

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIERRA HEALTH AND LIFE INSURANCE
COMPANY, INC.,

Appellant,

vs.

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

Respondent.

No. 85369

Electronically Filed
AMENDED DOCKET # 8022 03:17 PM
STATEMENT Elizabeth A. Brown
Clerk of Supreme Court
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Judicial District Department IV

County Clark Judge Nadia Krall

District Ct. Case No. A-19-788630-C

2. Attorney filing this docketing statement:

Attorney D. Lee Roberts, Jr., Philip N. Smith, Ryan T. Gormley Telephone (702) 938-3838

Firm WEINBERG, WHEELER, HUDGINS, GUNN & DIAL LLC

Address 6385 South Rainbow Blvd., Suite 400
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Attorney Thomas H. Dupree, Jr. Telephone (202) 955-8547

Firm GIBSON, DUNN & CRUTCHER LLP

Address 1050 Connecticut Avenue, N.W.,
Washington, D.C. 20036

Client(s) Sierra Health and Life Insurance Company, Inc. ("SHL")

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Matthew L. Sharp Telephone (775) 324-1500

Firm MATTHEW L. SHARP, LTD.

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Attorney Douglas A. Terry Telephone (405) 463-6362

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Firm GUPTA WESSLER PLLC

Address 2001 K Street, NW, Suite 850 North
Washington, DC 20001

Client(s) Sandra L. Eskew

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input checked="" type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following? No.

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Sierra Health and Life Insurance Company, Inc. v. Sandra Eskew, No. 85369

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Plaintiff sued Sierra Health and Life Insurance Company, Inc. (“SHL”), claiming that SHL denied insurance coverage for proton beam therapy in bad faith. The jury returned a verdict in Plaintiff’s favor and awarded \$40 million in noneconomic compensatory damages and \$160 million in punitive damages.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Whether SHL is entitled to judgment as a matter of law on Plaintiff’s bad-faith claim because Plaintiff failed to prove the necessary elements.
2. Whether SHL is entitled to judgment as a matter of law on Plaintiff’s punitive damages claim because Plaintiff failed to introduce sufficient evidence establishing that SHL acted with the requisite intent.
3. Whether SHL is entitled to a new trial based on the misconduct of Plaintiff’s counsel.
4. Whether SHL is entitled to a new trial or a substantial remittitur because the damage awards are excessive, tainted by passion and prejudice, and unconstitutional.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

- ☒ A substantial issue of first impression
- ☒ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain:

This appeal arises from one of the largest verdicts in Nevada history. The errors that led to the \$200 million award in this single-plaintiff insurance case were substantial. The awards of \$40 million in noneconomic damages and \$160 million in punitive damages are excessive and violate SHL's rights under the United States and Nevada Constitutions. The questions whether Plaintiff proved bad-faith denial of insurance coverage and whether the verdict was tainted by passion and prejudice arising from the misconduct of Plaintiff's counsel also raise substantial issues, some of first impression. And whether Nevada law allows the imposition of a \$200 million sanction on an insurer that made a coverage determination consistent with the determinations of the nation's leading organizations for radiation oncology and medical research—as well as with the determinations of the nation's other largest insurers—raises substantial issues of public policy.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court under NRAP 17(a)(12).

14. Trial. If this action proceeded to trial, how many days did the trial last? Phase 1 lasted 12 days; phase 2 lasted 1 day.

Was it a bench or jury trial? Jury

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 4/18/22 (Exhibit A); 10/07/22 (Exhibit M)

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 4/18/22 (Exhibit A); 10/24/22 (Exhibit M)

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☒ NRCP 50(b) Date of filing 5/16/22 (Exhibit B)

☐ NRCP 52(b) Date of filing _____

☒ NRCP 59 Date of filing 5/16/22 (Exhibit C)

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. _____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion

On August 15, 2022, the district court entered minute orders denying SHL's Rule 50(b) motion for judgment as a matter of law and Rule 59 motion for new trial or remittitur, and directed counsel for Plaintiff to submit proposed orders for the court's signature. (Exhibits H & I). When nearly 30 days had elapsed from issuance of the minute orders, and the court had not yet acted on the proposed orders, SHL filed its original notice of appeal on September 14, 2022, out of an abundance of caution. (Exhibit D). On October 5, 2022, the court issued signed written orders resolving the post-trial motions. (Exhibits K & L). On October 7, 2022, the court issued an amended judgment upon the jury verdict and granted Plaintiff's Motion for an Order Shortening Time (Exhibits M & N). On October

24, 2022, the court entered findings and conclusions as to allegations of attorney misconduct (Exhibit O).

(c) Date written notice of entry of order resolving tolling motion was served

As explained above, the district court issued signed written orders denying SHL's post-trial motions on October 5, 2022. Written notice of entry of those orders was served on October 24, 2022. Notice of entry of the amended judgment upon the jury verdict and the court's findings and conclusions as to allegations of attorney misconduct was served on October 24, 2022.

Was service by: Email

☐ Delivery

☐ Mail

19. Date notice of appeal filed 09/14/22 (Exhibit D (Original Notice of Appeal)); 10/31/22 (Exhibit P (Amended Notice of Appeal))

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

The time limit for filing the notice of appeal from a final judgment is governed by NRAP 4(a)(4).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☒ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) provides a basis for appeal because this is an appeal from a final judgment, and NRAP 3A(b)(2) also provides a basis for appeal because this is an appeal from an order denying a motion for a new trial.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Sandra L. Eskew, as a special administrator of the Estate of William George Eskew
Sierra Health and Life Insurance Company, Inc.
United Healthcare, Inc.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

United Healthcare, Inc. was dismissed from the case by stipulation of the parties. *See* Tr. (03/14/22) at 6.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

On July 15, 2019, Plaintiff filed a "First Amended Complaint and Jury Demand," alleging breach of contract, bad faith, and breach of Nevada Unfair Claims Settlement Practices Act (Exhibit E). Plaintiff's latter two claims included claims of wrongful death pursuant to NRS 41.085.

Plaintiff withdrew the breach of contract and statutory violation claims on January 14, 2022. (Exhibit F). On January 18, 2022, the parties also stipulated to the dismissal of Plaintiff's wrongful death claims. (Exhibit G). The bad faith claim was resolved by the jury on April 18, 2022 (Exhibit A).

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross- claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Sierra Health and Life Insurance Company, Inc.
Name of appellant

Ryan T. Gormley
Name of counsel of record

November 14, 2022
Date

/s/ Ryan T. Gormley
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I hereby certify that this “Amended Docketing Statement” was filed electronically with the Nevada Supreme Court on November 14, 2022. Electronic service of the foregoing “Amended Docketing Statement” shall be made in accordance with the Master Service List as follows:

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Attorneys for Respondent

I further certify that I served a copy of this document by emailing and mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, as follows:

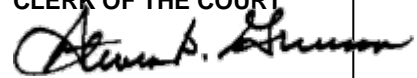
Paul M. Haire, Esq.
Settlement Judge
6980 S. Cimarron Road, Ste. 210
Las Vegas, NV 89113
phaire@armadr.com

/s/ Cindy Bowman

An Employee of Weinberg, Wheeler, Hudgins,
Gunn & Dial, LLC

EXHIBIT A

EXHIBIT A



NJUD
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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.

///

///

///

///

///

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

2 DATED this 18th 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

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
7 Marjan Hajimirzaee, Esq.; mhajimirzaee@wwhgd.com
8 Ryan T. Gormley, Esq.; 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 18th day of April 2022.

12 /s/ Cristin B. Sharp
13 An employee of Matthew L. Sharp, Ltd.
14
15
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EXHIBIT 1

JUV

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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.¹

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 ¹ <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
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 Judgment Upon Jury Verdict was served via the court's electronic eFile
14 system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 4/18/2022

16 Audra Bonney

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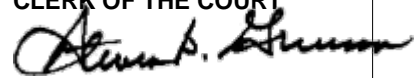
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EXHIBIT B

EXHIBIT B



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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

Hearing Requested

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

1 Defendant Sierra Health and Life Insurance Company, Inc. (“SHL”) moves for judgment
2 as a matter of law pursuant to Nevada Rule of Civil Procedure (“NRCP”) 50(b), the following
3 Memorandum of Points and Authorities, and any argument allowed on this matter.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 This is a dispute over insurance coverage that turns on whether proton beam therapy was
6 “medically necessary”—and therefore a covered treatment—in the case of William Eskew, who
7 was afflicted with Stage IV lung cancer. SHL reasonably concluded that it was not a covered
8 treatment. This was not a bad-faith determination, let alone one that would warrant the
9 extraordinary sanction of punitive damages.

10 The jury’s shocking verdict—finding that SHL made a bad-faith coverage denial, and
11 awarding \$40 million in compensatory damages and an additional \$160 million in punitive
12 damages—cannot stand. The record does not contain legally sufficient evidence that SHL acted
13 in bad faith or with the malicious intent necessary for an award of punitive damages under Nevada
14 law. This Court should therefore grant SHL judgment as a matter of law on Plaintiff’s claims for
15 insurance bad faith and punitive damages.

16 To prove insurance bad faith, Plaintiff needed to introduce sufficient evidence establishing
17 four separate elements: (1) the requested proton beam therapy was a covered service under the
18 terms of Plaintiff’s insurance plan; (2) SHL had no reasonable basis for denying coverage; (3) SHL
19 knew, or recklessly disregarded, that it lacked a reasonable basis for the denial; and (4) the denial
20 was a legal cause of harm to Mr. Eskew. *Powers v. United Servs. Auto. Ass’n*, 114 Nev. 690, 703,
21 962 P.2d 596, 604 (1998).

22 Plaintiff did not prove *any* of these elements. First, the insurance plan covers only those
23 therapies that SHL deems “medically necessary,” and SHL reasonably and correctly applied its
24 policies and guidelines in determining that proton beam therapy was not medically necessary in
25 this case. Second, SHL had a reasonable basis for denying coverage: its judgment conformed to
26 the judgments of the nation’s leading medical and radiological organizations and was consistent
27 with the policy followed by the 12 largest insurers in the United States. Third, SHL plainly did
28 not know (or recklessly disregard) that it lacked a reasonable basis for the denial; to the contrary,

1 SHL believed, based on the views of the medical community and other insurers, that it had very
2 good and legitimate reasons for the denial. And fourth, the denial was not the proximate cause of
3 the alleged noneconomic harm to Mr. Eskew because there was no evidence of economic loss, and
4 because there was insufficient evidence linking the denial to the pain-and-suffering Mr. Eskew
5 endured.

6 Even if the evidence could be deemed sufficient to support the bad-faith finding, this is not
7 a case for punitive damages. Nevada law imposes a heightened and demanding standard on
8 plaintiffs who seek punitive damages. They must prove, by clear and convincing evidence, that
9 the defendant acted with fraud, malice, or oppression in committing the underlying tort. *See* NRS
10 42.005(1).

11 Plaintiff did not come close to proving an entitlement to punitive damages. Although
12 Plaintiff argued that SHL acted with malice and oppression, the record does not contain clear-and-
13 convincing evidence supporting such a finding. To the contrary, the evidence at trial demonstrated
14 that SHL followed its usual and customary procedures in denying the request for coverage. SHL
15 based its decision on the United HealthCare (“UHC”) Proton Policy, which itself rested on studies
16 and data presented in peer-reviewed journals, as well as on the conclusion reached by leading
17 medical and radiology associations, including the American Society for Radiation Oncology and
18 the Agency for Healthcare Research and Quality, that current data do “not provide sufficient
19 evidence to recommend proton beam therapy [(PBT)] outside of clinical trials in lung cancer” and
20 “the evidence is insufficient to draw any definitive conclusions as to whether [PBT] has any
21 advantages over traditional therap[ies].” App. Vol. 3 (3/21 Tr.) at 663-64 (quotation marks
22 omitted). It should go without saying that an insurer that assesses medical necessity based on the
23 views of the nation’s top doctors and scientists is not acting with malice or oppression. Indeed,
24 the undisputed fact that SHL’s approach is the same approach followed by the nation’s largest
25 insurers negates any suggestion that SHL acted with malice or oppression, or otherwise
26 disregarded the rights of its insureds. To be sure, Plaintiff’s experts disagreed with SHL’s
27 coverage decision, but even if they were correct that SHL should have approved proton beam
28 therapy for Mr. Eskew, that would mean at most that SHL’s actions were mistaken, not malicious.

1 Because there was not legally sufficient evidence that SHL acted in bad faith or with malice
2 or oppression, this Court should grant judgment in favor of SHL on Plaintiff's claims for bad faith
3 and punitive damages.

4 BACKGROUND

5 This dispute arises out of a prior authorization request for insurance coverage. Mr. Eskew's
6 treating physician sought preauthorization from SHL for proton beam therapy, an alternative
7 treatment for Mr. Eskew's Stage IV lung cancer. The request was reviewed by Dr. Shamoon
8 Ahmad, a board-certified medical oncologist. SHL denied the request on February 5, 2016,
9 concluding that proton beam therapy did not constitute a "covered service" under Mr. Eskew's
10 insurance plan because the treatment was "unproven" and not "medically necessary" in Mr.
11 Eskew's case. Neither Mr. Eskew nor his treating physician appealed the denial.

12 Mr. Eskew received a different treatment known as Intensity-Modulated Radiation
13 Therapy ("IMRT"). His cancer continued to progress and he passed away on March 12, 2017.
14 There is no allegation that the use of IMRT rather than proton beam therapy hastened his death.
15 *See App. Vol. 3 (3/21 Tr.) at 616-17.*

16 The undisputed evidence showed that there is no randomized clinical trial supporting the
17 use of proton beam therapy over IMRT for lung cancer. And the denial of coverage was consistent
18 with guidance from two of the nation's leading organizations for radiation oncology and medical
19 research—the American Society for Radiation Oncology ("ASTRO") and the Agency for
20 Healthcare Research and Quality ("AHRQ").

21 Plaintiff Sandra Eskew, as special administrator of the Estate of William Eskew, sued SHL
22 for insurance bad faith. She sought noneconomic compensatory damages for Mr. Eskew's
23 emotional distress caused by the denial of coverage, as well as for pain-and-suffering from alleged
24 Grade III esophagitis, which she claimed was caused by the IMRT treatment. She also sought
25 punitive damages.

26 The jury found SHL liable for insurance bad faith. It awarded Plaintiff \$40 million in
27 noneconomic compensatory damages for emotional distress and pain-and-suffering, and imposed
28 \$160 million in punitive damages.

1 **LEGAL STANDARD**

2 This Court must grant judgment as a matter of law when it “finds that a reasonable jury
3 would not have a legally sufficient evidentiary basis to find for the party on that issue.” NRCPC
4 50(a)(1). Judgment as a matter of law is warranted when, viewing all evidence and inferences in
5 favor of the nonmoving party, it “has failed to prove a sufficient issue for the jury, so that [its]
6 claim cannot be maintained under the controlling law.” *Nelson v. Heer*, 123 Nev. 217, 223, 163
7 P.3d 420, 424 (2007) (quotation marks omitted).

8 **ARGUMENT**

9 **I. The Court Should Grant Judgment On The Bad Faith Claim.**

10 Bad-faith insurance actions are limited to “rare and exceptional cases” where the insurer
11 has engaged in “grievous and perfidious misconduct.” *Great Am. Ins. Co. v. Gen. Builders, Inc.*,
12 113 Nev. 346, 354-55, 934 P.2d 257, 263 (1997) (quotation marks omitted). Bad faith is
13 established only “where the insurer acts unreasonably and with knowledge that there is no
14 reasonable basis for its conduct.” *Guar. Nat’l Ins. Co. v. Potter*, 112 Nev. 199, 206, 912 P.2d 267,
15 272 (1996).

16 Under Nevada law, Plaintiff needed to prove four elements: (1) the requested proton beam
17 therapy was a covered service under the terms of Plaintiff’s insurance plan; (2) SHL had no
18 reasonable basis for denying coverage; (3) SHL knew, or recklessly disregarded, that it lacked a
19 reasonable basis for the denial; and (4) the denial was a legal cause of harm to Mr. Eskew. *Powers*
20 *v. United Servs. Auto. Ass’n*, 114 Nev. 690, 703, 962 P.2d 596, 604 (1998). Because Plaintiff
21 failed to introduce legally sufficient evidence to establish any of the necessary four elements, the
22 Court should grant judgment as a matter of law in favor of SHL.

23 **A. Plaintiff Did Not Prove That Proton Beam Therapy Was A Covered Service.**

24 Plaintiff did not introduce sufficient evidence that proton beam therapy was “medically
25 necessary” and thus a covered service under the insurance plan. Like all contracts, an insurance
26 plan must be interpreted “according to the plain and ordinary meaning of its terms.” *Fed. Ins. Co.*
27 *v. Coast Converters, Inc.*, 130 Nev. 960, 965, 339 P.3d 1281, 1285 (2014) (quotation marks
28 omitted). Courts may not “rewrite contract provisions that are otherwise unambiguous . . . [or]

1 increase an obligation to the insured where such was intentionally and unambiguously limited by
2 the parties.” *Id.* (quotation marks omitted). And “[t]he insured . . . bears the burden of proving
3 that its alleged loss falls within the terms of the various provisions under which it seeks coverage.”
4 *Cty. of Clark v. Factory Mut. Ins. Co.*, No. CV-S-02-1258-KJD-RJJ, 2005 WL 6720917, at *2 (D.
5 Nev. Mar. 28, 2005) (citing *Lucini-Par. Ins., Inc. v. Buck*, 108 Nev. 617, 620, 836 P.2d 627, 629
6 (1992)).

7 Plaintiff did not carry this burden. Plaintiff’s plan limits coverage to procedures deemed
8 “medically necessary.” It provides: “Covered Services are available only if and to the extent that
9 they are . . . Medically Necessary as defined in this [Agreement of Coverage].” App. Vol. 1 at 39
10 [Section 4.1]; *see also id.* at 40 [Section 5] (“Only Medically Necessary services are considered to
11 be Covered Services.”); *id.* at 47 [Section 6.1] (excluding coverage for any “services which are
12 not Medically Necessary, whether or not recommended or provided by a Provider”). The plan
13 defines “Medically Necessary” as a service, that, “as determined by SHL,” is:

- 14 • consistent with the diagnosis and treatment of the Insured’s Illness or Injury;
- 15 • the most appropriate level of service which can be safely provided to the Insured; and
- 16 • not solely for the convenience of the Insured, the Provider(s) or Hospital.

17 *Id.* at 64 [Section 13.66]; *see also* App. Vol. 2 (03/21) at 361. In making its medical-necessity
18 determination, “SHL may give consideration to any or all of the following” factors:

- 19 • The likelihood of a certain service or supply producing a significant positive outcome;
- 20 • Reports in peer-review literature;
- 21 • Evidence based reports and guidelines published by nationally recognized professional
22 organizations that include supporting scientific data;
- 23 • Professional standards of safety and effectiveness that are generally recognized in the
24 United States for diagnosis, care or treatment;
- 25 • The opinions of independent expert Physicians in the health specialty involved when
26 such opinions are based on broad professional consensus; or
- 27 • Other relevant information obtained by SHL.

1 App. Vol. 1 at 64 [Section 13.66]. The plan underscores that “Services and accommodations will
2 not automatically be considered Medically Necessary simply because they were prescribed by a
3 Physician.” *Id.* The plan expressly excludes coverage for any “[e]xperimental, investigational or
4 unproven treatment or devices as determined by SHL.” *Id.* at 49 [Section 6.34].

5 Thus, under the plain and ordinary meaning of the terms of the plan, a particular treatment
6 is covered only if SHL determines it is “Medically Necessary.” Even Plaintiff recognized this
7 limitation, App. Vol. 6 (3/24 Tr.) at 1484, and she admitted that she would have been aware of this
8 limitation when she bought the plan, *id.* at 1439. It is undisputed that the plan specifically provides
9 that SHL may determine that a service is not “medically necessary” based on peer-reviewed studies
10 and reports of expert organizations, and that SHL may also deny coverage if it determines that the
11 requested treatment is “experimental, investigational or unproven.”

12 The evidence at trial shows that this is exactly what SHL did. Dr. Ahmad concluded that
13 the requested proton beam therapy was not “medically necessary” based on “reports in peer-review
14 literature” and “evidence based reports and guidelines published by nationally recognized
15 professional organizations that include supporting scientific data.” App. Vol. 1 at 64 [Section
16 13.66]. Dr. Ahmad relied on the UnitedHealthcare Proton Policy in making his decision, *see* App.
17 Vol. 2 (3/16 Tr.) at 372-73, and Plaintiff’s expert, Dr. Andrew Chang, agreed that the proton policy
18 contained comprehensive references to “peer review literature” and “evidence based reports and
19 guidelines published by nationally recognized professional organizations,” App. Vol. 3 (3/21 Tr.)
20 at 659-60. Indeed, Dr. Chang was not able to identify *any* published peer review article or study
21 that the proton policy should have cited, but did not. *Id.* at 660. Dr. Ahmad further concluded that
22 the therapy was not medically necessary because it was unproven. App. Vol. 2 (3/16 Tr.) at 332-
23 33, 372-73.

24 In denying SHL’s initial motion for judgment, the Court noted that “the insurance policy
25 states that therapeutic radiation was a covered service, and proton therapy is a form of therapeutic
26 radiation.” App. Vol. 8 (3/25 Tr.) at 1881. But the plan states that it does not cover *all* “therapeutic
27 radiology ... services,” but only those services that are “authorized by the managed care program,”
28 App. Vol. 2 (3/16 Tr.) at 362-63 (quoting [Section 5.18])—and the managed care program is “the

process that determines medical necessity,” *id.* at 363-64 (quoting [Section 13.63]); *see also id.* at 360 (“SHL’s managed care program ... determines whether services ... are medically necessary”) (quotation marks omitted). In short, the plan is clear that it covers therapeutic radiology services *only* when SHL determines that they are medically necessary.

Plaintiff has not carried her burden of proving that the plan covered proton beam therapy. To the contrary, the evidence demonstrated that proton beam therapy was *not* a “Covered Service” under the plain and ordinary meaning of the terms of the plan.

B. Plaintiff Did Not Prove That SHL Lacked A Reasonable Basis For Denying Coverage.

Plaintiff did not introduce legally sufficient evidence establishing that SHL lacked a reasonable basis for denying coverage. If the insurer’s “interpretation of the [insurance] contract was reasonable, there is no basis for concluding that [it] acted in bad faith.” *Am. Excess Ins. Co. v. MGM Grand Hotels, Inc.*, 102 Nev. 601, 729 P.2d 1352, 1355 (1986). An insurer’s “honest mistake, bad judgment or negligence” is not enough. *Allstate Ins. Co. v. Miller*, 125 Nev. 300, 317, 212 P.3d 318, 330 (2009) (quotation marks omitted).

The undisputed evidence permits only one conclusion: SHL’s interpretation of the plan, even if it could be deemed mistaken, was reasonable. As Plaintiff’s expert Dr. Chang testified, the United HealthCare Proton Policy—on which Dr. Ahmad relied to conclude that proton beam therapy was not medically necessary in these circumstances—was based on “peer review literature” and “evidence based reports and guidelines published by nationally recognized professional organizations,” and did not overlook any important literature or clinical evidence. App. Vol. 3 (3/21 Tr.) at 659-60.

The proton policy rested on the findings of some of the nation’s leading medical and radiology organizations in concluding that “[c]urrent published evidence does not allow for any definitive conclusions about the safety and efficacy of proton beam therapy to treat” lung cancer “as proven and medically necessary.” App. Vol. 9 (3/28 Tr.) at 2016 (quotation marks omitted). For example, the proton policy looked to the conclusions of the American Society for Radiation Oncology (“ASTRO”), whose Emerging Technology Committee “concluded that [current data do]

1 not provide sufficient evidence to recommend proton beam therapy [PBT] outside of clinical trials
2 in lung cancer.” App. Vol. 3 (3/21 Tr.) at 662 (quotation marks omitted). The proton policy also
3 relied on the judgment of the Agency for Healthcare Research and Quality (“AHRQ”), a federally-
4 supervised agency specifically recognized by the Nevada Legislature as an expert research
5 institute. See NRS 695G.053(5)(a). AHRQ determined that “the evidence is insufficient to draw
6 any definitive conclusions as to whether [PBT] has any advantages over traditional therap[ies].”
7 App. Vol. 3 (3/21 Tr.) at 663-64 (quotation marks omitted). These expert determinations reflect
8 the fact that there is no randomized clinical trial supporting its use over IMRT for lung cancer.
9 SHL’s expert, Dr. Owens, reviewed the proton policy and concluded that the “evidence cited in
10 th[e] policy supported” its conclusion. App. Vol. 9 (3/28 Tr.) at 2017. Dr. Owens even identified
11 additional studies, such as the 2015 Blue Cross Blue Shield technology assessment, which found
12 insufficient evidence supporting proton beam therapy for non-small cell lung cancer. *Id.* at 2026.
13 The proton policy, and the scientific evidence underlying it, establish an objectively reasonable
14 basis for SHL’s conclusion that “[p]roton beam radiation therapy is unproven and not medically
15 necessary for . . . lung cancer.” *Id.* at 2016 (quotation marks omitted).

16 In assessing the reasonableness of an insurer’s conduct, courts look to whether its
17 “handling of the claim was in accord with insurance industry practice.” *Hanson v. Prudential Ins.*
18 *Co. of Am.*, 783 F.2d 762, 767 (9th Cir. 1985); see also *Schultz v. GEICO Cas. Co.*, 429 P.3d 844,
19 847 (Colo. 2018) (“The reasonableness of the insurer’s conduct . . . is based on proof of industry
20 standards.”) (quotation marks omitted). Here, the undisputed evidence showed that SHL’s
21 determination matched that of the nation’s 12 largest insurers. Dr. Owens testified that *none* of
22 those insurers considers proton beam therapy to be medically necessary. See, e.g., App. Vol. 9
23 (3/28 Tr.) at 2039 (Aetna’s policy is “that proton beam therapy was not medically necessary”); *id.*
24 at 2040 (Anthem, the largest Blue Cross plan, deems the therapy “as not medically necessary”);
25 *id.* at 2040-41 (Blue Shield of California does not list proton beam therapy for lung cancer among
26 its covered services); *id.* at 2041 (CIGNA believes the therapy is “not medically necessary”); *id.*
27 at 2042 (Florida Blue considers the therapy “[n]ot medically necessary when the disease gets
28 metastatic”); *id.* at 2042-43 (Highmark Group finds the therapy “[n]ot medically necessary”); *id.*

1 at 2043 (Humana classifies the therapy as “[n]ot medically necessary”). Indeed, Dr. Owens could
2 not find a single policy that covered proton beam therapy for non-small cell lung cancer, and
3 considered it “highly unlikely” that Plaintiff could even have obtained a policy that would have
4 covered it. *Id.* at 2045.

5 An insurer “is not liable for bad faith for being incorrect about policy coverage as long as
6 the insurer had a reasonable basis to take the position that it did.” *Pioneer Chlor Alkali Co. v.*
7 *Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.*, 863 F. Supp. 1237, 1242 (D. Nev. 1994) (citing *MGM*
8 *Grand Hotels, Inc.*, 102 Nev. 605, 729 P.2d at 1355). The undisputed evidence at trial established
9 that SHL had a reasonable basis to take the position that it did.

10 **C. Plaintiff Did Not Prove That SHL Knew, Or Recklessly Disregarded, That It**
11 **Lacked A Reasonable Basis For Denying Coverage.**

12 There was no evidence that SHL knew or recklessly disregarded that it lacked a reasonable
13 basis for denying coverage. Under Nevada law, “[i]t is not enough to show that, in hindsight, an
14 insurer acted unreasonably.” *Fernandez v. State Farm Mut. Auto. Ins. Co.*, 338 F. Supp. 3d 1193,
15 1200 (D. Nev. 2018) (citing *Potter*, 112 Nev. 199, 912 P.2d at 272). Rather, the plaintiff must
16 prove that the insurer had “‘actual or implied awareness’ that no reasonable basis exist[s] to deny
17 the claim.” *Pioneer Chlor Alkali*, 863 F. Supp. at 1242 (quoting *MGM Grand Hotels, Inc.*, 102
18 Nev. 601, 729 P.2d at 1354).

19 Plaintiff did not produce legally sufficient evidence demonstrating knowledge or reckless
20 disregard on the part of SHL. Shelean Sweet testified that the way Mr. Eskew’s file was handled
21 “was consistent with the policies and procedures at Sierra Health and Life.” App. Vol. 4 (3/22
22 Tr.) at 876. There was no evidence that anyone at SHL believed the proton policy was
23 unreasonable. To the contrary, as discussed above, the proton policy relied on the judgments of
24 some of the nation’s leading medical and oncology groups in determining that proton beam therapy
25 was not medically necessary for persons with Stage IV lung cancer. Moreover, the policy matched
26 the policy followed by the 12 largest insurers in the United States.

27 It would be one thing to conclude that a medical-necessity judgment that tracks the views
28 of leading medical organizations and the nation’s largest insurers lacks a reasonable basis. It would

1 be quite another to conclude that SHL *knew* that it lacked a reasonable basis when it looked to the
2 judgments of the medical community and insurance industry in formulating its proton policy. That
3 SHL's coverage determination reflects a widely-held view endorsed by so many of the nation's
4 leading medical experts and insurers is overwhelming proof that even if SHL's conclusion could
5 somehow be deemed unreasonable, SHL cannot possibly be found to have *known* or *recklessly*
6 *disregarded* that it was unreasonable.

7 **D. Plaintiff Did Not Prove Causation.**

8 Plaintiff failed to demonstrate that the denial of the claim was a legal cause of harm to Mr.
9 Eskew with respect to emotional distress or pain-and-suffering damages.

10 **1. Plaintiff Cannot Recover Noneconomic Damages Where There Was**
11 **No Proof Of Economic Loss.**

12 A plaintiff in a bad-faith insurance action cannot recover noneconomic damages—such as
13 damages for emotional distress or pain-and-suffering—without proving economic loss. That is the
14 rule in California, and the Nevada Supreme Court traditionally looks to California in defining the
15 parameters of bad-faith insurance claims. *See Avila v. Century Nat'l. Ins. Co.*, 473 F. App'x 554,
16 556 (9th Cir. 2012) (“We presume that Nevada would look to California law in determining
17 whether the bad faith claim would be viable”); *see also U.S. Fid. & Guar. Co. v. Peterson*, 91 Nev.
18 617, 619-20, 540 P.2d 1070, 1071 (1975) (deriving Nevada's bad-faith law from California law).
19 Here, Plaintiff did not attempt to prove economic loss, and sought and obtained only noneconomic
20 damages. *See App. Vol. 1 (3/16 Tr.)* at 186 (Plaintiff's counsel: “So harms and losses, I've gone
21 through them all. They're now pain and suffering, mental suffering, emotional distress and loss
22 of enjoyment of life.”).

23 California courts have long held that the insured must have suffered economic loss to
24 recover noneconomic damages in a bad-faith insurance case. *See Cont'l Ins. Co. v. Superior Court*,
25 37 Cal. App. 4th 69, 86–87, 43 Cal. Rptr. 2d 374, 384 (Cal. App. 1995) (“In the absence of any
26 economic loss there is no invasion of [the insureds'] *property rights* to which their alleged
27 emotional distress over [the insurer's] denial and delay could be incidentally attached. In short,
28 there would be no legal basis for an action for bad faith.”). Noneconomic damages are recoverable

1 on a bad-faith claim *only* if they are linked to a proven financial loss. *Id.* at 85-86, 43 Cal. Rptr.
2 2d at 383-84 (“a claim for emotional distress in a bad faith action cannot stand alone, but must be
3 accompanied by some showing of economic loss”) (citing *Gruenberg v. Aetna Ins. Co.* 9 Cal.3d
4 566, 108 Rptr. 48, 510 (Cal. 1973)). The noneconomic harm “must be tied to actual, not merely
5 potential, economic loss.” *Major v. W. Home Ins. Co.*, 169 Cal. App. 4th 1197, 1214, 87 Cal. Rptr.
6 3d 556, 571 (Cal. App. 2009).

7 Other states follow the California rule. *See, e.g., State Farm Mut. Auto. Ins. Co. v. Shrader*,
8 882 P.2d 813, 833–34 (Wyo. 1994) (“We agree with the court in *Gruenberg*, that to recover
9 damages for emotional distress, the insured must allege that as a result of the breach of the duty of
10 good faith and fair dealing, the insured has suffered substantial other damages, such as economic
11 loss, in addition to the emotional distress.”); *Anderson v. Cont’l Ins. Co.*, 271 N.W.2d 368, 378
12 (Wis. 1978) (“[S]ubstantial other damages in addition to the emotional distress are required if there
13 is to be recovery for damages resulting from the infliction of emotional distress.” (citing
14 *Gruenberg*)).

15 In denying SHL’s initial motion for judgment, this Court distinguished the California cases
16 on the grounds that this case involves “physical injury and related emotional injury.” App. Vol. 8
17 (3/25 Tr.) at 1881. But California’s rule applies equally to bad-faith insurance cases involving
18 physical injury. Indeed, this was precisely the situation in *Maxwell v. Fire Insurance Exchange*,
19 60 Cal. App. 4th 1446 (1998), where the court held that “the award of damages in bad faith cases
20 for personal injury, including emotional distress, is incidental to the award of economic damages.
21 This is so because bad faith actions seek recovery of a property interest, not personal injury.” *Id.*
22 at 1451 (emphasis added). Even though bad-faith insurance cases sometimes involve personal
23 injury, California and Nevada law both recognize that a bad faith action is “not a suit for personal
24 injury, but rather [is one relating] to financial damage.” *Gourley v. State Farm Mut. Auto. Ins.*
25 *Co.*, 53 Cal. 3d 121, 128, 822 P.2d 37 (1991) (quotation marks omitted). Thus, in bad faith actions,
26 both California and Nevada apply the longer statute of limitations for breach of contract claims
27 rather than the shorter statute of limitations for personal injury claims. *See id.* at 129, 822 P.2d at
28 374; *Davis v. State Farm Fire & Cas. Co.*, 545 F. Supp. 370, 372 (D. Nev. 1982).

1 This Court should follow the California rule and enter judgment in SHL’s favor because
2 Plaintiff failed to prove economic loss.

3 **2. Plaintiff Did Not Prove That SHL Proximately Caused Harm To Mr.**
4 **Eskew.**

5 Plaintiff did not introduce sufficient evidence establishing that SHL was the proximate
6 cause of Mr. Eskew’s pain-and-suffering. “For an act to be the proximate cause of an injury, it
7 must appear that the injury was the natural and probable consequence of the negligence or
8 wrongful act, and that it ought to have been foreseen in the light of the attending circumstances.”
9 *Van Cleave v. Kietz-Mill Minit Mart*, 97 Nev. 414, 416, 633 P.2d 1220, 1221 (1981) (quotation
10 marks omitted). Proximate cause means “any cause which in natural and continuous sequence,
11 unbroken by any efficient intervening cause, produces the injury complained of and without which
12 the result would not have occurred.” *Taylor v. Silva*, 96 Nev. 738, 741, 615 P.2d 970, 971 (1980).
13 “[M]ere correlation . . . is insufficient as a matter of law to establish causation.” *Wilson v. Circus*
14 *Hotels, Inc.*, 101 Nev. 751, 754, 710 P.2d 77, 79 (1985).

15 Plaintiff’s claim for pain-and-suffering damages is based solely on the difference between
16 Grade II esophagitis (which Plaintiff conceded was not attributable to IMRT rather than proton
17 beam therapy) and Grade III esophagitis (which Plaintiff alleges would not have resulted from
18 proton beam therapy). Plaintiff’s expert Dr. Chang admitted that the Grade I or Grade II
19 esophagitis that was diagnosed at MD Anderson was not attributable to the use of the IMRT instead
20 of proton beam therapy. App. Vol. 3 (3/21 Tr.) at 634. Dr. Chang further described the difference
21 between Grade II and Grade III esophagitis as “subjective.” *Id.* at 604.

22 Dr. Chang conceded that the use of IMRT instead of proton beam therapy increased the
23 likelihood of Mr. Eskew developing Grade III esophagitis only marginally—from 3% to 15%. *Id.*
24 at 593. When this Court denied SHL’s initial motion for judgment, it relied on Dr. Chang’s
25 reference to “a 95 percent degree of medical probability,” App. Vol. 8 (3/25 Tr.) at 1881, but that
26 percentage referred to Dr. Chang’s assertion that the likelihood of an event occurring qualifies as
27 a “medical probability” if it occurs at least “95 percent of the time.” App. Vol. 3 (3/21 Tr.) at 637.
28 Dr. Chang asserted that the likelihood of Mr. Eskew developing Grade III esophagitis from proton

1 beam therapy was 3%—and therefore it qualified as a “medical probability” that it would not
2 occur—but the likelihood of Grade III esophagitis resulting from IMRT was only 15%. *Id.* That
3 12% difference is not enough to equate to a “natural and probable consequence,” particularly
4 where there were many intervening acts, including the decision not to appeal, the decision not to
5 pay for proton beam therapy directly, and the decision to proceed with IMRT instead.

6 Any link between the denial of coverage and the pain-and-suffering does not rise above a
7 “[m]ere correlation,” *Wilson*, 101 Nev. at 754, 710 P.2d at 79, and is insufficient to sustain a
8 finding of proximate cause.

9 **3. Plaintiff Did Not Prove That Mr. Eskew’s Emotional Distress Led To**
10 **Any Physical Injuries.**

11 Plaintiff’s claim for emotional distress fails for the additional reason that she did not
12 produce substantial evidence showing that the emotional distress led to physical injuries. Under
13 Nevada law, “[i]n cases where emotional distress damages are not secondary to physical injuries,
14 but rather, precipitate physical symptoms, either a physical impact must have occurred or, in the
15 absence of physical impact, proof of ‘serious emotional distress’ causing physical injury or illness
16 must be presented.” *Betsinger v. D.R. Horton, Inc.*, 126 Nev. 162, 232 P.3d 433, 436 (2010)
17 (quoting *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382, 1387 (1988)). Here, there
18 was no evidence of a physical injury or illness flowing from the emotional distress. Although
19 there was testimony that the denial caused Mr. Eskew to feel “hopeless,” App. Vol. 5 (3/23 Tr.) at
20 1199, “angry,” “frustrated,” *id.* at 1200, 1201, 1260; and “devastated,” App. Vol. 6 (3/24 Tr.) at
21 1397, the record is devoid of substantial evidence that Mr. Eskew suffered such extreme emotional
22 distress from learning that the request for insurance preauthorization was denied that could justify
23 this award. Plaintiff’s claim for emotional distress thus necessarily fails.

24 **II. The Court Should Grant Judgment On Punitive Damages.**

25 The evidence was insufficient to support an award of punitive damages. Under Nevada
26 law, a plaintiff seeking punitive damages must prove, under the heightened clear-and-convincing-
27 evidence standard, that the defendant acted with “malice” or “oppression” toward the plaintiff.
28 NRS 42.005(1). Plaintiff did not make that showing here. SHL’s coverage denial—even if it

1 could be deemed erroneous—faithfully followed its claim-review policies, and was reasonably
2 based on the judgments of the nation’s leading medical organizations and was consistent with the
3 practices of the 12 largest insurers in the United States.

4 **A. Nevada Imposes A Demanding Standard For Punitive Damages.**

5 In insurance cases, “[t]he standard for punitive damages is much more stringent than that
6 for bad faith.” *Polymer Plastics Corp. v. Hartford Cas. Ins. Co.*, 389 F. App’x 703, 707 (9th Cir.
7 2010) (applying Nevada law). Proof of bad faith does not establish liability for punitive damages.
8 *See Peterson*, 91 Nev. at 620, 540 P.2d at 1072. Otherwise, plaintiffs would collect punitive
9 damages in *every* successful bad-faith case.

10 To obtain punitive damages under Nevada law, a plaintiff must prove by “clear and
11 convincing evidence that the defendant has been guilty of oppression, fraud or malice.” NRS
12 42.005(1). The “clear and convincing evidence” standard is a high bar, requiring “satisfactory
13 proof that is so strong and cogent as to satisfy the mind and conscience of a common man, and so
14 to convince him that he would venture to act upon that conviction in matters of the highest concern
15 and importance to his own interest.” *Ricks v. Dabney*, 124 Nev. 74, 79, 177 P.3d 1060, 1063
16 (2008) (quotation marks omitted). Here, Plaintiff did not bring a claim for fraud, App. Vol. 10
17 (3/30 Tr.) at 2445, and based her punitive damages claim on a theory of implied malice or
18 oppression.

19 The Nevada punitive damages statute defines implied malice as conduct engaged in “with
20 a conscious disregard of the rights of” the plaintiff. *Id.* at 2499-2500; NRS 42.001(3). Oppression
21 is defined as despicable conduct that subjects a person to “cruel and unjust hardship” in “conscious
22 disregard” of the rights of the person. App. Vol. 10 (3/30 Tr.) at 2500; NRS 42.001(4). However,
23 in bad-faith actions against an insurer, the statutory definition is “not applicable;” rather, “the
24 corresponding provisions of the common law apply.” NRS 42.005(5). The common law has a
25 much stricter definition of both malice and oppression. “Common law malice focuses on ill will
26 and hatred harbored by the defendant against the plaintiff.” *Schwartz v. Estate of Greenspun*, 110
27 Nev. 1042, 1046 n.2, 881 P.2d 638, 641, n.2 (1994). As the Nevada Supreme Court has explained,
28 *see Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 192 P.3d 243, 253-54 (2008),

1 prior to Section 42.001's enactment in 1995, Nevada looked to California law, which required
2 plaintiffs "to prove the actual existence of [defendant's] hatred and ill will," *Craig v. Circus-*
3 *Circus Enters., Inc.*, 106 Nev. 1, 786 P.2d 22, 23 (1990) (plurality) (quoting *Davis v. Hearst*, 160
4 Cal. 143, 162, 116 P. 530, 538 (1911)); *see also Phillips v. Clark Cnty. Sch. Dist.*, 903 F. Supp. 2d
5 1094, 1105 (D. Nev. 2012) ("‘Malice’ requires a showing of ‘hatred and ill-will’ or of Defendant’s
6 motive to ‘vex, harass, annoy, or injure.’") (alternation omitted). Similarly, to demonstrate
7 oppression at common law, "there must be made to appear to the satisfaction of the jury the evil
8 motive—the animus malus." *Davis*, 160 Cal. at 162, 116 P. at 538. Thus, to obtain punitive
9 damages in a bad-faith insurance case in Nevada, the insured must prove, by clear and convincing
10 evidence, that the insurer acted with hatred and ill will, or manifested an intent to injure them.

11 Over SHL's objection, this Court instructed the jury that malice and oppression required
12 merely a showing of "conscious disregard" of Plaintiff's rights and "cruel and unjust hardship in
13 conscious disregard" of the plaintiff, respectively, rather than a showing of "hatred and ill will" or
14 intent to injure. App. Vol. 10 (3/30 Tr.) at 2499-2500. SHL respectfully maintains that this was
15 not the correct standard for the reasons discussed above. Regardless, the evidence was insufficient
16 to support an award of punitive damages under *either* standard.

17 **B. The Evidence Does Not Support A Finding That SHL Acted With Malice Or**
18 **Oppression.**

19 There is *no* evidence—let alone the requisite clear-and-convincing evidence—that SHL
20 acted with malice or oppression under either a "conscious disregard" or a "hatred and intent to
21 injure" standard. Even if it upholds the bad faith liability finding, the Court should enter judgment
22 in SHL's favor on the punitive damages claim. As the United States Supreme Court has instructed,
23 "[i]t should be presumed a plaintiff has been made whole for his injuries by compensatory
24 damages, so punitive damages should *only* be awarded if the defendant's culpability, after having
25 paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions
26 to achieve punishment or deterrence." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408,
27 419 (2003) (emphasis added). That standard was not met here.

1 **1. SHL Denied The Claim In Accordance With Its Standard Procedures**
2 **And Did Not Display Any Malice or Oppression Toward Mr. Eskew.**

3 The decision to deny the pre-authorization claim was made by Dr. Ahmad, a Board-
4 certified medical oncologist with two decades of experience practicing in Nevada. App. Vol. 1
5 (3/16 Tr.) at 222; App. Vol. 2 (3/16 Tr.) at 351. Dr. Ahmad reviewed the claim and relied on the
6 contents of the UHC Proton Policy to conclude that proton beam therapy was not medically
7 necessary in Mr. Eskew's case. Dr. Ahmad testified that his coverage decision was based on
8 medical necessity, not cost. See App. Vol. 2 (3/21 Tr.) at 470-71. As Dr. Owens concluded after
9 reviewing the details of the case, Dr. Ahmad's review of the claim and his decision to deny it were
10 entirely reasonable. App. Vol. 9 (3/28 Tr.) at 2047, 2059. And Shelean Sweet testified that the
11 way the claim was handled "was consistent with the policies and procedures at Sierra Health and
Life." App. Vol. 4 (3/22 Tr.) at 876.

12 Dr. Ahmad's denial of the prior-authorization request was based on the plain language of
13 the plan, SHL's guidelines and practices, and guidance from major medical organizations and peer-
14 reviewed literature. The plan provided that "[o]nly Medically Necessary services are" covered,
15 App. Vol. 1 at 40 [Section 5], and that, in determining whether a service is "Medically Necessary,"
16 SHL may consider a wide array of factors, including "peer-review literature" and "[e]vidence
17 based reports and guidelines published by nationally recognized professional organizations that
18 include supporting scientific data," *id.* at 64 [Section 13.66]. The plan expressly excluded
19 coverage for any "unproven treatment ... as determined by SHL." *Id.* at 49 [Section 6.34]. Dr.
20 Ahmad followed the terms of the plan to the letter in determining, based on the proton policy that
21 encompassed peer-review literature and evidence-based reports from nationally recognized
22 professional organizations, that proton beam therapy was not medically necessary in Mr. Eskew's
23 case. This was a straightforward application of SHL's normal procedures.

24 As the Nevada Supreme Court has held, "the necessary requisites to support punitive
25 damages are not present" when an insurer denies benefits in accordance with its normal procedures
26 without any malice or oppression toward the insured. *Peterson*, 91 Nev. at 620, 540 P.2d at 1072.
27 In *Peterson*, an insured made numerous claims to its insurer under a liability policy, but the insurer
28 delayed and refused to pay the claims despite its awareness of the insured's "increasingly

1 precarious financial condition.” *Id.* at 619, 540 P.2d at 1071. The court held that even the insurer’s
2 “knowledge of the effect of its refusal to pay on [the insured’s] financial condition” and its
3 continued “refus[al] to negotiate or pay the sums known to be due” to the insured were not enough
4 to warrant punitive damages. *Id.* at 620, 540 P.2d at 1071.

5 Punitive damages are even less warranted here. Plaintiff did not present evidence that SHL
6 refused to pay benefits that it “kn[ew]” were due to Mr. Eskew, nor was there any “knowledge” of
7 (and therefore no callous disregard of) Mr. Eskew’s financial condition. The simple denial in this
8 case—which focused on particular facts of the claimant’s case and on peer-reviewed literature and
9 guidance by expert organizations—does not amount to malice or oppression. Indeed, even when
10 an insurer “displays a tendency to look for ways of avoiding coverage rather than looking for
11 coverage,” it does not “rise to the level of ‘oppression’ or ‘malice’” that would warrant punitive
12 damages under Nevada law. *Phillips*, 903 F. Supp. 2d at 1106 (quotation marks omitted).

13 **2. SHL Did Not Act With Malice Or Oppression In Adopting A Policy**
14 **That Matched The Judgments Of The Nation’s Leading Medical And**
15 **Radiology Organizations, And Was Consistent With Industry**
Practice.

16 The UHC Proton Policy—which Dr. Ahmad relied on in denying coverage—does not
17 provide a basis for imposing punitive damages either. The policy tracked the determinations of
18 some of the leading medical and radiology associations in the United States. And it was consistent
19 with the policies followed by all of the nation’s largest insurers.

20 Plaintiff’s expert, Dr. Andrew Chang, confirmed that the UHC Proton Policy was based on
21 “peer review literature” and “evidence based reports and guidelines published by nationally
22 recognized professional organizations.” App. Vol. 3 (3/21 Tr.) at 659-60. In particular, the proton
23 policy explained that “[the American Society for Radiation Oncology’s] Emerging Technology
24 Committee concluded that [current data do] not provide sufficient evidence to recommend proton
25 beam therapy [(PBT)] outside of clinical trials in lung cancer.” *Id.* at 662 (quotation marks
26 omitted). It also recognized that a report by the federal Agency for Healthcare Research and
27 Quality “states that the evidence is insufficient to draw any definitive conclusions as to whether
28 PBT has any advantages over traditional therap[ies].” *Id.* at 663-64 (quotation marks omitted).

1 Indeed, there is not a single randomized clinical trial supporting the use of proton beam therapy
2 over IMRT for lung cancer.

3 SHL’s policy regarding proton beam therapy for lung cancer also aligns with widespread
4 industry practice. As Dr. Owens testified, the health plans of the twelve largest insurers—
5 encompassing 75%-80% of the covered insureds in the United States—consider “proton beam
6 therapy for lung cancer [to be] unproven and/or not medically necessary.” App. Vol. 9 (3/28 Tr.)
7 at 2037-44. SHL’s medical policy regarding proton beam therapy for lung cancer is thus “very
8 consistent” with the vast majority of insurers across the country. *Id.* at 2044. In fact, Dr. Owens
9 was not able to find a single plan that covered the service, and concluded that it would be “highly
10 unlikely” for Mr. Eskew to have found such a policy because “the consensus in the industry [is]
11 that proton beam therapy is not medically necessary for non-small lung cancer.” *Id.* at 2045.

12 Conformance with industry standards is strong proof that an insurer acted reasonably. *See*
13 *Schultz*, 429 P.3d at 847 (“The reasonableness of the insurer’s conduct . . . is based on proof of
14 industry standards.”) (quotation marks omitted); *Hanson*, 783 F.2d at 767 (assessing
15 reasonableness by looking to whether the insurer’s “handling of the claim was in accord with
16 insurance industry practice”). If an insurer that conforms to industry standards generally cannot
17 be held liable for *compensatory* damages, it follows *a fortiori* that it cannot be held liable for the
18 extraordinary remedy of *punitive* damages. Conformance with industry standards is objective
19 evidence of reasonableness, and defeats any claim of malicious intent. For this reason, many courts
20 hold that “[c]ompliance with industry standard and custom serves to negate [any suggestion of]
21 conscious disregard.” *Drabik v. Stanley-Bostitch, Inc.*, 997 F.2d 496, 510 (8th Cir. 1993). In fact,
22 the decision in *Peterson* denying punitive damages relied on *Silberg v. California Life Insurance*
23 *Co.*, which held that punitive damages were unwarranted because the “practice in the insurance
24 industry” was consistent with the defendant insurer’s actions. 11 Cal. 3d 452, 463 (1974). So too
25 here.

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CONCLUSION

The Court should enter judgment in SHL’s favor on Plaintiff’s claims for insurance bad faith and punitive damages.

DATED: May 16, 2022.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 16, 2022 a true and correct copy of the foregoing
3 **DEFENDANT'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW** was
4 electronically filed and served on counsel through the Court's electronic service system pursuant
5 to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below,
6 unless service by another method is stated or noted:

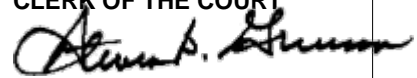
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EXHIBIT C

EXHIBIT C



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DISTRICT COURT
CLARK COUNTY, NEVADA

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

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36 Plaintiff,

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38 vs.

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41 SIERRA HEALTH AND LIFE INSURANCE
42 COMPANY, INC.,

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45 Defendant.

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Case No.: A-19-788630-C

Dept. No.: 4

Hearing Requested

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

1 Defendant Sierra Health and Life Insurance Company, Inc. (“SHL”) moves for a new trial
2 or remittitur pursuant to Nevada Rule of Civil Procedure (“NRCPP”) 59(a), 59(e), and 60(b), the
3 following Memorandum of Points and Authorities, and any argument allowed on this matter.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 The stunning \$200 million verdict in this case is excessive, unconstitutional, and the result
6 of a jury that was swayed by passion and prejudice. It cannot stand. In the event the Court does
7 not grant judgment as a matter of law to SHL, it should order a new trial or at a minimum a drastic
8 remittitur.

9 This is a case about insurance coverage. SHL made a coverage determination that proton
10 beam therapy was not a “medically necessary” treatment for William Eskew, who was afflicted
11 with Stage IV lung cancer and passed away in 2017. Plaintiff Sandra Eskew, the administrator of
12 Mr. Eskew’s estate, alleged that the denial of coverage violated the implied covenant of good faith
13 and fair dealing. SHL responded with evidence that its medical-necessity determination was
14 supported by guidance from some of the nation’s leading organizations for radiation oncology and
15 medical research.

16 But Plaintiff’s counsel had little interest in a trial focused on science and peer-reviewed
17 medical studies. Instead, counsel set out to inflame and incite the jury by attacking SHL, its
18 witnesses, and its counsel, hammering at every opportunity the false claim that SHL ran a “rigged
19 system.” Counsel exhorted the jury to punish SHL with a massive damages award and to use its
20 verdict as a way to regulate the insurance industry, arguing that “juries regulate insurance
21 companies more than anyone, including the government” and that “jury verdicts can be a good
22 thing to regulate conduct.”

23 Counsel went further. Even though this Court repeatedly sustained SHL’s objections,
24 counsel again and again improperly injected their personal opinions into the case, instructing the
25 jurors on how “Mr. Terry and I would” complete the verdict form, and reassuring them that “[w]e
26 wouldn’t ask you to do it if we weren’t convinced it was the right thing to do.” Counsel attacked
27 SHL’s counsel by falsely telling the jury that SHL’s counsel had called Ms. Eskew a liar during
28 cross-examination. And despite this Court’s pretrial order that “[t]he parties may not comment on

1 the litigation conduct of the lawyers,” Plaintiff’s counsel did exactly that in closing argument when
2 he said that Ms. Eskew was “a 69-year-old woman” and that SHL’s counsel “haven’t been able to
3 beat her down no matter what they do to her and her kids on the stand.”

4 Counsel took the misconduct to a new level in Phase 2. Over SHL’s objections, counsel
5 ordered Shelean Sweet, SHL’s claims manager, “to turn to the jury and say, on behalf of the
6 utilization review manager for Sierra Health and Life, that you agree with their verdict.” Counsel
7 then repeated the tactic twice more, commanding SHL’s witness to turn in her chair, face the jury,
8 and publicly affirm the company’s guilt—a blatant and shocking violation of one of the most
9 fundamental norms of American law, that lawyers *question* witnesses, rather than command them
10 to confess guilt or accept liability.

11 All of these tactics and arguments were grossly improper—but they worked. The jury
12 deliberated for approximately an hour and awarded Plaintiff \$40 million in noneconomic damages
13 for emotional distress and pain-and-suffering. Then, after hearing more evidence in a second
14 phase, it again deliberated for approximately an hour before awarding \$160 million in punitive
15 damages.

16 Both awards are stunning outliers and confirm beyond any doubt that the jury was
17 influenced by passion and prejudice. A rational jury would never have awarded \$200 million on
18 the facts of this case. The \$40 million award for emotional distress and pain-and-suffering—which
19 exceeds even the overinflated amount Plaintiff’s counsel requested—dwarfs all other such awards
20 ever upheld in Nevada history. Attached as Exhibits 14 and 15 are charts showing all emotional
21 distress and pain-and-suffering awards that have been upheld in reported Nevada cases since 1950.
22 Appendix (“App.”) Vol. 12 at 2844-47; *id.* at 2848-52. The award in this case exceeds all of them.
23 In fact, it is more than five times the largest affirmed noneconomic damage award. Attached as
24 Exhibit 16 is a chart showing all punitive damage awards that have been upheld in reported Nevada
25 cases since 1950. App. Vol. 12 at 2853-57. The \$160 million award in this case exceeds all of
26 those too. It is more than eight times the largest affirmed punitive damage award.

27 This Court should grant a new trial based on attorney misconduct under NRCP 59(a)(1)(B)
28 and the Nevada Supreme Court’s decision in *Lioce v. Cohen*, 124 Nev. 1, 174 P.3d 970 (2008).

1 Plaintiff's counsel infused their trial presentation, from beginning to end, with impermissible
2 arguments designed to inflame and incite the jury. Even though this Court sustained many of
3 SHL's objections, the harm was done and the prejudice could not be cured—as demonstrated by
4 the shocking and irrational damage awards the jury imposed after just an hour of deliberations.

5 A new trial is also warranted under NRCP 59(a)(1)(F), which requires a new trial when
6 there are “excessive damages appearing to have been given under the influence of passion or
7 prejudice.” As the Nevada Supreme Court has emphasized, a district court has the duty to “grant[
8] a new trial on the grounds of excessive damages” where “the verdict is so flagrantly improper as
9 to indicate passion, prejudice or corruption in the jury.” *Hazelwood v. Harrah's*, 109 Nev. 1005,
10 1010, 862 P.2d 1189, 1192 (1993) (quotation marks omitted), *overruled in part on other grounds*
11 *by Vinci v. Las Vegas Sands, Inc.*, 115 Nev. 243, 984 P.2d 750 (1999). There can be no doubt that
12 *this* verdict—consisting of two damage awards, each of which exceeds by many times the highest
13 such award ever upheld in Nevada history, in a case where Plaintiff's counsel injected their
14 personal opinions and urged the jury to inflict a massive punishment on SHL as a way of regulating
15 the insurance industry—has at least the “*appear[ance]*” of having been given under the influence
16 of passion or prejudice. NRCP 59(a)(1)(F) (emphasis added).

17 In the alternative, the Court should order a new trial unless Plaintiff consents to a drastic
18 remittitur. The \$40 million compensatory award is plainly excessive and is not supported by
19 substantial evidence. Nothing in the record comes remotely close to supporting an award of this
20 magnitude for noneconomic harm. Likewise, the \$160 million punitive damage award is grossly
21 excessive and unconstitutional. SHL did not act with a high degree of blameworthiness, and both
22 the United States and Nevada Supreme Courts have recognized that where, as here, the
23 compensatory award is substantial and intended to compensate for noneconomic harm, the
24 Constitution does not permit a punitive award that exceeds the amount of the compensatory award.
25 *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425-27 (2003); *Bongiovi v. Sullivan*,
26 122 Nev. 556, 579, 138 P.3d 433, 449 (2006).

BACKGROUND

This case arises from a request for insurance coverage. Plaintiff Sandra Eskew is the administrator of the estate of her late husband, William Eskew, who was diagnosed with Stage IV lung cancer in 2015. Mr. Eskew was insured under a policy, effective January 1, 2016, issued by Defendant SHL.

On February 3, 2016, Mr. Eskew's treating physician submitted a prior authorization request to SHL for proton beam therapy—an alternative treatment for certain types of cancer. The request was reviewed by Dr. Shamoon Ahmad, a board-certified medical oncologist. On February 5, 2016, SHL denied the request. The denial letter explained that the requested proton beam therapy treatment was not covered under the policy because the treatment was both “unproven” and not “Medically Necessary.” Neither Mr. Eskew nor his treating physician appealed the denial. Instead, Mr. Eskew received a different treatment, Intensity-Modulated Radiation Therapy (“IMRT”). Mr. Eskew's cancer continued to progress and he passed away on March 12, 2017. There is no allegation that the use of IMRT rather than proton beam therapy hastened his death.

Plaintiff sued SHL for insurance bad faith. She sought noneconomic compensatory damages for Mr. Eskew's emotional distress caused by the denial of coverage, as well as for pain and suffering from his alleged Grade III esophagitis, which she claimed was caused by the IMRT treatment. She also sought punitive damages.

The undisputed evidence showed that there is no randomized clinical trial supporting the use of proton beam therapy over IMRT for lung cancer. And the denial of coverage was consistent with guidance from two of the nation's leading organizations for radiation oncology and medical research—the American Society for Radiation Oncology (“ASTRO”) and the Agency for Healthcare Research and Quality (“AHRQ”).

The jury deliberated for just over an hour before finding SHL liable for insurance bad faith. The jury awarded \$40 million in noneconomic compensatory damages. The jury also found that an award of punitive damages was warranted. Then, after hearing more evidence and deliberating for less than an hour, it awarded \$160 million in punitive damages.

1 **LEGAL STANDARD**

2 This Court may grant a new trial or remittitur under NRCP 59(a) based on “abuse[s] of
3 discretion by which either party was prevented from having a fair trial”; “misconduct of the . . .
4 prevailing party”; “accident or surprise that ordinary prudence could not have guarded against”;
5 “manifest disregard by the jury of the instructions of the court”; “excessive damages appearing to
6 have been given under the influence of passion or prejudice”; or “error[s] in law occurring at the
7 trial and objected to by the party making the motion.”

8 **ARGUMENT**

9 The Court should grant a new trial on all issues. In the alternative, the Court should enter
10 a drastic remittitur of both the compensatory and punitive damage awards to bring them within the
11 bounds permitted by Nevada law and the United States Constitution.

12 **I. The Court Should Grant A New Trial Based On The Improper Arguments And**
13 **Misconduct Of Plaintiff’s Counsel.**

14 NRCP 59(a)(1)(B) provides that a new trial may be granted due to “misconduct of the . . .
15 prevailing party.” In *Lioce v. Cohen*, 124 Nev. 1, 174 P.3d 970 (2008), the Nevada Supreme Court
16 established “the standards that the district courts are to apply when deciding a motion for a new
17 trial based on attorney misconduct.” *Id.* at 14, 174 P.3d at 978. The court held that “[w]hen a
18 party successfully objects to the misconduct, the district court may grant a subsequent motion for
19 a new trial if the moving party demonstrates that the misconduct’s harmful effect could not be
20 removed through any sustained objection and admonishment.” 124 Nev. at 6-7, 174 P.3d at 973-
21 74. When a party does not object to the misconduct, “the district court may grant a motion for a
22 new trial only if the misconduct amounted to plain error, so that absent the misconduct, the verdict
23 would have been different.” 124 Nev. at 7, 174 P.3d at 974.

24 The trial presentation and tactics of Plaintiff’s counsel went well beyond the bounds of
25 permissible argument. Counsel set out to inflame and incite the jury, running roughshod over this
26 Court’s pretrial orders in limine and mid-trial admonitions by deploying lines of attack that were
27 designed to whip up the jury’s prejudices and impose a massive, punitive verdict on SHL. *See*,
28 *e.g.*, App. Vol. 10 (3/29 Tr.) at 2315 (statement of the Court: “Mr. Terry, your behavior is

1 inappropriate. You need to stop this.”). These tactics were completely improper—but they
2 worked. Counsel succeeded in exactly what they set out to do. The jury was inflamed and returned
3 astonishing and unprecedented verdicts.

4 The following is just a sampling of the improper arguments counsel presented to the jury.
5 A new trial would be warranted under *Lioce* on the basis of any single one. Taken together, they
6 leave no doubt that the misconduct harmed and prejudiced SHL to an extent that could not be cured
7 by SHL’s sustained objections and this Court’s repeated admonitions. *See Barrett v. Baird*, 111
8 Nev. 1496, 1515, 908 P.2d 689, 702 (1995) (weighing “cumulative effect” of different instances
9 of attorney misconduct in ordering new trial). Even under a plain error standard, a new trial would
10 be required because the misconduct undeniably led to the stunning and unprecedented damage
11 awards. The verdict—either as to liability or to the amount of damages awarded—would have
12 been different absent the misconduct.

13 **First**, counsel repeatedly and improperly injected their personal beliefs into the
14 proceedings. As the Nevada Supreme Court held in *Lioce*, “an attorney’s statements of personal
15 opinion as to the justness of a cause, the credibility of a witness, or the culpability of a litigant is
16 . . . improper in civil cases and may amount to prejudicial misconduct necessitating a new trial.”
17 124 Nev. at 21-22, 174 P.3d at 983. The Nevada Rules of Professional Conduct contain the same
18 prohibition: an attorney shall not state to the jury “a personal opinion as to the justness of a cause,
19 the credibility of a witness, [or] the culpability of a civil litigant.” RPC 3.4(e). *See also DeJesus*
20 *v. Flick*, 116 Nev. 812, 817-18, 7 P.3d 459, 463 (2000) (ordering new trial where counsel
21 “improperly interjected his personal opinions about the defendant” and “improperly gave his
22 personal opinion as to the justness of [the plaintiff’s] cause”) (overruled in part by *Lioce*, which
23 clarified the contours of the plain error review that applies to unobjected-to misconduct).

24 Here, counsel did exactly that. They forced their personal opinions on the jury in closing
25 argument—not once, but many times:

- 26 • Counsel told the jury that “I will tell you, I have seen a lot in a courtroom. I have never
27 seen a witness implode like Dr. Kumar.” App. Vol. 11 (4/4 Tr.) at 2511. He
28 commented that a jury instruction was “remarkable to me,” *id.* at 2531, added a minute

1 later that SHL’s conduct was also “remarkable to me,” *id.* at 2532, again commented
2 on “[w]hat I find remarkable,” *id.* at 2543, and then shared his personal views on “what
3 I think is remarkable” about this case, *id.* at 2544. He volunteered what was “amazing[]
4 to me” about the case. *Id.* at 2545. He also offered his opinion on SHL’s conduct: “I
5 think that’s tragic.” *Id.* at 2543. And he told the jury that “Mr. Terry and I . . . want
6 you” to hold SHL liable, and that “Mr. Terry and I would put in” an award of \$30
7 million in compensatory damages when completing the verdict form. *Id.* at 2578.

- 8 • Counsel offered the jury his personal belief of SHL’s alleged “hypocrisy” concerning
9 proton beam therapy: “[I]t’s breathtaking to me. The hypocrisy of that just knocks the
10 wind out of me. Sometimes I can’t believe it. And the funny thing is, the part I’m just
11 God smacked by—” *Id.* at 2655. At this point the Court sustained SHL’s objection.
12 *Id.*
- 13 • Less than a minute after SHL’s objection was sustained, counsel again offered his
14 personal beliefs, and commented directly on the credibility of witnesses, when he
15 accused SHL of “speaking out of both sides of [its] mouth” about proton beam therapy,
16 and told the jury “I think it renders everything they say about that topic unbelievable.”
17 *Id.* at 2655-56. SHL again objected, and the Court again sustained the objection. *Id.*
18 at 2656.
- 19 • Then, in an egregious closing summation, counsel exhorted the jurors: “So here’s what
20 we ask you to do. Check yes on No. 1 on the verdict form. Write in \$30 million and
21 do it with your chest stuck out and proudly. Don’t hesitate. It’s the right thing to do.
22 We wouldn’t ask you to do it if we weren’t convinced it was the right thing to do.” *Id.*
23 at 2692 (emphasis added). Once again, SHL objected, and once again the Court
24 sustained the objection. *Id.*

25 The Nevada Supreme Court in *Lioce* specifically directed trial courts to “give great weight”
26 to instances of continued misconduct—i.e., cases where, as here, an objection is sustained but
27 counsel persists in the prohibited line of argument:
28

1 [W]hen the district court decides a motion for a new trial based on repeated or
2 persisted objected-to misconduct, the district court shall factor into its analysis the
3 notion that, by engaging in continued misconduct, the offending attorney has
4 accepted the risk that the jury will be influenced by his misconduct. Therefore, the
district court shall give great weight to the fact that single instances of improper
conduct that could have been cured by objection and admonishment might not be
curable when that improper conduct is repeated or persistent.

5 124 Nev. at 18-19, 174 P.3d at 981 (emphasis added). *Lioce* itself involved continuous misconduct
6 where counsel repeatedly injected his personal views into the case. 124 Nev. at 21-22, 174 P.3d
7 at 983-84. And in *DeJesus*, the court found that counsel’s offering “commentary on the virtues of
8 [the plaintiff’s] cause . . . blatantly violated” the rules of professional conduct, and collected prior
9 Supreme Court authorities holding it grossly improper for a lawyer to tell the jury their personal
10 opinion of the righteousness of their cause—*exactly* what Plaintiff’s counsel did here. 116 Nev.
11 at 819, 7 P.3d at 464; *Lioce*, 124 Nev. at 21-22, 174 P.3d at 983-84 (same).

12 There can be no doubt this was a deliberate tactic. Even if counsel had been unaware of
13 *Lioce* despite this Court’s pretrial order to read it, *see* Order Regarding Defendants’ Motions in
14 Limine at 7-8 (MIL Nos. 20 & 21), counsel would have known that injecting his personal beliefs
15 into the trial was impermissible the moment the Court sustained the first objection. But he did it
16 again—and again and again. Because the repeated objections and the repeated admonishments
17 could not cure the prejudice, a new trial is required.

18 **Second**, counsel repeatedly attacked SHL’s counsel before the jury, falsely accusing SHL’s
19 counsel of calling Ms. Eskew a liar. *See* App. Vol. 7 (3/24 Tr.) at 1543 (“Well, he called her a
20 liar”); *id.* (“So, Sandy, that guy just said that you have an incentive to get on that stand and lie.
21 How does that make you feel?”); *id.* at 1547 (“So this incentive, this money incentive that these
22 people are accusing you of having to come here, do you think they have an incentive to come in
23 here and call the widow of Bill Eskew and his children liars[?]”). SHL counsel objected to all
24 three questions, but was overruled every time. *See id.* at 1543, 1547. When Plaintiff’s counsel
25 continued this improper line of attack—“Did that incentive call you and BJ . . . and Tyler liars? .
26 . . . Right here in the courthouse in front of people that you don’t know?”—SHL counsel asked for
27 a bench conference, and the assault stopped, at least for the time being. *See id.* at 1547.

1 Counsel then doubled down on the theme in closing argument, stating that “I never thought
2 that an insurance company . . . would stoop to that, what happened in front of you, to call honest
3 people liars.” App. Vol. 11 (4/4 Tr.) at 2509. SHL counsel’s objection was sustained. *Id.* But
4 Plaintiff’s counsel was undeterred. Later in his closing, he launched a direct personal attack on
5 SHL’s counsel, telling the jury that Ms. Eskew was “a 69-year-old woman” and SHL’s counsel
6 “haven’t been able to beat her down no matter what they do to her and her kids on the stand.” *Id.*
7 at 2690 (emphasis added). SHL counsel again objected, and once again the objection was
8 sustained. *Id.*

9 This inflammatory and ad hominem line of attack—hammered home again and again
10 before the jury—was totally false. SHL’s counsel never called Ms. Eskew a liar. These attacks,
11 which were based on SHL’s cross-examination of Ms. Eskew, blatantly violated the Court’s order
12 in limine providing that “[t]he parties may not comment on the litigation conduct of the lawyers.”
13 Order Regarding Defendants’ Motions in Limine at 6 (MIL No. 17). Courts strictly prohibit
14 lawyers from launching personal attacks against opposing counsel before the jury precisely
15 because such attacks are unfair, prejudicial, and have no place in a court of law.

16 In *Born v. Eisenman*, 114 Nev. 854, 962 P.2d 1227 (1998), the Nevada Supreme Court
17 explained that “improper comments by counsel which may prejudice the jury against the other
18 party, his or her counsel, or witnesses is clearly misconduct by an attorney.” 114 Nev. at 862, 962
19 P.2d at 1232. The court emphasized that “[c]ases that have dealt with similar situations have
20 uniformly condemned such statements as fundamentally prejudicial.” *Id.* And it concluded that
21 “[w]here an attorney attacks opposing counsel in the presence of the jury, it constitutes grounds
22 for a new trial if it appears that prejudice may have resulted.” *Id.* (quotation marks omitted). “The
23 test in a matter of this sort is not necessarily that the misconduct complained of had a prejudicial
24 effect upon the jury, but that it *might* have done so.” *Id.* (emphasis added and quotation marks
25 omitted).

26 That test is easily satisfied here. There can be no serious dispute that counsel’s improper
27 comments “*might*” have had “a prejudicial effect upon the jury.” *Born*, 114 Nev. at 862, 962 P.2d
28 at 1232 (emphasis added and quotation marks omitted). Indeed, they plainly *did* have a prejudicial

1 effect, as evidenced by the shocking damage awards. And here too, *Lioce*'s mandate to district
2 courts—to “give great weight to the fact that single instances of improper conduct that could have
3 been cured by objection and admonishment might not be curable when that improper conduct is
4 repeated or persistent” (124 Nev. at 18-19, 174 P.3d at 981)—applies with full force. This was
5 not an isolated incident. This was deliberate, repeated misconduct. It was a strategy—to win
6 sympathy for Plaintiff by demonizing opposing counsel based on the “litigation conduct of the
7 lawyers.” Order Regarding Defendants’ Motions in Limine at 6 (MIL No. 17). Because the
8 prejudice could not be cured, this Court should order a new trial.

9 ***Third***, in the punitive damages phase, counsel directed Shelean Sweet, SHL’s claims
10 manager, “to turn to the jury and say, on behalf of the utilization review manager for Sierra Health
11 and Life, that you agree with their verdict.” App. Vol. 12 (4/5 Tr.) at 2778. The court overruled
12 SHL’s objections, *id.*, at which point counsel instructed the witness to make additional public
13 acceptances of guilt before the jury, again over SHL’s objections. *See id.* at 2778-79 (“[T]urn to
14 the jury and tell them that on behalf of Sierra Health and Life, as a utilization management director,
15 whether or not you accept that amount?”); *id.* at 2779 (“There was an amount of money that was
16 awarded by this jury in the amount of \$40 million to Mr. Eskew for his compensatory damages
17 [T]urn to that jury and tell them whether you accept that finding.”).

18 Ordering a witness to perform in this way—through direct commands as to what to say,
19 rather than by asking questions—was grossly improper, as a matter of both form and substance.
20 Lawyers *question* witnesses at trial; they do not *command* them to make specific statements. The
21 law does not permit forcing a witness to choose between (1) publicly admitting they accept the
22 finding that they violated the law or (2) telling the jury they reject the jury’s verdict—at a time the
23 jury is hearing evidence and about to begin deliberations over damages in a second phase. It was
24 plain error to allow counsel to publicly humiliate, degrade, and demean SHL’s witness by
25 repeatedly directing her to turn in her chair, face the jury, and state that she agreed with their \$40
26 million verdict.

1 **II. The Court Should Order A New Trial Because The Verdict Was Tainted By Passion**
2 **And Prejudice.**

3 NRCP 59(a)(1)(F) empowers this Court to order a new trial when there are “excessive
4 damages appearing to have been given under the influence of passion or prejudice.” In the words
5 of the Nevada Supreme Court, a district court is “justified in granting a new trial on the grounds
6 of excessive damages” where “the verdict is so flagrantly improper as to indicate passion, prejudice
7 or corruption in the jury.” *Hazelwood*, 109 Nev. at 1010, 862 P.2d at 1192 (quotation marks
8 omitted) (affirming district court’s grant of new trial when \$425,000 verdict was influenced by
passion and prejudice). The verdict in this case easily meets that standard.

9 The “power to set aside the jury’s verdict and grant a new trial is not in derogation of the
10 right of trial by jury but is one of the historic safeguards of that right.” *Gasperini v. Ctr. for*
11 *Humanities*, 518 U.S. 415, 433 (1996) (quotation marks and brackets omitted). Thus, “[i]f it
12 should clearly appear that the jury have committed a gross error, or have acted from improper
13 motives, or have given damages excessive in relation to the person or the injury, it is as much the
14 duty of the court to interfere, to prevent the wrong, as in any other case.” *Id.* (quoting *Blunt v.*
15 *Little*, 3 F. Cas. 760, 761-62 (C.C. Mass. 1822) (Story, J.)).

16 If the jury was influenced by passion or prejudice, a new trial *must* be granted. As the
17 United States Supreme Court has held, “no verdict can be permitted to stand which is found to be
18 in any degree the result of appeals to passion and prejudice.” *Minneapolis St. P. & S.S. M. Ry. Co.*
19 *v. Moquin*, 283 U.S. 501, 521 (1931); *see also Wells v. Dallas Indep. Sch. Dist.*, 793 F.2d 679,
20 683-84 (5th Cir. 1986) (“[W]hen an award is so exaggerated as to indicate bias, passion [or]
21 prejudice . . . remittitur is inadequate and the only proper remedy is a new trial.”) (citation and
22 quotation marks omitted). Under the Nevada standard, a court need not determine that the awards
23 *were in fact given* under the influence of passion or prejudice. Rather, the standard is far lower—
24 a new trial is warranted if excessive damages merely “*appear*[]” to have been so given. *See* NRCP
25 59(a)(1)(F) (emphasis added).

1 **A. The Stunning And Excessive Damage Awards Are Indisputable Indicators**
2 **Of A Verdict Given Under The Influence Of Passion And Prejudice.**

3 The size of a damages award is the strongest indicator of a verdict given under the influence
4 of passion or prejudice. *See Honda Motor Co. v. Oberg*, 512 U.S. 415, 422 (1994) (explaining
5 that early common law cases, “while generally deferring to the jury’s determination of damages,
6 steadfastly upheld the court’s power to order new trials solely on the basis that the damages were
7 too high”). Trial courts “infer passion, prejudice, or partiality from the size of the award,” and
8 damages ““may be so monstrous and excessive, as to be in themselves an evidence of passion or
9 partiality in the jury.”” *Oberg*, 512 U.S. at 422, 425 (quoting *Fabrigas v. Mostyn*, 96 Eng. Rep.
10 549 (C.P. 1773)). To be sure, “the mere fact [that] a verdict is large is not *conclusive* that it is the
11 result of passion or prejudice.” *Miller v. Schnitzer*, 78 Nev. 301, 309, 371 P.2d 824, 828 (1962)
12 (emphasis added), *abrogated in part on other grounds by Ace Truck & Equip. Rentals, Inc. v.*
13 *Kahn*, 103 Nev. 503, 746 P.2d 132 (1987). But it is very strong evidence. And it is *indisputable*
14 evidence where, as here, each award would exceed by multiples the largest awards ever upheld in
15 Nevada history. The awards in this case are not connected to the evidence and are utterly irrational.

16 The \$40 million compensatory award and \$160 million punitive award are stunning
17 outliers. They dwarf all such awards that have ever been upheld in Nevada history. The lists of
18 prior emotional distress, pain-and-suffering, and punitive damage awards, *see* Exs. 15-17, confirm
19 what is obvious from the face of the verdict: the shocking amounts of these awards are powerful,
20 smoking-gun evidence that the jury was influenced by passion and prejudice. In *Nevada*
21 *Independent Broadcasting Corp. v. Allen*, 99 Nev. 404, 664 P.2d 337 (1983), for example, the
22 Nevada Supreme Court looked to awards in other cases in determining whether a noneconomic
23 damage award was influenced by passion and prejudice—and concluded, in light of the other
24 cases, that a \$675,000 award was “simply beyond the range of reason,” was “not supported by the
25 evidence,” and “therefore must have been given under the influence of passion or prejudice.” 99
26 Nev. at 419, 664 P.2d at 347.

27 The \$40 million compensatory damage award would be—by a vast margin—the largest
28 noneconomic damage award upheld in Nevada history. As shown in Exhibits 14 and 15, the largest
such awards are the approximately \$7.7 million (per plaintiff) award in *Wyeth v. Rowatt*, 126 Nev.

1 446, 244 P.3d 765 (2010), followed by the \$7.5 million award in *First Transit, Inc. v. Chernikoff*,
2 476 P.3d 860, 2020 WL 6887972 (Nev. Nov. 23, 2020) (unpublished). App. Vol. 12 at 2844-52.
3 The award in this case is more than five times the record-setting amount upheld in *Wyeth*.

4 The compensatory damage award even exceeded the unjustified and inflated amounts
5 Plaintiff's counsel requested. He asked for \$30 million and the jury awarded \$40 million. See
6 App. Vol. 11 (4/4 Tr.) at 2578. In *DeJesus*, the Nevada Supreme Court recognized that where a
7 damages "award far exceeds what counsel requested," that is evidence of "a jury verdict that was
8 the product of passion and prejudice." 116 Nev. at 820, 7 P.3d at 464-65; see also *Bongiovi v.*
9 *Sullivan*, 122 Nev. 556, 579, 138 P.3d 433, 449 (2006) ("[Plaintiff] asked for \$1 million in
10 compensatory damages, but the jury only awarded one-fourth of that amount. Thus, we conclude
11 that the compensatory damages award was not excessive."); *Jutzi-Johnson v. United States*, 263
12 F.3d 753, 761 (7th Cir. 2001) (non-economic damage award that exceeded the amount plaintiff
13 requested indicates passion and prejudice). Tellingly, in an implicit acknowledgment that the jury
14 had gone too far in awarding compensatory damages—and that the verdict would be in serious
15 jeopardy under passion-and-prejudice review—Plaintiff's counsel desperately attempted to
16 salvage the verdict in his Phase 2 closing by urging the jury, for unspecified "legal reasons," not
17 to go too far in imposing punitive damages. App. Vol. 12 (4/5 Tr.) at 2801; *id.* at 2823 ("You
18 won't be helping us if you" award more than \$160 million).

19 But the jury *did* go too far: its punitive damage award is another stunning outlier. On the
20 facts of this case, a \$160 million punitive damage award is clear and indisputable evidence of
21 passion and prejudice. As shown in Exhibit 16, the largest punitive damage award ever affirmed
22 in Nevada history is the approximately \$19 million (per plaintiff) punitive damage award in *Wyeth*,
23 followed by the \$6 million award in *Evans v. Dean Witter Reynolds, Inc.*, 5 P.3d 1043 (2000), and
24 the \$5.9 million award in *Ainsworth v. Combined Ins. Co.*, 763 P.2d 673 (1988). App. Vol. 12 at
25 2853-57. The \$160 million punitive damage award in this case is more than eight times the largest
26 punitive award ever upheld in Nevada.

1 If these awards—more than five times the largest affirmed compensatory award and more
2 than eight times the largest affirmed punitive award—do not even “appear[]” to have resulted
3 from passion and prejudice, it is hard to imagine how the Rule 59 standard could ever be met.

4 **B. Counsel’s Improper Arguments And Misconduct Fueled The Prejudice And**
5 **Directly Led To The Irrational Awards.**

6 In addition to examining the size of the verdict, Nevada courts also look to the arguments
7 that led to the verdict in determining whether the jury was swayed by passion and prejudice. If
8 counsel presented the jury with improper arguments—for example, arguments laced with
9 counsel’s personal views or arguments intended to incite and inflame—that is powerful evidence
10 that the jury was influenced by improper considerations and its verdict must be set aside. In
11 *DeJesus*, for example, the Nevada Supreme Court held that not only did counsel’s “inappropriate
12 remarks violate well-established standards of professional conduct,” his “improper arguments so
13 thoroughly permeated the proceeding that we are convinced they tainted the entire trial and resulted
14 in a jury verdict that was the product of passion and prejudice.” 116 Nev. at 820, 7 P.3d at 464.
15 The court explained that the excessive damage award—there, a mere \$1.47 million—“plainly
16 reflects the influence of counsel’s improper arguments.” *Id.*

17 Here, the stunning verdict is the direct result of counsel’s improper arguments. As
18 discussed above, Plaintiff’s counsel repeatedly injected their personal beliefs into the case; they
19 attacked and demonized SHL counsel before the jury; and they commanded SHL’s witness to turn
20 to the jury and repeatedly state that she accepted their verdict. These acts of misconduct warrant
21 a new trial. They also demonstrate, just as in *DeJesus*, that the jury was incited and inflamed—
22 indeed, they explain how the jury could have rendered such a shocking and otherwise inexplicable
23 verdict.

24 In addition to the blatant acts of misconduct described above, Plaintiff’s counsel fueled the
25 fires of prejudice in other ways. Counsel incited the jury by telling them, over and over, that SHL
26 ran a “rigged system.” App. Vol. 11 (4/4 Tr.) at 2558, 2664, 2665, 2668, 2669, 2670, 2671, 2679.
27 Counsel accused SHL witnesses of talking out of both sides of their mouth. *Id.* at 2655-56.
28 Counsel portrayed SHL as a remorseless corporate behemoth that deserved the harshest of

1 punishments and asserted, falsely, that no company representative attended Phase 2 of the trial
2 because they “don’t want to face the music.” App. Vol. 12 (4/5 Tr.) at 2819, 2824-25. He told the
3 jury that “juries regulate insurance companies more than anyone, including the government” and
4 that “jury verdicts can be a good thing to regulate conduct.” App. Vol. 11 (4/4 Tr.) at 2685.
5 Counsel told the jury to act as the conscience of the community, *id.* at 2687-88, and overtly framed
6 the case as an “us versus them” dispute by emphasizing that SHL was a large corporation at odds
7 with “this community.” *See id.* at 2579 (“[A]re you going to let a large insurance company tell
8 you, tell this community, tell this state they’re above the law?”); *see Hazelwood*, 109 Nev. at 1010,
9 862 P.2d at 1192 (verdict tainted by passion and prejudice where the individual plaintiff faced “a
10 large corporation” and “incited feelings of passion and prejudice in the jury”). And counsel
11 violated the prohibition on Golden Rule arguments, *see Lioce*, 124 Nev. 1 at 22-23, asking jurors
12 to imagine themselves in the place of Mr. Eskew. *See App. Vol. 11 (4/4 Tr.)* at 2576 (“[Y]our
13 health is what the health is, but that moment that you prepare to leave your journey that you can
14 reflect back on your accomplishments, on the life you lived.”).

15 In Phase 2, counsel exhorted the jury to “send a message” through a massive award of
16 punitive damages. *See App. Vol. 12 (4/5 Tr.)* at 2799 (claiming there is only “one way” to get a
17 “message through to an insurance company What’s the language they understand? Money.”).
18 Counsel even went so far as to suggest that if the jury didn’t “really punish” SHL, it would be
19 “sending the opposite message,” i.e., that it was “okay if you do wrong.” *Id.* at 2820. The damages
20 awards followed immediately on the heels of these egregious closing arguments.

21 The jury’s deliberations were shockingly brief. This was a 13-day trial that involved
22 extensive witness testimony, much of it highly technical, and dozens of exhibits spanning
23 thousands of pages. Plaintiff’s Phase 1 closing argument alone lasted nearly four hours. Yet the
24 jury deliberated for little more than an hour before awarding \$40 million in compensatory
25 damages. And it deliberated for *less* than an hour before awarding \$160 million in punitive
26 damages. All of this is yet further confirmation that the jury did not carefully sift, examine, and
27 discuss the evidence, but rather decided this case in an impassioned state.

1 In sum, the amounts of the awards, particularly when viewed in light of the arguments that
2 led to those awards, compel the conclusion that the Rule 59 standard—“excessive damages
3 appearing to have been given under the influence of passion or prejudice”—is satisfied. The
4 verdict cannot stand.

5 **III. At A Minimum, The Court Should Drastically Remit The Compensatory And**
6 **Punitive Damage Awards.**

7 In the alternative, and at a bare minimum, the Court should enter a drastic remittitur to
8 reduce the compensatory and punitive damage awards to amounts that are permissible under
9 Nevada law and the United States Constitution. The compensatory damage award should be
10 reduced to no more than \$2 million, and the punitive damage award should be reduced to an
11 amount that does not exceed the compensatory damage award.

12 **A. The Compensatory Damage Award Is Not Supported By Substantial**
13 **Evidence, And Amounts To An Excessive And Irrational Punishment.**

14 A compensatory damage award must be remitted when it is not supported by “substantial
15 evidence” in the record. *Wyeth v. Rowatt*, 126 Nev. at 470, 244 P.3d at 782. Plaintiff sought
16 compensatory damages for two types of noneconomic harm to Mr. Eskew: pain-and-suffering
17 (from the esophagitis that allegedly resulted from IMRT therapy in lieu of proton beam therapy);
18 and emotional distress (from the denial of coverage). The evidence in this case does not come
19 close to supporting a \$40 million award of noneconomic compensatory damages.

20 **1.** As to pain-and-suffering, the evidence cannot support anything remotely
21 approaching a \$40 million award. Plaintiff’s radiation oncology expert, Dr. Chang, testified that
22 the use of IMRT rather than proton beam therapy did not affect the progression of Mr. Eskew’s
23 cancer. App. Vol. 3 (3/21 Tr.) at 617. Moreover, Plaintiff conceded that proton beam therapy
24 would have caused Grade I and II esophagitis, so the amount of compensable pain-and-suffering
25 would be limited to the difference between a Grade II case and a Grade III case in any event. And
26 even assuming the evidence supported a finding that Mr. Eskew actually had a Grade III case—a
27 condition that was never diagnosed by medical records—his condition lasted less than one year.
28

1 Finally, much of Mr. Eskew's pain-and-suffering during his final year was caused by his Stage IV
2 lung cancer rather than by esophagitis.

3 As to emotional distress, there was no evidence warranting an award of this magnitude, or
4 anything close to it. Although there was testimony that the denial caused Mr. Eskew to feel
5 "hopeless," App. Vol. 5 (3/23 Tr.) at 1199, "angry," "frustrated," *id.* at 1200, 1201, 1260; and
6 "devastated," App. Vol. 6 (3/24 Tr.) at 1397, the record is devoid of substantial evidence that Mr.
7 Eskew suffered such extreme emotional distress from learning that the request for insurance
8 preauthorization was denied that could justify this award. In fact, *any* award of emotional distress
9 damages was precluded because Plaintiff did not present substantial evidence of a physical
10 manifestation of the emotional distress. *Betsinger v. D.R. Horton, Inc.*, 126 Nev. 162, 232 P.3d
11 433, 436 (2010). In short, even assuming a denial of insurance coverage could cause legally
12 compensable emotional distress, there is simply nothing in the record that could support a \$40
13 million award.

14 Nevada courts have reduced noneconomic damage awards in cases involving far more
15 serious emotional harm than presented here. For example, in *Rowatt v. Wyeth*, 2008 WL 876652
16 (Nev. 2d Jud. Dist. Ct. Feb. 19, 2008), the court substantially remitted excessive pain-and-suffering
17 and emotional distress awards. The jury had awarded approximately \$35 million for pain-and-
18 suffering and emotional distress to the three plaintiffs, an average of approximately \$11.7 million
19 each. The court found that the women—who had gotten breast cancer after taking Defendant
20 Wyeth's hormone therapy—had suffered devastating emotional harm and undergone extreme
21 pain-and-suffering. The court recognized that "the jury found that Defendant's conduct was the
22 legal cause of Plaintiffs having gotten cancer and that cancer is a terrifying and devastating illness."
23 *Id.* at *2. Moreover, the court explained, the plaintiffs would suffer "serious and lifelong physical
24 and emotional consequences" from surgery and the mental toll from "the possible re-occurrence
25 of cancer." *Id.* The court asked rhetorically, "Who would volunteer to suffer these consequences
26 for any sum of money?" *Id.* at *3. Nonetheless, the court concluded, the awards of approximately
27 \$11.7 million were excessive despite the lifetime of physical and emotional suffering the plaintiffs
28 would endure. "The Court is compelled to find that these amounts are obviously so

1 disproportionate to the injury proved as to justify the conclusion that the verdict is not the result
2 of the cool and dispassionate discretion of the jury.” *Id.* at *2 (quotation marks omitted). The
3 court remitted the \$35 million total award to \$23 million, or approximately \$7.7 million per
4 plaintiff. *Id.* at *3. The Nevada Supreme Court affirmed “the compensatory damage awards after
5 remittitur.” *See* 126 Nev. at 472, 244 P.3d at 783.

6 Likewise, in *Hazelwood v. Harrah’s*, 109 Nev. 1005, 862 P.2d 1189 (1993), the Nevada
7 Supreme Court affirmed the district court’s grant of a new trial if the plaintiff did not agree to a
8 remittitur. Although the jury had awarded the plaintiff \$425,000 in noneconomic damages, the
9 district court held that a remittitur to \$200,000 was warranted. *See* 109 Nev. at 1009, 862 P.2d at
10 1191. The Supreme Court held that “[a]lthough a judge may not invade the province of the jury,
11 it is not an abuse of discretion for a judge to order a new trial on the issue of damages or, in the
12 alternative, remittitur, when the jury verdict was the result of passion and prejudice.” 109 Nev. at
13 1010-11, 862 P.2d at 1192. Accordingly, the court held, “the district court did not err in ordering
14 a remittitur in this case.” 109 Nev. at 1011, 862 P.2d at 1192.

15 There are many similar examples of courts remitting excessive noneconomic damage
16 awards. *See, e.g., Bravo v. United States*, 532 F.3d 1154, 1161-62 (11th Cir. 2008) (\$20 million
17 in noneconomic damages “shock[ed] the judicial conscience” even though medical malpractice
18 resulted in severe brain injuries to child); *Tretola v. Cnty. of Nassau*, 14 F. Supp.3d 58, 85
19 (E.D.N.Y. 2014) (\$3 million award for emotional injuries remitted to \$175,000); *Advocat, Inc. v.*
20 *Sauer*, 353 Ark. 29, 48 (2003) (\$15 million pain-and-suffering award “shock[ed] the conscience
21 of this court”); *Hughes v. Ford Motor Co.*, 204 F. Supp. 2d 958, 965-66 (N.D. Miss. 2002) (\$4
22 million award—most of which was for pain-and-suffering—remitted to \$2.5 million even though
23 plaintiff suffered burns, intense pain, and a “lifetime of disfigurement”).

24 **2.** Comparing the noneconomic damage award to awards in other Nevada cases
25 confirms that a \$40 million award is grossly excessive and cannot be sustained. In *Nevada*
26 *Independent Broadcasting Corp. v. Allen*, 99 Nev. 404, 419, 664 P.2d 337, 347 (1983), the Nevada
27 Supreme Court looked to awards in other comparable cases in agreeing with the defendant that the
28 plaintiff “was entitled, as a matter of law, to less than [the plaintiffs in the other cases] received.”

1 The court then remitted the \$675,000 noneconomic damage award to \$50,000 as “the maximum
2 amount that could be reasonably awarded under these circumstances.” 99 Nev. at 419, 664 P.2d
3 at 347. That approach tracks the approach at common law, where courts have long considered
4 prior awards as an important objective measure in evaluating whether a particular verdict is
5 excessive. *See, e.g.*, Cal. Jur. 3d Damages § 209 (2022) (“The amount of an average award allowed
6 for a particular injury in the past, as determined by jury verdicts which have been approved in
7 previous actions, . . . has its place in ascertaining the damages to be allowed”); *Gilbert v.*
8 *DaimlerChrysler Corp.*, 470 Mich. 749, 765 (2004) (“[W]hen a verdict is . . . entirely inconsistent
9 with verdicts rendered in similar cases, a reviewing court may fairly conclude that the verdict
10 exceeds the amount required to compensate the injured party.”). Prior awards demonstrate what
11 judges and juries applying Nevada law consider to be reasonable amounts in cases involving pain-
12 and-suffering or emotional distress. In particular, the relevant comparison is awards that have
13 been upheld upon review. Only then is there a judicial determination that the award is permissible
14 under Nevada law.

15 To be sure, Nevada courts do not deem prior awards *conclusive* as to whether a particular
16 verdict is excessive, and in some cases they have declined to take a comparative approach, at least
17 when reviewing a remittitur decision on appeal. *See Wyeth*, 126 Nev. at 472 n.10, 244 P.3d at 783
18 n.10 (affirming district court’s remittitur but declining comparative approach to compensatory
19 damages); *Wells, Inc. v. Shoemaker*, 64 Nev. 57, 74, 177 P.2d 451, 460 (1947) (stating that “the
20 fact that juries in other similar cases have fixed a much lower amount as damages” is not
21 “controlling on the question of excessiveness”). But even if prior awards are not “controlling,”
22 they are plainly *relevant* in that they are objective yardsticks in assessing excessiveness—as
23 illustrated by the Nevada Supreme Court’s decision in *Allen*, where the court compared the jury’s
24 award against prior verdicts.

25 The attached Exhibits 14 and 15 show that a \$40 million award for pain-and-suffering and
26 emotional distress would exceed all such other awards ever upheld in Nevada history. App. Vol.
27 12 at 2844-47. In fact, Nevada juries and courts have awarded and upheld far lesser amounts even
28 in cases involving harms that were far more severe. *See, e.g., State v. Eaton*, 101 Nev. 705, 710

1 P.2d 1370 (1985) (some part of \$82,352 in damages for wrongful death of infant daughter in car
2 accident), *overruled in part on other grounds by State ex rel. Dep't of Transp. v. Hill*, 114 Nev.
3 810, 963 P.2d 480 (1998); *Jacobson v. Manfredi*, 100 Nev. 226, 679 P.2d 251 (1984) (some part
4 of \$900,000 for permanent and severe injury to two-year-old child from consumption of toxic
5 liquid).

6 In light of the evidence in this case and prior awards, an award of no more than \$2 million
7 in compensatory damages is the maximum permitted under Nevada law. *Cf. State Farm*, 538 U.S.
8 at 426 (describing a \$1 million noneconomic damage award as “substantial” in a bad-faith case
9 against an insurer, and noting that the plaintiffs “were awarded \$1 million for a year and a half of
10 emotional distress”).

11 **3.** Absent a drastic remittitur, the noneconomic damage award would violate due
12 process. *See Gilbert*, 470 Mich. at 765 n.22 (“A grossly excessive award for pain and suffering
13 may violate the Due Process Clause even if . . . not labeled ‘punitive.’”). The award bears the
14 hallmarks of an unconstitutional punitive sanction. The jury was not given meaningful guidance
15 as to how to determine the amount of the award—it was essentially told to do whatever it thought
16 was right—and the resulting award vastly exceeds the amount necessary to fully compensate
17 Plaintiff. “[W]ithout rational criteria or defined limits, the pain and suffering award becomes the
18 same arbitrary deprivation of property as were punitive damage awards before” the Supreme Court
19 established constitutional limits. *See Paul V. Niemeyer, Awards for Pain and Suffering: The*
20 *Irrational Centerpiece of our Tort System*, 90 VA. L. REV. 1401, 1417, 1420 (2004) (“the
21 constitutional infirmities of punitive damages found by the Supreme Court can be applied with
22 even greater force to awards for pain and suffering”).

23 **B. The Punitive Damage Award Is Grossly Excessive And Unconstitutional.**

24 The punitive damage award is grossly excessive and cannot be sustained under the Due
25 Process Clause of the United States Constitution. It should be reduced to an amount no greater
26 than the remitted award of compensatory damages.

27 **1.** “The Due Process Clause of the Fourteenth Amendment prohibits the imposition
28 of grossly excessive or arbitrary punishments on a tortfeasor.” *State Farm*, 538 U.S. at 416.

1 Excessive punitive damage awards are “tantamount to a severe criminal penalty” where the
2 defendant lacked “fair notice” of the severity of the punishment that could be imposed. *BMW of*
3 *N. Am., Inc. v. Gore*, 517 U.S. 559, 574, 585 (1996).

4 In *Gore*, the United States Supreme Court identified three “guideposts” for determining
5 when a punitive damage award violates due process: (1) the degree of reprehensibility of the
6 defendant’s conduct; (2) the ratio between the punitive and compensatory damage awards; and (3)
7 the difference between the punitive damages award and the civil penalties that have been imposed
8 or are available for comparable conduct. *Gore*, 517 U.S. at 574-75. The Court has since
9 strengthened these guideposts, in light of its “concerns over the imprecise manner in which
10 punitive damages systems are administered” and the danger that juries’ “wide discretion in
11 choosing amounts,” especially in cases involving large corporate defendants, “creates the potential
12 that juries will use their verdicts to express biases against big businesses.” *State Farm*, 538 U.S.
13 at 417. Due process requires that reviewing courts apply “[e]xacting” de novo review to punitive
14 damage awards and their underlying facts, *id.* at 418, and afford no deference to findings implied
15 from the jury’s award, *Simon v. San Paolo U.S. Holding Co.*, 35 Cal. 4th 1159, 1173 (2005).

16 In *Bongiovi v. Sullivan*, 122 Nev. 556, 583, 138 P.3d 433, 452 (2006), the Nevada Supreme
17 Court held that “the proper standard for reviewing excessiveness of a punitive damages award in
18 Nevada is the federal standard’s three guideposts.”

19 **2.** Applying the federal guideposts in this case compels the conclusion that any
20 punitive damage award against SHL cannot exceed an amount equal to the final award of
21 compensatory damages. If the compensatory award is not drastically remitted, than a ratio far
22 *lower* than 1:1 would be constitutionally required.

23 **First**, SHL’s conduct was not reprehensible. This Court instructed the jury, in assessing
24 reprehensibility, to consider three factors: SHL’s “culpability and blameworthiness”; whether
25 SHL’s conduct “was part of a pattern of similar conduct by the defendants”; and “any mitigating
26 conduct by the defendants.” All three factors cut in SHL’s favor.

27 SHL did not act with a high degree of culpability or blameworthiness. In denying
28 preauthorization for proton beam therapy, SHL acted pursuant to the terms of the policy at issue,

1 which conditioned coverage on a treatment being “medically necessary.” SHL’s proton policy,
2 under which proton beam therapy was not deemed medically necessary in cases of Stage IV lung
3 cancer, was consistent with the views of some of the nation’s leading medical and scientific
4 authorities, including the American Society for Radiation Oncology’s Emerging Technology
5 Committee, and the Federal Agency for Healthcare Research and Quality. SHL’s policy was also
6 consistent with the policies of many other insurers. There was no evidence that SHL had any
7 intent or desire to injure Mr. Eskew. Even if the coverage decision could be deemed incorrect, or
8 even if SHL could be faulted for reaching the conclusion it did concerning proton beam therapy,
9 any such errors do not reflect a high level of moral culpability or blameworthiness. Nor was there
10 evidence that SHL’s conduct was part of a pattern of conduct. To the contrary, each medical
11 necessity decision turned on the facts of the individual’s case and the exercise of clinical discretion.
12 App. Vol. 4 (3/22 Tr.) at 820-21. This case concerned a single denial of coverage, and a single
13 type of therapy. Finally, there was substantial evidence of mitigating conduct by SHL, including
14 evidence that SHL now sends preauthorization requests for radiation oncology treatment to an
15 external review organization, where they are reviewed by a radiation oncologist. App. Vol. 12
16 (4/5 Tr.) at 2774. SHL also instituted annual internal training on Nevada’s duty of good faith and
17 fair dealing. *Id.* at 2774-75. And of course, SHL changed the underlying policy itself, to allow
18 for proton beam therapy for an individual in Mr. Eskew’s situation. *Id.* at 2813-14.

19 In *Rowatt v. Wyeth*, the district court remitted the jury’s \$99 million punitive damage award
20 to \$58 million under the due process guideposts, awarding approximately \$19 million to each of
21 the three plaintiffs. The court recognized that “[t]he jury could justifiably find a significant degree
22 of reprehensibility in Defendant’s decision to misrepresent the risks and benefits of a product
23 which the jury determined caused Plaintiffs’ cancers, in order to increase its bottom line.” 2008
24 WL 876652 at *4-5. Nonetheless, in light of the Due Process Clause’s prohibition of “grossly
25 excessive or arbitrary punitive damage awards,” the court held “the amount of punitive damages
26 to be excessive.” *Id.* (quotation marks omitted). The Nevada Supreme Court approved the reduced
27 awards, concluding that “the remitted punitive damages awards do not violate Wyeth’s due process
28 rights.” 126 Nev. at 475, 244 P.3d at 785. If the facts of *Rowatt v. Wyeth*—far more egregious

1 and harmful conduct, with multiple victims who faced a lifetime of severe pain-and-suffering—
2 would support at most a \$19 million punitive damage award, the facts of *this* case cannot support
3 a \$160 million punitive award.

4 Similarly, in *Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249, 969 P.2d 949 (1998), the
5 Nevada Supreme Court reduced an \$8 million punitive award to \$3.9 million. The court
6 “conclude[d] that the jury’s punitive damage assessments . . . are excessive and disproportionate
7 to [the defendants’] degree of blameworthiness.” 114 Nev. at 1268, 969 P.2d at 962. Accordingly,
8 the “punitive damage awards assessed by the jury in this case exceed the punishment and deterrent
9 effect intended by an award of punitive damages.” *Id.* And in *Guaranty National Insurance Co.*
10 *v. Potter*, 112 Nev. 199, 912 P.2d 267 (1996), a bad faith insurance case, the court held that a \$1
11 million punitive damage award was excessive and reduced it to \$250,000. The court found the
12 award “unreasonable and disproportionate to the behavior” at issue, and “excessive in light of [the
13 insurer’s] overall conduct.” 112 Nev. at 208-09, 912 P.2d at 274. So too here.

14 **Second**, a 1:1 ratio is the constitutional maximum in this case (again assuming drastic
15 remittitur of the compensatory award). A “central feature” of the due process analysis, *Exxon*
16 *Shipping Co. v. Baker*, 554 U.S. 471, 507 (2008), is the ratio between punitive and compensatory
17 damages. The United States Supreme Court has held that a ratio of no more than 1:1 may be the
18 “outermost” constitutional limit in cases where the compensatory award is “substantial.” *State*
19 *Farm*, 538 U.S. at 425. Here, the compensatory award of \$40 million is obviously “substantial”;
20 indeed, in *State Farm* itself, the Supreme Court held that a \$1 million compensatory award was
21 “substantial.” *Id.* at 429. Because “courts must ensure that the measure of punishment is both
22 reasonable and proportionate to the amount of harm to the plaintiff and to the general damages
23 recovered,” *id.* at 426, there is no basis in this case for a punitive damage award that exceeds the
24 compensatory damage award, let alone one that exceeds it by millions of dollars. Indeed, absent
25 a drastic remittitur of the compensatory award, a ratio far *lower* than 1:1 would be required.

26 Even in cases involving far smaller compensatory damage awards than the award in this
27 case, a 1:1 ratio is the constitutional maximum. For example, in *Bongiovi*, the Nevada Supreme
28 Court approved a 1:1 ratio in a case involving a \$250,000 compensatory award, even though it

1 deemed the defendant's conduct "reprehensible." *See* 122 Nev. at 583, 138 P.3d at 452. Similarly,
2 in *Roby*, the California Supreme Court reduced a punitive damage award to achieve a 1:1 ratio in
3 a case involving a \$1.9 million compensatory damage award. The court explained that "punitive
4 damages in an amount equal to compensatory damages marks the constitutional limit in this case
5 and still provides the appropriate deterrence." *Roby v. McKesson Corp.*, 47 Cal. 4th 686, 719
6 (2010); *see also id.* at 717-18 (holding that a 1:1 ratio was the constitutional maximum even though
7 the defendants "acted wrongfully and in a manner warranting civil penalties" and even though the
8 plaintiff suffered "serious[] ... emotional injury" when the defendant failed to respond to prior
9 reports of harassment). And in *Grassilli v. Barr*, 142 Cal. App. 4th 1260, 1290 (Cal. App. 2006),
10 the court reduced a \$4 million punitive damage award to \$55,000—representing an 0.1:1 ratio—
11 noting that, although defendants' conduct was "highly reprehensible," plaintiff "was fully
12 compensated for his economic damages and received a substantial recovery for his claimed
13 emotional injuries." Many other courts have done the same. *See, e.g., Williams v. ConAgra*
14 *Poultry Co.*, 378 F.3d 790, 799 (8th Cir. 2004) (1:1 ratio was outer limit of due process where
15 \$600,000 compensatory damages award was "substantial"); *Bach v. First Union Nat'l Bank*, 486
16 F.3d 150, 156 (6th Cir. 2007) (1:1 ratio appropriate where \$400,000 compensatory damages
17 awarded); *Willow Inn, Inc. v. Pub. Serv. Mut. Ins. Co.*, 399 F.3d 224, 233-37 (3d Cir. 2005)
18 (approving 1:1 ratio where \$150,000 in compensatory damages awarded).

19 A 1:1 ratio is especially warranted in this case because the compensatory damage award
20 consisted entirely of noneconomic damages. *See Roby*, 47 Cal. 4th at 719 (emphasizing that 1:1
21 ratio was the constitutional maximum where there was "a substantial award of noneconomic
22 damages"); *Noyes v. Kelly Servs., Inc.*, 2008 WL 2915113, at *13-14 (E.D. Cal. 2008), *aff'd*. 349
23 F. App'x 185 (9th Cir. 2009) (in light of \$500,000 award for emotional distress, "a ratio of 1 to 1
24 is the constitutional limit in this case"); *see also Simon*, 35 Cal. 4th at 1182 ("Especially when the
25 compensatory damages are substantial or already contain a punitive element," lower constitutional
26 limits apply). The requirement of a low ratio in noneconomic-damage cases arises from the fact
27 that an emotional distress award serves punitive purposes, and is therefore "duplicated in the
28 punitive award." *State Farm*, 538 U.S. at 426 ("Much of the distress was caused by the outrage

1 and humiliation the [insured plaintiffs] suffered at the actions of their insurer; and it is a major role
2 of punitive damages to condemn such conduct. Compensatory damages, however, already contain
3 this punitive element.”). Here too, a low ratio is required because the jury’s award of \$40 million
4 in emotional distress and pain-and-suffering damages necessarily includes a significant punitive
5 element.

6 The United States Supreme Court’s *State Farm* decision—which involved a bad-faith
7 claim against an insurer resulting in a \$1 million award of compensatory damages—is instructive.
8 The Court concluded: “An application of the *Gore* guideposts to the facts of this case, especially
9 in light of the substantial compensatory damages awarded (a portion of which contained a punitive
10 element), likely would justify a punitive damages award at or near the amount of compensatory
11 damages.” 538 U.S. at 429. Here too, a ratio of 1:1 or lower is warranted.

12 **Third**, the final due process guidepost—“the difference between the punitive damages
13 awarded by the jury and the civil penalties authorized or imposed in comparable cases”—further
14 compels a reduction of the punitive damage award to an amount no greater than the compensatory
15 damage award. *State Farm*, 538 U.S. at 418. Two analogous civil penalties are far less than the
16 punishment imposed here. Nevada’s Deceptive Trade Practices Act provides for a civil penalty
17 “not to exceed \$5,000 for each violation . . . if the court finds that a person has willfully engaged
18 in a deceptive trade practice.” NRS 598.0999. And NRS 678B.185 allows for a fine of up to
19 \$10,000 if a person “willfully engages in the unauthorized transaction of insurance.” The award
20 here is, respectively, 32,000 and 16,000 times larger than those legislatively specified civil
21 penalties.

22 Punitive damage awards in other cases further underscore the excessiveness of the award
23 in this case. As Exhibit 16 demonstrates, the punitive damage award in this case exceeds all other
24 such awards upheld in Nevada history. App. Vol. 12 at 2853-57. Even if SHL’s conduct could
25 somehow be deemed comparable to Wyeth’s in *Wyeth v. Rowatt*—and it plainly cannot—that
26 would *still* only authorize a punitive damage award of \$19 million. There is no case in the history
27 of Nevada that provides the constitutionally mandated “fair notice” that a punitive damage award
28 of \$160 million could be imposed on these facts.

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CONCLUSION

The Court should grant a new trial on all issues. In the alternative, the Court should reduce the compensatory damage award to no more than \$2 million, and reduce the punitive damage award to an amount that does not exceed the remitted compensatory damage award.

DATED: May 16, 2022.

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Attorneys for Defendant

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 16, 2022 a true and correct copy of the foregoing
3 **DEFENDANT'S MOTION FOR A NEW TRIAL OR REMITTITUR** was electronically filed
4 and served on counsel through the Court's electronic service system pursuant to Administrative
5 Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by
6 another method is stated or noted:

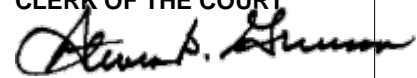
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Attorneys for Plaintiffs
13 Sandra L. Eskew, Tyler Eskew and
14 William G. Eskew, Jr.

15 /s/ Cynthia S. Bowman
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17 HUDGINS, GUNN & DIAL, LLC
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EXHIBIT D

EXHIBIT D



Electronically Filed
Sep 19 2022 02:30 p.m.
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Clerk of Supreme Court

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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

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. Order Granting In Part and Denying In Part Defendant's Motion To Retax, filed
7 June 8, 2022, notice of entry of which was served electronically on June 9, 2022
8 (Exhibit B);
- 9 3. Minute Order denying Defendant's Renewed Motion for Judgment as a Matter of
10 Law, electronically served by Courtroom Clerk on August 15, 2022 (Exhibit C);
- 11 4. Minute Order denying Defendant's Motion for a New Trial or Remittitur,
12 electronically served by Courtroom Clerk on August 15, 2022 (Exhibit D); and
- 13 5. All judgments, rulings and interlocutory orders made appealable by any of the
14 foregoing.

15
16 DATED: September 14, 2022.

17 /s/ Ryan T. Gormley
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Attorneys for Defendant

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on September 14, 2022 a true and correct copy of the foregoing
3 **NOTICE OF APPEAL** was electronically filed and served on counsel through the Court's
4 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:

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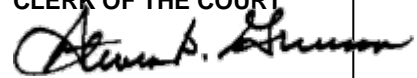
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EXHIBIT A

EXHIBIT A



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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 18th 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

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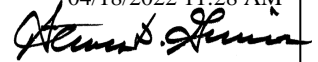
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EXHIBIT 1


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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,

Case No. A-19-788630-C

Dept. No. 4

vs.

SIERRA HEALTH AND LIFE INSURANCE
COMPANY, INC.,

Defendant.

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.¹

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 ¹ <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**
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 Judgment Upon Jury Verdict was served via the court's electronic eFile
14 system to all recipients registered for e-Service on the above entitled case as listed below:

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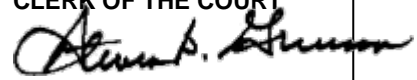
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EXHIBIT B

EXHIBIT B



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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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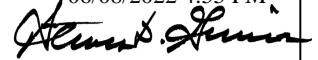
///

1 A copy of the Order is attached hereto.

2 DATED this 9th 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
13 *Attorneys for Plaintiffs*
14
15
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CLERK OF THE COURT

ORDR
MATTHEW L. SHARP, ESQ.
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Matthew L. Sharp, Ltd.
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(775) 324-1500
matt@mattsharpplaw.com

Doug Terry, Esq.
Admitted PHV
DOUG TERRY LAW, PLLC.
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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.

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

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

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

8 3. NRS 18.110(1) provides that the party seeking costs must provide a memorandum of costs
9 setting forth the recoverable costs that have been necessarily incurred. The requirements of NRS
10 18.110(1) are not jurisdictional. *Eberle v. State ex rel. Redfield Trust*, 108 Nev. 587, 590, 836 P.2d
11 67, 69 (1992).

12 4. This Court has the discretion to determine the allowable costs under NRS 18.020. *Motor*
13 *Coach Indus., Inc. v. Khiabani by & through Rigaud*, 137 Nev. Adv. Op. 42, 493 P.3d 1007, 1017
14 (2021).

15 5. NRS 18.005(5) governs the recovery of expert witness fees. It provides, “Reasonable fees of
16 not more than five expert witnesses of not more than \$1,500 for each witness, unless the court allows
17 a larger fee after determining that the circumstances surrounding the expert’s testimony were of such
18 necessity as to require the larger fee.” In evaluating a request for expert fees over \$1,500 per witness,
19 this Court should “carefully evaluate a request for excess fees.” *Motor Coach Indus. v. Khiabani*, 492
20 P.3d at 1017. This Court should recognize the importance of expert witnesses and consider the factors
21 set forth in *Frazier v. Drake*, 131 Nev. 632, 650-51, 357 P.3d 365, 377-78 (Ct. App. 2015). Those
22 factors include: (1) the importance of the expert’s testimony to the case; (2) the degree that the expert
23 aided the jury in deciding the case; (3) whether the expert’s testimony was repetitive of other experts;
24 (4) the extent and nature of the work performed by the expert; (5) the amount of time the expert spent
25 in court, preparing a report, and testifying at trial; (6) the expert’s area of expertise; (7) the expert’s
26 education and training; (8) the fees charged by the expert; (9) the fees traditionally charged by the
27 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.

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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

Las Vegas, NV 89118

(702) 938-3838

rgormley@wwhgd.com

Attorneys for Defendants

Matt Sharp <matt@mattsharplaw.com>

RE: Eskew v. Sierra

1 message

Gormley, Ryan <RGormley@wwhgd.com>

Mon, Jun 6, 2022 at 3:07 PM

To: Matt Sharp <matt@mattsharplaw.com>, "Roberts, Lee" <LRoberts@wwhgd.com>Cc: Doug Terry <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

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www.wwhgd.com | vCard

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

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

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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 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

abonney@wwhgd.com

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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24 Suzy Thompson

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25 Marjan Hajimirzaee

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Maxine Rosenberg	Mrosenberg@wwhgd.com
Stephanie Glantz	sglantz@wwhgd.com
Douglas Terry	doug@dougterrylaw.com
Thomas Dupree	TDupree@gibsondunn.com

EXHIBIT C

EXHIBIT C

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 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 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)

**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

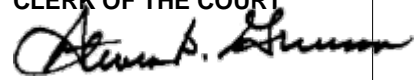
v. Shoemake, 64 Nev. 57 (1947); Nevada Independent Broadcasting Corporation v. Allen, 99 Nev. 404 (1983); Quintero v. McDonald, 116 Nev. 1181 (2000); Barmettler v. Reno, Air, Inc., 114 Nev. 441 (1998); State v. Eaton, 101 Nev. 705 (1985); Jacobson v. Manfredi, 100 Nev. 226 (1984); BMW of N. Am. Inc. 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.



1 **ASTA**
D. Lee Roberts, Jr., Esq.
2 lroberts@wwhgd.com
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3 Phillip N. Smith, Esq.
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4 Nevada Bar No. 10233
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1050 Connecticut Avenue, N.W.
12 Washington, DC 20036
Telephone: (202) 955-8547
13 Facsimile: (202) 530-9670

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,

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

21 Plaintiff,

22 vs.

23 SIERRA HEALTH AND LIFE INSURANCE
COMPANY, INC.,

24 Defendant.
25
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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.
PHILLIP N. SMITH, ESQ.
RYAN T. GORMLEY, ESQ.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
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(702) 938-3838

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

MATTHEW L. SHARP., ESQ.
MATTHEW L. SHARP, LTD
432 Ridge St.
Reno, Nevada 89501
(775) 324-1500

DOUGLAS A. TERRY, ESQ.
DOUG TERRY LAW, PLLC
200 E. 10th St. Plaza, Ste. 200

1 Edmond, OK 73013
2 (405) 463-6362

3 DEEPAK GUPTA, ESQ.
4 MATTHEW W.H. WESSLER, ESQ.
5 GUPTA WESSLER PLLC
6 2001 K St., N.W., Ste. 850 North
7 Washington, DC 20006
8 (202) 888-1741

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

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

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

18 Retained counsel.

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

21 Retained counsel.

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

24 Appellant was not granted leave to proceed in forma pauperis.

25 **9. Indicate the date the proceeding commenced in the district court (e.g., date complaint,**
26 **indictment, information, or petition was filed):**

27 Complaint and Jury Demand filed February 1, 2019.
28

1 **10. Provide a brief description of the nature of the action and result in the district court,**
2 **including the type of document or order being appealed and the relief granted by the**
3 **district court:**

4 Plaintiff challenged SHL's denial of insurance coverage for proton beam therapy. The jury
5 returned a verdict in Plaintiff's favor and awarded compensatory and punitive damages.
6 Defendant appeals from all orders and rulings, including the judgment on the jury verdict, the
7 order denying its Motion to Retax Costs, and the orders denying post-trial relief.
8

9 **11. Indicate whether the case has previously been the subject of an appeal to or original**
10 **writ proceeding in the Supreme Court and, if so, the caption and Supreme Court**
11 **docket number of the prior proceeding:**

12 This case has not previously been the subject of an appeal or original writ proceeding in the
13 Supreme Court.

14 **12. Indicate whether the appeal involves child custody or visitation:**

15 This case does not involve child custody or visitation.

16 **13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:**

17 SHL has always been willing to consider settlement on reasonable terms.
18

19 DATED: September 14, 2022.

20 /s/ Ryan T. Gormley
21 D. Lee Roberts, Jr., Esq.
22 Phillip N. Smith, Esq.
23 Ryan T. Gormley, Esq.
24 WEINBERG, WHEELER, HUDGINS,
25 GUNN & DIAL, LLC
26 6385 South Rainbow Blvd., Suite 400
27 Las Vegas, Nevada 89118

28 Thomas H. Dupree Jr., Esq.
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1050 Connecticut Avenue, N.W.
Washington, DC 20036

Attorneys for Defendant

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on September 14, 2022 a true and correct copy of the foregoing **CASE**
3 **APPEAL STATEMENT** was electronically filed and served on counsel through the Court's
4 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:

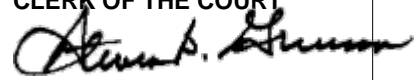
6 Matthew L. Sharp, Esq.
7 matt@mattsharpplaw.com
8 MATTHEW L. SHARP, LTD.
432 Ridge St.
Reno, NV 89501

9 Douglas A. Terry, Esq.
10 doug@dougterrylaw.com
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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
17
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EXHIBIT A

EXHIBIT A



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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

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

///





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.

11 6385 South Rainbow Blvd., Suite 400

12 Las Vegas, Nevada 89118

13
14 *Attorneys for Defendant*
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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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Edmond, OK 73018
Attorneys for Plaintiffs
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



ORDR

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lroberts@wwhgd.com

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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,
GUNN & DIAL, LLC

6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118

Attorneys for Defendant

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: 7/12/2022

15 Audra Bonney

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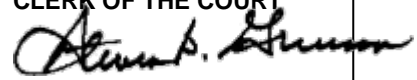
25 Suzy Thompson

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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 15th 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@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
7 Marjan Hajimirzaee, Esq.; mhajimirzaee@wwhgd.com
8 Ryan T. Gormley, Esq.; 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 15th 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,

///

///

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///

///

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.

4
5 Dated this 14th day of August, 2022

6 
DISTRICT COURT JUDGE

7 Submitted by:

8 **1C9 EA8 3EC9 F2EF**
Nadia Krall
District Court Judge

9 /s/ Matthew L. Sharp
10 Matthew L. Sharp, Esq.
11 Nevada State Bar #4746
12 Matthew L. Sharp, Ltd.
13 432 Ridge St.
14 Reno, NV 89501
15 (775) 324-1500
16 Attorney for Plaintiff

17 Approved as to form and content:

18 **Weinberg Wheeler Hudgins Gunn & Dial**

19 /s/ Ryan Gormley
20 Ryan Gormley, Esq.
21 6385 South Rainbow Blvd., Suite 400
22 Las Vegas, NV 89118
23 Attorneys for Defendant
24
25
26
27
28

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
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Begin forwarded message:

From: "Gormley, Ryan" <RGormley@wwhgd.com>
Date: August 11, 2022 at 10:59:57 PM PDT
To: Matt Sharp <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 | vCard

From: Matt Sharp <matt@mattsharplaw.com>
Sent: Wednesday, August 10, 2022 4:30 PM
To: Gormley, Ryan <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

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19 Matthew Sharp

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21 Thomas Dupree

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22 Ryan Gormley

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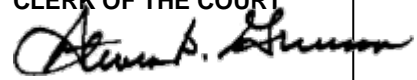
25 Suzy Thompson

suzy@mattsharplaw.com

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Doug Terry, Esq.
Admitted PHV
DOUG TERRY LAW, PLLC.
200 E. 10th St. Plaza, Ste. 200
Edmond, OK 73013
(405) 463-6362
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.

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1 A copy of the Order is attached hereto.

2 DATED this 15th 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@mattsharplaw.com
13 *Attorneys for Plaintiffs*
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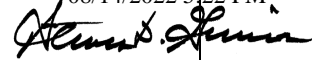
1 **CERTIFICATE OF SERVICE**

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
7 Marjan Hajimirzaee, Esq.; mhajimirzaee@wwhgd.com
8 Ryan T. Gormley, Esq.; 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 15th day of August 2022.

12 /s/ Suzy Thompson
13 An employee of Matthew L. Sharp, Ltd.
14
15
16
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CLERK OF THE COURT

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

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](#)

Matthew L. Sharp
432 Ridge St
Reno, NV 89501
Matt@mattsharplaw.com
775-324-1500

Begin forwarded message:

From: "Gormley, Ryan" <RGormley@wwhgd.com>
Date: August 11, 2022 at 10:59:57 PM PDT
To: Matt Sharp <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 | vCard

From: Matt Sharp <matt@mattsharplaw.com>
Sent: Wednesday, August 10, 2022 4:30 PM
To: Gormley, Ryan <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

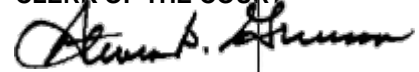
25 Suzy Thompson

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



ORAP
MATTHEW L. SHARP, ESQ.
Nevada State Bar #4746
Matthew L. Sharp, Ltd.
432 Ridge St.
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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; 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

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///

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
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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)**§
§
§
§
§Location: **Department 4**
Judicial Officer: **Krall, Nadia**
Filed on: **02/01/2019**
Case Number History:
Cross-Reference Case Number: **A788630****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****Gormley, Ryan**
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>
06/24/2019	 Notice of Non Opposition

CASE SUMMARY

CASE NO. A-19-788630-C

	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>
09/05/2019	 Order Admitting to Practice

CASE SUMMARY

CASE NO. A-19-788630-C

Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew
[26] Order Admitting to Practice - Douglas A. Terry, Esq. for Plaintiffs

09/06/2019



Commissioners Decision on Request for Exemption - Granted
[27] Commissioner's Decision on Request for Exemption - GRANTED

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
[28] Joint Case Conference Report

10/02/2019



Notice to Appear for Discovery Conference
[29] Order to Appear for Mandatory Discovery Conference

10/17/2019



Notice of Rescheduling
[30] Notice of Rescheduling of Time of Hearing

11/01/2019



Scheduling and Trial Order
[31] Scheduling Order and Order Setting Civil Jury Trial and Calendar Call

01/28/2020



Application
 Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc
[32] Application to Issue Commission to Serve Subpoena Outside the State of Nevada

01/28/2020



Commission Issued
 Filed by: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc
[33] Commission to Serve Subpoena Outside the State of Nevada

06/17/2020



Stipulated Protective Order
 Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc
[34] Stipulation and Qualified Protective Order

06/18/2020



Notice of Entry of Order
 Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc
[35] Notice of Entry of Stipulated Qualified Protective Order

06/26/2020



Stipulation and Order to Extend Discovery Deadlines
[36] Stipulation and Order to Extend Discovery

06/29/2020



Notice of Entry of Stipulation and Order
 Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc
[37] Notice of Entry of Stipulation and Order for Extension of Time to Complete Discovery (First Request)

09/30/2020



Stipulation to Extend Discovery
 Party: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc
[38] Stipulation and Order for Extension of Time to Complete Discovery (Second Request)












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 Healthcare, Inc












CASE SUMMARY

CASE NO. A-19-788630-C

	<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 Party: Defendant Sierra Health and Life Insurance Company Inc; Defendant United

CASE SUMMARY

CASE NO. A-19-788630-C

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

CASE SUMMARY

CASE NO. A-19-788630-C

12/29/2021	 <p>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></p>
12/29/2021	 <p>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></p>
12/29/2021	 <p>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></p>
12/29/2021	 <p>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></p>
12/29/2021	 <p>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></p>
12/29/2021	 <p>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></p>
12/29/2021	 <p>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></p>
12/29/2021	 <p>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></p>
12/29/2021	 <p>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></p>
12/29/2021	 <p>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></p>
12/29/2021	 <p>Errata Filed By: Special Administrator Eskew, Sandra L; Plaintiff Eskew, Tyler; Plaintiff Eskew, William G, Jr.; Plaintiff Estate of William George Eskew</p>

CASE SUMMARY

CASE NO. A-19-788630-C

[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

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

CASE SUMMARY

CASE NO. A-19-788630-C

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



Motion in Limine

CASE SUMMARY

CASE NO. A-19-788630-C

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

CASE SUMMARY

CASE NO. A-19-788630-C

	<p>Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc</p> <p><i>[113] Appendix of Exhibits in Support of Defendants Motions for Summary Judgment and Partial Summary Judgment Volume 3</i></p>
12/29/2021	<p> Appendix</p> <p>Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc</p> <p><i>[114] Appendix of Exhibits in Support of Defendants Motions for Summary Judgment and Partial Summary Judgment Volume 4</i></p>
12/29/2021	<p> Appendix</p> <p>Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc</p> <p><i>[115] Appendix of Exhibits in Support of Defendants Motions for Summary Judgment and Partial Summary Judgment Volume 5</i></p>
12/29/2021	<p> Appendix</p> <p>Filed By: Defendant Sierra Health and Life Insurance Company Inc; Defendant United Healthcare, Inc</p> <p><i>[116] Appendix of Exhibits in Support of Defendants Motions for Summary Judgment and Partial Summary Judgment Volume 6</i></p>
12/30/2021	<p> Clerk's Notice of Hearing</p> <p><i>[117] Notice of Hearing</i></p>
12/30/2021	<p> Clerk's Notice of Hearing</p> <p><i>[118] Notice of Hearing</i></p>
12/30/2021	<p> Clerk's Notice of Hearing</p> <p><i>[119] Notice of Hearing</i></p>
12/30/2021	<p> Clerk's Notice of Hearing</p> <p><i>[120] Notice of Hearing</i></p>
12/30/2021	<p> Clerk's Notice of Nonconforming Document</p> <p><i>[121] Clerk's Notice of Nonconforming Document</i></p>
12/30/2021	<p> Clerk's Notice of Nonconforming Document</p> <p><i>[122] Clerk's Notice of Nonconforming Document</i></p>
12/30/2021	<p> Clerk's Notice of Nonconforming Document</p> <p><i>[123] Clerk's Notice of Nonconforming Document</i></p>
01/04/2022	<p> Clerk's Notice of Hearing</p> <p><i>[124] Notice of Hearing</i></p>
01/04/2022	<p> Clerk's Notice of Hearing</p> <p><i>[125] Notice of Hearing</i></p>
01/04/2022	<p> Clerk's Notice of Hearing</p> <p><i>[126] Notice of Hearing</i></p>
01/06/2022	<p> Clerk's Notice of Nonconforming Document and Curative Action</p>

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[127] Clerk's Notice of Curative Action

01/06/2022



Clerk's Notice of Nonconforming Document and Curative Action

[128] Clerk's Notice of Curative Action

01/06/2022



Clerk's Notice of Nonconforming Document and Curative Action

[129] Clerk's Notice of Curative Action

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

[130] Opposition to Defendants Motion for Partial Summary Judgment Re: Damages

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

[131] Opposition to Defendants Motion for Partial Summary Judgment Re: Damages

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

[132] Opposition to Defendants' Motion for Summary Judgment Re: Claims

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

[133] Opposition to Defendants Motion in Limine No. 1

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

[134] Opposition to Defendants' Motion in Limine No. 2

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

[135] Opposition to Defendants Motion in Limine No. 3

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

[136] Opposition to Defendants Motion in Limine No. 4

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

[137] Opposition to Defendants' Motion in Limine No. 5

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

[138] Opposition to Defendants' Motion in Limine No 6

01/14/2022



Opposition to Motion in Limine

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
[139] *Opposition to Defendants Motion in Limine No. 7*

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
[140] *Opposition to Defendants Motion in Limine No. 8*

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
[141] *Opposition to Defendants Motion in Limine No. 9*

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
[142] *Opposition to Defendants Motion in Limine No.10*

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
[143] *Opposition to Defendants Motion in Limine No. 11*

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
[144] *Opposition to Defendants Motion in Limine No.12*

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
[145] *Opposition to Defendants Motion in Limine No. 13*

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
[146] *Opposition to Defendants Motion in Limine No. 14*

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
[147] *Opposition to Defendants Motion in Limine No.15*

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
[148] *Opposition to Defendants Motion in Limine No. 16*

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
[149] *Opposition to Defendants Motion in Limine No. 17*

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

CASE SUMMARY

CASE NO. A-19-788630-C

[150] Opposition to Defendants Motion in Limine No.18.

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

[151] Opposition to Defendants Motion in Limine No.19

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

[152] Opposition to Defendants Motion in Limine No. 20

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

[153] Opposition to Defendants Motion in Limine No. 21

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

[154] NOTICE OF WITHDRAWAL OF CLAIMS

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

[155] Response and Objections to Defendants' Asserted Undisputed Facts in Support of Motions for Summary Judgment/Partial Summary Judgment

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

[156] Consolidated Statement of Facts

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

[157] Declaration of Matthew L. Sharp in Support of Plaintiffs' Consolidated Statement of Facts

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

[158] APPENDIX OF EXHIBITS (VOLUME I) IN SUPPORT OF PLAINTIFFS CONSOLIDATED STATEMENT OF FACTS

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

[159] APPENDIX OF EXHIBITS (VOLUME II) IN SUPPORT OF PLAINTIFFS CONSOLIDATED STATEMENT OF FACTS

01/14/2022



Opposition to Motion




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

[160] Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment

01/14/2022

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CASE NO. A-19-788630-C

	 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 Plaintiffs' 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>

CASE SUMMARY

CASE NO. A-19-788630-C

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











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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>












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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














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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

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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

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	[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>






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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>
<u>DISPOSITIONS</u>	
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), Estate of William George Eskew (Plaintiff) Judgment: 01/18/2022, Docketed: 01/19/2022 Comment: Certain Claims
04/04/2022	Verdict (Judicial Officer: Krall, Nadia)

CASE SUMMARY

CASE NO. A-19-788630-C

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

04/05/2022

Verdict (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

04/18/2022

Judgment Upon the Verdict (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: 04/18/2022, Docketed: 04/19/2022
Total Judgment: 206,363,287.67

05/19/2022

Order of Dismissal With Prejudice (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

HEARINGS

06/18/2019



Motion to Dismiss (9:00 AM) (Judicial Officer: Cory, Kenneth)

Events: 05/10/2019 Motion to Dismiss

Defendant SHL's Motion to Dismiss for Failure to State a Claim

Granted in Part;

Journal Entry Details:

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.;

08/15/2019



Motion to Associate Counsel (3:00 AM) (Judicial Officer: Cory, Kenneth)

Motion to Associate Counsel

Granted;


Journal Entry Details:

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;

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-19-788630-C

11/01/2019	 Mandatory Rule 16 Conference (10:00 AM) (Judicial Officer: Cory, Kenneth) Trial Date Set; Journal Entry Details: <i>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 ;</i>
08/19/2021	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Cory, Kenneth) <i>Vacated - Superseding Order</i>
09/01/2021	 Motion (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Joint Motion for Rule 16 Conference on OST</i> Granted; Journal Entry Details: <i>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.;</i>
09/07/2021	CANCELED Jury Trial (9:00 AM) (Judicial Officer: Clark Newberry, Tara) <i>Vacated - Superseding Order</i>
11/02/2021	CANCELED Calendar Call (11:00 AM) (Judicial Officer: Krall, Nadia) <i>Vacated - per Judge</i>
11/15/2021	CANCELED Jury Trial (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Vacated - per Judge</i>
01/03/2022	 Minute Order (8:00 AM) (Judicial Officer: Krall, Nadia) Matter Heard; Journal Entry Details: <i>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 ;</i>
02/10/2022	Motion in Limine (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Defendants' Motion in Limine No. 1: Limit the Testimony of Plaintiffs' "Bad Faith" Expert Stephen D. Prater</i> Granted in Part;
02/10/2022	Motion in Limine (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Defendants' Motion in Limine No. 2: Exclude Evidence, Argument, and/or Testimony Relating to the Financial Condition of Non-Party UnitedHealth Group Incorporated</i> Deferred Ruling;
02/10/2022	Motion in Limine (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Defendants' Motion in Limine No. 3: Exclude Evidence, Argument, and/or Testimony Relating</i>

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

	<i>to Pre-Contract Communications Concerning Coverage</i> Denied;
02/10/2022	Motion in Limine (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	Motion in Limine (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	Motion in Limine (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	Motion in Limine (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Defendants' Motion in Limine No. 7: Exclude Certain Photos</i> Granted in Part;
02/10/2022	Motion in Limine (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	Motion in Limine (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	Motion in Limine (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	Motion in Limine (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	Motion in Limine (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	Motion in Limine (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	Motion in Limine (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> Granted in Part;
02/10/2022	Motion in Limine (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Defendants' Motion in Limine No. 15: Exclude Evidence, Argument, and/or Testimony Relating to Hypothetical Questioning, Regarding What Would Be Fairer</i>

CASE SUMMARY

CASE NO. A-19-788630-C

Granted;

02/10/2022

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

02/10/2022-02/11/2022

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

Matter Heard;

Motion Granted;

Matter Heard;

Motion Granted;

02/10/2022

CANCELED All Pending Motions (9:00 AM) (Judicial Officer: Krall, Nadia)

Vacated - Duplicate Entry

02/10/2022



All Pending Motions (9:00 AM) (Judicial Officer: Krall, Nadia)

Matter Heard;

Journal Entry Details:


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

CASE SUMMARY

CASE NO. A-19-788630-C

	<i>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 ;</i>
02/11/2022	Motion in Limine (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;
02/11/2022	Motion in Limine (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;
02/11/2022	Motion in Limine (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;
02/11/2022	Motion in Limine (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;
02/11/2022	Motion in Limine (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;
02/11/2022	Motion for Summary Judgment (1:00 PM) (Judicial Officer: Krall, Nadia) <i>Defendants Motion for Summary Judgment Re: Claims</i> Denied in Part;
02/11/2022	Motion for Partial Summary Judgment (1:00 PM) (Judicial Officer: Krall, Nadia) <i>Defendants Motion for Partial Summary Judgment Re: UHC</i> Motion Denied;
02/11/2022	Motion for Partial Summary Judgment (1:00 PM) (Judicial Officer: Krall, Nadia) <i>Defendants Motion for Partial Summary Judgment Re: Damages</i> Denied Without Prejudice;
02/11/2022	Motion for Sanctions (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;
02/11/2022	Motion for Partial Summary Judgment (1:00 PM) (Judicial Officer: Krall, Nadia) Events: 12/29/2021 Motion for Partial Summary Judgment 12/29/2021 Errata <i>Plaintiffs' Motion for Partial Summary Judgment</i> Motion Denied;
02/11/2022	Motion in Limine (1:00 PM) (Judicial Officer: Krall, Nadia)

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

	<p>Events: 12/29/2021 Motion in Limine 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>Motion in Limine (1:00 PM) (Judicial Officer: Krall, Nadia)</p> <p>Events: 12/29/2021 Motion in Limine 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>Motion in Limine (1:00 PM) (Judicial Officer: Krall, Nadia)</p> <p>Events: 12/29/2021 Motion in Limine 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>Motion in Limine (1:00 PM) (Judicial Officer: Krall, Nadia)</p> <p>Events: 12/29/2021 Motion in Limine 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>Motion in Limine (1:00 PM) (Judicial Officer: Krall, Nadia)</p> <p>Events: 12/29/2021 Motion in Limine 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>Motion in Limine (1:00 PM) (Judicial Officer: Krall, Nadia)</p> <p>Events: 12/29/2021 Motion in Limine 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>Motion to Seal/Redact Records (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> All Pending Motions (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; 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</i></p>

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

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 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

CASE SUMMARY

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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;

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.

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

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;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for Plaintiff;

Verdict for Plaintiff;

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

CASE SUMMARY

CASE NO. A-19-788630-C

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 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

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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 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

CASE SUMMARY

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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. 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

CASE SUMMARY

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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;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

CASE SUMMARY

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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 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

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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 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,

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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. 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

EIGHTH JUDICIAL DISTRICT COURT

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(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); *Lioco 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); *Hernandez 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

08/30/2022

CANCELED Motion to Associate Counsel (9:00 AM) (Judicial Officer: Krall, Nadia)
Vacated
Plaintiff's Motion to Associate Counsel - Matthew W.H. Wessler

DATE

FINANCIAL INFORMATION

CASE SUMMARY**CASE NO. A-19-788630-C****Defendant** United Healthcare, Inc

Total Charges 3.50

Total Payments and Credits 3.50

Balance Due as of 9/16/2022 0.00**Defendant** Sierra Health and Life Insurance Company Inc

Total Charges 3,554.50

Total Payments and Credits 3,554.50

Balance Due as of 9/16/2022 0.00**Special Administrator** Eskew, Sandra L

Total Charges 560.00

Total Payments and Credits 560.00

Balance Due as of 9/16/2022 0.00**Defendant** Sierra Health and Life Insurance Company IncAppeal Bond Balance as of 9/16/2022 **500.00**

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**

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

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Reno, NV 89501

(775) 324-1500

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Admitted PHV

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Edmond, OK 73013

(405) 463-6362

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.¹

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 ¹ <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
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 Judgment Upon Jury Verdict was served via the court's electronic eFile
14 system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 4/18/2022

16 Audra Bonney

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23 Flor Gonzalez-Pacheco

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24 Kelly Gaez

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25 Suzy Thompson

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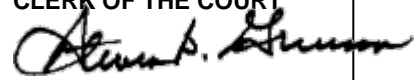
26 Marjan Hajimirzaee

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



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Attorney for Plaintiffs

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IN AND FOR THE COUNTY OF CLARK

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William George Eskew,

Plaintiffs,

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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 18th 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

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
7 Marjan Hajimirzaee, Esq.; mhajimirzaee@wwhgd.com
8 Ryan T. Gormley, Esq.; 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 18th day of April 2022.

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

EXHIBIT 1

JUV

MATTHEW L. SHARP, ESQ.

Nevada State Bar #4746

Matthew L. Sharp, Ltd.

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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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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)

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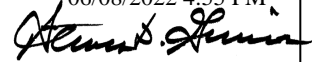
26 Marjan Hajimirzaee

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


CLERK OF THE COURT

ORDR
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Nevada State Bar #4746
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Attorney for Plaintiffs

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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.

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

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

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

8 3. NRS 18.110(1) provides that the party seeking costs must provide a memorandum of costs
9 setting forth the recoverable costs that have been necessarily incurred. The requirements of NRS
10 18.110(1) are not jurisdictional. *Eberle v. State ex rel. Redfield Trust*, 108 Nev. 587, 590, 836 P.2d
11 67, 69 (1992).

12 4. This Court has the discretion to determine the allowable costs under NRS 18.020. *Motor*
13 *Coach Indus., Inc. v. Khiabani by & through Rigaud*, 137 Nev. Adv. Op. 42, 493 P.3d 1007, 1017
14 (2021).

15 5. NRS 18.005(5) governs the recovery of expert witness fees. It provides, “Reasonable fees of
16 not more than five expert witnesses of not more than \$1,500 for each witness, unless the court allows
17 a larger fee after determining that the circumstances surrounding the expert’s testimony were of such
18 necessity as to require the larger fee.” In evaluating a request for expert fees over \$1,500 per witness,
19 this Court should “carefully evaluate a request for excess fees.” *Motor Coach Indus. v. Khiabani*, 492
20 P.3d at 1017. This Court should recognize the importance of expert witnesses and consider the factors
21 set forth in *Frazier v. Drake*, 131 Nev. 632, 650-51, 357 P.3d 365, 377-78 (Ct. App. 2015). Those
22 factors include: (1) the importance of the expert’s testimony to the case; (2) the degree that the expert
23 aided the jury in deciding the case; (3) whether the expert’s testimony was repetitive of other experts;
24 (4) the extent and nature of the work performed by the expert; (5) the amount of time the expert spent
25 in court, preparing a report, and testifying at trial; (6) the expert’s area of expertise; (7) the expert’s
26 education and training; (8) the fees charged by the expert; (9) the fees traditionally charged by the
27 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

Las Vegas, NV 89118

(702) 938-3838

rgormley@wwhgd.com

Attorneys for Defendants

Matt Sharp <matt@mattsharplaw.com>

RE: Eskew v. Sierra

1 message

Gormley, Ryan <RGormley@wwhgd.com>

Mon, Jun 6, 2022 at 3:07 PM

To: Matt Sharp <matt@mattsharplaw.com>, "Roberts, Lee" <LRoberts@wwhgd.com>Cc: Doug Terry <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 | vCard

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

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:

15 Service Date: 6/8/2022

16 Audra Bonney

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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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21 Cristin Sharp

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22 Ryan Gormley

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23 Flor Gonzalez-Pacheco

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24 Kelly Gaez

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25 Suzy Thompson

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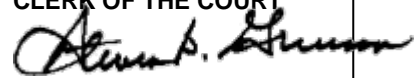
26 Marjan Hajimirzaee

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Maxine Rosenberg	Mrosenberg@wwhgd.com
Stephanie Glantz	sglantz@wwhgd.com
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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 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 9th 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
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:

6 D. Lee Roberts, Jr. Esq.; lroberts@wwhgd.com
7 Marjan Hajimirzaee, Esq.; mhajimirzaee@wwhgd.com
8 Ryan T. Gormley, Esq.; 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 9th day of June 2022.

12 /s/ Suzy Thompson
13 An employee of Matthew L. Sharp, Ltd.
14
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ORDR
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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,

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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.

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

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

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

8 3. NRS 18.110(1) provides that the party seeking costs must provide a memorandum of costs
9 setting forth the recoverable costs that have been necessarily incurred. The requirements of NRS
10 18.110(1) are not jurisdictional. *Eberle v. State ex rel. Redfield Trust*, 108 Nev. 587, 590, 836 P.2d
11 67, 69 (1992).

12 4. This Court has the discretion to determine the allowable costs under NRS 18.020. *Motor*
13 *Coach Indus., Inc. v. Khiabani by & through Rigaud*, 137 Nev. Adv. Op. 42, 493 P.3d 1007, 1017
14 (2021).

15 5. NRS 18.005(5) governs the recovery of expert witness fees. It provides, “Reasonable fees of
16 not more than five expert witnesses of not more than \$1,500 for each witness, unless the court allows
17 a larger fee after determining that the circumstances surrounding the expert’s testimony were of such
18 necessity as to require the larger fee.” In evaluating a request for expert fees over \$1,500 per witness,
19 this Court should “carefully evaluate a request for excess fees.” *Motor Coach Indus. v. Khiabani*, 492
20 P.3d at 1017. This Court should recognize the importance of expert witnesses and consider the factors
21 set forth in *Frazier v. Drake*, 131 Nev. 632, 650-51, 357 P.3d 365, 377-78 (Ct. App. 2015). Those
22 factors include: (1) the importance of the expert’s testimony to the case; (2) the degree that the expert
23 aided the jury in deciding the case; (3) whether the expert’s testimony was repetitive of other experts;
24 (4) the extent and nature of the work performed by the expert; (5) the amount of time the expert spent
25 in court, preparing a report, and testifying at trial; (6) the expert’s area of expertise; (7) the expert’s
26 education and training; (8) the fees charged by the expert; (9) the fees traditionally charged by the
27 expert on related matters; (10) comparable expert fees charged in similar cases; and (11) the fees that
28

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.

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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.

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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

Las Vegas, NV 89118

(702) 938-3838

rgormley@wwhgd.com

Attorneys for Defendants

Matt Sharp <matt@mattsharplaw.com>

RE: Eskew v. Sierra

1 message

Gormley, Ryan <RGormley@wwhgd.com>

Mon, Jun 6, 2022 at 3:07 PM

To: Matt Sharp <matt@mattsharplaw.com>, "Roberts, Lee" <LRoberts@wwhgd.com>Cc: Doug Terry <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 | vCard

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

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

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

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23 Kelly Gaez

kgaez@wwhgd.com

24 Suzy Thompson

suzy@mattsharplaw.com

25 Marjan Hajimirzaee

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Maxine Rosenberg	Mrosenberg@wwhgd.com
Stephanie Glantz	sglantz@wwhgd.com
Douglas Terry	doug@dougterrylaw.com
Thomas Dupree	TDupree@gibsondunn.com

**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

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

**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

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

**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

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

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

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

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)

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)

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

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

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

PRESENT:	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)

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

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.

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

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

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

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.

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

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 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

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

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

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 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

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 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

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

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

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. 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

PRESENT:	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

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. 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****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. 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

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

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

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. 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**

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. 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

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)
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August 11, 2022	3:00 AM	Minute Order	Plaintiff's Motion to Associate Counsel Depak Gupta, Esq.
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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.

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

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
Renewed Motion for
Judgment as a Matter
of Law**

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

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 Motion for a New Trial or Remittitur
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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.

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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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.					



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

D. LEE ROBERTS, JR., ESQ.
6385 S. RAINBOW BLVD., SUITE 400
LAS VEGAS, NV 89118

DATE: September 16, 2022
CASE: A-19-788630-C

RE CASE: SANDRA L. ESKEW, as special administrator of the ESTATE OF WILLIAM GEORGE ESKEW vs. SIERRA HEALTH AND LIFE INSURANCE COMPANY, INC.; UNITED HEALTHCARE, INC.

NOTICE OF APPEAL FILED: September 14, 2022

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☐ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☐ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☒ Order *re: August 15, 2022 minute orders*
- ☒ Notice of Entry of Order *re: August 15, 2022 minute orders*

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

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):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; JUDGMENT UPON THE JURY VERDICT; NOTICE OF ENTRY OF 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; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

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 16 day of September 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

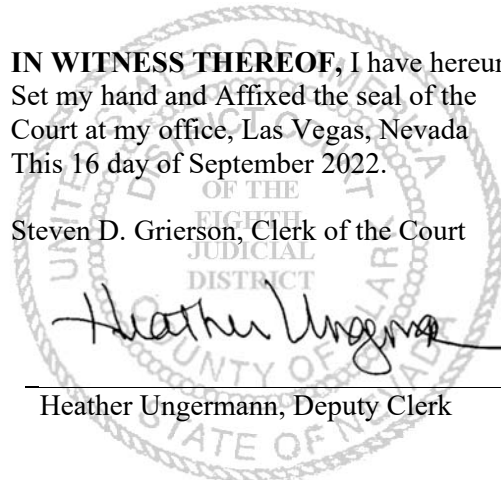
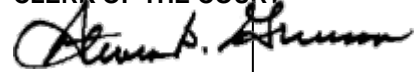


EXHIBIT E

EXHIBIT E



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

Case No. A19-788630-C

Dept. No. 1

Plaintiffs,

vs.

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

FIRST AMENDED COMPLAINT
and JURY DEMAND
Exemption Requested:
Damages Exceed \$50,000.00

Defendants.

Plaintiffs, by and through their attorney, Matthew L. Sharp, hereby allege and complain
as follows:

I. JURISDICTION

1. Plaintiff Sandra L. Eskew ("Sandy") is the Special Administrator of the Estate of William George Eskew ("Bill"). She is the surviving spouse of Bill. As his surviving spouse, Sandy has standing under NRS 41.085 and NRS 41.100.

2. Plaintiffs Tyler Eskew ("Tyler") and William George Eskew, Jr. ("BJ") are the surviving children of Bill. Tyler and BJ have standing under NRS 41.085.

3. Plaintiffs are residents of Clark County, Nevada.

4. At all relevant times, the injuries to Bill, and his death, occurred while Bill was a resident of Clark County, Nevada.

5. Defendant Sierra Health and Life Ins. Co., Inc. (“SHL”) is an insurance company residing in Nevada with its principal place of business in Clark County, Nevada.

6. At all relevant times, SHL, in communications with its insured and the public, holds itself out as a UnitedHealthcare Company.

7. Defendant UnitedHealthcare, Inc. (“UHC”) is an insurance company with its principal place of business in St. Paul, Minnesota.

8. At all relevant times, UHC owns, controls and manages SHL.

9. At all relevant time, UHC is responsible for the management for all insurance subsidiaries of UnitedHealth Group, Inc. including SHL.

10. At all relevant times, UHC has adopted and implemented all commercial medical policies used by all insurance subsidiaries of United Health Group including SHL.

11. At all relevant times, UHC and SHL were engaged in the joint venture of providing health insurance and handling claims including preauthorization requests for citizens of the State of Nevada.

12. Defendants DOES I through XXX are persons, firms, corporations, and/or business organizations whose true identities are presently unknown. Plaintiffs allege Defendants DOES I through XXX engaged in wrongful and tortious conduct. When the true names of DOES I through XXX are discovered, Plaintiffs will request leave to amend the complaint. Plaintiffs allege that Defendants DOES I through XXX engaged in conduct that caused injury to and/or the death of Bill. Defendants DOES I through XXX are responsible for the acts of SHL. They engaged in conduct to assist, authorize, or direct SHL to engage in the tortious conduct as alleged in this complaint, including the refusal to authorize and pay policy benefits for proton beam therapy. Defendants DOES I through XXX were responsible for establishing policies and procedures that lead to the denial of or refusal to authorize proton beam therapy.

II. FACTS

13. Bill and Sandy Eskew purchased an individual health insurance policy from UHC and SHL with an effective date of January 1, 2016.

1 14. At the time UHC and SHL issued the policy, they knew Bill had had been
2 diagnosed with lung cancer and was receiving treatment for lung cancer.

3 15. When it issued the policy, UHC and SHL entered into a special relationship with
4 Bill that was akin to that of a fiduciary duty.

5 16. UHC and SHL had adopted a Managed Care Program to control the medical care
6 its insureds receive.

7 17. UHC and SHL required that the insured participate in the Managed Care Program.

8 18. UHC and SHL knew that if services for cancer are not pre-authorized it is unlikely
9 the insured will go forward with the treatment recommended by the treating physician.

10 19. UHC and SHL represented that a service was medically necessary if it was needed
11 to improve a specific health condition or to preserve the insured's health and was consistent with:
12 (1) the diagnosis or treatment of the insured; (2) the most appropriate level of service that can be
13 safely provided to the insured; and (3) not solely for convenience of the insured, the provider or
14 the hospital.

15 20. UHC and SHL represented that its Managed Care Program consisted of medical
16 peer review committees, Utilization Review Committees and Medical Directors.

17 21. UHC and SHL represented that the Managed Care Program was intended to direct
18 care to the most appropriate settings to provide healthcare in a cost-effective manner.

19 22. At all relevant times, UHC and SHL knew that it owed a duty of good faith and
20 fair dealing to its insured and the implementation of the Managed Care Program had to be
21 consistent with its duty of good faith and fair dealing including:

- 22 • UHC and SHL had a duty to promptly approve pre-authorization when the request for
23 services was medically necessary.
- 24 • UHC and SHL had a duty to conduct prompt, thorough and objective investigation and
25 evaluation of a request for pre-authorization of service.
- 26 • UHC and SHL had a duty to consider its insured's interest at least equal to its own interest.
- 27 • UHC and SHL had a duty to assist its insured in obtaining the benefits of the policy.

- 1 • UHC and SHL had a duty to deal fairly honestly with its insured including disclosing the
- 2 policy benefits and conditions relevant to the pre-authorization request.
- 3 • UHC and SHL had a duty to interpret its insurance policy in a reasonable manner and
- 4 consistent with Nevada law including to interpret a coverage provision to provide the
- 5 greatest possible coverage to its insureds.
- 6 • UHC and SHL had a duty to provide a reasonable explanation for the factual basis and
- 7 basis within the policy to deny a claim for pre-authorization.

8 23. At all relevant times, UHC and SHL knew that a preauthorization request
9 constitutes a notice of claim pursuant to NAC 686A.622 and requires compliance with NAC
10 686A.660 et. al. including:

- 11 • UHC and SHL had a duty to disclose all benefits, coverage or other provisions relating
- 12 to the request for preauthorization.
- 13 • UHC and SHL had a duty to provide an insured with reasonable assistance so the insured
- 14 can comply with policy conditions and any reasonable requirements of the insured.

15 24. At all relevant times, UHC and SHL knew that in processing a preauthorization
16 request it owed a duty to comply with NRS 686A.310(1) including:

- 17 • UHC and SHL cannot mispresent to insured pertinent facts or policy provisions relating
- 18 to a coverage at issue.
- 19 • UHC and SHL must adopt and implement reasonable standards for the prompt
- 20 investigation and processing of claims.
- 21 • UHC and SHL must effectuate a prompt, fair and equitable settlement where liability was
- 22 reasonably clear.

23 25. Bill needed treatment for his lung cancer, and he received treatment from various
24 medical professionals in the State of Nevada.

25 26. Bill went to the University of Texas, MD Anderson Cancer Center in Houston,
26 Texas (“MD Anderson”) for evaluation and treatment.

27 27. MD Anderson Cancer Center is a center of excellence, and one of the highest-
28 ranked (if not the top ranked) cancer treatment centers in the world.

1 28. Among the services provided by its radiation oncology department, MD
2 Anderson provides radiation treatment for cancer in the form of a radiation therapy called proton
3 beam therapy (“PBT”).

4 29. PBT is not new or novel. PBT has been utilized to treat cancer in human beings
5 since the 1950s.

6 30. The FDA approved PBT for treating cancer decades ago.

7 31. Hundreds of published medical studies have demonstrated PBT is safe and
8 effective for treating cancer in humans, and PBT is used in almost thirty (30) currently active
9 proton centers in the United States and dozens more worldwide. More proton centers are
10 currently being constructed in the United States and around the world.

11 32. M.D Anderson and other qualified facilities have developed overwhelming
12 clinical evidence that PBT is safe and clinically effective to improve or preserve the health of
13 cancer patients.

14 33. Unlike other types of radiation therapy that use x-rays or photons to destroy
15 cancer cells, PBT uses a beam of special accelerated particles (protons) that carry a positive
16 charge.

17 34. There is no significant difference in the biological effects of protons versus
18 photons in treating cancer. In other words, both protons and photons are equally effective in
19 killing cancer cells.

20 35. However, proton beam therapy can deliver a dose of radiation in a more confined
21 way to the tumor tissue than traditional photon-based radiation therapy, which is called “intensity
22 modulated radiation therapy” or “IMRT.”

23 36. In cases where a patient’s cancer is adjacent to healthy critical structures, IMRT
24 can cause devastating side-effects by unintentionally radiating (and potentially necrosing) those
25 healthy critical structures. This unintended radiation of health structures can be avoided or
26 significantly lessened through the use of PBT.

27 37. After they enter the body, protons release most of their energy within the tumor
28 region and, unlike photons, deliver only a minimal dose beyond the tumor boundaries.

1 38. The greatest energy release with photon-based radiation is at the surface of the
2 tissue (when it first enters the body) and decreases exponentially the farther it travels through
3 the body.

4 39. Photons, by their very physical nature, travel all the way through the body, not
5 stopping at any defined point.

6 40. In contrast, the energy of a proton beam is released at the end of its path, a region
7 called the Bragg peak. Treating physicians and their supporting personnel are able to precisely
8 control the location of the Bragg peak so that they can control the precise location of the release
9 of the energy of a proton beam. Therefore, the energy of a proton beam can be delivered
10 precisely to the cancer site.

11 41. Accordingly, the use of PBT results in the precise delivery of radiation energy to
12 the cancer site while minimizing the delivery of radiation energy to healthy tissues, decreasing
13 the chances of side effects associated with delivering radiation energy to healthy tissues.

14 42. Because of PBT's physical properties, it is safe, effective, and particularly useful
15 when the targeted tumor site is in close proximity to one or more critical structures in the patient's
16 body and sparing the surrounding healthy tissue cannot be adequately achieved with photon-
17 based radiation therapy.

18 43. Bill's highly-trained and eminently qualified treating physicians at MD Anderson
19 recommended that Bill undergo proton beam therapy.

20 44. Bill's cancer was in close proximity to one or more critical structures.

21 45. PBT was appropriate for treatment of Bill's cancer including the treatment
22 provided the best chance of delivering the beneficial impact of radiation treatment, coupled with
23 the best chance of avoiding the potentially devastating side effects associated with using IMRT.

24 46. Bill's eminently qualified radiation oncologist made the clinical decision that Bill
25 would benefit most from PBT.

26 47. Treatment with proton beam therapy was needed to improve and/or preserve
27 Bill's health because it would precisely target the tumor while minimizing damages to adjacent
28 health tissue.

1 48. Treatment with proton beam therapy was consistent with diagnosis and treatment
2 of Bill's lung cancer.

3 49. M.D Anderson could provide the PBT services to Bill on an outpatient basis and
4 consistent with the most appropriate level of service that could be safely provided to Bill.

5 50. PBT was not solely for the convenience of Bill or M.D Anderson.

6 51. On Bill's behalf, MD Anderson submitted a request for preauthorization to SHL
7 to approve treatment with proton beam therapy.

8 52. At all relevant times, UHC and SHL knew or recklessly disregarded the fact that
9 the use of PBT is effective to improve or preserve the health of insureds who, like Bill, are
10 diagnosed with cancer, including lung cancer.

11 53. At all relevant times, UHC and SHL knew or recklessly disregarded that facilities
12 like M.D Anderson could safely provide PBT to an insured who, like Bill, was diagnosed with
13 cancer, including an insured with lung cancer.

14 54. At all relevant times, UHC and SHL knew or recklessly disregarded the PBT
15 being sought by Bill was not solely for the convenience of Bill or M.D Anderson.

16 55. UHC and SHL had adopted a policy and plan to disapprove PBT treatment for its
17 insureds suffering from cancer if at all possible, regardless of the opinions of highly qualified
18 treating physicians and the weight of scientific and medical information supporting the use of
19 PBT on such insureds.

20 56. UHC and SHL implemented a system by which it consciously refused to consider
21 the basis for a treating physician's recommendation of PBT or the reasons that the physician
22 believed the patient would benefit from PBT when deciding to deny its insureds' requests for
23 coverage for PBT treatment.

24 57. UHC and SHL implemented a system by which it would deny a request for
25 coverage for PBT without a fair, thorough and objective investigation, evaluation or reasonable
26 consideration by appropriately qualified and trained personnel of the legal issues involving
27 insurance coverage and the medical issues involving the clinical judgment of the treating
28 physician and clinical condition of the insured.

1 58. UHC and SHL implemented its system of considering its insureds' requests for
2 coverage as part of a plan to favor its financial interest over the well-being of its insured.

3 59. Specifically, IMRT is less expensive than PBT.

4 60. UHC and SHL developed its bad faith system for handling insureds' requests for
5 coverage for financial reasons and to place its own financial interests ahead of the health and
6 well-being of its insureds.

7 61. UHC and SHL was willing to subject Bill to the devastating side effects of IMRT
8 rather than pay for its insured to receive the PBT Bill's MD Anderson physicians recommended
9 would be superior to IMRT.

10 62. Through its policy and procedures, UHC and SHL, without disclosure to the
11 insured within the terms of the policy and in known violation of the insurance policy and Nevada
12 law relating to good faith and fair dealing and the interpretation of an insurance contract, chose
13 to exclude PBT from coverage.

14 63. After receiving M.D Anderson's request for coverage for PBT on Bill's behalf,
15 UHC and SHL acted consistently with its system of handling insureds' requests for coverage
16 described above.

17 64. UHC and SHL immediately denied the request for coverage.

18 65. UHC and SHL intentionally and knowingly failed and refused to conduct a
19 prompt, thorough and objective investigation or evaluation of Bill's request for coverage for
20 PBT.

21 66. In denying the request for coverage, UHC and SHL misrepresented and
22 manipulated pertinent facts to manufacture a pretextual basis to deny that request:

- 23 • It represented that PBT was clinically unproven when in fact it is not.
- 24 • It represented that there is no evidence of "definitive" conclusions "about the safety and
25 efficacy of PBT" when in fact there are.
- 26 • It represented there is "limited" clinical evidence that directly compares PBT to other
27 types of radiation, when in fact there is such evidence.

28 67. At all relevant times, UHC and SHL knew that PBT was clinically proven.

1 68. At all relevant times, UHC and SHL knew “definitive conclusion” is an inherently
2 ambiguous term and is not something required by the insurance policy.

3 69. At all relevant times, UHC and SHL knew “limited clinic evidence” is an
4 inherently ambiguous term and not relevant to the terms of the insurance policy.

5 70. At all relevant times, UHC and SHL knew there was clinical evidence supporting
6 the use of proton beam therapy as a more medically effective therapy providing less risk of side-
7 effects than other types radiation, including IMRT.

8 71. At all relevant times, UHC and SHL further knew that it was the role of doctors
9 in consultation with patients to utilize clinical judgment to decide which radiation therapy is in
10 the clinical interest of the patient.

11 72. At all relevant times, UHC and SHL further knew that if a doctor’s recommended
12 treatment is the treatment providing the best chance of the best outcome to the patient, and that
13 treatment was well-established as safe and effective, UHC and SHL should not substitute its
14 clinical judgment for that of qualified doctors in consultation with his/her patients to decide
15 which radiation therapy is in the clinical interest of the patient.

16 73. In denying the request for coverage, UHC and SHL failed to properly disclose
17 Bill’s appeal rights to him.

18 74. Based upon information and belief, UHC and SHL failed to disclose Bill’s appeal
19 rights to him because it knew any appeal of the denial for the request for coverage would be a
20 sham and automatically, without any meaningful review, result in upholding the denial of the
21 original request for coverage.

22 75. Based upon information and belief, Bill’s treating radiation oncologist from MD
23 Anderson attempted to convince the medical director for UHC and SHL that PBT was the best
24 and most appropriate treatment for Bill, but the medical director, who is not a radiation
25 oncologist, refused to consider the MD Anderson radiation oncologist’s opinion.

26 76. UHC and SHL’s denial of Bill’s claim for PBT was signed by Dr. Shamoon
27 Ahmad on behalf of UHC. The denial was based on a “Commercial Medical Policy” which was
28 written and issued by home office personnel at UHC. This “Commercial Medical Policy” is

designed and implemented by UHC as a tool to wrongly and dishonestly deny the claims of its insureds.

77. The “Medical Policy” referenced in the letter sent to Bill by Dr. Ahmad is a UHC policy.

78. Dr. Ahmad is not a radiation oncologist.

79. Dr. Ahmad is not qualified by education, training or experience to make a clinical decision about what radiation therapy modality is in the clinical interest of a patient and is not qualified to have made such a decision about Bill’s treatment.

80. Dr. Ahmad is not qualified by education, training or experience to render a legal opinion about whether insurance coverage for PBT for Bill under the circumstances presented to him in Bill’s case existed or not under the terms and provisions of Bill’s insurance policy issued to him by UHC and SHL.

81. Based upon information and belief, MD Anderson had knowledge of UHC and SHL’s practice of denying PBT even when such denials were inaccurate and unsupported, and thus also requested preauthorization of IMRT.

82. Pursuant to its policies and practices, UHC and SHL approved the IMRT without investigation and without consideration of whether IMRT was in Bill’s interest.

83. UHC and SHL hold PBT to a different standard than IMRT when determining if there is coverage under its insurance policies issued to its insureds.

84. UHC and SHL consciously placed Bill in the position of either undergoing IMRT or delaying PBT with the hope that SHL would reverse its denial.

85. Bill chose to undergo IMRT therapy because doing so under the circumstances, where SHL had denied the best and most appropriate treatment for him, was his only viable option.

86. As a result of UHC and SHL’s denial of coverage for PBT, Bill was forced to undergo the less-precise radiation modality, photon-based IMRT, thus making it more likely radiation energy would be applied to healthy tissues in close proximity to his cancer.

1 87. When UHC and SHL denied Bill's request for coverage, UHC and SHL knew or
2 proceeded in conscious disregard for the fact Bill would not receive the treatment that gave him
3 the best chance and opportunity to extend his life by curing his cancer while also giving him the
4 best chance at the best possible quality of life following radiation treatment. By virtue of its
5 actions, UHC and SHL deprived Bill of the radiation treatment he needed (according to his MD
6 Anderson doctors) to maximize his chances of survival while minimizing the possibility of
7 potential devastating and even fatal side effects.

8 88. When UHC and SHL denied the request for coverage, UHC and SHL knew or
9 proceeded with conscious disregard for the fact Bill would be subjected to IMRT and its
10 potentially devastating or even fatal side effects under Bill's clinical condition.

11 89. As a result of the denial of coverage for proton beam therapy, Bill was forced to
12 undergo the less-precise radiation modality, photon-based IMRT, thus making it more likely
13 radiation energy would be applied to healthy tissues in close proximity to his cancer.

14 90. During Bill's life he incurred personal injuries and physical and mental pain,
15 suffering, emotional distress, and anxiety as a legal cause of UHC and SHL's conduct including:

- 16 • The side effects from the IMRT that caused physical injury, physical pain, mental
17 suffering, emotional distress, and anxiety.
- 18 • Physical pain, mental suffering, emotional distress, and anxiety because of, but
19 not limited, to the fact SHL interfered with his physicians' advice and precluded him
20 access to the therapy that gave him the best opportunity to survive and because he knew
21 that he was not able to access the therapy recommended by his doctor.

22 91. Without the PBT, Bill died on March 12, 2017.

23 92. UHC and SHL's conduct in denying the PBT was a legal cause of Bill's death on
24 March 12, 2017.

25 93. UHC and SHL's conduct in denying the PBT was a legal cause of Bill's mental
26 suffering and emotional distress. UHC and SHL's denial of the PBT Bill needed legally caused
27 Bill's survival from cancer to be shortened and caused him to die prematurely on March 12,
28 2017. As such, UHC and SHL's conduct caused Bill's death.

1 94. When UHC and SHL denied the request for coverage, Bill suffered an economic
2 loss. He lost the economic value of the benefits of his policy to pay for PBT treatment.

3 95. The value of that benefit is in the amount of the cost of the PBT treatment and in
4 excess of \$15,000.

5 96. In addition, as a result of SHL's denial of the claim for PBT treatment, Bill and
6 his Estate have suffered other economic losses including:

- 7 • Bill incurred expenses related to the IMRT therapy including boarding expenses and
8 expenses for pain medications.
- 9 • Bill was forced to purchased a different vehicle as a cause of the side-effects of IMRT
10 and the ongoing effects of the cancer that PBT could have avoided and/or treated.
- 11 • A portion of a family business was sold because Bill, following IMRT and without PBT,
12 required more assistance from family members.
- 13 • Bill purchased additional equipment to deal with the side-effects of IMRT, including a
14 chair.
- 15 • Expenses, for things such as food items intended to deal with the malnutrition Bill
16 suffered from, in response to the IMRT side effect
- 17 • The cost of filing this lawsuit.

18 **III. FIRST CAUSE OF ACTION**

19 **(Breach of Contract)**

20 97. Plaintiffs incorporate the allegations of paragraphs 1 through 96 as if fully set
21 forth herein.

22 98. An insurance contract existed between Bill and UHC and SHL. The contract
23 provided coverage for the proton beam therapy requested to treat Bill.

24 99. The PBT recommended by M.D Anderson was covered under the terms of the
25 subject insurance policy issued by UHC and SHL to Bill.

26 100. UHC and SHL breached the contract by wrongfully denying coverage for PBT.

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1 101. As a legal and proximate cause of UHC and SHL's conduct, the Estate, pursuant
2 to NRS 41.100, has standing to recover the lost value of the benefits of Bill's policy to pay for
3 PBT treatment.

4 102. As a legal and proximate result, Bill, through his estate, has sustained damages in
5 an amount in excess of Fifteen Thousand Dollars (\$15,000.00). Sandy, as the administrator of
6 Bill's estate, has standing to recover those damages.

7 **IV. SECOND CAUSE OF ACTION**

8 **(Bad Faith)**

9 103. Plaintiffs incorporate the allegations of paragraphs 1 through 102 as if fully set
10 forth herein.

11 104. There is an implied covenant of good faith and fair dealing in the insurance
12 contract that Defendants will not do anything to injure the rights of Bill as their insured.

13 105. As set forth herein, Defendants breached its duty of good faith and fair dealing to
14 Bill including: (1) unreasonably refusing to authorize and pay for PBT; (2) failing to conduct a
15 prompt, fair and through investigation and evaluation of Bill's claim for PBT; (3) failing to take
16 steps to reasonably assist Bill in obtaining the benefits of his insurance policy; (4) interpreting
17 its insurance policy in an unreasonable manner and inconsistent with law of Nevada; (5) adopting
18 and implementing an unreasonable, unfair, bad faith system by which it systematically and
19 without just cause excludes PBT from the coverage for its insureds, including Bill; (6) failing to
20 consistently consider it insured's interests as at least equal to its own interests; and (7) other
21 wrongful conduct.

22 106. The denial of the request for coverage caused economic loss including as more
23 specifically set forth at paragraphs 94-96.

24 107. As a legal and proximate cause of UHC and SHL's conduct, Bill suffered special
25 and general damages including personal injuries, physical and mental pain and suffering,
26 anxiety, and emotional distress in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

1 108. As a legal and proximate cause of UHC and SHL's conduct, Bill lost the chance
2 of survival, his life was shortened and he died, and he sustained conscious pain and suffering in
3 an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

4 109. Pursuant to NRS 41.100, Plaintiff Sandy, as the administrator, has standing to
5 recover Bill's special and general damages sustained before his death.

6 110. If the jury finds that UHC and SHL's conduct was a legal or proximate cause of
7 Bill's death and pursuant to NRS 41.085, Sandy, Tyler, and BJ, as the heirs of Bill, have standing
8 to recover Bill's conscious pain, suffering, anxiety, and emotional distress incurred or sustained
9 before his death.

10 111. In engaging in its bad faith conduct, UHC and SHL has acted fraudulently,
11 oppressively, and in malicious disregard for the rights of Bill. Sandy, as the Special
12 Administrator of the Estate, has standing pursuant to NRS 41.085 and NRS 41.100 to recover
13 punitive damages by way of punishment and deterrence in an amount to be determined at trial.

14 **V. THIRD CAUSE OF ACTION**

15 **(Breach of Nevada Unfair Claims Settlement Practices Act)**

16 112. Plaintiffs incorporate the allegations of paragraphs 1 through 111 as if fully set
17 forth herein.

18 113. UHC and SHL are and at all times mentioned herein entities regulated by Title
19 57 of the Nevada Revised Statutes.

20 114. UHC and SHL violated NRS 686A.310(1) include:

- 21 • They violated NRS 686A.310(1)(e) by failing to authorize and pay for proton beam
22 therapy where UHC and SHL's liability to make such payments was reasonably clear
- 23 • They violated NRS 686A.310(1)(a) by misrepresenting pertinent facts of an insurance
24 policy provision relating to coverages at issue including as set forth more specifically at
25 paragraphs 55-62, 66-73.
- 26 • They violated NRS 686.310(1)(c) failed to adopt and implement reasonable standards for
27 the investigation of claims involving proton beam therapy.

115. As a legal and proximate cause of UHC and SHL's conduct, Bill suffered special and general damages including personal injuries, physical and mental pain and suffering, anxiety, and emotional distress in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

116. Pursuant to NRS 41.100, Plaintiff Sandy, as the administrator, has standing to recover Bill's damages sustained before his death.

117. If the jury finds that UHC and SHL's conduct was a legal or proximate cause of Bill's death and pursuant to NRS 41.085, Sandy, Tyler, and BJ, as the heirs of Bill, have standing to recover Bill's conscious pain, suffering, anxiety, and emotional distress incurred or sustained before his death.

118. If the jury finds that UHC and SHL's conduct was a legal or proximate cause of Bill's death and pursuant to NRS 41.085, Sandy, Tyler, and BJ have sustained grief, sorrow, loss companionship, society, and comfort because of Bill's death and in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

119. In engaging in its bad faith conduct, UHC and SHL have acted fraudulently, oppressively, and in malicious disregard for the rights of Bill. Sandy, as the Special Administrator of the Estate, has standing pursuant to NRS 41.085 and NRS 41.100 to recover punitive damages by way of punishment and deterrence in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for judgment against Defendant as follows:

1. Contractual, special, general and punitive damages, according to proof but in excess of Fifteen Thousand Dollars (\$15,000.00);
2. Pre- and post-judgment interest as provided by law on contract;
3. An award of attorney's fees and costs of suit incurred; and
4. For such other and further relief as the Court deems just and proper.

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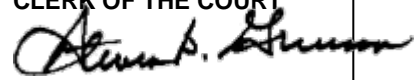
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D. Lee Roberts, Jr. Esq.; lroberts@wwhgd.com
 Marisa Rodriguez, Esq.; mrodriguez@wwhgd.com
 Ryan T. Gormley, Esq.; rgormley@wwhgd.com
 WEINBERG WHEELER HUDGINS GUNN & DIAL LLC
 6385 S. Rainbow Blvd., Ste. 400
 Las Vegas, NV 89118
Attorneys for Defendant SHL

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

EXHIBIT F

EXHIBIT F



NOTC
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(405) 463-6362
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, individually and
as Special Administrator of the Estate
of William George Eskew; TYLER
ESKEW; and WILLIAM G. ESKEW, JR.;

Plaintiffs,

vs.

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

Defendants.

Case No. A-19-788630-C

Dept. No. 4

NOTICE OF WITHDRAWAL OF CLAIMS

Sandra L. Eskew as Special Administrator of the Estate of William George Eskew hereby
files this notice withdrawing its claims for breach of contract which is the First Cause of Action and
the private right action under Nevada Unfair Claims Settlement Practices Act (NRS 686A.310)

///

///

1 which is the Third Cause Action. The remaining cause of action is the Breach of the Implied
2 Covenant of Good Faith and Fair Dealing which is the Second Cause of Action.

3 DATED this 14th day of January 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@mattsharplaw.com
13 *Attorneys for Plaintiffs*
14
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Marjan Hajimirzaee, Esq.; mhajimirzaee@wwhgd.com
Ryan T. Gormley, Esq.; rgormley@wwhgd.com
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Attorneys for Defendants

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

EXHIBIT G

EXHIBIT G

STIP

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(405) 463-6362
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, individually and
as Special Administrator of the Estate
of William George Eskew; TYLER
ESKEW; and WILLIAM G. ESKEW, JR.;

Plaintiffs,

vs.

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

Defendants.

Case No. A-19-788630-C

Dept. No. 4

STIPULATION AND ORDER TO DISMISS CLAIMS UNDER NRS 41.085

Plaintiffs, SANDRA L. ESKEW, individually and as Special Administrator of the Estate of William George Eskew, TYLER ESKEW, and WILLIAM G. ESKEW, JR., through their counsel of record, MATTHEW L. SHARP, ESQ. and DOUG TERRY, ESQ., and Defendants, SIERRA HEALTH AND LIFE INSURANCE COMPANY, INC. and UNITED HEALTHCARE, INC., by and through their counsel of record, WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC, hereby stipulate and agree as follows:

ORDER

Upon good cause showing, the Court grants the Stipulation and Order to Dismiss Claims Under NRS 41.085. The claims for damages asserted by Plaintiffs Sandra L. Eskew, individually and as the administrator of the Estate of William George Eskew, Tyler Eskew, and William G. Eskew, Jr., under NRS 41.085 are hereby dismissed with prejudice each party to bear their own costs and fees. Sandra L. Eskew, individually, Tyler Eskew, and William G. Eskew, Jr are no longer parties to the case. This stipulation does not affect the claims of Plaintiff Sandra L. Eskew as the special administrator of the Estate of William George Eskew asserted pursuant to NRS 41.100.

DATED this ____ day of January 2022.

Dated this 18th day of January, 2022



DISTRICT JUDGE

**EFA 8CA D801 3A79
Nadia Krall
District Court Judge**

Submitted by:

MATTHEW L. SHARP, LTD.

/s/ Matthew L. Sharp

Matthew L. Sharp
432 Ridge St
Reno, NV 89501
Phone: (775) 324-1500
Fax: (775) 284-0675
matt@mattsharp.com
Attorney for Plaintiffs

Subject: RE: Eskew
Date: Thursday, January 13, 2022 at 2:13:56 PM Pacific Standard Time
From: Gormley, Ryan
To: Matt Sharp, Doug Terry
CC: Roberts, Lee
Attachments: image001.png, REVISEE-sig2020_5801a862-4942-4e3a-94ab-425c0ea8e329.png, 2021-01-11 Stip to dismiss wrongful death claim doc edits.doc

Thank you both. Yes on the dismissal stipulation. It is attached with a few minor redlines. If those redlines look agreeable, you can proceed with adding my e-signature and filing.

From: Matt Sharp <matt@mattsharplaw.com>
Sent: Thursday, January 13, 2022 1:37 PM
To: Doug Terry <doug@dougterrylaw.com>; Gormley, Ryan <RGormley@wwhgd.com>
Cc: Roberts, Lee <LRoberts@wwhgd.com>
Subject: Re: Eskew

This Message originated outside your organization.

That is fine we will plan on the opposition to motion for sanctions being filed on Monday. We may need extra time to reply to motion.

Can we also confirm that UHC is in agreement to a stipulation to dismiss with wrongful death claim?

Matthew L. Sharp
Law Office of Matthew L. Sharp
432 Ridge St.
Reno, NV 89501
Matt@MattSharpLaw.com
775-324-1500
Member American Association for Justice Leaders Forum
Board of Governors American Association for Justice
Board of Governors Nevada Justice Association

From: Doug Terry <doug@dougterrylaw.com>
Date: Thursday, January 13, 2022 at 1:33 PM
To: "Gormley, Ryan" <RGormley@wwhgd.com>, Matthew Sharp <matt@mattsharplaw.com>
Cc: Lee Roberts <LRoberts@wwhgd.com>
Subject: RE: Eskew

Hope your family is bouncing back from the virus, Ryan.

From: Gormley, Ryan <RGormley@wwhgd.com>
Sent: Thursday, January 13, 2022 3:32 PM
To: Matt Sharp <matt@mattsharplaw.com>
Cc: Doug Terry <doug@dougterrylaw.com>; Roberts, Lee <LRoberts@wwhgd.com>
Subject: RE: Eskew

Thank you for the well-wishes. If we could change the deadline to Monday that would be appreciated. If you want to discuss further, please feel free to call me on my cell phone at 702-525-6366 or let me know when you want to discuss.

From: Matt Sharp <matt@mattsharplaw.com>
Sent: Wednesday, January 12, 2022 8:56 AM
To: Gormley, Ryan <RGormley@wwhgd.com>
Cc: Doug Terry <doug@dougterrylaw.com>; Roberts, Lee <LRoberts@wwhgd.com>
Subject: Re: Eskew

This Message originated outside your organization.

Ryan,

I am sorry to hear about your family. If you and Lee cannot get the opposition to the motion for sanctions done by Friday because of your family health issues we will work something out.

Please touch base with us as to where things stand.

In the meantime, I will hold back on filing the stipulation.

I hope all is well with you and your family.

Matthew L. Sharp
Law Office of Matthew L. Sharp
432 Ridge St.
Reno, NV 89501
Matt@MattSharpLaw.com
775-324-1500
Member American Association for Justice Leaders Forum
Board of Governors American Association for Justice
Board of Governors Nevada Justice Association

From: "Gormley, Ryan" <RGormley@wwhgd.com>
Date: Tuesday, January 11, 2022 at 12:29 PM
To: Matthew Sharp <matt@mattsharplaw.com>
Cc: Doug Terry <doug@dougterrylaw.com>, Lee Roberts <LRoberts@wwhgd.com>
Subject: RE: Eskew

Thank you, scheduling stipulation is attached with one redline. If that looks acceptable, please feel free to add my e-signature to file. I feel more comfortable with the footnote because we may move to extend the deadline to Monday. I am trying to make Friday work, but along with the other work obligations I mentioned to you, current Covid diagnoses of family members have multiplied from 1 to 5 in the past couple days, which does not help the schedule. I should know by end of day or tomorrow if we will need to file a motion to extend.

I will follow up on the stipulation to dismiss.



LITIGATION DEPARTMENT
OF THE YEAR ALM'S DAILY REPORT
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 | [vCard](#)

From: Matt Sharp <matt@mattsharp.com>
Sent: Tuesday, January 11, 2022 9:04 AM
To: Gormley, Ryan <RGormley@wwhgd.com>; Roberts, Lee <LRoberts@wwhgd.com>
Cc: Doug Terry <doug@dougterrylaw.com>
Subject: Eskew

This Message originated outside your organization.

Ryan and Lee,

Here is a stipulation on the motion for sanctions moving the hearing date and applying the same briefing schedule as all other motions.

We also have authority to dismiss the wrongful death claims. We have attached a proposed stipulation to dismiss.

Matthew Sharp
432 Ridge St.
Reno, NV 89501
matt@mattsharp.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 Stipulation 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: 1/18/2022

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

EXHIBIT H

EXHIBIT H

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 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 I

EXHIBIT I

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.

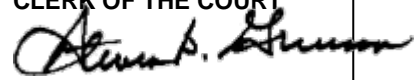
COURT FURTHER ORDERED, counsel for Plaintiff to include Findings of Fact and Conclusions of Law based upon the Memorandum of Points and Authorities set forth in Plaintiff's pleadings.

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 J

EXHIBIT J



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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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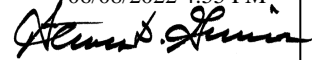
///

1 A copy of the Order is attached hereto.

2 DATED this 9th 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
13 *Attorneys for Plaintiffs*
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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.

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

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

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

8 3. NRS 18.110(1) provides that the party seeking costs must provide a memorandum of costs
9 setting forth the recoverable costs that have been necessarily incurred. The requirements of NRS
10 18.110(1) are not jurisdictional. *Eberle v. State ex rel. Redfield Trust*, 108 Nev. 587, 590, 836 P.2d
11 67, 69 (1992).

12 4. This Court has the discretion to determine the allowable costs under NRS 18.020. *Motor*
13 *Coach Indus., Inc. v. Khiabani by & through Rigaud*, 137 Nev. Adv. Op. 42, 493 P.3d 1007, 1017
14 (2021).

15 5. NRS 18.005(5) governs the recovery of expert witness fees. It provides, “Reasonable fees of
16 not more than five expert witnesses of not more than \$1,500 for each witness, unless the court allows
17 a larger fee after determining that the circumstances surrounding the expert’s testimony were of such
18 necessity as to require the larger fee.” In evaluating a request for expert fees over \$1,500 per witness,
19 this Court should “carefully evaluate a request for excess fees.” *Motor Coach Indus. v. Khiabani*, 492
20 P.3d at 1017. This Court should recognize the importance of expert witnesses and consider the factors
21 set forth in *Frazier v. Drake*, 131 Nev. 632, 650-51, 357 P.3d 365, 377-78 (Ct. App. 2015). Those
22 factors include: (1) the importance of the expert’s testimony to the case; (2) the degree that the expert
23 aided the jury in deciding the case; (3) whether the expert’s testimony was repetitive of other experts;
24 (4) the extent and nature of the work performed by the expert; (5) the amount of time the expert spent
25 in court, preparing a report, and testifying at trial; (6) the expert’s area of expertise; (7) the expert’s
26 education and training; (8) the fees charged by the expert; (9) the fees traditionally charged by the
27 expert on related matters; (10) comparable expert fees charged in similar cases; and (11) the fees that
28

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

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Attorneys for Defendants

Matt Sharp <matt@mattsharplaw.com>

RE: Eskew v. Sierra

1 message

Gormley, Ryan <RGormley@wwhgd.com>

Mon, Jun 6, 2022 at 3:07 PM

To: Matt Sharp <matt@mattsharplaw.com>, "Roberts, Lee" <LRoberts@wwhgd.com>Cc: Doug Terry <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

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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.](#)

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matt@mattsharpplaw.com

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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

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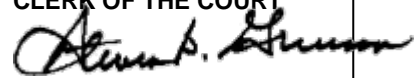
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EXHIBIT K

EXHIBIT K



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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 24th 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
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12 matt@mattsharpplaw.com
13 *Attorneys for Plaintiff*
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:

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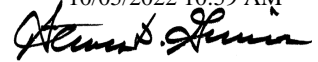
10 Thomas H. Dupree Jr., Esq.; TDupree@gibsondunn.com
11 GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036

12 *Attorneys for Defendants*

13 DATED this 24th 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
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.

WEINBERG, WHEELER, HUDGINS,

13 GUNN & DIAL, LLC

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15 Thomas H. Dupree Jr., Esq.

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17 Washington, DC 20036

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**

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13 Court. The foregoing Order was served via the court's electronic eFile system to all
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14 Service Date: 10/5/2022

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19 Matthew Sharp

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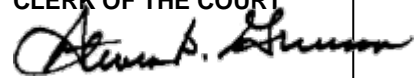
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EXHIBIT L

EXHIBIT L



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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 24th 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
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
7 Phillip N. Smith, Esq.; psmith@wwhgd.com
8 Ryan T. Gormley, Esq.; rgormley@wwhgd.com
9 WEINBERG WHEELER HUDGINS GUNN & DIAL LLC
6385 S. Rainbow Blvd., Ste. 400
Las Vegas, NV 89118

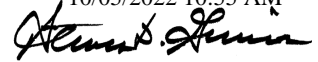
10 Thomas H. Dupree Jr., Esq.; TDupree@gibsondunn.com
11 GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036

12 *Attorneys for Defendants*

13 DATED this 24th 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).
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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

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15 Thomas H. Dupree Jr., Esq.

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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**

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13 Court. The foregoing Order was served via the court's electronic eFile system to all
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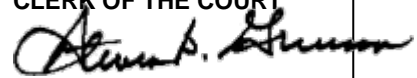
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EXHIBIT M

EXHIBIT M



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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 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 24th 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

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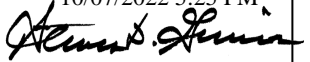
10 Thomas H. Dupree Jr., Esq.; TDupree@gibsondunn.com
11 GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036

12 *Attorneys for Defendants*

13 DATED this 24th 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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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.¹

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 ¹ <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**

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13 Court. The foregoing Amended Judgment was served via the court's electronic eFile system
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EXHIBIT N

EXHIBIT N

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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 6th day of October 2022.

13 MATTHEW L. SHARP, LTD.

14
15 /s/ Matthew L. Sharp
16 MATTHEW L. SHARP, ESQ.
17 Nevada Bar No. 4746
18 432 Ridge Street
19 Reno NV 89501
20 (775) 324-1500
21 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 6th day of October 2022.

7 MATTHEW L. SHARP, LTD.
8

9 /s/ Matthew L Sharp

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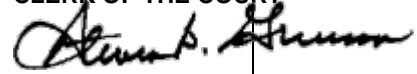
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DATED this 6th day of October 2022.

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

EXHIBIT 1



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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 1.¹

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.²

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28 ²Ex. 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 6th day of October 2022.

4
5 /s/ Matthew L. Sharp

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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., 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

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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.¹ 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.

¹ 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

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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.¹

¹ 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.² 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.

² 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.³ 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).

³ 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.⁴

⁴ 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)

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

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ORDER OF AFFIRMANCE¹

¹ 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.² 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.

² 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

End of Document

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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

Marquis Aurbach Coffing.

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP/Las Vegas.

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.”¹

¹ 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.² Thus, Blankenship did not adduce expert testimony regarding the curb.

² 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

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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

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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

From: Gormley, Ryan <RGormley@wwhgd.com>
Sent: Friday, September 16, 2022 4:03 PM
To: Sorensen, David <Dept04LC@clarkcountycourts.us>
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

[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>
Sent: Wednesday, September 14, 2022 2:54 PM
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,

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

From: Gormley, Ryan <RGormley@wwhgd.com>
Sent: Wednesday, August 31, 2022 4:35 PM
To: Sorensen, David <Dept04LC@clarkcountycourts.us>
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>
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 | [vCard](#)

From: Sorensen, David <Dept04LC@clarkcountycourts.us>
Sent: Tuesday, August 30, 2022 12:04 PM
To: 'suzy@mattsharplaw.com' <suzy@mattsharplaw.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>; Gormley, Ryan <RGormley@wwhgd.com>; 'Cristin Sharp' <cristin@mattsharplaw.com>; Everett, Tia <EverettT@clarkcountycourts.us>; 'Matt Sharp' <matt@mattsharplaw.com>
Subject: RE: A-19-788630-FCCO-Eskew vs. Sierra Health

This Message originated outside your organization.

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

From: suzy@mattsharplaw.com <suzy@mattsharplaw.com>
Sent: Tuesday, August 30, 2022 11:40 AM
To: Sorensen, David <Dept04LC@clarkcountycourts.us>
Cc: 'Deepak Gupta' <deepak@guptawessler.com>; 'Doug Terry' <doug@dougterrylaw.com>; 'Matthew Wessler' <matt@guptawessler.com>; 'Lee Roberts' <LRoberts@wwhgd.com>; 'Dupree Jr., Thomas H.' <TDupree@gibsondunn.com>; 'Ryan Gormley' <RGormley@wwhgd.com>; 'Cristin Sharp' <cristin@mattsharplaw.com>; Everett, Tia <EverettT@clarkcountycourts.us>; 'Matt Sharp' <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@mattsharplaw.com
(775) 324-1500
(775) 284-0675 fax

From: Sorensen, David <Dept04LC@clarkcountycourts.us>
Sent: Tuesday, August 30, 2022 8:31 AM
To: 'Matt Sharp' <matt@mattsharplaw.com>
Cc: Deepak Gupta <deepak@guptawessler.com>; Doug Terry <doug@dougterrylaw.com>; Matthew Wessler <matt@guptawessler.com>; Lee Roberts <LRoberts@wwhgd.com>; Dupree Jr., Thomas H. <TDupree@gibsondunn.com>; Ryan Gormley <RGormley@wwhgd.com>; Suzy Thompson <suzy@mattsharplaw.com>; Cristin Sharp <cristin@mattsharplaw.com>; Everett, Tia <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

From: Matt Sharp <matt@mattsharplaw.com>
Sent: Monday, August 29, 2022 8:56 PM
To: Sorensen, David <Dept04LC@clarkcountycourts.us>
Cc: Deepak Gupta <deepak@guptawessler.com>; Doug Terry <doug@dougterrylaw.com>; Matthew Wessler <matt@guptawessler.com>; Lee Roberts <LRoberts@wwhgd.com>; Dupree Jr., Thomas H. <TDupree@gibsondunn.com>; Ryan Gormley <RGormley@wwhgd.com>; Suzy Thompson <suzy@mattsharplaw.com>; Cristin Sharp <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
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

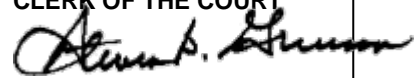
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Maxine Rosenberg	Mrosenberg@wwhgd.com
Stephanie Glantz	sglantz@wwhgd.com
Douglas Terry	doug@dougterrylaw.com

EXHIBIT O

EXHIBIT O



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

Doug Terry, Esq.
Admitted PHV
DOUG TERRY LAW, PLLC.
200 E. 10th St. Plaza, Ste. 200
Edmond, OK 73013
(405) 463-6362
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.

///

///

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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 24th 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
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:

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

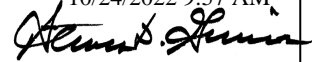
10 Thomas H. Dupree Jr., Esq.; TDupree@gibsondunn.com
11 GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036

12 *Attorneys for Defendants*

13 DATED this 24th 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 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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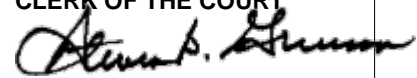
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EXHIBIT P

EXHIBIT P



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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.

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14 *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:

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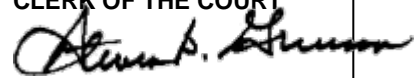
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14 /s/ Cynthia S. Bowman

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

EXHIBIT A



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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 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.

///

///

///

///

///

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

2 DATED this 18th day of April 2022.

3 MATTHEW L. SHARP, LTD.

4
5 /s/ Matthew L. Sharp

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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

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.¹

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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27 ¹ <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 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

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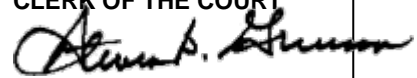
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EXHIBIT B

EXHIBIT B



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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 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 24th 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

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
7 Phillip N. Smith, Esq.; psmith@wwhgd.com
8 Ryan T. Gormley, Esq.; rgormley@wwhgd.com
9 WEINBERG WHEELER HUDGINS GUNN & DIAL LLC
6385 S. Rainbow Blvd., Ste. 400
Las Vegas, NV 89118

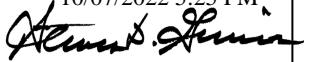
10 Thomas H. Dupree Jr., Esq.; TDupree@gibsondunn.com
11 GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036

12 *Attorneys for Defendants*

13 DATED this 24th 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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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.¹

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 ¹ <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

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**

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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

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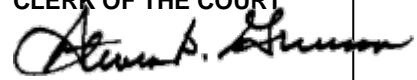
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Stephanie Glantz	sglantz@wwhgd.com
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EXHIBIT C

EXHIBIT C



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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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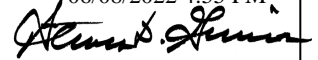
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1 A copy of the Order is attached hereto.

2 DATED this 9th day of June 2022.

3 MATTHEW L. SHARP, LTD.

4
5
6 /s/ Matthew L. Sharp
7 MATTHEW L. SHARP, ESQ.
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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.

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

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

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

8 3. NRS 18.110(1) provides that the party seeking costs must provide a memorandum of costs
9 setting forth the recoverable costs that have been necessarily incurred. The requirements of NRS
10 18.110(1) are not jurisdictional. *Eberle v. State ex rel. Redfield Trust*, 108 Nev. 587, 590, 836 P.2d
11 67, 69 (1992).

12 4. This Court has the discretion to determine the allowable costs under NRS 18.020. *Motor*
13 *Coach Indus., Inc. v. Khiabani by & through Rigaud*, 137 Nev. Adv. Op. 42, 493 P.3d 1007, 1017
14 (2021).

15 5. NRS 18.005(5) governs the recovery of expert witness fees. It provides, “Reasonable fees of
16 not more than five expert witnesses of not more than \$1,500 for each witness, unless the court allows
17 a larger fee after determining that the circumstances surrounding the expert’s testimony were of such
18 necessity as to require the larger fee.” In evaluating a request for expert fees over \$1,500 per witness,
19 this Court should “carefully evaluate a request for excess fees.” *Motor Coach Indus. v. Khiabani*, 492
20 P.3d at 1017. This Court should recognize the importance of expert witnesses and consider the factors
21 set forth in *Frazier v. Drake*, 131 Nev. 632, 650-51, 357 P.3d 365, 377-78 (Ct. App. 2015). Those
22 factors include: (1) the importance of the expert’s testimony to the case; (2) the degree that the expert
23 aided the jury in deciding the case; (3) whether the expert’s testimony was repetitive of other experts;
24 (4) the extent and nature of the work performed by the expert; (5) the amount of time the expert spent
25 in court, preparing a report, and testifying at trial; (6) the expert’s area of expertise; (7) the expert’s
26 education and training; (8) the fees charged by the expert; (9) the fees traditionally charged by the
27 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.

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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

Las Vegas, NV 89118

(702) 938-3838

rgormley@wwhgd.com

Attorneys for Defendants

Matt Sharp <matt@mattsharplaw.com>

RE: Eskew v. Sierra

1 message

Gormley, Ryan <RGormley@wwhgd.com>

Mon, Jun 6, 2022 at 3:07 PM

To: Matt Sharp <matt@mattsharplaw.com>, "Roberts, Lee" <LRoberts@wwhgd.com>Cc: Doug Terry <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 | vCard

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@mattsharpplaw.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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19 Matthew Sharp

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21 Ryan Gormley

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Douglas Terry	doug@dougterrylaw.com
Thomas Dupree	TDupree@gibsondunn.com

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)

**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.

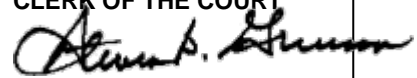
COURT FURTHER ORDERED, counsel for Plaintiff to include Findings of Fact and Conclusions of Law based upon the Memorandum of Points and Authorities set forth in Plaintiff's pleadings.

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



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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 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 24th 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
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:

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

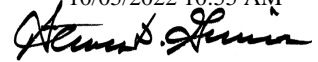
10 Thomas H. Dupree Jr., Esq.; TDupree@gibsondunn.com
11 GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036

12 *Attorneys for Defendants*

13 DATED this 24th day of October 2022.

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

EXHIBIT 1


CLERK OF THE COURT

ORDD

D. Lee Roberts, Jr., Esq.

lroberts@wwhgd.com

Nevada Bar No. 8877

Phillip N. Smith, Esq.

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Nevada Bar No. 10233

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1050 Connecticut Avenue, N.W.

Washington, DC 20036

Telephone: (202) 955-8547

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
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

Las Vegas, Nevada 89118

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15 Thomas H. Dupree Jr., Esq.

GIBSON, DUNN & CRUTCHER LLP

16 1050 Connecticut Avenue, N.W.

Washington, DC 20036

17 *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

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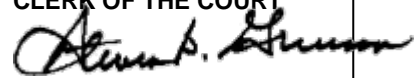
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Maxine Rosenberg	Mrosenberg@wwhgd.com
Stephanie Glantz	sglantz@wwhgd.com
Douglas Terry	doug@dougterrylaw.com

EXHIBIT G

EXHIBIT G



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Nevada State Bar #4746
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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.

///

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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 24th 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
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12 matt@mattsharpplaw.com
13 *Attorneys for Plaintiff*
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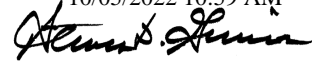
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/s/ Suzy Thompson
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EXHIBIT 1


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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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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

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EXHIBIT H

EXHIBIT H

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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 6th day of October 2022.

13 MATTHEW L. SHARP, LTD.

14
15 /s/ Matthew L. Sharp
16 MATTHEW L. SHARP, ESQ.
17 Nevada Bar No. 4746
18 432 Ridge Street
19 Reno NV 89501
20 (775) 324-1500
21 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 6th day of October 2022.

7 MATTHEW L. SHARP, LTD.
8

9 /s/ Matthew L Sharp

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15 matt@mattsharpplaw.com
16 Attorney for Plaintiff
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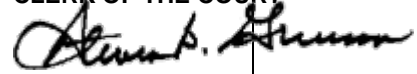
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Attorneys for Defendants

DATED this 6th day of October 2022.

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

EXHIBIT 1



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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 1.¹

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.²

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28 ²Ex. 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 6th day of October 2022.

4
5 /s/ Matthew L. Sharp

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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
25 instructions and the evidence at trial.

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

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Keating Law Group

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.¹ 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.

¹ 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

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

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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.¹

¹ 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.² 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.

² 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.³ 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).

³ 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.⁴

⁴ 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)

134 Nev. 963, 2018 WL 3912241

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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

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FILED OCTOBER 31, 2019

Attorneys and Law Firms

Law Office of Neal Hyman

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ORDER OF AFFIRMANCE¹

¹ 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.² 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.

² 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.

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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.”¹

¹ 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.² Thus, Blankenship did not adduce expert testimony regarding the curb.

² 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

From: Gormley, Ryan <RGormley@wwhgd.com>
Sent: Friday, September 16, 2022 4:03 PM
To: Sorensen, David <Dept04LC@clarkcountycourts.us>
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

[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>
Sent: Wednesday, September 14, 2022 2:54 PM
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,

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

From: Gormley, Ryan <RGormley@wwhgd.com>
Sent: Wednesday, August 31, 2022 4:35 PM
To: Sorensen, David <Dept04LC@clarkcountycourts.us>
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>
Subject: RE: A-19-788630-FCCO-Eskew vs. Sierra Health

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

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 | [vCard](#)

From: Sorensen, David <Dept04LC@clarkcountycourts.us>
Sent: Tuesday, August 30, 2022 12:04 PM
To: 'suzy@mattsharplaw.com' <suzy@mattsharplaw.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>; Gormley, Ryan <RGormley@wwhgd.com>; 'Cristin Sharp' <cristin@mattsharplaw.com>; Everett, Tia <EverettT@clarkcountycourts.us>; 'Matt Sharp' <matt@mattsharplaw.com>
Subject: RE: A-19-788630-FCCO-Eskew vs. Sierra Health

This Message originated outside your organization.

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

From: suzy@mattsharplaw.com <suzy@mattsharplaw.com>
Sent: Tuesday, August 30, 2022 11:40 AM
To: Sorensen, David <Dept04LC@clarkcountycourts.us>
Cc: 'Deepak Gupta' <deepak@guptawessler.com>; 'Doug Terry' <doug@dougterrylaw.com>; 'Matthew Wessler' <matt@guptawessler.com>; 'Lee Roberts' <LRoberts@wwhgd.com>; 'Dupree Jr., Thomas H.' <TDupree@gibsondunn.com>; 'Ryan Gormley' <RGormley@wwhgd.com>; 'Cristin Sharp' <cristin@mattsharplaw.com>; Everett, Tia <EverettT@clarkcountycourts.us>; 'Matt Sharp' <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
(775) 324-1500
(775) 284-0675 fax

From: Sorensen, David <Dept04LC@clarkcountycourts.us>
Sent: Tuesday, August 30, 2022 8:31 AM
To: 'Matt Sharp' <matt@mattsharpplaw.com>
Cc: Deepak Gupta <deepak@guptawessler.com>; Doug Terry <doug@dougterrylaw.com>; Matthew Wessler <matt@guptawessler.com>; Lee Roberts <LRoberts@wwhgd.com>; Dupree Jr., Thomas H. <TDupree@gibsondunn.com>; Ryan Gormley <RGormley@wwhgd.com>; Suzy Thompson <suzy@mattsharpplaw.com>; Cristin Sharp <cristin@mattsharpplaw.com>; Everett, Tia <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

From: Matt Sharp <matt@mattsharplaw.com>
Sent: Monday, August 29, 2022 8:56 PM
To: Sorensen, David <Dept04LC@clarkcountycourts.us>
Cc: Deepak Gupta <deepak@guptawessler.com>; Doug Terry <doug@dougterrylaw.com>; Matthew Wessler <matt@guptawessler.com>; Lee Roberts <LRoberts@wwhgd.com>; Dupree Jr., Thomas H. <TDupree@gibsondunn.com>; Ryan Gormley <RGormley@wwhgd.com>; Suzy Thompson <suzy@mattsharplaw.com>; Cristin Sharp <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
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

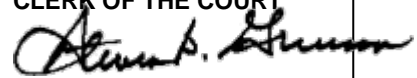
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Maxine Rosenberg	Mrosenberg@wwhgd.com
Stephanie Glantz	sglantz@wwhgd.com
Douglas Terry	doug@dougterrylaw.com

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

Doug Terry, Esq.
Admitted PHV
DOUG TERRY LAW, PLLC.
200 E. 10th St. Plaza, Ste. 200
Edmond, OK 73013
(405) 463-6362
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.

///

///

///

///

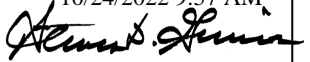
1 A copy of the Findings and Conclusions as to Allegations of Attorney Misconduct is attached
2 hereto as Exhibit 1.

3 DATED this 24th 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
13 *Attorneys for Plaintiffs*
14
15
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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 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
21
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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
case as listed below:

15 Service Date: 10/24/2022

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20 Matthew Sharp

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22 Thomas Dupree

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23 Ryan Gormley

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24 Flor Gonzalez-Pacheco

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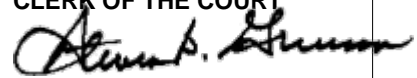
25 Suzy Thompson

suzy@mattsharplaw.com

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Maxine Rosenberg	Mrosenberg@wwhgd.com
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Douglas Terry	doug@dougterrylaw.com



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2 lroberts@wwhgd.com
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3 Phillip N. Smith, Esq.
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4 Nevada Bar No. 10233
Ryan T. Gormley, Esq.
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Nevada Bar No. 13494
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10 *Admitted pro hac vice*
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11 GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
12 Washington, DC 20036
Telephone: (202) 955-8547
13 Facsimile: (202) 530-9670

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
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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.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
(702) 938-3838

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

MATTHEW L. SHARP., ESQ.
MATTHEW L. SHARP, LTD
432 Ridge St.
Reno, Nevada 89501
(775) 324-1500

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DOUGLAS A. TERRY, ESQ.
DOUG TERRY LAW, PLLC
200 E. 10th St. Plaza, Ste. 200
Edmond, OK 73013
(405) 463-6362

DEEPAK GUPTA, ESQ.
MATTHEW W.H. WESSLER, ESQ.
GUPTA WESSLER PLLC
2001 K St., N.W., Ste. 850 North
Washington, DC 20006
(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.

1 **9. Indicate the date the proceeding commenced in the district court (e.g., date complaint,**
2 **indictment, information, or petition was filed):**

3 Complaint and Jury Demand filed February 1, 2019.

4 **10. Provide a brief description of the nature of the action and result in the district court,**
5 **including the type of document or order being appealed and the relief granted by the**
6 **district court:**

7 Plaintiff challenged SHL's denial of insurance coverage for proton beam therapy. The jury
8 returned a verdict in Plaintiff's favor and awarded compensatory and punitive damages.
9 Defendant appeals from all orders and rulings, including the judgment on the jury verdict, the
10 order denying its Motion to Retax Costs, and the orders denying post-trial relief.

11 **11. Indicate whether the case has previously been the subject of an appeal to or original**
12 **writ proceeding in the Supreme Court and, if so, the caption and Supreme Court**
13 **docket number of the prior proceeding:**

14 *Sierra Health & Life Insurance Company, Inc. v. Sandra Eskew*, Case No. 85369

15 **12. Indicate whether the appeal involves child custody or visitation:**

16 This case does not involve child custody or visitation.

17 **13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:**

18 SHL has always been willing to consider settlement on reasonable terms. An in-person
19 settlement conference has been scheduled for December 21, 2022.

20 DATED: October 31, 2022.

21 /s/ Ryan T. Gormley
22 D. Lee Roberts, Jr., Esq.
23 Phillip N. Smith, Esq.
24 Ryan T. Gormley, Esq.
25 WEINBERG, WHEELER, HUDGINS,
26 GUNN & DIAL, LLC
27 6385 South Rainbow Blvd., Suite 400
28 Las Vegas, Nevada 89118

Thomas H. Dupree Jr., Esq.
GIBSON, DUNN & CRUTCHER LLP

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Washington, DC 20036

Attorneys for Defendant

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1 **CERTIFICATE OF SERVICE**

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

7 Matthew L. Sharp, Esq.
8 matt@mattsharpplaw.com
9 MATTHEW L. SHARP, LTD.
432 Ridge St.
Reno, NV 89501

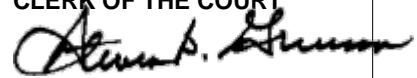
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11 doug@dougterrylaw.com
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200 E. 10th St. Plaza, Suite 200
Edmond, OK 73018
Attorneys for Plaintiffs
13 Sandra L. Eskew, Tyler Eskew and
14 William G. Eskew, Jr.

15 /s/ Cynthia S. Bowman

16 An employee of WEINBERG, WHEELER,
17 HUDGINS, GUNN & DIAL, LLC
18
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EXHIBIT A

EXHIBIT A



1 **NEOJ**

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5 *rgormley@wwhgd.com*

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8 Telephone: (702) 938-3838

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10 *Pro Hac Vice Pending*

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Telephone: (202) 955-8547

13 Facsimile: (202) 530-9670

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
22 COMPANY, INC.,

23 Defendant.

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

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

24
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.

11 6385 South Rainbow Blvd., Suite 400

12 Las Vegas, Nevada 89118

13
14 *Attorneys for Defendant*
15
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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:

Matthew L. Sharp, Esq.
matt@mattsharplaw.com
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432 Ridge St.
Reno, NV 89501

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200 E. 10th St. Plaza, Suite 200
Edmond, OK 73018
Attorneys for Plaintiffs
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



ORDR

D. Lee Roberts, Jr., Esq.

lroberts@wwhgd.com

Nevada Bar No. 8877

Phillip N. Smith, Esq.

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Nevada Bar No. 10233

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Telephone: (202) 955-8547

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 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,
GUNN & DIAL, LLC

6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118

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
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/12/2022

15 Audra Bonney

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24 Kelly Gaez

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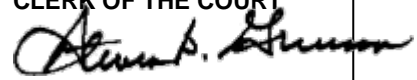
25 Suzy Thompson

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



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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 15th 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@mattsharplaw.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:

6 D. Lee Roberts, Jr. Esq.; lroberts@wwhgd.com
7 Marjan Hajimirzaee, Esq.; mhajimirzaee@wwhgd.com
8 Ryan T. Gormley, Esq.; 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 15th 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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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

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.
14 Reno, NV 89501
15 (775) 324-1500
16 Attorney for Plaintiff

17 Approved as to form and content:

18 **Weinberg Wheeler Hudgins Gunn & Dial**

19 /s/ Ryan Gormley
20 Ryan Gormley, Esq.
21 6385 South Rainbow Blvd., Suite 400
22 Las Vegas, NV 89118
23 Attorneys for Defendant
24
25
26
27
28

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
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Matt@mattsharplaw.com
775-324-1500

Begin forwarded message:

From: "Gormley, Ryan" <RGormley@wwhgd.com>
Date: August 11, 2022 at 10:59:57 PM PDT
To: Matt Sharp <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 | vCard

From: Matt Sharp <matt@mattsharplaw.com>
Sent: Wednesday, August 10, 2022 4:30 PM
To: Gormley, Ryan <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

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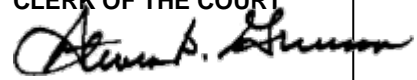
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Doug Terry, Esq.
Admitted PHV
DOUG TERRY LAW, PLLC.
200 E. 10th St. Plaza, Ste. 200
Edmond, OK 73013
(405) 463-6362
doug@dougterrylaw.com

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.

///

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1 A copy of the Order is attached hereto.

2 DATED this 15th 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@mattsharplaw.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:

6 D. Lee Roberts, Jr. Esq.; lroberts@wwhgd.com
7 Marjan Hajimirzaee, Esq.; mhajimirzaee@wwhgd.com
8 Ryan T. Gormley, Esq.; 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 15th day of August 2022.

12 /s/ Suzy Thompson
13 An employee of Matthew L. Sharp, Ltd.
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

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](#)

Matthew L. Sharp
432 Ridge St
Reno, NV 89501
Matt@mattsharplaw.com
775-324-1500

Begin forwarded message:

From: "Gormley, Ryan" <RGormley@wwhgd.com>
Date: August 11, 2022 at 10:59:57 PM PDT
To: Matt Sharp <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 | vCard

From: Matt Sharp <matt@mattsharplaw.com>
Sent: Wednesday, August 10, 2022 4:30 PM
To: Gormley, Ryan <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
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 Admitting to Practice was served via the court's electronic eFile
14 system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 8/14/2022

16 Audra Bonney

abonney@wwhgd.com

17 Cindy Bowman

cbowman@wwhgd.com

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

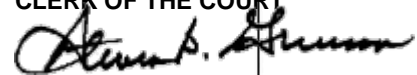
26 Suzy Thompson

suzy@mattsharplaw.com

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



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

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

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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
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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)

§
§
§
§
§
§

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,

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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

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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

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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>

CASE SUMMARY

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>

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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 Plaintiffs' 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











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	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>












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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














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	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>Verdict (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>Verdict (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>Order of Dismissal With Prejudice (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>Amended Judgment Upon the Verdict (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>HEARINGS</p>
06/18/2019	<p> Motion to Dismiss (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> Motion to Associate Counsel (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	Motion in Limine (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	Motion in Limine (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	Motion in Limine (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	Motion in Limine (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	Motion in Limine (9:00 AM) (Judicial Officer: Krall, Nadia) <i>Defendants' Motion in Limine No. 7: Exclude Certain Photos</i> Granted in Part;
02/10/2022	Motion in Limine (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	Motion in Limine (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	Motion in Limine (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	Motion in Limine (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	Motion in Limine (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	Motion in Limine (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	Motion in Limine (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>Motion in Limine (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>Motion in Limine (9:00 AM) (Judicial Officer: Krall, Nadia)</p> <p>02/10/2022-02/11/2022</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>CANCELED All Pending Motions (9:00 AM) (Judicial Officer: Krall, Nadia)</p> <p><i>Vacated - Duplicate Entry</i></p>
02/10/2022	<p> All Pending Motions (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>Motion in Limine (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>Motion in Limine (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>Motion in Limine (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>Motion in Limine (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>Motion in Limine (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>Motion for Summary Judgment (1:00 PM) (Judicial Officer: Krall, Nadia) <i>Defendants Motion for Summary Judgment Re: Claims</i> Denied in Part;</p>
02/11/2022	<p>Motion for Partial Summary Judgment (1:00 PM) (Judicial Officer: Krall, Nadia) <i>Defendants Motion for Partial Summary Judgment Re: UHC</i> Motion Denied;</p>
02/11/2022	<p>Motion for Partial Summary Judgment (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>Motion for Sanctions (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>Motion for Partial Summary Judgment (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>Motion in Limine (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>Motion in Limine (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>Motion in Limine (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>Motion in Limine (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>Motion in Limine (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>Motion in Limine (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>Motion to Seal/Redact Records (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> All Pending Motions (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>

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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

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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

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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

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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

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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

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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.

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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

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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


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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	CANCELED Motion to Associate Counsel (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	 Motion (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

Defendant United Healthcare, Inc	
Total Charges	3.50
Total Payments and Credits	3.50
Balance Due as of 11/2/2022	0.00
Defendant Sierra Health and Life Insurance Company Inc	
Total Charges	3,561.50
Total Payments and Credits	3,561.50
Balance Due as of 11/2/2022	0.00
Special Administrator Eskew, Sandra L	
Total Charges	635.07
Total Payments and Credits	635.07
Balance Due as of 11/2/2022	0.00
Defendant Sierra Health and Life Insurance Company Inc	
Appeal Bond Balance as of 11/2/2022	500.00

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**

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

Doug Terry, Esq.

Admitted PHV

DOUG TERRY LAW, PLLC.

200 E. 10th St. Plaza, Ste. 200

Edmond, OK 73013

(405) 463-6362

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.¹

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 ¹ <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
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 Judgment Upon Jury Verdict was served via the court's electronic eFile
14 system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 4/18/2022

16 Audra Bonney

abonney@wwhgd.com

17 Cindy Bowman

cbowman@wwhgd.com

18 D. Lee Roberts

lroberts@wwhgd.com

19 Raiza Anne Torrenueva

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20 Matthew Sharp

matt@mattsharplaw.com

21 Cristin Sharp

cristin@mattsharplaw.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

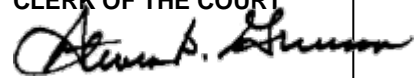
26 Marjan Hajimirzaee

mhajimirzaee@wwhgd.com

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



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Doug Terry, Esq.
Admitted PHV
DOUG TERRY LAW, PLLC.
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(405) 463-6362
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 18th 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

Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

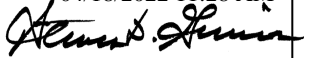
2 I hereby certify that I am an employee of Matthew L. Sharp, Ltd., and that on this date, a true
3 and correct copy of the foregoing was electronically filed and served on counsel through the Court's
4 electronic service system pursuant to Administrative Order 14-2 and NEFCR 9, via the electronic mail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

6 D. Lee Roberts, Jr. Esq.; lroberts@wwhgd.com
7 Marjan Hajimirzaee, Esq.; mhajimirzaee@wwhgd.com
8 Ryan T. Gormley, Esq.; 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 18th day of April 2022.

12 /s/ Cristin B. Sharp
13 An employee of Matthew L. Sharp, Ltd.
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EXHIBIT 1


CLERK OF THE COURT

JUV

MATTHEW L. SHARP, ESQ.

Nevada State Bar #4746

Matthew L. Sharp, Ltd.

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Reno, NV 89501

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Attorney for Plaintiffs

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Dept. No. 4

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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
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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.¹

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 ¹ <https://www.washoecourts.com/toprequests/interestrates>. The pre-judgment interest rate is 5.25
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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)

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19 Raiza Anne Torrenueva

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20 Matthew Sharp

matt@mattsharplaw.com

21 Cristin Sharp

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22 Ryan Gormley

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23 Flor Gonzalez-Pacheco

FGonzalez-Pacheco@wwhgd.com

24 Kelly Gaez

kgaez@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

Heather S. Smith

CLERK OF THE COURT

AJUV
MATTHEW L. SHARP, ESQ.
Nevada State Bar #4746
Matthew L. Sharp, Ltd.
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Reno, NV 89501
(775) 324-1500
matt@mattsharpplaw.com

Doug Terry, Esq.
Admitted PHV
DOUG TERRY LAW, PLLC.
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Edmond, OK 73013
(405) 463-6362
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.

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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.¹

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 ¹ <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
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 Amended Judgment was served via the court's electronic eFile system
14 to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/7/2022

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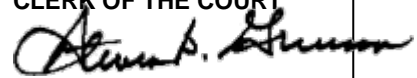
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Attorney for Plaintiffs

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 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 24th 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

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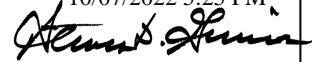
10 Thomas H. Dupree Jr., Esq.; TDupree@gibsondunn.com
11 GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036

12 *Attorneys for Defendants*

13 DATED this 24th 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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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.¹

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 ¹ <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.

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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

8 Sierra Health and Life Insurance
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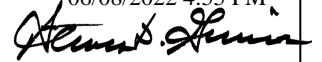
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CLERK OF THE COURT

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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.

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

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

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

8 3. NRS 18.110(1) provides that the party seeking costs must provide a memorandum of costs
9 setting forth the recoverable costs that have been necessarily incurred. The requirements of NRS
10 18.110(1) are not jurisdictional. *Eberle v. State ex rel. Redfield Trust*, 108 Nev. 587, 590, 836 P.2d
11 67, 69 (1992).

12 4. This Court has the discretion to determine the allowable costs under NRS 18.020. *Motor*
13 *Coach Indus., Inc. v. Khiabani by & through Rigaud*, 137 Nev. Adv. Op. 42, 493 P.3d 1007, 1017
14 (2021).

15 5. NRS 18.005(5) governs the recovery of expert witness fees. It provides, “Reasonable fees of
16 not more than five expert witnesses of not more than \$1,500 for each witness, unless the court allows
17 a larger fee after determining that the circumstances surrounding the expert’s testimony were of such
18 necessity as to require the larger fee.” In evaluating a request for expert fees over \$1,500 per witness,
19 this Court should “carefully evaluate a request for excess fees.” *Motor Coach Indus. v. Khiabani*, 492
20 P.3d at 1017. This Court should recognize the importance of expert witnesses and consider the factors
21 set forth in *Frazier v. Drake*, 131 Nev. 632, 650-51, 357 P.3d 365, 377-78 (Ct. App. 2015). Those
22 factors include: (1) the importance of the expert’s testimony to the case; (2) the degree that the expert
23 aided the jury in deciding the case; (3) whether the expert’s testimony was repetitive of other experts;
24 (4) the extent and nature of the work performed by the expert; (5) the amount of time the expert spent
25 in court, preparing a report, and testifying at trial; (6) the expert’s area of expertise; (7) the expert’s
26 education and training; (8) the fees charged by the expert; (9) the fees traditionally charged by the
27 expert on related matters; (10) comparable expert fees charged in similar cases; and (11) the fees that
28

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.

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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

Las Vegas, NV 89118

(702) 938-3838

rgormley@wwhgd.com

Attorneys for Defendants

Matt Sharp <matt@mattsharplaw.com>

RE: Eskew v. Sierra

1 message

Gormley, Ryan <RGormley@wwhgd.com>

Mon, Jun 6, 2022 at 3:07 PM

To: Matt Sharp <matt@mattsharplaw.com>, "Roberts, Lee" <LRoberts@wwhgd.com>Cc: Doug Terry <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 | vCard

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

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

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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 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

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

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22 Flor Gonzalez-Pacheco

FGonzalez-Pacheco@wwhgd.com

23 Kelly Gaez

kgaez@wwhgd.com

24 Suzy Thompson

suzy@mattsharplaw.com

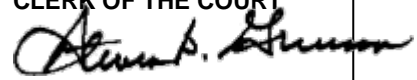
25 Marjan Hajimirzaee

mhajimirzaee@wwhgd.com

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Maxine Rosenberg	Mrosenberg@wwhgd.com
Stephanie Glantz	sglantz@wwhgd.com
Douglas Terry	doug@dougterrylaw.com
Thomas Dupree	TDupree@gibsondunn.com



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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 9th day of June 2022.

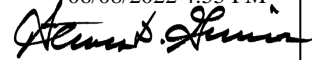
3 MATTHEW L. SHARP, LTD.

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
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13 *Attorneys for Plaintiffs*
14
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D. Lee Roberts, Jr. Esq.; droberts@wwhgd.com
Marjan Hajimirzaee, Esq.; mhajimirzaee@wwhgd.com
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Attorneys for Defendants

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


CLERK OF THE COURT

ORDR
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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.

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

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

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

8 3. NRS 18.110(1) provides that the party seeking costs must provide a memorandum of costs
9 setting forth the recoverable costs that have been necessarily incurred. The requirements of NRS
10 18.110(1) are not jurisdictional. *Eberle v. State ex rel. Redfield Trust*, 108 Nev. 587, 590, 836 P.2d
11 67, 69 (1992).

12 4. This Court has the discretion to determine the allowable costs under NRS 18.020. *Motor*
13 *Coach Indus., Inc. v. Khiabani by & through Rigaud*, 137 Nev. Adv. Op. 42, 493 P.3d 1007, 1017
14 (2021).

15 5. NRS 18.005(5) governs the recovery of expert witness fees. It provides, “Reasonable fees of
16 not more than five expert witnesses of not more than \$1,500 for each witness, unless the court allows
17 a larger fee after determining that the circumstances surrounding the expert’s testimony were of such
18 necessity as to require the larger fee.” In evaluating a request for expert fees over \$1,500 per witness,
19 this Court should “carefully evaluate a request for excess fees.” *Motor Coach Indus. v. Khiabani*, 492
20 P.3d at 1017. This Court should recognize the importance of expert witnesses and consider the factors
21 set forth in *Frazier v. Drake*, 131 Nev. 632, 650-51, 357 P.3d 365, 377-78 (Ct. App. 2015). Those
22 factors include: (1) the importance of the expert’s testimony to the case; (2) the degree that the expert
23 aided the jury in deciding the case; (3) whether the expert’s testimony was repetitive of other experts;
24 (4) the extent and nature of the work performed by the expert; (5) the amount of time the expert spent
25 in court, preparing a report, and testifying at trial; (6) the expert’s area of expertise; (7) the expert’s
26 education and training; (8) the fees charged by the expert; (9) the fees traditionally charged by the
27 expert on related matters; (10) comparable expert fees charged in similar cases; and (11) the fees that
28

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.

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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.

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13 itemized as follows:

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• 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

Las Vegas, NV 89118

(702) 938-3838

rgormley@wwhgd.com

Attorneys for Defendants

Matt Sharp <matt@mattsharplaw.com>

RE: Eskew v. Sierra

1 message

Gormley, Ryan <RGormley@wwhgd.com>

Mon, Jun 6, 2022 at 3:07 PM

To: Matt Sharp <matt@mattsharplaw.com>, "Roberts, Lee" <LRoberts@wwhgd.com>Cc: Doug Terry <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 | vCard

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

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**

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26 Marjan Hajimirzaee

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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
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;
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10 Defendant's Renewed Motion for Judgment as a Matter of Law filed on 5/16/2022 is
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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
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16 114 Nev. 690 (1998); *Century Sur. Co. v. Casino W., Inc.*, 130 Nev. 395 (2014); *Powell v. Liberty*
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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,

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15 Thomas H. Dupree Jr., Esq.

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

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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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9 Company Inc, Defendant(s)

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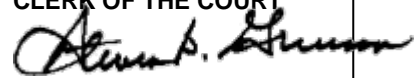
25 Marjan Hajimirzaee

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Douglas Terry	doug@dougterrylaw.com



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Doug Terry, Esq.
Admitted PHV
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(405) 463-6362
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 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 24th 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
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:

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

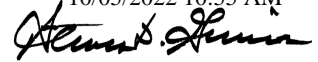
10 Thomas H. Dupree Jr., Esq.; TDupree@gibsondunn.com
11 GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036

12 *Attorneys for Defendants*

13 DATED this 24th day of October 2022.

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

EXHIBIT 1


CLERK OF THE COURT

ORDD

D. Lee Roberts, Jr., Esq.

lroberts@wwhgd.com

Nevada Bar No. 8877

Phillip N. Smith, Esq.

psmith@wwhgd.com

Nevada Bar No. 10233

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Nevada Bar No. 13494

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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
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.
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14 *v. H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249 (1998); *Allstate Ins. Co. v. Miller*, 125 Nev. 300
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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.

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1 **CSERV**

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4 CLARK COUNTY, NEVADA

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CASE NO: A-19-788630-C

7 vs.

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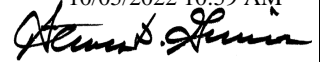
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Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

SANDRA L. ESKEW, as special administrator
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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
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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.

WEINBERG, WHEELER, HUDGINS,

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
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CLARK COUNTY, NEVADA

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6 Sandra Eskew, Plaintiff(s)

CASE NO: A-19-788630-C

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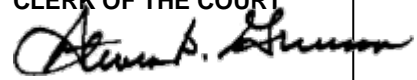
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Attorney for Plaintiffs

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 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 24th 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
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12 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
7 Phillip N. Smith, Esq.; psmith@wwhgd.com
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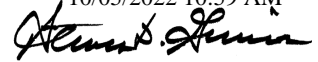
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11 GIBSON, DUNN & CRUTCHER LLP
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Washington, DC 20036

12 *Attorneys for Defendants*

13 DATED this 24th 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
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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15 Thomas H. Dupree Jr., Esq.

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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

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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 6th day of October 2022.

13 MATTHEW L. SHARP, LTD.

14
15 /s/ Matthew L. Sharp
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17 Nevada Bar No. 4746
18 432 Ridge Street
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20 (775) 324-1500
21 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 6th day of October 2022.

7 MATTHEW L. SHARP, LTD.
8

9 /s/ Matthew L Sharp

10 Matthew L. Sharp
11 Nevada Bar No.4746
12 432 Ridge Street
13 Reno, NV 89501
14 (775) 324-1500
15 matt@mattsharpplaw.com
16 Attorney 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
5 mail address noted below:

6 D. Lee Roberts, Jr. Esq.; lroberts@wwhgd.com
7 Phillip N. Smith, Esq.; psmith@wwhgd.com
8 Ryan T. Gormley, Esq.; rgormley@wwhgd.com
9 WEINBERG WHEELER HUDGINS GUNN & DIAL LLC
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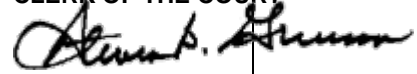
10 Thomas H. Dupree Jr., Esq.; TDupree@gibsondunn.com
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Washington, DC 20036

12 *Attorneys for Defendants*

13 DATED this 6th day of October 2022.

14
15
16 /s/ Cristin B. Sharp
An employee of Matthew L. Sharp, Ltd.

EXHIBIT 1



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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 1.¹

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.²

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28 ²Ex. 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 6th day of October 2022.

4
5 /s/ Matthew L. Sharp

6 MATTHEW L. SHARP, ESQ.
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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

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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.¹ 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.

¹ 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

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

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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.¹

¹ 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.² 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.

² 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.³ 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).

³ 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.⁴

⁴ 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)

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

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ORDER OF AFFIRMANCE¹

¹ 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.² 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.

² 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.”¹

¹ 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.² Thus, Blankenship did not adduce expert testimony regarding the curb.

² 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

From: Gormley, Ryan <RGormley@wwhgd.com>
Sent: Friday, September 16, 2022 4:03 PM
To: Sorensen, David <Dept04LC@clarkcountycourts.us>
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

[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>
Sent: Wednesday, September 14, 2022 2:54 PM
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,

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

From: Gormley, Ryan <RGormley@wwhgd.com>
Sent: Wednesday, August 31, 2022 4:35 PM
To: Sorensen, David <Dept04LC@clarkcountycourts.us>
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>
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 | [vCard](#)

From: Sorensen, David <Dept04LC@clarkcountycourts.us>
Sent: Tuesday, August 30, 2022 12:04 PM
To: 'suzy@mattsharplaw.com' <suzy@mattsharplaw.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>; Gormley, Ryan <RGormley@wwhgd.com>; 'Cristin Sharp' <cristin@mattsharplaw.com>; Everett, Tia <EverettT@clarkcountycourts.us>; 'Matt Sharp' <matt@mattsharplaw.com>
Subject: RE: A-19-788630-FCCO-Eskew vs. Sierra Health

This Message originated outside your organization.

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

From: suzy@mattsharplaw.com <suzy@mattsharplaw.com>
Sent: Tuesday, August 30, 2022 11:40 AM
To: Sorensen, David <Dept04LC@clarkcountycourts.us>
Cc: 'Deepak Gupta' <deepak@guptawessler.com>; 'Doug Terry' <doug@dougterrylaw.com>; 'Matthew Wessler' <matt@guptawessler.com>; 'Lee Roberts' <LRoberts@wwhgd.com>; 'Dupree Jr., Thomas H.' <TDupree@gibsondunn.com>; 'Ryan Gormley' <RGormley@wwhgd.com>; 'Cristin Sharp' <cristin@mattsharplaw.com>; Everett, Tia <EverettT@clarkcountycourts.us>; 'Matt Sharp' <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@mattsharplaw.com
(775) 324-1500
(775) 284-0675 fax

From: Sorensen, David <Dept04LC@clarkcountycourts.us>
Sent: Tuesday, August 30, 2022 8:31 AM
To: 'Matt Sharp' <matt@mattsharplaw.com>
Cc: Deepak Gupta <deepak@guptawessler.com>; Doug Terry <doug@dougterrylaw.com>; Matthew Wessler <matt@guptawessler.com>; Lee Roberts <LRoberts@wwhgd.com>; Dupree Jr., Thomas H. <TDupree@gibsondunn.com>; Ryan Gormley <RGormley@wwhgd.com>; Suzy Thompson <suzy@mattsharplaw.com>; Cristin Sharp <cristin@mattsharplaw.com>; Everett, Tia <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

From: Matt Sharp <matt@mattsharplaw.com>
Sent: Monday, August 29, 2022 8:56 PM
To: Sorensen, David <Dept04LC@clarkcountycourts.us>
Cc: Deepak Gupta <deepak@guptawessler.com>; Doug Terry <doug@dougterrylaw.com>; Matthew Wessler <matt@guptawessler.com>; Lee Roberts <LRoberts@wwhgd.com>; Dupree Jr., Thomas H. <TDupree@gibsondunn.com>; Ryan Gormley <RGormley@wwhgd.com>; Suzy Thompson <suzy@mattsharplaw.com>; Cristin Sharp <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
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 Motion 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: 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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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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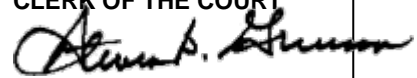
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IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

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 24th 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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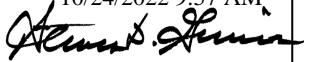
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12 *Attorneys for Defendants*

13 DATED this 24th 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 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

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

Kali Kull

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
15 case as listed below:

Service Date: 10/24/2022

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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. 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.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Insurance Tort

COURT MINUTES

August 15, 2019

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
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HEARD BY: Cory, Kenneth	COURTROOM: RJC Courtroom 16A
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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

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

**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

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

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

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

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)

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)

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

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

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

PRESENT:	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)

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

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.

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

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

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

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.

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

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 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

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

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

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 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

PRESENT:	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**

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

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

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. 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

PRESENT:	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

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. 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

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. 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

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

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

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. 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

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. 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

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.

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)
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August 11, 2022	3:00 AM	Minute Order	Plaintiff's Motion to Associate Counsel Depak Gupta, Esq.
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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.

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

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
Renewed Motion for
Judgment as a Matter
of Law**

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

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

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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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

Exhibit Number	Exhibit Description	Bates	Date Offered	Objection	Date Admitted
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),

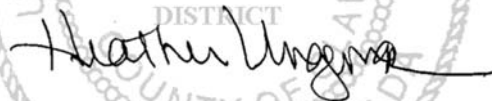
Case No: A-19-788630-C

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".

Heather Ungermann, Deputy Clerk
A-19-788630-C