and multiple proposed juror panels between today and tomorrow.

PROSPECTIVE JURORS PRESENT: Voir Dire.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Colloquy regarding defense's request

to have a second court recorder present for the duration of the trial. COURT ORDERED, for appeal purposes, Ms. Burgener's transcript WILL BE the Court's official transcript.

PROSPECTIVE JURORS PRESENT: Continued Voir Dire.

COURT ORDERED, prospective jurors to RETURN on March 15, 2022 at 12:30 PM. Court adjourned for the day; to resume March 15, 2022 at 9:30 AM.

JURY TRIAL CONTINUED TO: 03/15/22 09:30 AM

CLERK'S NOTE: These Minutes were amended to correct the hearing type in its caption.//pb/3/16/22.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**March 15, 2022**

---

A-19-788630-C      Sandra Eskew, Plaintiff(s)  
vs.  
Sierra Health and Life Insurance Company Inc, Defendant(s)

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**March 15, 2022      9:30 AM      Jury Trial**

**HEARD BY:** Krall, Nadia      **COURTROOM:** RJC Courtroom 03C

**COURT CLERK:** Pharan Burchfield

**RECORDER:** Melissa Burgener

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Eskew, Sandra L	Plaintiff
		Special Administrator
	Gormley, Ryan	Attorney
	Roberts, D Lee, Jr.	Attorney
	Sharp, Matthew L.	Attorney
	Smith, Phillip N.	Attorney
	Terry, Douglas A.	Attorney

**JOURNAL ENTRIES**

- All parties present as before. David Crump, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Colloquy regarding jury selection and combining the prospective juror panels.

PROSPECTIVE JURORS PRESENT: Prospective Jurors Panel # 2 SWORN. Voir Dire. Prospective Jurors Panel # 3 SWORN. Voir Dire.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Colloquy regarding number of jurors and alternates and number of jurors needed during the peremptory challenges.



PROSPECTIVE JURORS PRESENT: Jurors Panels # 1-3 combined. Continued Voir Dire.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Record made for peremptory challenge.

JURORS PRESENT: Jury SELECTED and SWORN.

Court adjourned for the day; to resume March 16, 2022 at 9:00 AM.

JURY TRIAL CONTINUED TO: 03/16/22 09:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**March 16, 2022**

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A-19-788630-C	Sandra Eskew, Plaintiff(s)
	vs.
	Sierra Health and Life Insurance Company Inc, Defendant(s)

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**March 16, 2022                      9:00 AM                      Jury Trial**

**HEARD BY:** Krall, Nadia **COURTROOM:** RJC Courtroom 03C

**COURT CLERK:** Pharan Burchfield

**RECORDER:** Melissa Burgener

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Eskew, Sandra L	Plaintiff
		Special Administrator
	Gormley, Ryan	Attorney
	Roberts, D Lee, Jr.	Attorney
	Sharp, Matthew L.	Attorney
	Smith, Phillip N.	Attorney
	Terry, Douglas A.	Attorney

**JOURNAL ENTRIES**

- All parties present as before. David Crump, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present.

OUTSIDE THE PRESENCE OF THE JURY: Preliminary Jury Instructions settled; COURT NOTED, changes "I" to "the Court": not using the word "I" as it is not a personal opinion, rather than what the Court and the law requires. Colloquy regarding anticipated witness testimony schedule; COURT NOTED, on Tuesday, April 5, 2022 trial will only be in the afternoon, after the Court's civil calendar.

JURORS PRESENT: Parties WAIVED the reading of the pleadings. Parties INVOKED EXCLUSIONARY RULE. Court INSTRUCTED the jurors on the Agreed Preliminary Jury Instructions. Opening Statement made by Mr. Sharp. Opening Statement made by Mr. Smith. Testimony and exhibits presented. (See worksheets.)

Court adjourned for the day; to resume March 21, 2022 at 9:00 AM.

JURY TRIAL CONTINUED TO: 03/21/22 09:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Insurance Tort

# COURT MINUTES

**March 21, 2022**

A-19-788630-C      Sandra Eskew, Plaintiff(s)  
vs.  
Sierra Health and Life Insurance Company Inc, Defendant(s)

**March 21, 2022                  9:00 AM                  Jury Trial**

**HEARD BY:** Krall, Nadia **COURTROOM:** RJC Courtroom 03C

**COURT CLERK:** Pharan Burchfield

**RECORDER:** Melissa Burgener

**REPORTER:**

## PARTIES

<b>PRESENT:</b>	Eskew, Sandra L	Plaintiff
		Special Administrator
	Gormley, Ryan	Attorney
	Roberts, D Lee, Jr.	Attorney
	Sharp, Matthew L.	Attorney
	Smith, Phillip N.	Attorney
	Terry, Douglas A.	Attorney

## JOURNAL ENTRIES

- All parties present as before. David Crump, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present.

JURORS PRESENT: Continued testimony and exhibits presented. (See worksheets.)

## CONFERENCE AT THE BENCH.

JURORS PRESENT: Continued testimony and exhibits presented. (See worksheets.) Court alerted the Jury that parts of Mr. Gormely's cross-examination of Dr. Chang, regarding the line of questioning of Dr. Liao's July 1, 2018 article and the Report to the Congress, Medicare, and the Health Care Delivery System, MEDPAC, has no barring on the issue of bad faith, rather than for medical causation.

OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding medical records exhibits. (See worksheet.)

JURORS PRESENT: The Court informed the Jury of the trial schedule for the remainder of the trial. Continued testimony and exhibits presented. (See worksheets.)

Court adjourned for the day; to resume March 22, 2022 at 9:00 AM.

JURY TRIAL CONTINUED TO: 03/22/22 09:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**March 22, 2022**

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A-19-788630-C	Sandra Eskew, Plaintiff(s) vs. Sierra Health and Life Insurance Company Inc, Defendant(s)
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**March 22, 2022                      9:00 AM                      Jury Trial**

**HEARD BY:** Krall, Nadia **COURTROOM:** RJC Courtroom 03C

**COURT CLERK:** Pharan Burchfield

**RECORDER:** Melissa Burgener

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Eskew, Sandra L	Plaintiff
		Special Administrator
	Gormley, Ryan	Attorney
	Roberts, D Lee, Jr.	Attorney
	Sharp, Matthew L.	Attorney
	Smith, Phillip N.	Attorney
	Terry, Douglas A.	Attorney

**JOURNAL ENTRIES**

- All parties present as before. David Crump, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present.

JURORS PRESENT: Continued testimony and exhibits presented. (See worksheets.)

OUTSIDE THE PRESENCE OF THE JURY: Discussions regarding witness scheduling and objections to the reading portions of Dr. Liao's deposition. Zhongxing Liao, M.D.'s December 18, 2020 Deposition PUBLISHED. (See log.)

JURORS PRESENT: Continued testimony presented. (See worksheets.)

OUTSIDE THE PRESENCE OF THE JURY: Mr. Roberts objected to the method of reading of the

deposition is handled; requested the Court instruct the reader to read the testimony as flat and neutral tone. COURT FINDS, witness's testimony is consistent with the testimony of Dr. Liao; the Court does not find that her intonation, voice, or body language is inappropriate in any manner; the Court finds it to be congruent with the testimony, and the objection is OVERRULED.

JURORS PRESENT: Continued testimony presented. (See worksheets.)

Court adjourned for the day; to resume March 23, 2022 at 9:00 AM.

JURY TRIAL CONTINUED TO: 03/23/22 09:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort****COURT MINUTES****March 23, 2022**

A-19-788630-C      Sandra Eskew, Plaintiff(s)  
    vs.  
    Sierra Health and Life Insurance Company Inc, Defendant(s)

**March 23, 2022      9:00 AM      Jury Trial**

**HEARD BY:** Krall, Nadia      **COURTROOM:** RJC Courtroom 03C

**COURT CLERK:** Pharan Burchfield

**RECORDER:** Melissa Burgener

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Eskew, Sandra L  Gormley, Ryan Roberts, D Lee, Jr. Sharp, Matthew L. Smith, Phillip N. Terry, Douglas A.	Plaintiff Special Administrator Attorney Attorney Attorney Attorney Attorney
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**JOURNAL ENTRIES**

- All parties present as before. David Crump, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present.

**JURORS PRESENT:** Continued testimony and exhibits presented. (See worksheets.) Mr. Roberts requested to use proposed Joint Exhibit 195, page 8 for demonstrative purposes only. **COURT GRANTED**, Mr. Roberts's request.

**OUTSIDE THE PRESENCE OF THE JURY:** Mr. Roberts renewed Motion in Limine to limit expert's testimony to exclude legal conclusions. Argument from Mr. Sharp regarding industry standards. Court reminded counsel that the Court did not **DENY** the motion. Counsel stated that they would discuss objections together over the break. Mr. Roberts clarified his objection is to the word "duty" as it implies that it's a legal duty or obligation as a matter of law; has no objection to the witness



testifying to that standard of care requires or what the standard of care is. Mr. Sharp stated that he's asked Mr. Prater to refer to "industry standards". COURT SO NOTED.

JURORS PRESENT: Continued testimony. (See worksheets.) Court instructed the jury to DISREGARD any statements by the witness (Mr. Prater) regarding his opinion of medical necessity. Mr. Sharp requested the Court take judicial notice of NRS 695G.150. With no objection from Mr. Roberts, COURT ORDERED, the COURT WILL TAKE JUDICIAL NOTICE.

OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding schedule of remaining witnesses. Mr. Sharp indicated that Plaintiff's Case-in Chief is anticipated to finish tomorrow.

JURORS PRESENT: Continued testimony. (See worksheets.)

Court adjourned for the day; to resume March 24, 2022 at 10:45 AM.

JURY TRIAL CONTINUED TO: 03/24/22 10:45 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort****COURT MINUTES****March 24, 2022**

A-19-788630-C

Sandra Eskew, Plaintiff(s)

vs.

Sierra Health and Life Insurance Company Inc, Defendant(s)

**March 24, 2022****10:45 AM****Jury Trial****HEARD BY:** Krall, Nadia**COURTROOM:** RJC Courtroom 03C**COURT CLERK:** Pharan Burchfield**RECORDER:** Melissa Burgener**REPORTER:****PARTIES****PRESENT:**

Eskew, Sandra L

Plaintiff

Special Administrator

Gormley, Ryan

Attorney

Roberts, D Lee, Jr.

Attorney

Sharp, Matthew L.

Attorney

Smith, Phillip N.

Attorney

Terry, Douglas A.

Attorney

**JOURNAL ENTRIES**

- All parties present as before. David Crump, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present.

JURORS PRESENT: Continued testimony. (See worksheet.)

OUTSIDE THE PRESENCE OF THE JURY: Mr. Sharp argued Defendants' Motion in Limine # 11 on not seeking unqualified opinions; expressed concern it coming out that Mr. Eskew was a party in this lawsuit during his testimony; requested admonition that defense counsel must follow their own Motion in Limine; stated that it was not an accident. Mr. Smith responded that Motion in Limine applies to medical causation and clarified that he asked Mr. Eskew about lawsuit was justified. Court can admonish the jury the fact that Mr. Eskew is no longer a party in the litigation is due to some procedural issues, as that his mother is a party, and the jury could accept that. Mr. Sharp proposed

jury instruction tomorrow. Discussion regarding compliance with ruling on Motions in Limine regarding bringing in evidence through Ms. Eskew about Ms. Holland-Williams. COURT SO NOTED.

JURORS PRESENT: Continued testimony. (See worksheet.)

OUTSIDE THE PRESENCE OF THE JURY: Mr. Sharp argued that defense asked Mrs. Eskew about medical causation, opening the door for Plaintiff's counsel to cross. Upon Court's inquiry, Mr. Sharp clarified causation of death. Mr. Smith rebutted that Plaintiff's counsel asked at length on all three Eskew's state of mind, and defense thinks it is being embellished and needs to be accurate and truthful for the jury to award damages; it undermines creditability. Mr. Sharp argued that a line was crossed and state of mind is now at issue; lying about her belief. Upon Court's inquiry, Mr. Smith responded that Plaintiff is not being asked if IMRT killed her husband. Mr. Sharp argued that Mrs. Eskew has the right to defend herself. COURT ORDERED, Mr. Sharp will be allow to ask Plaintiff what she believed killed her husband, because defense has opened the door by asking her what killed her husband. Mr. Smith wanted to put on record that defense is not consenting to procedural turning this into a wrongful death case and Plaintiff to add a wrongful death claim. Mr. Sharp confirmed Plaintiff is not adding. COURT SO NOTED.

JURORS PRESENT: Continued testimony and exhibits presented. (See worksheets.)

Court adjourned for the day; to resume March 25, 2022 at 9:00 AM.

JURY TRIAL CONTINUED TO: 03/25/22 09:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**March 25, 2022**

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A-19-788630-C	Sandra Eskew, Plaintiff(s) vs. Sierra Health and Life Insurance Company Inc, Defendant(s)
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**March 25, 2022                      9:00 AM                      Jury Trial**

**HEARD BY:** Krall, Nadia **COURTROOM:** RJC Courtroom 03C

**COURT CLERK:** Pharan Burchfield

**RECORDER:** Melissa Burgener

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Eskew, Sandra L	Plaintiff
		Special Administrator
	Gormley, Ryan	Attorney
	Roberts, D Lee, Jr.	Attorney
	Sharp, Matthew L.	Attorney
	Smith, Phillip N.	Attorney
	Terry, Douglas A.	Attorney

**JOURNAL ENTRIES**

- All parties present as before. Glen Stevens, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present. Mr. Gormley present via BlueJeans.

OUTSIDE THE PRESENCE OF THE JURY: Arguments from Mr. Sharp and Mr. Smith regarding upcoming anticipated testimony of Dr. Chandra, previously argued in Motion in Limine regarding his rebuttal expert report. Having ruled on this before, COURT DOES NOT FIND jury nullification in these statements of Dr. Chandra's report. COURT FINDS Plaintiff has brought up costs repeatedly, Plaintiff has brought up utilization management, and both parties have discussed it with the jury. COURT FINDS Plaintiff has asked the jury essentially to send a message to the community that the only way the insurance company is going to change is by a very large verdict, and that relates to money, so defense is allowed bring up money because Plaintiff has made money a huge part of what is allegedly driving the insurance company making these decisions. COURT FINDS with respect to

Dr. Chandra's testimony whether treatment is proven or not, he can testify based upon the foundation that will be laid by Mr. Smith of any studies that he has reviewed and his experience.

JURORS PRESENT: Continued testimony and exhibits presented. (See worksheets.) Plaintiff REST. Mr. Roberts moved for NRCP Rule 58 ruling, requested to postpone argument without the jury. COURT SO NOTED, argument will be outside the presence of the jury.

OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding the order of calling witnesses due to witness availability. Mr. Sharp objected to Dr. Cohen testifying to the standard of care in 2016; excluded in Plaintiff's Motion in Limine. Mr. Roberts explained that Dr. Cohen was a treating physician of Mr. Eskew. Mr. Sharp rebutted a difference between disclosed and admissible. COURT FINDS Plaintiff opened the door during their case-in-chief. COURT ORDERED, Dr. Cohen will be allowed to testify.

JURORS PRESENT: Continued testimony and exhibits presented. (See worksheets.)

OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding witness scheduling and timing of closing arguments.

JURORS PRESENT: Continued testimony.

OUTSIDE THE PRESENCE OF THE JURY: Mr. Gormley argued Motion for Judgment as a Matter of Law. Argument from Mr. Sharp. COURT FINDS that there is an issue of fact whether the Defendant acted in conscious disregard of the Plaintiff's rights, preventing the granting of Defendant's motion for directed verdicts on bad faith and punitive damages. The Court bases this on the fact that the insurance policy states that therapeutic radiation was a covered service and proton therapy is a form of therapeutic radiation. COURT FINDS witnesses did testify that no one at the insurance company reviewed the insurance policy when this decision to deny coverage was made. COURT FINDS Dr. Chang clearly testified on his direct examination on the stand that within a ninety-five percent (95%) of medical probability, that the decedent Bill Eskew sustained a grade three (3) esophagitis due to the IMRT treatment. With respect the California case law preventing emotional distress when there is no accompanying economic loss, COURT FINDS those cases to be distinguishable, as because here, Plaintiff has alleged that Bill Eskew suffered physical injury and related emotional injury. On those bases, COURT ORDERED, Motions for Directed Verdict (Motion for Judgment as a Matter of Law) DENIED.

Court adjourned for the day; to resume March 28, 2022 at 9:00 AM.

JURY TRIAL CONTINUED TO: 03/28/22 09:00 AM

CLERK'S NOTE: Minutes amended on April 15, 2022 for formatting purposes only.//pb/4/15/22.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort****COURT MINUTES****March 28, 2022**

A-19-788630-C      Sandra Eskew, Plaintiff(s)  
vs.  
Sierra Health and Life Insurance Company Inc, Defendant(s)

**March 28, 2022      9:00 AM      Jury Trial**

**HEARD BY:** Krall, Nadia      **COURTROOM:** RJC Courtroom 03C

**COURT CLERK:** Pharan Burchfield

**RECORDER:** Melissa Burgener

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Eskew, Sandra L	Plaintiff
		Special Administrator
	Roberts, D Lee, Jr.	Attorney
	Sharp, Matthew L.	Attorney
	Smith, Phillip N.	Attorney
	Terry, Douglas A.	Attorney

**JOURNAL ENTRIES**

- All parties present as before. David Crump, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present. Mr. Gormley present via BlueJeans.

**JURORS PRESENT:** Continued testimony. (See worksheet.) Mr. Sharp moved for the Court to take judicial notice of NRS 686A.310. COURT ORDERED, the Court will take JUDICIAL NOTICE of NRS 686A.310. Mr. Sharp asked for the Court to take judicial notice of NAC 686A.660. COURT FURTHERED ORDERED, the Court will take JUDICIAL NOTICE of NAC 686A.660. Mr. Sharp sought judicial notice of NAC 686A.675 from the Court. COURT FURTHERED ORDERED, the Court will take JUDICIAL NOTICE of NAC 686A.675.

**OUTSIDE THE PRESENCE OF THE JURY:** Mr. Sharp alerted the Court that witness has notes at the stand; requested to review said notes. With no objection from Mr. Roberts, COURT SO NOTED. Colloquy regarding remaining witness testimony scheduling.

JURORS PRESENT: Continued testimony.

OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding tomorrow's start time to accommodate rulings on counsel's objections regarding a deposition to be played in court and clarification on motion in limine ruling regarding witness testimony. COURT ORDERED, counsel to arrive at 8:30 AM.

Court adjourned for the day; to resume March 29, 2022 at 8:30 AM.

JURY TRIAL CONTINUED TO: 03/29/22 08:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort****COURT MINUTES****March 29, 2022**

A-19-788630-C      Sandra Eskew, Plaintiff(s)  
    vs.  
    Sierra Health and Life Insurance Company Inc, Defendant(s)

**March 29, 2022      8:30 AM      Jury Trial**

**HEARD BY:** Krall, Nadia      **COURTROOM:** RJC Courtroom 03C

**COURT CLERK:** Pharan Burchfield

**RECORDER:** Melissa Burgener

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Eskew, Sandra L	Plaintiff
		Special Administrator
	Gormley, Ryan	Attorney
	Roberts, D Lee, Jr.	Attorney
	Sharp, Matthew L.	Attorney
	Smith, Phillip N.	Attorney
	Terry, Douglas A.	Attorney

**JOURNAL ENTRIES**

- All parties present as before. David Crump, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present. Mr. Gormley present via BlueJeans.

OUTSIDE THE PRESENCE OF THE JURY: Mr. Terry informed the Court that parties are working with I.T. regarding displays for the jury. Mr. Terry prefaced the Court that parties have been discussing Dr. Kumar's upcoming testimony and potential gray area, due to complexity, of topics and questions allowed to be asked in compliance with the Court's ruling on Motion in Limine. Mr. Roberts argued that Dr. Kumar's purpose as a witness is to testify to causation; believed that Dr. Chang's testimony had opened the door. COURT NOTED that Plaintiff has open the door.

JURORS PRESENT: Continued testimony and exhibits presented. (See worksheets.)



OUTSIDE THE PRESENCE OF THE JURY: Mr. Roberts updated the Court on the proposed trial schedule regarding remaining witness testimony, video-taped deposition, and deposition to be read to the jury. Mr. Sharp suggested arguing the proposed jury instructions and verdict form tomorrow afternoon. COURT SO NOTED. Parties stipulate to exhibits. (See worksheet.) Mr. Roberts preluded to his intent to request judicial notice of additional Nevada statutes.

JURORS PRESENT: Continued testimony. (See worksheet.) Lou Ann Amogawin's July 28, 2020 Deposition PUBLISHED. (See log.)

OUTSIDE THE PRESENCE OF THE JURY: Mr. Smith requested that the Court explain that the questions being read from Ms. Amogawin's deposition were asked by Plaintiff's counsel, even though Mr. Smith is the one asking them now. With no objection from Plaintiff's counsel, COURT SO NOTED. Counsel argued two objections regarding the reading of Ms. Amogawin's deposition. With no foundation for these questions, COURT ORDERED, objections SUSTAINED.

JURORS PRESENT: Continued testimony. (See worksheet.) Court expressed that witness testimony will wrap up tomorrow afternoon and counsel will make their closing arguments on Monday, April 4, 2022.

Court adjourned for the day; to resume March 30, 2022 at 9:00 AM.

JURY TRIAL CONTINUED TO: 03/30/22 09:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort****COURT MINUTES****March 30, 2022**

A-19-788630-C      Sandra Eskew, Plaintiff(s)  
    vs.  
    Sierra Health and Life Insurance Company Inc, Defendant(s)

**March 30, 2022      9:00 AM      Jury Trial**

**HEARD BY:** Krall, Nadia      **COURTROOM:** RJC Courtroom 03C

**COURT CLERK:** Pharan Burchfield

**RECORDER:** Melissa Burgener

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Eskew, Sandra L	Plaintiff
		Special Administrator
	Gormley, Ryan	Attorney
	Roberts, D Lee, Jr.	Attorney
	Sharp, Matthew L.	Attorney
	Smith, Phillip N.	Attorney
	Terry, Douglas A.	Attorney

**JOURNAL ENTRIES**

- All parties present as before. Glen Stevens, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present. Mr. Gormley present via BlueJeans.

OUTSIDE THE PRESENCE OF THE JURY: Mr. Sharp alerted the Court of issues with portions of Ms. Sweet's deposition and upcoming witness testimony; informed the Court that Ms. Sweet was presented as a NRCP 30(b)(6) representative and instructed to not answer questions about her communications with employees in preparation of her deposition regarding appeals and utilization management audits; stated attorney-client privilege for the objection at the time of the deposition. Mr. Roberts confirmed Ms. Sweet will not testify to appeals. Mr. Sharp argued that defense cannot use attorney-client privilege as the sword and the shield; and requested any objections made during upcoming testimony be discussed outside the presence of the jury. Mr. Roberts rebutted that Plaintiff did not seek a motion to compel to get the information and clarified that Ms. Sweet is not testifying as

a NRCP 30(b)(6) representative or what she learned in her investigation. COURT ORDERED, Ms. Sweet is not going to be able to testify as to anything she relied upon in discussing with other people at the deposition; Ms. Sweet cannot testify to it at the time of trial; and Ms. Sweet can only testify if she does not have personal knowledge. Mr. Roberts requested a few minutes to confer with Ms. Sweet. COURT SO NOTED.

JURORS PRESENT: Continued testimony and exhibits presented. (See worksheets.) Mr. Roberts reminded the Court of his intention to move for judicial review; and requested outside the presence of the jury. COURT SO NOTED. Defense REST.

OUTSIDE THE PRESENCE OF THE JURY: Mr. Sharp moved for a Rule 50 judgment on the first element. To make the record clear, counsel moved to publish the depositions of Mr. Palmer, Ms. Amogawin, and Dr. Liao. COURT ORDERED, all three (3) GRANTED. Matthew Palmer's October 22, 2021 Deposition and disc of played portion PUBLISHED. (See log.)

Mr. Sharp argued his Motion for Judgment on the First Element as the insurance company did not relay on the insurance policy for its denial. Mr. Roberts argued procedure was unproven and not medically necessary as the reason for the denial in the insurance contract. Mr. Sharp rebutted that there was no consideration. COURT ORDERED, Motion for Judgment as a Matter of Law - Covered Service DENIED.

Jury Instructions and Verdict Forms SETTLED.

Mr. Roberts requested that the Court take judicial notice of NRS 695G.055, NRS 695G.040, NRS 695G.053, and NRS 695G.110. With no objection from Mr. Sharp, COURT ORDERED, the Court will take JUDICIAL NOTICE of NRS NRS 695G.040, NRS 695G.053, and NRS 695G.110.

Court adjourned for the day; to resume April 4, 2022 at 9:00 AM.

JURY TRIAL CONTINUED TO: 04/04/22 09:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**April 04, 2022**

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A-19-788630-C	Sandra Eskew, Plaintiff(s) vs. Sierra Health and Life Insurance Company Inc, Defendant(s)
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**April 04, 2022**

**9:00 AM**

**Jury Trial**

**HEARD BY:** Krall, Nadia

**COURTROOM:** RJC Courtroom 03C

**COURT CLERK:** Pharan Burchfield

**RECORDER:** Melissa Burgener

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Eskew, Sandra L	Plaintiff
		Special Administrator
	Gormley, Ryan	Attorney
	Roberts, D Lee, Jr.	Attorney
	Sharp, Matthew L.	Attorney
	Smith, Phillip N.	Attorney
	Terry, Douglas A.	Attorney

**JOURNAL ENTRIES**

- All parties present as before. Glen Stevens, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present. David Crump, as a representative of Defendant Sierra Health and Life Insurance Company Inc., also present via BlueJeans. Mr. Gormley present via BlueJeans.

**JURY PRESENT:** Court instructed the jury. Closing argument by Mr. Sharp.

**OUTSIDE THE PRESENCE OF THE JURY:** Mr. Roberts requested a supplemental jury instruction to curate an inaccurate argument of the law made by Mr. Sharp. Mr. Sharp responded that was not his intent to mislead the jury and argued that a curative instruction would punish him and his integrity; suggested being able to clarify to the jury. Mr. Roberts stated that would be satisfied. COURT SO NOTED.

JURY PRESENT: Mr. Sharp continued closing argument; closing argument by Mr. Roberts; and rebuttal argument by Mr. Terry. Marshal and Law Clerk SWORN. At the hour of 03:41 PM, the jury retired to deliberate. Court thanked and excused the alternates. At the hour of 04:57 PM, the jury returned with a verdict in favor of Plaintiff. Jury polled.

OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding remaining trial schedule and punitive damages phase of trial.

Court adjourned for the evening; trial to resume with punitive damages phase on April 5, 2022 at 1:00 PM.

JURY TRIAL CONTINUED TO: 04/05/2022 01:00 PM

CLERK'S NOTE: Minutes amended on April 15, 2022 for formatting purposes only.//pb/4/15/22.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort****COURT MINUTES****April 05, 2022**

A-19-788630-C      Sandra Eskew, Plaintiff(s)  
    vs.  
    Sierra Health and Life Insurance Company Inc, Defendant(s)

**April 05, 2022****1:00 PM****Jury Trial****HEARD BY:** Krall, Nadia**COURTROOM:** RJC Courtroom 03C**COURT CLERK:** Pharan Burchfield**RECORDER:** Melissa Burgener**REPORTER:****PARTIES**

<b>PRESENT:</b>	Eskew, Sandra L	Plaintiff
		Special Administrator
	Gormley, Ryan	Attorney
	Roberts, D Lee, Jr.	Attorney
	Sharp, Matthew L.	Attorney
	Smith, Phillip N.	Attorney
	Terry, Douglas A.	Attorney

**JOURNAL ENTRIES**

- All parties present as before. Glen Stevens and David Crump, as a representatives of Defendant Sierra Health and Life Insurance Company Inc., also present via BlueJeans.

OUTSIDE THE PRESENCE OF THE JURY: Discussion of the Jury Instructions For Phase 2 (Punitive Damages Phase). Parties stipulated to the net worth of Defendant Sierra Health and Life Insurance Company, Inc. Mr. Roberts requested jury clarify the 04/04/2022 Verdict and whether or not that included punitive damages; Mr. Sharp discussed the Wyatt case and stated would create potential error of the record; Mr. Roberts indicated plans to move for a new trial or mistrial. COURT ORDERED, that the parties meet and come up a proposed jury instruction, based on Mr. Sharp inclination during voir dire of asking the panel from between 15 million and 50 million and on Mr. Terry asking for 30 million. Counsel made objection to the instruction. Jury Instructions For Phase 2 (Punitive Damages Phase) SETTLED.

JURY PRESENT: Plaintiff REST. Witnesses RECALLED, SWORN and TESTIFIED (See Worksheet.). Defense REST. Court instructed the jury on phase 2 (punitive damages). Arguments by Mr. Terry and Mr. Roberts. Mr. Roberts requested that the Court take judicial notice that pursuant to Administration Order 21-4 as modified by General Order 22-04, Mr. Crump, representative for Defendant Sierra Health and Life Insurance Company Inc. has been present via BlueJeans. With no objection from Mr. Terry, COURT ORDERED, the Court will take JUDICIAL NOTICE that the company representative has been listening to this proceeding via audio; even though the jury cannot see it, he has been present. Marshal and JEA SWORN. At the hour of 03:25 PM, the jury retired to deliberate. Court thanked and excused the alternates. At the hour of 04:07 PM, the jury returned with a verdict in favor of Plaintiff for punitive damages. Jury polled. Court thanked and excused the jury.

CLERK'S NOTE: Minutes amended on April 15, 2022 for formatting purposes only.//pb/4/15/22.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**May 25, 2022**

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A-19-788630-C      Sandra Eskew, Plaintiff(s)  
vs.  
Sierra Health and Life Insurance Company Inc, Defendant(s)

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**May 25, 2022      3:00 AM      Minute Order**

**HEARD BY:** Krall, Nadia      **COURTROOM:** Chambers

**COURT CLERK:** Pharan Burchfield

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to secure efficient, just and inexpensive determinations in every action and proceeding.

Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time with or without oral argument, and grant or deny it.

Plaintiff's Verified Memorandum of Costs and Disbursements filed on 4/19/2022; Defendant's Motion to Retax Costs filed on 4/22/2022; Plaintiff's Opposition to Defendant's Motion to Retax Costs filed on 5/6/2022.

The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on file.

COURT ORDERED, Defendant's Motion to Retax Costs filed on 4/22/2022 is GRANTED IN PART and DENIED IN PART. Defendant's Motion to Retax is GRANTED consistent with Plaintiff's Opposition and is DENIED as to all other aspects.

COURT FURTHER ORDERED, counsel for Plaintiff to draft and circulate a proposed order for opposing counsel's signature prior to submitting it to the Department 4 inbox for the Judge's review



and signature within fourteen (14) days and distribute a filed copy to all parties involved in this matter.

COURT FURTHER ORDERED, counsel for Plaintiff to include Findings of Fact and Conclusions of Law based upon the Memorandum of Points and Authorities set forth in Plaintiff's pleadings.

COURT FURTHER ORDERED Defendant's Motion to Retax Costs filed on 4/22/2022 and scheduled for hearing on 6/1/2022 at 9:00 A.M. is VACATED.

CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Pharan Burchfield, to all registered parties for Odyssey File & Serve.//pb/5/25/22.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Insurance Tort

# COURT MINUTES

**July 07, 2022**

A-19-788630-C      Sandra Eskew, Plaintiff(s)  
vs.  
Sierra Health and Life Insurance Company Inc, Defendant(s)

**July 07, 2022**                      **3:00 AM**                      **Minute Order**

**HEARD BY:** Krall, Nadia **COURTROOM:** Chambers

**COURT CLERK:** Pharan Burchfield

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

## JOURNAL ENTRIES

- NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to secure efficient, just and inexpensive determinations in every action and proceeding.

Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time with or without oral argument, and grant or deny it.

Defendant's Motion to Associate Counsel Thomas H. Dupree, Jr. filed on 6/6/2022.

The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on file.

COURT NOTES Eighth Judicial District Court Rule 2.20(e) states: "Within 14 days after the service of the motion, and 5 days after service of any joinder to the motion, the opposing party must serve and file written notice of non-opposition or opposition thereto, together with a memorandum of points and authorities and supporting affidavits, if any, stating facts showing why the motion and/or joinder should be denied. Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same."

COURT FURTHER NOTES as of 7/5/2022 no opposition to Defendant's Motion to Associate Counsel Thomas H. Dupree, Jr. filed on 6/6/2022 has been filed.

COURT ORDERED, Defendant's Motion to Associate Counsel Thomas H. Dupree, Jr. filed on 6/6/2022 is GRANTED pursuant to Eighth Judicial District Court Rule 2.20(e) and Nevada Supreme Court Rule 42.

COURT FURTHER ORDERED, counsel for Defendant Sierra Health and Life Insurance Company, Inc. to draft and submit a proposed order to the Department 4 inbox for the Judge's review and signature within fourteen (14) days and distribute a filed copy to all parties involved in this matter.

COURT FURTHER ORDERED, Defendant's Motion to Associate Counsel Thomas H. Dupree, Jr. filed on 6/6/2022 and scheduled for hearing on 7/12/2022 at 9:00 A.M. is VACATED.

CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Pharan Burchfield, to all registered parties for Odyssey File & Serve.//pb/7/7/22.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**August 11, 2022**

A-19-788630-C

Sandra Eskew, Plaintiff(s)

vs.

Sierra Health and Life Insurance Company Inc, Defendant(s)

**August 11, 2022**

**3:00 AM**

**Minute Order**

**Plaintiff's Motion to  
Associate Counsel  
Matthew W.H.  
Wessler, Esq.**

**HEARD BY:** Krall, Nadia

**COURTROOM:** Chambers

**COURT CLERK:** Pharan Burchfield

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to secure efficient, just and inexpensive determinations in every action and proceeding.

Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time with or without oral argument, and grant or deny it.

Plaintiff's Motion to Associate Counsel Matthew W.H. Wessler, Esq. filed on 7/28/2022.

The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on file.

COURT NOTES Eighth Judicial District Court Rule 2.20(e) states: "Within 14 days after the service of the motion, and 5 days after service of any joinder to the motion, the opposing party must serve and file written notice of non-opposition or opposition thereto, together with a memorandum of points and authorities and supporting affidavits, if any, stating facts showing why the motion and/or joinder should be denied. Failure of the opposing party to serve and file written opposition may be

construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same."

COURT FURTHER NOTES as of 8/11/2022 no opposition to Plaintiff's Motion to Associate Counsel Matthew W.H. Wessler, Esq. filed on 7/28/2022 has been filed.

COURT ORDERED, Plaintiff's Motion to Associate Counsel Matthew W.H. Wessler, Esq. filed on 7/28/2022 is GRANTED pursuant to Eighth Judicial District Court Rule 2.20(e) and Nevada Supreme Court Rule 42.

COURT FURTHER ORDERED, counsel for Plaintiff to draft and circulate a proposed order for opposing counsel's signature prior to submitting it to the Department 4 inbox for the Judge's review and signature within fourteen (14) days and distribute a filed copy to all parties involved in this matter.

COURT FURTHER ORDERED, Plaintiff's Motion to Associate Counsel Matthew W.H. Wessler, Esq. filed on 7/28/2022 and scheduled for hearing on 8/30/2022 at 9:00 A.M. is VACATED.

CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Pharan Burchfield, to all registered parties for Odyssey File & Serve.//pb/8/11/22.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**August 11, 2022**

A-19-788630-C

Sandra Eskew, Plaintiff(s)

vs.

Sierra Health and Life Insurance Company Inc, Defendant(s)

**August 11, 2022**

**3:00 AM**

**Minute Order**

**Plaintiff's Motion to  
Associate Counsel  
Depak Gupta, Esq.**

**HEARD BY:** Krall, Nadia

**COURTROOM:** Chambers

**COURT CLERK:** Pharan Burchfield

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to secure efficient, just and inexpensive determinations in every action and proceeding.

Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time with or without oral argument, and grant or deny it.

Plaintiff's Motion to Associate Counsel Depak Gupta, Esq. filed on 7/21/2022.

The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on file.

COURT NOTES Eighth Judicial District Court Rule 2.20(e) states: "Within 14 days after the service of the motion, and 5 days after service of any joinder to the motion, the opposing party must serve and file written notice of non-opposition or opposition thereto, together with a memorandum of points and authorities and supporting affidavits, if any, stating facts showing why the motion and/or joinder should be denied. Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting

the same."

COURT FURTHER NOTES as of 8/11/2022 no opposition to Plaintiff's Motion to Associate Counsel Depak Gupta, Esq. filed on 7/21/2022 has been filed.

COURT ORDERED, Plaintiff's Motion to Associate Counsel Depak Gupta, Esq. filed on 7/21/2022 is GRANTED pursuant to Eighth Judicial District Court Rule 2.20(e) and Nevada Supreme Court Rule 42.

COURT FURTHER ORDERED, counsel for Plaintiff to draft and circulate a proposed order for opposing counsel's signature prior to submitting it to the Department 4 inbox for the Judge's review and signature within fourteen (14) days and distribute a filed copy to all parties involved in this matter.

COURT FURTHER ORDERED, Plaintiff's Motion to Associate Counsel Depak Gupta, Esq. filed on 7/21/2022 and scheduled for hearing on 8/30/2022 at 9:00 A.M. is VACATED.

CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Pharan Burchfield, to all registered parties for Odyssey File & Serve.//pb/8/11/22.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**August 15, 2022**

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A-19-788630-C	Sandra Eskew, Plaintiff(s) vs. Sierra Health and Life Insurance Company Inc, Defendant(s)
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<b>August 15, 2022</b>	<b>3:00 AM</b>	<b>Minute Order</b>	<b>Defendant's Renewed Motion for Judgment as a Matter of Law</b>
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**HEARD BY:** Krall, Nadia

**COURTROOM:** Chambers

**COURT CLERK:** Pharan Burchfield

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to secure efficient, just and inexpensive determinations in every action and proceeding.

Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time with or without oral argument, and grant or deny it.

Defendant's Renewed Motion for Judgment as a Matter of Law filed on 5/16/2022; Plaintiff's Opposition to Defendant's Renewed Motion for Judgment as a Matter of Law filed on 6/29/2022; and Defendant's Reply in Support of its Renewed Judgment as a Matter of Law filed on 7/20/2022.

The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on file.

COURT ORDERED, Defendant's Renewed Motion for Judgment as a Matter of Law filed on 5/16/2022 is DENIED pursuant to M.C. Multi-Family Development, L.L.C. v. Crestdale Associates, Ltd., 124 Nev. 901 (2008); Harrah's Las Vegas, LLC v. Muckridge, 473 P.3d 1020 (Nev. 2020);



Broussard v. Hill, 100 Nev. 325 (1984); Ainsworth v. Combined Ins. Co. of Am., 104 Nev. 587 (1988); Albert v. H. Wohlers & Co. v. Bartgis, 114 Nev. 1249 (1998); Allstate Ins. Co. v. Miller, 125 Nev. 300 (2009); Guar. Nat. Ins. Co. v. Potter, 112 Nev. 199 (1996); Powers v. United Servs. Auto Ass'n, 114 Nev. 690 (1998); Century Sur. Co. v. Casino W., Inc., 130 Nev. 395 (2014); Powell v. Liberty Mut. Fire Ins. Co., 127 Nev. 156 (2011); Holcomb v. Georgia Pac., LLC, 128 Nev. 614 (2012); NRS 51.005; Countrywide Home Loans, Inc. v. Thitchener, 124 Nev. 725 (2008); Ainsworth v. Combined Ins. Co. of America, 104 Nev. 587 (1988); United Fire Ins. Co. v. McClelland, 105 Nev. 504 (1989); First Interstate Bank v. Jafbros Auto Body, 106 Nev. 54 (1990); and Wreth v. Rowatt, 126 Nev. 446 (2010).

COURT FURTHER ORDERED, counsel for Plaintiff to draft and circulate a proposed order for opposing counsel's signature prior to submitting it to the Department 4 inbox for the Judge's review and signature within fourteen (14) days and distribute a filed copy to all parties involved in this matter.

COURT FURTHER ORDERED, counsel for Plaintiff to include Findings of Fact and Conclusions of Law based upon the Memorandum of Points and Authorities set forth in Plaintiff's pleadings.

COURT FURTHER ORDERED, Defendant's Renewed Motion for Judgment as a Matter of Law filed on 5/16/2022 and scheduled for hearing on 8/17/2022 at 9:00 A.M. is VACATED.

CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Pharan Burchfield, to all registered parties for Odyssey File & Serve.//pb/8/15/22.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort**

**COURT MINUTES**

**August 15, 2022**

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A-19-788630-C	Sandra Eskew, Plaintiff(s) vs. Sierra Health and Life Insurance Company Inc, Defendant(s)
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<b>August 15, 2022</b>	<b>3:00 AM</b>	<b>Minute Order</b>	<b>Defendant's Motion for a New Trial or Remittitur</b>
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**HEARD BY:** Krall, Nadia

**COURTROOM:** Chambers

**COURT CLERK:** Pharan Burchfield

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- NRCP 1 and NRCP 1.10 state that the procedures in district court shall be administered to secure efficient, just and inexpensive determinations in every action and proceeding.

Pursuant to EDCR 2.23(c), the judge may consider the motion on its merits at any time with or without oral argument, and grant or deny it.

Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022; Plaintiff's Opposition to Defendant's Motion for a New Trial or Remittitur filed on 6/29/2022; Defendant's Reply in Support of Its Motion for a New Trial or Remittitur filed on 7/20/2022; and Defendant's Motion for Leave to File Supplemental Authority in Support of its Motion for a New Trail or Remittitur filed on 8/10/2022.

The Court reviewed all of the pleadings and attached exhibits regarding the pleadings on file.

COURT ORDERED, Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022 is DENIED pursuant to Bahena v. Goodyear Tire & Rubber Co., 126 Nev. 243 (2010); NRCP 59(a)(1)(B) & (F);

Wyeth v. Rowatt, 126 Nev. 446 (2010); Bayerische Motoren Werke Aktiengesellschaft v Roth, 127 Nev. 122 (2011); Grosjean v. Imperial Palace, 125 Nev. 349 (2009); Cox v. Copperfield, 138 Nev. Adv. Op. 27 (2022); Pizarro-Ortega v. Cervantes-Lopez, 133 Nev. 261 (2017); Lioce v. Cohen, 124 Nev. 1 (2008); Ringle v. Bruton, 120 Nev. 82 (2004); Walker v. State, 78 Nev. 463 (1962); Born v. Eisenman, 114 Nev. 854 (1998); Satackiewicz v. Nissan Motor Corp. in U.S.A., 100 Nev. 443 (1983); Guaranty Nat. Ins. Co. v. Potter, 112 Nev. 199 (1996); Automatic Merchandisers, Inc. v. Ward, 98 Nev. 282 (1982); Hernancez v. City of Salt Lake, 100 Nev. 504 (1984); Dejesus v. Flick, 116 Nev. 812 (2000); Wells, Inc. v. Shoemake, 64 Nev. 57 (1947); Nevada Independent Broadcasting Corporation v. Allen, 99 Nev. 404 (1983); Quintero v. McDonald, 116 Nev. 1181 (2000); Barmettler v. Reno, Air, Inc., 114 Nev. 441 (1998); State v. Eaton, 101 Nev. 705 (1985); State v. Eaton, 101 Nev. 705 (1985); Jacobson v. Manfredi, 100 Nev. 226 (1984); BMW of N. Am. Inc. v. Gore, 517 U.S. 559 (1996); State Farm Mut. Aut. Ins. Co. v. Campbell, 538 U.S. 408 (2003); TXO Prod. Corp. v. Alliance Res. Corp., 509 U.S. 443 (1993); Merrick v. Paul Revere Life Ins. Co., 594 F.Supp.2d 1168 (Nev. Dis. 2008); and Campbell v. State Farm. Mut. Auto Ins. Co., 98 P.3d 409 (Utah 2004).

COURT FURTHER ORDERED, counsel for Plaintiff to draft and circulate a proposed order for opposing counsel's signature prior to submitting it to the Department 4 inbox for the Judge's review and signature within fourteen (14) days and distribute a filed copy to all parties involved in this matter.

COURT FURTHER ORDERED, counsel for Plaintiff to include Findings of Fact and Conclusions of Law based upon the Memorandum of Points and Authorities set forth in Plaintiff's pleadings.

COURT FURTHER ORDERED, Defendant's Motion for a New Trial or Remittitur filed on 5/16/2022 and scheduled for hearing on 8/17/2022 at 9:00 A.M. is VACATED.

CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Pharan Burchfield, to all registered parties for Odyssey File & Serve.//pb/8/15/22.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Tort****COURT MINUTES****October 18, 2022**

A-19-788630-C

Sandra Eskew, Plaintiff(s)

vs.

Sierra Health and Life Insurance Company Inc, Defendant(s)

**October 18, 2022****9:00 AM****Motion**

**Plaintiff's Motion for  
Entry of Express  
Findings as Required  
by Lioce v. Cohen**

**HEARD BY:** Krall, Nadia**COURTROOM:** RJC Courtroom 03C**COURT CLERK:** Pharan Burchfield**RECORDER:** Melissa Burgener**REPORTER:****PARTIES****PRESENT:**

Gormley, Ryan

Attorney

Roberts, D Lee, Jr.

Attorney

Sharp, Matthew L.

Attorney

Terry, Douglas A.

Attorney

**JOURNAL ENTRIES**

- COURT thanked counsel for the courtesy binders and NOTED having read everything. Arguments by Mr. Sharp and Mr. Gormley regarding the merits of and oppositions to Plaintiff's Motion for Entry of Express Findings as Required by Lioce v. Cohen. COURT ORDERED, Plaintiff's Motion for Entry of Express Findings as Required by Lioce v. Cohen GRANTED. COURT NOTED having rejected the 65-page proposed Findings of Facts and Conclusions of Law and Order as to being too broad and beyond the scope; after the rejection, Plaintiff did pare it down to 12-pages with input from defense counsel, and defense counsel submitted their own proposal. COURT FURTHER NOTED having to review the objections under the plain error standard, STATED its FINDINGS, and FURTHER ORDERED, both parties submit a Word version of their current proposed Findings of Facts and Conclusions of Law and Order to the Court by e-mailing Law Clerk Mr. Sorensen; and the Court will make any changes it deems necessary.

# JOINT EXHIBIT LIST

Case No.: A-19-788630-C

Trial Date: March 14, 2022

Dept. No.: IV (4)

Judge: Hon. Nadia Krall

Court Clerk: Pharan Burchfield

**Sandra L. Eskew,**  
Plaintiff(s),

Recorder / Reporter: Melissa Burgener

vs.

**Sierra Health and Life Ins. Co. Inc.,**  
Defendant(s).

Counsel for Plaintiff: Matthew L. Sharp, Esq. &  
Douglas A. Terry, Esq.

Counsel for Defendant: D. Lee Roberts, Jr., Esq.,  
Ryan T. Gormley, Esq., &  
Phillip N. Smith, Jr., Esq.

## JURY TRIAL BEFORE THE COURT

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
1.	William Eskew SHL Membership card, Eskew 000052	001:1			
2.	Eskew Insurance Policy, Eskew 00001-51	002:1-51	3-23-22	NO	3-23-22
3.	UHC Insurance Policy No. 1, SHL 00001-98	003:1-98	3-23-22	YES	3-23-22
4.	UHC Insurance Policy No. 2, SHL 02587-2688	004:1-102	3-16-22	NO	3-16-22
5.	Proton Beam Request File, SHL 00320-378	005:1-59	3-16-22	NO	3-16-22
6.	Denial Library Text, SHL 02536	006:1-195	3-22-22	YES	3-22-22
7.	MBO Partners Invoice, MB 00563	007:1	3-16-22	NO	3-16-22
8.	The New York Proton Center Material, Eskew 485-795	008:1-311	3-22-22	NO	3-22-22
9.	Photographs of William Eskew	009:1-2	3-23-22	NO	3-23-22
10.	Holland-Williams Text Messages, HW 00122-131	010:1-10			
11.	Holland-Williams Text Messages, HW 00135-141	011:1-7			
12.	Holland-Williams Text Messages, HW 00148-151	012:1-4			

**JOINT EXHIBITS**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Bates</b>	<b>Date Offered</b>	<b>Objection</b>	<b>Date Admitted</b>
13.	United Healthcare Policy & Procedure – SHL001915-1920	013:1-6	3-22-22	NO	3-22-22
14.	Utilization Management Policy, SHL 00512-586	014:1-75	3-22-22	NO	3-22-22
15.	UHC Proton Beam Radiation Therapy Medical Policy No 2011T0132K, Effective Date 12/01/2011, SHL 01755-1774	015:1-20			
16.	UHC Proton Beam Radiation Therapy Medical Policy No. 2012T0132L, Effective Date 12/01/2012, SHL 01775-179;	016:1-22			
17.	UHC Proton Beam Radiation Therapy Medical Policy No. 2013T0132M, Effective Date 04/01/2013, SHL 01797-1817	017:1-21			
18.	UHC Proton Beam Radiation Therapy Medical Policy No. 2013T0132M, Effective Date 04/01/2013, SHL 01818-1839	018:1-22			
19.	UHC Medical Policy, Proton Beam Radiation Therapy, Policy No. 2014T0132O, Effective Date 01/01/2014, SHL 00587-0608	019:1-22			
20.	UHC Medical Policy, Proton Beam Radiation Therapy, Policy No. 2014T90132P, Effective Date 06/01/2014; SHL 00609-0630	020:1-22			
21.	UHC Medical Policy, Proton Beam Radiation Therapy, Policy No. 2017T90132Q, Effective Date 09/01/2014, SHL 00631-0655	021:1-25			
22.	UHC Medical Policy, Proton Beam Radiation Therapy, Policy No. 2015T0132R, Effective Date 01/01/2015, SHL 00656-0678	022:1-23			
23.	UHC Medical Policy, Proton Beam Radiation Therapy, Policy No. 2015T0132S, Effective Date 10/01/2015, SHL 00679-0702	023:1-24			
24.	UHC Medical Policy, Proton Beam Radiation Therapy, Policy No. 2015T0132T, Effective Date 12/01/2015, SHL 00703-0728	024:1-26	3-16-22	NO	3-16-22

**JOINT EXHIBITS**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Bates</b>	<b>Date Offered</b>	<b>Objection</b>	<b>Date Admitted</b>
25.	UHC Medical Policy, Proton Beam Radiation Therapy, Policy No. 2016T0132U, Effective Date 10/01/2016, SHL 00729-0747	025:1-19			
26.	UHC Medical Policy, Proton Beam Radiation Therapy, Policy No. 2016T0132V, Effective Date 11/01/2016, SHL 00748-0766	026:1-19			
27.	UHC Medical Policy, Proton Beam Radiation Therapy, Policy No. 2017T0132W, Effective Date 09/01/2017, SHL 00767-0786	027:1-20			
28.	UHC Medical Policy, Proton Beam Radiation Therapy, Policy No. 2018T0132X, Effective Date 01/01/2018, SHL 00787-0805	028:1-19			
29.	UHC Medical Policy, Proton Beam Radiation Therapy, Policy No. 2018T0132Y, Effective Date 03/01/2018, SHL 00806-0823	029:1-18			
30.	UHC Medical Policy, Proton Beam Radiation Therapy, Policy No. 2018T0132Z, Effective Date 07/01/2018, SHL 00824-0842	030:1-19			
31.	UHC Medical Policy, Proton Beam Radiation Therapy, Policy No. 2019T0132AA, Effective Date 01/01/2019, SHL 00843-0861	031:1-19	3-25-22	YES	3-25-22
32.	UHC Medical Policy, Proton Beam Radiation Therapy, Policy No. 2019T0132AA, Effective Date 01/01/2019, SHL 00862-0881	032:1-20			
33.	UHC Medical Policy, Proton Beam Radiation Therapy, Policy No. 2019T0132AA, Effective Date 01/01/2019, SHL 00882-0901	033:1-20			
34.	SHL Protocol, Proton Beam Radiation Therapy, Protocol ONC004, Effective Date 07/08/2013, SHL 01113-1136	034:1-24			
35.	SHL Protocol, Proton Beam Radiation Therapy, Protocol ONC004, Effective Date 03/10/2014, SHL 01137-1161	035:1-25			

**JOINT EXHIBITS**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Bates</b>	<b>Date Offered</b>	<b>Objection</b>	<b>Date Admitted</b>
36.	SHL Protocol, Proton Beam Radiation Therapy, Protocol ONC004, Effective Date 08/11/2014, SHL 01162-1185	036:1-24			
37.	SHL Protocol, Proton Beam Radiation Therapy, Protocol ONC004, Effective Date 11/10/2014, SHL 01186-1212	037:1-27			
38.	SHL Protocol, Proton Beam Radiation Therapy, Protocol ONC004, Effective Date 03/01/2015, SHL 01213-1239	038:1-27			
39.	SHL Protocol, Proton Beam Radiation Therapy, Protocol ONC004, Effective Date 12/01/2015, SHL 01240-1270	039:1-31			
40.	SHL Protocol, Proton Beam Radiation Therapy, Protocol ONC004, Effective Date 02/01/2016, SHL 01271-1303	040:1-33			
41.	SHL Protocol, Proton Beam Radiation Therapy, Protocol ONC004, Effective Date 12/01/2016, SHL 01304-1337	041:1-34			
42.	SHL Protocol, Proton Beam Radiation Therapy, Protocol ONC004, Effective Date 01/11/2017, SHL 01338-1370	042:1-33			
43.	SHL Protocol, Proton Beam Radiation Therapy, Protocol ONC004, Effective Date 04/01/2019, SHL 01371-1397	043:1-27			
44.	Proton Beam Radiation Therapy Evidence Grid, SHL 01868	044:1			
45.	Proton Beam Radiation Therapy Data, SHL 02723	045:1-50			
46.	MBO Contractor Agreement, SHL 01660-1664	046:1-5			
47.	MBO/Physician Legal Contractor Agreement, MBO 00490-520	047:1-31	3-22-22	NO	3-22-22
48.	2011-08-20 Independent Contractor Referral, MBO 00430-431	048:1-2	3-22-22	NO	3-22-22
49.	2016-11-16 Independent Contractor Referral, SHL 01845-1846	049:1-2	3-22-22	YES	3-22-22
50.	2017-02-28 Independent Contractor Referral, SHL 01847-1848	050:1-2	3-22-22	NO	3-22-22
51.	2017-05-01 Independent Contractor Referral, SHL 01851-1852	051:1-2			



**JOINT EXHIBITS**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Bates</b>	<b>Date Offered</b>	<b>Objection</b>	<b>Date Admitted</b>
52.	2018-02-29 Independent Contractor Referral Template, SHL 01852-1853, MBO 00438-439	052:1-2			
53.	MBO Work Orders, MBO 00561	053:1			
✓x 54.	Dr. Ahmad Excel Spreadsheet, SHL 01840	054:1-16	3-16-22	NO	3-16-22
55.	Dr. Ahmad MBO Ledger, MBO 00236-418	055:1-183			
✓ 56.	UHC/MBO Master Services Agreement, SHL 01679-1754	056:1-76	3-22-22	NO	3-22-22
57.	UTMDACC 00046	057:1			
58.	UTMDACC 00393-394	058:1-2			
59.	UTMDACC 24-229	059:1-206			
60.	MPAC Agenda 9/13/16, SHL 2716-2717	060:1-2			
61.	MPAC Minutes 9/13/16, SHL 2718-2722	061:1-5			
62.	UHC Responses to Plaintiffs' Fourth Set of Requests for Production	062:1-34			
63.	2019 Annual Statement for Sierra Health, Eskew 1387-1458	063:1-72			
64.	2020 Annual Statement for Sierra Health, Eskew 1459-1561	064:1-103			
65.	AM Best's Credit Report for UnitedHealthcare, Eskew 1562-1612	065:1-51			
66.	2015-2020 10K's for UnitedHealth Group, Eskew 1613-2321	066:1-113			
67.	UHC Medical Policy, Intensity-Modulated Radiation Therapy, Policy No. 2014T0407M, Effective Date 07/01/2014, SHL 930-957	067:1-28			
68.	UHC Medical Policy, Intensity-Modulated Radiation Therapy, Policy No. 2015T0407N, Effective Date 01/01/2015, SHL 958-977	068:1-20			
69.	UHC Medical Policy, Intensity-Modulated Radiation Therapy, Policy No. 2015T0407O, Effective Date 08/01/2015, SHL 978-996	069:1-19			

**JOINT EXHIBITS**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Bates</b>	<b>Date Offered</b>	<b>Objection</b>	<b>Date Admitted</b>
70.	UHC Medical Policy, Intensity-Modulated Radiation Therapy, Policy No. 2016T0407P, Effective Date 02/01/2016, SHL 997-1012	070:1-16			
71.	New York Proton Center Website last accessed February 16, 2021	71: 1-29	3-25-22	YES	Only 1, 17 & 18
71-1	Cover Page (with Date)	071:1	3-25-22	NO	3-25-22 WA
71-17	Proton Therapy for Lung and thoracic tumors	071:17	3-25-22	YES	3-25-22 WA
71-18	Description	071:18	3-25-22	YES	3-25-22 WA
72.	Protocol ONC006-Fecal DNA Testing, SHL 0311-0319	072:1-9	3-29-22	NO	3-29-22 WA
73.	Case History, Case No. 160360744, SHL 393-397	073:1-5	3-22-22	NO	3-22-22 WA
74.	Correspondence, Reference No. 160360744, SHL 478	074:1			
75.	SHL Protocol, Intensity-Modulated Radiation Therapy, Protocol RAD026, Effective Date 10/01/2015, SHL 1492-1514	075:1-23	3-16-22	YES	3-16-22 WA
76.	Dr. Ahmad Affirmative Statement about Incentives Records, SHL 1665-1675	076:1-11	3-21-22	NO	3-21-22 WA
77.	Job Description, SHL 1676-1678	077:1-3			
78.	MBO – Ahmad Full Ledger Details, MBO0001-79	078:1-79			
79.	MBO – Ahmad Full Time Review Details, MBO00080-235	079:1-156	3-16-22	NO	3-16-22 WA
80.	MBO – Ahmad Ledger for 3/1/16-3/31/16, MBO000333	080:1			
81.	MBO – Ahmad Requalification Survey, MBO000419-422	081:1-4			
82.	MBO – Ahmad Work Order Update, MBO000423-429	082:1-7			
83.	MBO – Ahmad American Background Summary Sheet, MBO000489	083:1			
84.	MBO – Ahmad Amendment No. 1 to the Contractor Agreement, signed October 4, 2011, MBO000521-524	084:1-4			
85.	MBO – Ahmad Contractor Agreement, MBO000525-529	085:1-5			
86.	MBO – Ahmad Contractor Questionnaire, MBO000542-544	086:1-3			
87.	Fieldglass Contractor Data – Dr. Ahmad (Excel Spreadsheet) (confidential), SHL 1841	087:1-6			
88.	Worker Invoice Detail Standard (Excel Spreadsheet) (confidential), SHL 1842	088:1-15			

**JOINT EXHIBITS**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Bates</b>	<b>Date Offered</b>	<b>Objection</b>	<b>Date Admitted</b>
89.	Independent Contractor Referral Template, dated 09/01/2011 (confidential), SHL 1843-1844	089:1-2			
90.	Independent Contractor Referral Form, dated 02/28/2017 (confidential), SHL 1849-1850	090:1-2			
91.	MTAC August 6, 2015 Meeting, Agenda (confidential), SHL 1855-1857	091:1-3			
92.	MTAC August 6, 2015 Meeting, Minutes (confidential), SHL 1858-1867	092:1-10			
93.	MTAC August 6, 2015 Meeting, Evidence Grid (Excel Spreadsheet) (confidential), SHL 1868	093:1			
94.	MTAC August 6, 2015 Meeting, Draft Proton Beam Radiation Therapy v4 (confidential), SHL 1869-1896	094:1-28			
95.	MTAC August 6, 2015 Meeting, Proton Beam Radiation Therapy Status Form v4 (confidential), SHL 1897-1900	095:1-4			
96.	MPIA August 11, 2015 Meeting, Agenda (confidential), SHL 1901-1902	096:1-2			
97.	MPIA August 11, 2015 Meeting, Minutes, Attachment A (Excel Spreadsheet) (confidential), SHL 1903	097:1-28			
98.	MPIA August 11, 2015 Meeting, Attachment B (Excel Spreadsheet) (confidential), SHL 1904	098:1-3			
99.	MD Anderson – Medical Literature, UTMDACC 00324-388	099:1-65			
100.	MD Anderson – Opening Article, UTMDACC 00389	100:1			
101.	HW – William G. Eskew Insurance Card, HW000002	101:1			
102.	HW – William G. Eskew Insurance Application, HW000003-6	102:1-4			
103.	HW – William G. Eskew Agent/Agency Agreement, HW000008-18	103:1-11			
104.	MD Anderson - Appeals Policy, UTMDACC 00230-235	104:1-6			
105.	MD Anderson - Patient Notes, UTMDACC 00236-248	105:1-13	3/29/22	No	3/29/22 wa

**JOINT EXHIBITS**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Bates</b>	<b>Date Offered</b>	<b>Objection</b>	<b>Date Admitted</b>
106.	MD Anderson - Organizational Chart, UTMDACC 00249	106:1			
107.	MD Anderson - Clinical Program Manager Job Description, UTMDACC 00250-252	107:1-3			
108.	MD Anderson – Emails, UTMDACC 00390-395	108:1-6	3-25-22	NO	3-25-22
109.	MD Anderson – First Amendment to Management Services Agreement and Consent of Limited Partners of the Proton Therapy Center-Houston LTD., LLP, UTMDACC 00396-398	109:1-3			
110.	MD Anderson – Entity Chart, UTMDACC 00399	110:1			
111.	MD Anderson – Entity Chart, updated August 6, 2015 , UTMDACC 00400	111:1			
112.	MD Anderson – Limited Partnership Agreement of The Proton Therapy Center – Houston LTD. LLP By and Among PTC – Houston Management, LP, PTC – Houston Investors, LLC, and The University of Texas M.D. Anderson Cancer Center, dated December 19, 2002, UTMDACC 00401-494	112:1-94			
113.	MD Anderson – PTC – Houston Investors, LLC Limited Liability Company Agreement, dated December 19, 2002, UTMDACC 00495-537	113:1-43			
114.	MD Anderson – Amended and Restated Limited Partnership Agreement of The Proton Therapy Center-Houston LTD., LLP By and Among PTC – Houston Management, LP, PTC – Houston Investors, LLC, and The University of Texas M.D. Anderson Cancer Center, dated March 30, 2010, UTMDACC 00538-601	114:1-64			
115.	MD Anderson – PUT Agreement, UTMDACC 00602-614	115:1-13			
116.	MD Anderson – Cash Participation Rights Agreement, UTMDACC 00615-621	116:1-7			
117.	MD Anderson – Agreement Among Members, UTMDACC 00622-638	117:1-17			

**JOINT EXHIBITS**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Bates</b>	<b>Date Offered</b>	<b>Objection</b>	<b>Date Admitted</b>
118.	MD Anderson – Investment Agreement, UTMDACC 00639-659	118:1-21			
119.	MD Anderson – Utilization Rates Information, UTMDACC 00808	119:1			
120.	MD Anderson – Utilization Rates Information, UTMDACC 00809	120:1			
121.	MD Anderson – Utilization Rates Information, UTMDACC 00810	121:1			
122.	MD Anderson – Clinical Rationale Recommendations, UTMDACC 00914-917	122:1-4			
123.	MD Anderson – Huddle Guidelines, UTMDACC 00918-921	123:1-4			
124.	MD Anderson – P2P Decision Tree, UTMDACC 00922	124:1			
125.	MD Anderson – Peer to Peer Packet Cover Page, UTMDACC 00923	125:1			
126.	MD Anderson – Proton Machine Information, UTMDACC 00924-925	126:1-2			
127.	UHC Policy & Procedure, Hierarchy of Clinical Evidence, effective date 3/15/13 (operative as of February 2016), SHL1912-1914	127:1-3			
128.	UHC Policy & Procedure, New Medical Policy Development, effective date 5/7/15 (operative as of February 2016), SHL1921-1924	128:1-4			
129.	UHC Policy & Procedure, Medical Policy Update and Revision, effective date 5/7/15 (operative as of February 2016), SHL1925-1928	129:1-4			
130.	UHC Policy & Procedure, Medical Technology Assessment Committee – Function and Structure, effective date 5/7/15 (operative as of February 2016), SHL1929-1932	130:1-4			
131.	UHC Policy & Procedure, Specialty Society Review of Draft Medical Policies, effective date 5/7/15 (operative as of February 2016), SHL 1933-1934	131:1-2			

**JOINT EXHIBITS**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Bates</b>	<b>Date Offered</b>	<b>Objection</b>	<b>Date Admitted</b>
132.	June 20, 2018 Article in Journal of Clinical Oncology by Dr. Feng-Ming (Spring) Kong, SHL1905-1909	132:1-5			
133.	July 1, 2018 Article in Journal of Clinical Oncology by Dr. Zhongxing Liao and Radhe Mohan, SHL1910-1911	133:1-2	3-21-22	YES	3-21-22
134.	Standards and Guidelines for the Accreditation of Health Plans, NCQA (confidential), SHL 1935-2534	134:1-600	3-30-22	NO	3-30-22
135.	Accreditation Summary Report, dated 8/25/16 (confidential), SHL 2535	135:1			
136.	Utilization Management Department 2016 Program Description, SHL 2537-2586	136:1-50			
137.	Sample Delivery Postcard, SHL 2689-2690	137:1-2			
138.	HW – Text Messages, HW000049-104	138:1-56			
139.	HW – Text Messages, HW 000105-158	139:1-54			
140.	Response of PTC Remainco to Subpoena, PTCR 1-3	140:1-3			
141.	Houston Chronicle Article, dated October 23, 2005, SHL 2691-2713	141:1-23			
142.	Response of MD Anderson to Subpoena, dated November 8, 2021, MDA 1-4	142:1-4			
143.	1/11/2017 Email Chain regarding Dr. Ahmad IRR testing (confidential), SHL 2714-2715	143:1-2			
144.	William Eskew, Individual Applicant Enrollment Form, dated 12/11/15, SHL 2724-2726	144:1-3			
145.	Letter dated January 20, 2016, Eskew-000054	145:1			
146.	Urgent Letter of Medical Necessity dated February 3, 2016, Eskew-MD Anderson-000146-147	146:1-2			
147.	Letter dated February 5, 2016 – Proton, Eskew-000055-57	147:1-3			
148.	Letter dated February 5, 2016 – IMRT, Eskew-000058	148:1			
149.	Letter dated February 12, 2016 -Chemo, Eskew-000059-60	149:1-2			

**JOINT EXHIBITS**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Bates</b>	<b>Date Offered</b>	<b>Objection</b>	<b>Date Admitted</b>
150.	Letter dated February 12, 2016 – Chemo, Eskew-000061-62	150:1-2			
151.	Sierra HLC Financials, Eskew-000216-217	151:1-2			
152.	Sierra HLC Company Overview, Eskew-000218-220	152:1-3			
153.	Sierra HLC NAIC Listing, Eskew-000221-223	153:1-3			
154.	MD Anderson – Medical Records, Eskew-MD Anderson-000001-153	154:1-153	3-21-22	NO	3-21-22
155.	MD Anderson – Medical Records, UTMDACC Med 00001-624	155:1-624			
156.	MD Anderson - Medical Records, UTMDACC 00001-18	156:1-18			
157.	MD Anderson - Patient Radiation Prescription, UTMDACC 00019	157:1			
158.	MD Anderson - Clinical Treatment Plan, UTMDACC 00020-21	158:1-2			
159.	MD Anderson - Simulation Complex, UTMDACC 00022-23	159:1-2			
160.	MD Anderson - Radiation Oncology IMRT Planning Note, UTMDACC 00024-100	160:1-77	3-21-22	NO	3-21-22
161.	MD Anderson - Radiation Oncology Proton Treatment Planning Note, UTMDACC 00101-229	161:1-129	3-21-22	NO	3-21-22
162.	MD Anderson – Medical Records, UTMDACC 00811-913	162:1-103			
163.	Radiation Oncology Records from MD Anderson, Eskew-MD Anderson-000154-261	163:1-108			
164.	Mountainview Hospital Records, MV selected pages 1-723 and 9/724-1446, 164:1-1446	164:1-1446	3-21-22	NO	3-21-22
165.	Walmart Pharmacy Records, WP 1-24	165:1-9			
166.	Bone & Joint / Dr. Manning Records, BJM 1-98; Eskew Dr. Manning 28-31	166:1-83	3-21-22	NO	3-21-22
167.	George Gluck, MD Records, Eskew-Dr Gluck-000001-20	167:1-20	3-24-22	NO	3-24-22
168.	B. Berelowitz, MD Records, BB 1-64; Eskew- Dr Berelowitz-000001-63	168:1-116			
169.	Comprehensive Cancer Center Records, COMP 1-149; Eskew-Jean 10-15	169:1-144	3-21-22	NO	3-21-22

**JOINT EXHIBITS**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Bates</b>	<b>Date Offered</b>	<b>Objection</b>	<b>Date Admitted</b>
170.	Foad Moazez, MD Records, Eskew-Dr Moazez-000001-39	170:1-39			
171.	Kidney Specialists of So. Nevada Records, KSSN 1-90	171:1-90			
172.	Robert Whipper, MD Records, Eskew-Dr. Whipper-000001-18	172:1-18	3-21-22	No	3-21-22
173.	Steinberg Diagnostic Medical Imaging Records, SDMI 1-21	173:1-24			
174.	Galen Kim, MD Records, Eskew-Dr Kam-000001-55	174:1-55			
175.	Pharmacy records of Optum RX, Eskew-Optum RX-000001-23	175:1-23			
176.	Summerlin Hospital Records, SH 1-539, and Eskew-Summerlin 1, 2, 32, 33, 34-37 – for 2016 Admit	176:1-512			
177.	Summerlin Hospital records, Eskew-Summerlin 492-747, 2013 and 2016 Admits	177:1-256			
178.	Death Certificate, Eskew-000233	178:1			
179.	Estate of William Eskew Pldg P-19-098037-E, Eskew 291-306	179:1-16			
180.	Assurant Letter dated June 22, 2015, Eskew-000315-000316	180:1-2			
181.	Letter dated February 5, 2016 – Proton, Eskew-000317-000331	181:1-15			
182.	MD Anderson Emails, Eskew-000332-000393	182:1-62			
183.	GMS Job Description, Eskew-000479-480	183:1-2			
184.	Form 5500 Searches, Eskew-001053-1089	184:1-14			
185.	Dr. Chang Dep. – Ex. 2 – Website Bio	185:1			
186.	Dr. Chang Dep. – Ex. 3 – Clinical Trial Description	186:1-3			
187.	Dr. Chang Dep. – Ex. 4 – SAH Global Article	187:1-6			
188.	Dr. Chang Dep. – Ex. 10 – Report to the Congress, Medicare and the Health Care Delivery System, MEDPAC, dated June 2018	188:1-407			



**JOINT EXHIBITS**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Bates</b>	<b>Date Offered</b>	<b>Objection</b>	<b>Date Admitted</b>
189.	Dr. Chang Dep. – Ex. 13 – Widesott et al., Proton therapy in lung cancer: Clinical outcomes and technical issues. A systematic review (2008)	189:1-11	3-21-22	YES	3-21-22
190.	Expert reports, supplements, exhibits, supporting documentation, data, and literature, CV, fee schedule, and testimony list of Dr. Parvesh Kumar	190:1-101			
191.	Expert reports, supplements, exhibits, supporting documentation, data, and literature, CV, fee schedule, and testimony list of Dr. Gary Owens	191:1-73			
192.	Expert reports, supplements, exhibits, supporting documentation, data, and literature, CV, fee schedule, and testimony list of Amitabh Chandra, Ph.D	192:1-48			
193.	Expert reports, supplements, exhibits, supporting documentation, data, and literature, CV, fee schedule, and testimony list of Dr. Andrew L. Chang	193:1-22			
194.	Expert reports, supplements, exhibits, supporting documentation, data, and literature, CV, fee schedule, and testimony list of Stephen Prater	194:1-41			
195.	Expert reports, supplements, exhibits, supporting documentation, data, and literature, CV, fee schedule, and testimony list of Elliott S. Flood	195:1-77			
196.					
197.					
198.					
199.					

# COURT'S EXHIBIT LIST

Case No.: A-19-788630-C

Trial Date: March 14, 2022

Dept. No.: IV (4)

Judge: Hon. Nadia Krall

Court Clerk: Pharan Burchfield

Sandra L. Eskew,  
Plaintiff(s),  
vs.

Recorder / Reporter: Melissa Burgener

Sierra Health and Life Ins. Co. Inc.,  
Defendant(s).

Counsel for Plaintiff: Matthew L. Sharp, Esq. &  
Douglas A. Terry, Esq.

Counsel for Defendant: D. Lee Roberts, Jr., Esq.,  
Ryan T. Gormley, Esq., &  
Phillip N. Smith, Jr., Esq.

## JURY TRIAL BEFORE THE COURT

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
1.	AGREED PRELIMINARY JURY INSTRUCTIONS	—	—	—	3-16-22
2.	JURY QUESTION ASKED	—	3-25-22	NO	3-25-22
3.	JURY QUESTION ASKED	—	3-25-22	NO	3-25-22
4.	JURY QUESTIONS ASKED	—	3-28-22	NO	3-28-22
5.	JURY QUESTION ASKED	—	3-29-22	NO	3-29-22
6.	MATTHEW PALMER DEPOSITION CD - "VIDEO CLIPS"	—	3-30-22	NO	3-30-22
7.	PLAINTIFF'S OPENING POWERPOINT	—	—	—	3-30-22
8.	JURY QUESTION & ANSWER (DURING DELIBERATION)	—	—	NO	4-5-22
9.					

# Certification of Copy

State of Nevada }  
County of Clark } SS:

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

AMENDED NOTICE OF APPEAL; AMENDED CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; JUDGMENT UPON THE JURY VERDICT; NOTICE OF ENTRY OF JUDGMENT UPON JURY VERDICT; AMENDED JUDGMENT UPON THE JURY VERDICT; NOTICE OF ENTRY OF AMENDED JUDGMENT UPON JURY VERDICT; ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO RETAX; NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO RETAX; ORDER DENYING DEFENDANT'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW; NOTICE OF ENTRY OF ORDER DENYING RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW; ORDER DENYING DEFENDANT'S MOTION FOR A NEW TRIAL OR REMITTITUR; NOTICE OF ENTRY OF ORDER DENYING MOTION FOR A NEW TRIAL OR REMITTITUR; PLAINTIFF'S MOTION TO CONSIDER PLAINTIFF'S MOTION FOR ENTRY OF EXPRESS FINDINGS AS REQUIRED BY LIOCE V. COHEN ON AN ORDER SHORTENING TIME BASIS; FINDINGS AND CONCLUSIONS AS TO ALLEGATIONS OF ATTORNEY MISCONDUCT; NOTICE OF ENTRY OF FINDINGS AND CONCLUSIONS AS TO ALLEGATIONS OF ATTORNEY MISCONDUCT; DISTRICT COURT MINUTES; EXHIBITS LIST

SANDRA L. ESKEW, as special administrator  
of the ESTATE OF WILLIAM GEORGE  
ESKEW,

Plaintiff(s),

vs.

SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC.; UNITED HEALTHCARE,  
INC.,

Defendant(s),

Case No: A-19-788630-C

Dept No: IV

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 2 day of November 2022.

Steven D. Grierson, Clerk of the Court

A handwritten signature in black ink, appearing to read "Heather Ungermann", is written over a faint, circular court seal. The seal contains the text "JUDICIAL DISTRICT OF THE COUNTY OF CLATSOP STATE OF OREGON".

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Heather Ungermann, Deputy Clerk  
A-19-788630-C