## IN THE SUPREME COURT OF THE STATE OF NEVADA

KEON KHIABANI; ARIA KHIABANI; SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani, M.D. (Decedent), the Estate of Kayvan Khiabani, M.D. (Decedent); SIAMAK BARIN, as Executor of the Estate of Katayoun Barin, DDS (Decedent); and the Estate of Katayoun Barin, DDS (Decedent);<br>Plaintiffs,<br>vs.<br>Motor Coach Industries, Inc., Respondent.

Electronically Filed
No. 86417 May 112023 04:49 PM Elizabeth A. Brown Clerk of Supreme Court

## Docketing Statement 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 County Eighth

County Clark

Department $\underline{14}$
Judge Adriana Escobar

District Ct. Case No. A-17-755977-C

## 2. Attorney filing this docketing statement:

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Clients: KEON KHIABANI; ARIA KHIABANI; SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani, M.D. (Decedent), the Estate of Kayvan Khiabani, M.D. (Decedent); SIAMAK BARIN, as Executor of the Estate of Katayoun Barin, DDS (Decedent); and the Estate of Katayoun Barin, DDS (Decedent).

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):

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Client(s) Motor Coach Industries, Inc.

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

$\square$ Judgment after bench trial
■ Judgment after jury verdict
$\square$ Summary judgment
$\square$ Default judgment
$\square$ Grant/Denial of NRCP 60(b) relief
$\square$ Grant/Denial of injunction
$\square$ Grant/Denial of declaratory relief
$\square$ Review of agency determination
$\square$ Dismissal:
$\square$ Lack of jurisdiction
$\square$ Failure to state a claim
$\square$ Failure to prosecute
$\square$ Other (specify)
$\square$ Divorce Decree:
$\square$ Original
$\square$ Modification
$\square$ Other disposition (specify):
5. Does this appeal raise issues concerning any of the following? No.
$\square$ Child Custody
$\square$ Venue
$\square$ 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:

Motor Coach Industries, Inc. v. A.K., et al., Case No. 78701
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:

This is a strict product liability action arising from the death of Dr. Kayvan Khiabani, who was sucked underneath a motor coach while riding his bicycle on April 18, 2017. Dr. Khiabani's estate and heirs sued several defendants, including Motor Coach Industries, Inc. (MCI), the designer and manufacturer of the defective motor coach. Prior to trial, Plaintiffs settled with all Defendants except MCI. Following trial against MCI, the jury returned a verdict in favor of Plaintiffs. Based on the jury's verdict, the district court entered judgment in favor of Plaintiffs and denied MCI's post-trial motion to offset the judgment amount by any sums paid by the settling defendants. Among other issues, MCI appealed the judgment and the district court's order denying offset.

While the appeal was pending, the Nevada Supreme Court issued its opinion in J.E. Johns \& Assoc. v. Lindberg, 136 Nev.Adv.Op. 55, 470 P.3d 204 (2020), which addressed offsets under NRS 17.245(1)(a). Lindberg holds that: (i) when considering settlement offsets under NRS 17.245(1)(a), the relevant question is "whether both the settling and remaining defendants caused the same injury;" (ii) the statute does not permit "the reduction of the entire settlement amount obtained-without regard to the type of exposure resolved by the settling defendants...;" and (iii) offsets should not include any "portion of a settlement award that resolves a settling defendant's exposure beyond actual damages-such as treble or punitive damages-if such exposure is unique to the settling defendant." Id. at 208, 211 (citation omitted) (italics in original). In light of the new Lindberg decision,

Plaintiffs/Respondents acknowledged that the settlement proceeds paid by Defendant Michelangelo Leasing, Inc. resolved both its exposure to actual damages for the "same injury" caused by MCI, and its exposure beyond actual damages, including punitive damages, which were unique to Michelangelo.

In its decision on appeal, the Nevada Supreme Court affirmed the judgment and post-judgment orders as to all matters except the district court's order denying MCI's motion for offset. The Court reversed the judgment as to its amount and "remand[ed] to the district court to determine the amount of the offset to which MCI is entitled...."

On remand, the district court determined that Lindberg did not apply to its offset determination, that Lindberg is limited to cases involving a statutory entitlement to treble damages, and that Lindberg's express reference to punitive damages as another example of unique exposure beyond actual damages could be disregarded as dictum. In its order granting MCI's motion for offset, which Plaintiffs/Appellants now appeal, the district court reduced the judgment amount by the entire amounts paid by the settling defendants without regard to the type of exposure resolved by any of the settling defendants, including Michelangelo.
9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

1. Whether the district court erred by finding that J.E. Johns \& Assoc. v. Lindberg is limited to offset determinations in cases involving statutory rights to treble damages only, and that Lindberg does not apply when portions of the settlement resolve a settling defendant's exposure to other forms of unique damages, including punitive damages?
2. Whether the district court erred by determining that a settling defendant's liability must be adjudicated by the jury as a condition for calculating an offset under NRS 17.245(1)(a)?
3. Whether the district court erred by giving MCI credit for all settlement proceeds paid by the settling defendants, even though portions of those settlement proceeds resolved exposure beyond actual damages that were unique to the settling defendant?
4. Whether the district court abused its discretion by automatically deducting the entirety of Plaintiffs/Appellants' settlement award without considering the type of exposure resolved by the settling defendants or the makeup of the award in relation to the judgment against MCI?
5. Whether the district court erred by finding that Plaintiffs/Appellants were judicially estopped from seeking to apply Lindberg to the court's offset determination on remand, even though the Lindberg decision was issued while this case was on appeal.
6. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raise 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?
$\boxtimes \mathrm{N} / \mathrm{A}$
$\square$ Yes
$\square$ No
$\square$ If not, explain:
12. Other issues. Does this appeal involve any of the following issues?
$\square$ Reversal of well-settled Nevada precedent (identify the case(s))
$\square$ An issue arising under the United States and/or Nevada Constitutions
$\boxtimes \mathrm{A}$ substantial issue of first impression
®An issue of public policy
$\boxtimes A n$ issue where en banc consideration is necessary to maintain uniformity of this court's decisions
$\square$ A ballot question

## 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)(11) and NRAP 17(b)(5).
14. Trial. If this action proceeded to trial, how many days did the trial last?

23
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: March 16, 2023. (Exhibit " 1 ").

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

March 24, 2023. (Exhibit " 1 ").
Was service by:
$\square$ Delivery
凹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.

Date of Filing
$\square$ NRCP 52(b)
Date of Filing
-NRCP 59
Date of Filing
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. $\qquad$ , 245 P.3d 1190 (2010).
(b) Date of entry of written order resolving tolling motion
(c) Date written notice of entry of order resolving tolling motion was served

Was service by:
$\square$ Delivery
凹Mail/Electronic/Fax
19. Date notice of appeal filed: $4 / 12 / 23$ (Exhibit " 2 ")

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:

N/A
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)(1).
21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:
(a)
®NRAP 3A(b)(1) $\quad \square$ NRS 38.205
$\square$ NRAP 3A(b)(2) $\quad \square$ NRS 233B. 150
$\square$ NRAP 3A(b)(3)
$\square$ NRS 703.376
$\square$ Other (specify) NRAP 3A(b)(8) Special order where the Court miscalculated Defendant MCI's Offset of other settling Defendants.
(b) Explain how each authority provides a basis for appeal from the judgment or order:

This appeal is from a final judgment pursuant to NRAP 3A(b)(1).
The appeal is from the order concerning the offset of settlement proceeds paid by other defendants and granting costs are pursuant to NRAP 3A(b)(8).

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

(a) Parties:

Keon Khiabani
Aria Khiabani
Siamak Barin, as executor of the Estate of Kayvan Khiabani, M.D.
The Estate of Kayvan Khiabani, M.D.
Siamak Barin, as executor of the Estate of Katayoun Barin, DDS
The Estate of Katayoun Barin, DDS
Motor Coach Industries, 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:

Plaintiffs' claims against Michelangelo Leasing Inc. d/b/a Ryan's Express and Edward Hubbard were resolved with the August 22, 2018 'Stipulation and Order Dismissing Plaintiffs' Claims Against Defendants Michelangelo Leasing, Inc. and Edward Hubbard Only." (Exhibit " 3 ")

Plaintiffs' claims against Bell Sports, Inc. d/b/a Giro Sport Design were resolved with the October 17, 2018 "Stipulation and Order Dismissing Claims Against Defendant Bell Sports, Inc. Only." (Exhibit "4")

Plaintiffs' claims against SevenPlus Bicycles, Inc. d/b/a Pro Cyclery were resolved with the October 17, 2018 "Stipulation and Order Dismissing Plaintiffs' Claims Against Defendant SevenPlus Bicycles, Inc. Only." (Exhibit " 5 ")

## 23. Give a brief description ( $\mathbf{3}$ 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.

Plaintiffs filed their "Second Amended Complaint and Demand for Jury Trial" on November 17, 2017 for (1) strict liability: defective condition or failure to warn (MCI); (2) negligence (Ryan's Express and Edward Hubbard); (3) negligence per se (Ryan's Express and Edward Hubbard); (4) negligent training (Ryan's Express); (5) strict liability: defective condition or failure to warn (Giro and Pro Cyclery); (6) breach of implied warranty of fitness for a particular purpose (Giro and Pro Cyclery); (7) wrongful death of Kayvan Khiabani, MD (all defendants); and (8) wrongful death of Katayoun Barin, DDS (all defendants) (Exhibit " 6 ").

An order granting the motion to dismiss the wrongful death claim for Katayoun Barin was entered on January 31, 2019. (Exhibit "7")

The remaining claims against MCI were resolved by the April 18, 2018 Judgment (Exhibit " 8 ").

## 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?区Yes
$\square$ No

## 25. If you answered "No" to question 23, 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)?
$\square$ Yes
$\square$ 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?

## $\square$ Yes

$\square$ No
26. If you answered "No" to any part of question 24, 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.

Aria Khiabani, et al.
Name of appellant
May 11, 2023
Date
Clark County, Nevada
State and county where signed

Eric Pepperman
Name of counsel of record
/s/ Eric Pepperman
Signature of counsel of record

## CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May, 2023, the foregoing was filed electronically with the Nevada Supreme Court and served on the following through the electronic service system:

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## EXHIBIT 1

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## District Court

Clark County, Nevada

Keon Khiabani and Aria Khiabani, minors, by and through their guardian, MARIE-ClaUdE RIGAUD; SIAMAK BARIN, as executor of the EsTATE OF KAYVAN Khiabani, M.D., (Decedent); the Estate of Kayvan Khiabani, m.D. (Decedent); SIAMAK BARIN, as executor of the Estate of Katayoun Barin, Dds (Decedent); and the Estate of KATAYOUN BARIN, DDS (Decedent),

## Plaintiffs,

vs.
Motor Coach Industries, Inc., a Delaware corporation; MICHELANGELO LEASING Inc. d/b/a RyAN'S Express, an Arizona corporation; EdWARD HUBBARD, a Nevada resident; BELL Sports, Inc. d/b/a Giro Sport Design, a Delaware corporation; SEVENPLUS BICYCLES, INC. d/b/a Pro Cyclery, a Nevada
corporation, DOES 1 through 20; and RoE CORPORATIONS 1 through 20,

Defendants.

Case No. A-17-755977-C
Dept. No. 14

Notice of Entry of "Order Granting Defendant Motor Coach Industries, Inc.'s MOTION FOR OFFSET"

Please take notice that on the $16^{\text {th }}$ day of March, 2023, an "Order Granting Defendant Motor Coach Industries, Inc.'s Motion for Offset" was entered in this case. A copy of the order is attached.

Dated this 24th day of March, 2023.
Lewis Roca Rothgerber Christie llp

By /s/Joel D. Henriod
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Attorneys for Defendant
Motor Coach Industries, Inc.

## Certificate of Service

I hereby certify that on the 24th day of March, 2023, a true and correct copy of the foregoing Notice of Entry of Order was served by e-service, in accordance with the Electronic Filing Procedures of the Eight Judicial District Court.

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## DISTRICT COURT

 Clark County, NevadaKEON KHIABANI AN INDIVIDUAL; aria Khiabani, an individual;
SIAMAK BARIN, AS EXECUTOR OF THE ESTATE OF KAYVAN KHIABANI, M•D. (DECEDENT), THE ESTATE OF KAYVAN KHIABANI, M•D• (DECEDENT); SIAMAK BARIN, AS EXECUTOR OF THE ESTATE OF KATAYOUN BARIN, DDS (DECEDENT); and the estate of katayoun barin DDS (DECEDENT),

Plaintiffs,
vs.
Motor Coach industries, Inc. a DELAWARE CORPORATION: Michelangelo Leasing INC. D/b/a RYAN'S EXPRESS, AN ARIZONA CORPORATION; EDWARD HUBBARD, A NEVADA RESIDENT; BELL SPORTS INC. d/B/a GIRO SPORT DESIGN, A DELAWARE CORPORATION; SEVENPLUS BICYCLES, INC• D/B/a PRO CYCLERY, A NEVADA CORPORATION; DOES 1 THROUGH 20; and Roe corporations 1 THROUGH 20.

Defendants.

Case No. A-77-755977-C
Dept. No XIV
(PROPOSED)
Order granting defendant Motor COACH INDUSTRIES, INC.'S MOTION FOR OFFSET

Hearing Date: June 28, 2022 Hearing Time: 10:00 a.m.

Defendant Motor Coach Industries, Inc has moved the Court for an Offset of the settlement proceeds paid by other defendants in its Brief Regarding Offset filed December 13, 2021. In addition to this motion, the corresponding answering brief and responding brief, the Court also heard oral argument June 28, 2022, regarding the offset. The Court now, having considered the briefs and materials submitted by the parties, oral argument, and the record before the Court, the Court orders as follows:

## FINDINGS OF FACT

7. The decedent Dr. Khiabani died when his bicycle collided with a motor coach designed by defendant Motor Coach Industries, Inc. ("MCl"). Defendant Edward Hubbard was driving the vehicle for his employer, Michelangelo Leasing Inc. d/b/a Ryan's Express ("Michelangelo"), taking passengers from the airport to the Red Rock Casino Resort.
8. The plaintiff-heirs sued MCl, Michelangelo, and Hubbard, as well as the manufacturer and seller of the helmet that Dr. Khiabani was wearing at the time of the accident. The helmet was manufactured by Bell Sports, Inc. d/b/a Giro Sport Design. The helmet was sold by SevenPlus Bicycles, Inc. d/b/a Pro Cyclery,
9. In their operative Second Amended Complaint ("SAC"), Plaintiffs alleged the following claims: (i) Strict Liability: Defective Condition or Failure to Warn against Defendant MCI, (ii) Negligence against Defendants Michelangelo and Hubbard, (iii) Negligence per se against Defendants Michelangelo and Hubbard, (iv) Negligent Training Against Michelangelo, (v) Strict Liability: Defective Condition or Failure to Warn against Defendants Bell Sports and SevenPlus, and (vi) Breach of Implied Warranty of Fitness for a Particular Purpose against Defendants

Bell Sports and SevenPlus.
4. Plaintiffs' complaint also alleged claims for punitive damages. With respect to Michelangelo, Plaintiffs alleged that, "[i]n carrying out its responsibility to adequately hire and train its drivers, Michelangelo acted with fraud, malice, oppression, and/or conscious disregard of the safety of others." 11/17/17 SAC, 9162.
5. Prior to trial, Plaintiffs settled with everyone but MC1. In exchange for a full release of all possible claims and damages against the settling defendants, Plaintiffs received $\$ 5$ million from Michelangelo and Hubbard, \$100,000 from Bell Sports, and \$10,000 from SevenPlus Bicycles. The Court granted motions for good faith settlement determinations with respect to each settlement, and Plaintiffs' claims against MCl proceeded to trial in February 2018.
6. The $\$ 5$ million settlement proceeds from Michelangelo and Hubbard, were satisfied through Michelangelo's insurance. Although the settlement was reached in principle prior to trial, the $\$ 5$ million was not paid until approximately four months after trial. Plaintiffs actually received the settlement proceeds on August 13, 2018.
7. Following a several-week trial on Plaintiffs' claims against MCl , the jury returned a verdict in favor of Plaintiffs under their failure-towarn theory. The jury awarded compensatory damages in the amount of $\$ 18,746,003 \cdot 62$. The jury did not award any punitive damages against MCl. On April 17, 2018, the court entered judgment on the jury's verdict.
8. On June 6, 2018, MCl filed a motion to alter or amend the judgment. In its motion, MCl argued that the judgment amount should be offset by the $\$ 5,110,000 \cdot 00$ paid by the settling defendants
pursuant to NRS 17.245(1)(a) and NRS 41.141(3). Plaintiffs opposed the motion on grounds that product_manufacturers are ineligible to offset settlement proceeds from co-defendants. The Court denied the motion and did not offset the judgment by any amounts paid by the settling defendants.
9. On April 24, 2019, MCl filed an appeal. In its appeal, MCl challenged the judgment and several of the Court's rulings, including the order denying its motion to offset the judgment by the full $\$ 5,110,000 \cdot 00$ paid by the settling defendants.
10. On August 20, 2020, the Nevada Supreme Court issued its opinion in J.E. Johns \& Assoc. v. Lindberg, 136 Nev.Adv.Op. 55, 470 P.3d 204 (2020). The Lindberg opinion was issued after briefing on MCl's appeal was completed but before oral arguments.
11. On March 1, 2021, the Nevada Supreme Court heard oral arguments on MCl's appeal. During oral arguments, Plaintiffs conceded that the "same injury" underlies their claims against both the settling and nonsettling defendants and, therefore, NRS 17•245(1)(a) applied to offset their judgment as to MCl under Lindberg. Plaintiffs also argued that Lindberg applied to the offset calculation as well because the settlement proceeds resolved Defendants' exposure to damages that were beyond actual damages and unique to the settling defendants.
12. On August 19, 2021, the Nevada Supreme Court issued its en banc decision in this case. The Supreme Court concluded as follows:

The district court properly denied the motions for judgment as a matter of law, for a new trial, and to retax costs, and we affirm the judgment and post-judgment orders as to those matters. However, the district court incorrectly denied the motion to alter or amend the judgment to offset the
settlement proceeds paid by other defendants. We therefore reverse the judgment as to its amount and remand to the district court to determine the amount of the offset to which MCl is entitled and enter a corrected judgment thereon. Motor Coach Indus:, Inc. v. Khiabani by \& through Rigaud, 137 Nev. Adv. Op. 42, 493 P.3d 1007, 1017 (2021).
13. The amount of the offset also affects the calculation of interest on the judgment. On December 13, 2021, the parties filed simultaneous briefs on these two issues-the amount of the offset and the calculation of interest. On January 20, 2022, the parties filed simultaneous answering briefs. A hearing was held on June 28, 2022.

## CONCLUSIONS OF LAW

## $1 \cdot$

## THE OFFSET UNDER NRS 17.245

14. NRS 17.245(1)(a) provides as follows:
15. When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death: (a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater...
16. In J.E. Johns \& Assoc. v. Lindberg, $136 \mathrm{Nev} \cdot \mathrm{Adv} \cdot \mathrm{Op} \cdot 55$, 470 P.3d 204, 208 (2020), the Nevada Supreme Court recently addressed the application of NRS 17.245(1)(a).
17. In Lindberg, an aggrieved home buyer sued both the home sellers and the real estate agents of both parties. "The Lindbergs specifically alleged that the sellers violated their statutory disclosure obligation under NRS 113•130, for which NRS 113•150(4) permits the



recovery of treble damages, and that the sellers' agents and the Lindbergs' agents violated their statutory duties of disclosure pursuant to NRS 645.252, which gave rise to a cause of action under NRS 645.257 to recover their actual damages. ld. at 206. Before trial, "the Lindbergs settled with the sellers for $\$ 50,000$ and with the Lindbergs' agents for \$7,500." ld.
18. Following a three-day bench trial against the remaining defendants (the sellers' agents), "the district court awarded the Lindbergs $\$ 27,663.95$ in damages-the cost of installing the proper-sized septic system [] pursuant to NRS 645.257." ld. "The district court also awarded $\$ 48,116.84$ in attorney fees and costs, plus interest, for a total award of $\$ 75,780 \cdot 79 \cdot "$ ld at 207.
19. "The sellers' agents then filed an NRCP 59(e) motion to amend or alter the judgment," which was granted in part. 1d. The district court reasoned that "NRS 17.245(1)(a) entitled the sellers" agents to offset the judgment by the settlement amounts, 'finding that all defendants, settling and remaining, were responsible for the same injury.'" ld. Following a hearing on the proper calculation of the offset, "the district court offset the $\$ 27,552.95$ award [to fix the septic tank] by the entire settlement amount paid by the Lindbergs' agents ( $\$ 7,500$ ), and by one-third of the settlement amount paid by the sellers $(\$ 50,000 \times 1 / 3=\$ 16,650)$ in recognition that the Lindbergs 'would be entitled to treble damages against the sellers associated with any claim established under NRS 113.250.'" ld at 210 .
20. Both parties appealed, claiming "that the district erred in determining the amount to be offset from the original judgment under NRS 17.245(1)(a). ld. at 207. The Lindbergs argued that NRS
KEMP JONES, LLP
17.245(1)(a) did not apply to offset the judgment "because the statute requires a finding of joint tortfeasor liability for all defendants for the same injury." ld. "The sellers' agents challenge[d] the district court's offset calculation, arguing that the district court erred by failing to offset the judgment by the full amount paid by the sellers'" ld.
21. In rejecting the Lindbergs' argument, the Nevada Supreme Court held that "NRS 17.245(1)(a) does not require that a party be found liable." ld at 208 (quotation omitted). "Instead, as the district court properly determined, the relevant question governing the applicability of NRS 17.245(1)(a) for the purposes of settlement offsets is whether both the settling and remaining defendants caused the same injury. ld. (Citation omitted) (italics in original). "To provide additional guidance, [the Supreme Court echo[ed] the district court's reasoning to further hold that independent causes of action, multiple legal theories, or facts unique to each defendant do not foreclose a determination that both the settling and nonsettling defendants bear responsibility for the same injury pursuant to NRS 17•245(1)(a)•" ld (Citation omitted) (italics in original). Because the district court's "same injury" finding was supported by substantial evidence, the Supreme Court affirmed the application of NRS 17.245(1)(a) in Lindberg. ld. at 210.
22. "Having concluded that the district court properly determined that NRS 17.245(1)(a) applie[d] to offset the Lindbergs' judgment as to the sellers' agents, [the Supreme Court next] consider[ed] whether the district court appropriately calculated the offset amount•" ld. "Whether NRS 17.245(1)(a) requires district courts to automatically deduct the entirety of a settlement award, without considering the makeup of the award in relation to the judgment against
the nonsettling defendants, present[ed] a question of law that [the Court] review[ed] de novo." ld. (Citation omitted). On this issue, the Nevada Supreme Court found as follows:

While the plain language of the statute could be interpreted as permitting the reduction of the entire settlement amount obtained-without regard to the type of exposure resolved by the settling defendants-we reason that such an interpretation violates the spirit of NRS 17.245(1)(a). (Citation omitted) (italics in original). The principal purpose of equitable settlement offsets under the statute is to prevent double recovery to the plaintiff-or in other words, to guard against windfalls.
Because the principal purpose of equitable settlement offsets is to avoid windfalls, we determine that it would be inconsistent with the legislative intent of NRS 17.245(1)(a) to then permit the blanket deduction of entire settlement amounts without scrutinizing the allocation of damages awarded therein. Specifically, actual damages "redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct." Cooper Indus', Inc. vLeatherman Tool Grp; Inc: 532 U.S. 424, 432, 121 S.Ct. 1678, 149 L•Ed•2d 674 (2001); see also Actual Damages, Black's Law Dictionary (11th ed- 2019) (defining "actual damages" as those "that repay actual losses"). Treble damages, on the other hand, represent "[d]amages that, by statute, are three times the amount of actual damages that the fact-finder determines is owed•" Treble Damages, Black's Law Dictionary (17th ed. 2019). Thus, ensuring that a plaintiff does not recover twice for the same injury does not mean that a plaintiff should otherwise be precluded from receiving the portion of a settlement award that resolves a
settling defendant's exposure beyond actual damages-such as treble or punitive damages - if such exposure is unique to the settling defendant. Cf. Mobil Oil Corp. v. Ellender, 968 S.W.2d 917, 927 (Tex. 1998) (explaining that a nonsettling defendant "cannot receive credit for settlement amounts representing punitive damages" due to their individual nature). To conclude otherwise would penalize the plaintiff, while granting a windfall to the nonsettling defendant. Id at 210-11.
22. On remand, there is no dispute that $M C l$ is entitled to an offset under NRS 17.245(1)(a), but the parties disagree over the application of Lindberg and the proper calculation of the offset amount.
23. Plaintiffs contend that Lindberg applies to the court's offset calculation in this case. See Plaintiffs' 12/13/21 Brief Regarding Offset, 2:5-3:24. They argue that, in paying the $\$ 5$ million settlement amount, Michelangelo and Hubbard resolved their exposure to damages beyond actual damages that are unique to Michelangelo and/or Hubbard. Id at 3:25-4:26. Specifically, "the principal settling defendant (Michelangelo) paid $\$ 5$ million to settle the compensatory and punitive damages claims asserted against it." ld. at 3:26-27. Plaintiffs also served offers of judgment on each of the settling defendants. Plaintiffs' 1/20/22 Ans. Brief, 4:3-4. This created an additional "exposure" to an award of attorneys' fees, which was also resolved as part of the settlement payment. Id at 4:4-5. This attorneys' fees "exposure" was unique to the settling defendants, as Plaintiffs did not serve an offer of judgment on MCl. Id. at 4:5-6. As in Lindberg, Plaintiffs contend that the offset calculation in this case should account for the resolution of
this exposure to punitive damages and attorneys' fees, as these damages are beyond actual damages and unique to Michelangelo and/or Hubbard. ld at 4:8-9.
24. MCl argues that lindberg does not apply here because the Lindberg case involved "a statutory entitlement to treble damages." MCl's 12/13/21 Brief Re Offset, 8:16-17. MCI contends that, unlike statutory treble damages, "the allowance or denial of exemplary or punitive damages rests entirely in the discretion of the trier of fact." ld. at 9:6-7, citing Evans v. Dean Witter Reynolds, Inc., 116 Nev. 598, 5 P.3d 1043 (2000). MCl asserts that the Nevada Supreme Court did not instruct this court to calculate the offset under Lindberg but rather "unambiguously directed the court to offset all the settlement proceeds." ld. at 6:25-26.
25. The court agrees with MCl . Lindberg does not apply, and the judgment will be offset by the entirety of the $\$ 5,110,000 \cdot 00$ in settlement proceeds. In Lindberg, there was a clear statute that allowed for treble damages. And here, that is not the case. In this court's view, the Lindberg case was not about punitive damages, and any discussion about punitive damages was dictum.
26. In this case, the jury found no punitive damages. Without the jury making a finding of punitive damages, the settling Defendants cannot be charged with punitive damages absent a settlement that specifies the amount. When an insurance policy pays an award, the settlement generally does not include an apportionment for punitive liability on behalf of their insured. The court has not seen any fact or case law that would warrant finding punitive damages against the settling defendants in this case, as that would be in the area of the jury or
finder of fact, and that did not happen here.
27. MCl also argues that "Plaintiffs are judicially estopped from alleging that Hubbard acted with conscious disregard of danger" because they presented evidence that Hubbard would have taken actions to avoid the accident if warned about the motor coach's air displacement. MCl's 12/13/21 Brief Regarding Offset, 13:14-19. Plaintiffs respond that the punitive damages exposure was based on Michelangelo's "corporate misconduct in driver screening and driver training-not on Hubbard's actions." 1/20/22 Ans. Brief, 5:10-11.
28. The Court agrees with MC1. Judicial estoppel prevents a party from taking inconsistent positions when "the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true)." In re Frei Irrevocable Tr. Dated Oct. 29, 1996, 133 Nev. 50, 390 P.3d 646, 652 (2017) (emphasis added). The court does not have to formally "adopt" the party's argument before judicial estoppel applies. See id. Plaintiffs are judicially estopped from alleging that the settling Defendant's conduct justified punitive damages based on their previous representation to the court and the orders procured from this court.
/ / /
/ / /

## 11.

## Interest Calculation Following Application of Offset

29. The prejudgment interest must be calculated following proper allocation of the settlement proceeds. By defendant's calculation, the correct amount of prejudgment interest is $\$ 182,826.85$ as detailed
below.
The Offset is applied to the verdict before Prejudgment interest is Calculated
30. For the purpose of calculating interest, Plaintiffs argued that the offset should be applied as of the date in which the settlement payments were actually received (August 13, 2018). MCl argued that the offset should be deducted as of the date of judgment and prior to the calculation of prejudgment interest, even though Plaintiffs did not receive the settlement proceeds until several months later.
31. In Nevada, prejudgment interest is calculated after settlement proceeds are deducted from jury's assessment of compensatory damages. Ramadanis v. Stupak, $107 \mathrm{Nev} \cdot 22,23-24,805 \mathrm{P} \cdot 2 \mathrm{~d}$ 65, 65-66 (1991); c.f. NRS 47.141(3) (directing the court to subtract settlement proceeds "the net sum otherwise recoverable by the plaintiff pursuant to the general and special verdicts," without reference prejudgment interest). Settlements with co-defendants are not presumed to include both principal and interest to date of settlement. Ramadanis, 107 Nev . at 23-24, 805 P.2d at 65-66.
32. Additionally, under Nevada law, the appropriate amount of the punitive damages under NRS 42.005 can only be calculated using the net compensatory damages following the offset. Coughlin, 879 F. Supp. at 1051 ("[T]he language 'compensatory damages awarded' in the punitive damages statute refers to the reduced [i.e•, after-offset,] compensatory damages award Plaintiff . . . is to receive according to Nevada's comparative negligence statute[, NRS 41.141(3)].").

## Apportionment of Offset

33. Plaintiffs' past compensatory damages were $\$ 4,546,003 \cdot 62$.

The pro rata share of the $\$ 5$ million offset attributable to those damages $(24 \cdot 25 \%)^{1}$ is $\$ 1,239,175 \cdot 00$ bringing the award of past compensatory damages to $\$ 3,306,828 \cdot 62$, on which prejudgment interest accrued.
34. Plaintiffs' future compensatory damages were $\$ 14,200,000 \cdot 00$. The pro rata share of the $\$ 5$ million offset attributable to those damages ( $75.75 \%)^{2}$ is $\$ 3,870,825.00$ bringing the award of future compensatory damages to $\$ 10,329,175 \cdot 00$. Calculation of Prejudgment Interest
35. The amount of prejudgment interest awardable to plaintiff is $\$ 182,826 \cdot 85$. That represents interest on Plaintiffs' past compensatory damages of $\$ 3,306,828.62$ at the statutory rate of $5.75 \%$ from June 1, 2017 through June 30, 2017 for a total of $\$ 15,628 \cdot 16$; the statutory rate of 6.25\% from July 7, 2017 through December 31, 2017 for a total of $\$ 104,187.75$; the statutory rate of $6.50 \%$ from January 1, 2018 through April 17, 2018 for a total of $\$ 63,010 \cdot 94$.
/ / /
/ / /
${ }^{1}$ Of the total $\$ 18,746,003.62$ in compensatory damages found by the jury, the past damages to plaintiffs $(\$ 4,546,003.62)$ account for $\% 24.25$.
${ }^{2}$ Of the total $\$ 18,746,003.62$ in compensatory damages found by the jury, the future damages to plaintiffs ( $\$ 14,200,000.00$ ) account for $\% 75.75$.

## ORDER

7. It is therefore ORDERED that the judgment will be offset by $\$ 5,110,000$ million.
8. It is further ORDERED that the amount of prejudgment interest awardable to plaintiff is $\$ 182,826 \cdot 85$.

IT IS SO ORDERED.

Submitted by:

## 1s/ Eric Pepperman

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Dated this 16 th day of March, 2023


109 28D F090 04C5
Adriana Escobar
District Court Judge
Disapproved as to form and content by:
/s/ Joel Henriod

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CSERV

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

| Keon Khiabani, Plaintiff(s) | CASE NO: A-17-755977-C |
| :--- | :--- |
| vs. | DEPT. NO. Department 14 |
| Motor Coach Industries Inc, <br> Defendant(s) |  |

## AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District 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:

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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 3/17/2023

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DIStrict Court<br>Clark County, Nevada

KEON KHIABANI, an individual; ARIA KHIABANI, an individual; SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani, M.D. (Decedent), the Estate of Kayvan Khiabani, M.D. (Decedent);
SIAMAK BARIN, as Executor of the Estate of Katayoun Barin, DDS (Decedent); and the Estate of Katayoun Barin, DDS (Decedent);

Plaintiffs,
$v s$.
Motor Coach Industries, Inc., a DELAWARE CORPORATION; Michelangelo Leasing Inc. D/B/A RYAN'S EXPRESS, AN ARIZONA corporation; Edward Hubbard, a Nevada Resident; Bell Sports Inc. D/B/a Giro Sport Design, a Delaware corporation; SEVENPLUS BICYCLES, Inc. D/B/a PRo CYCLERY, A NEVADA CORPORATION; DOES 1 THROUGH 20; AND Roe Corporations 1 through 20.

Defendants.

Case No. A-17-755977-C
Dept. No. XIV

## NOTICE OF APPEAL

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## NOTICE OF APPEAL

Please take notice that Plaintiffs hereby appeal to the Supreme Court of Nevada from:

1. The district court's March 16, 2023 Order Granting Defendant Motor Coach Industries, Inc.'s Motion for Offset. A Notice of Entry of Order was filed on March 24, 2023, and is attached as Exhibit "1."
2. Any judgments, rulings, and/or interlocutory orders made appealable by the foregoing.

DATED this 12th day of April, 2023.
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## CERTIFICATE OF SERVICE

I hereby certify that on the 12 th day of April, 2023, I served a true and correct copy of the foregoing Notice of Appeal via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.
/s/ Maria T. San Juan
An Employee of KEMP JONES, LLP

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## District Court

Clark County, Nevada

Keon Khiabani and Aria Khiabani, minors, by and through their guardian, MARIE-ClaUdE RIGAUD; SIAMAK BARIN, as executor of the EsTATE OF KAYVAN Khiabani, M.D., (Decedent); the Estate of Kayvan Khiabani, m.D. (Decedent); SIAMAK BARIN, as executor of the Estate of Katayoun Barin, Dds (Decedent); and the Estate of KATAYOUN BARIN, DDS (Decedent),

## Plaintiffs,

vs.
Motor Coach Industries, Inc., a Delaware corporation; MICHELANGELO LEASING Inc. d/b/a RyAN'S Express, an Arizona corporation; EdWARD HUBBARD, a Nevada resident; BELL Sports, Inc. d/b/a Giro Sport Design, a Delaware corporation; SEVENPLUS BICYCLES, INC. d/b/a Pro Cyclery, a Nevada
corporation, DOES 1 through 20; and RoE CORPORATIONS 1 through 20,

Defendants.

Case No. A-17-755977-C
Dept. No. 14

Notice of Entry of "Order Granting Defendant Motor Coach Industries, Inc.'s MOTION FOR OFFSET"

Please take notice that on the $16^{\text {th }}$ day of March, 2023, an "Order Granting Defendant Motor Coach Industries, Inc.'s Motion for Offset" was entered in this case. A copy of the order is attached.

Dated this 24th day of March, 2023.
Lewis Roca Rothgerber Christie llp

By /s/Joel D. Henriod
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## Certificate of Service

I hereby certify that on the 24th day of March, 2023, a true and correct copy of the foregoing Notice of Entry of Order was served by e-service, in accordance with the Electronic Filing Procedures of the Eight Judicial District Court.

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## DISTRICT COURT

 Clark County, NevadaKEON KHIABANI AN INDIVIDUAL; aria Khiabani, an individual;
SIAMAK BARIN, AS EXECUTOR OF THE ESTATE OF KAYVAN KHIABANI, M•D. (DECEDENT), THE ESTATE OF KAYVAN KHIABANI, M•D• (DECEDENT); SIAMAK BARIN, AS EXECUTOR OF THE ESTATE OF KATAYOUN BARIN, DDS (DECEDENT); and the estate of katayoun barin DDS (DECEDENT),

Plaintiffs,
vs.
Motor Coach industries, Inc. a DELAWARE CORPORATION: Michelangelo Leasing INC. D/b/a RYAN'S EXPRESS, AN ARIZONA CORPORATION; EDWARD HUBBARD, A NEVADA RESIDENT; BELL SPORTS INC. d/B/a GIRO SPORT DESIGN, A DELAWARE CORPORATION; SEVENPLUS BICYCLES, INC• D/B/a PRO CYCLERY, A NEVADA CORPORATION; DOES 1 THROUGH 20; and Roe corporations 1 THROUGH 20.

Defendants.

Case No. A-77-755977-C
Dept. No XIV
(PROPOSED)
Order granting defendant Motor COACH INDUSTRIES, INC.'S MOTION FOR OFFSET

Hearing Date: June 28, 2022 Hearing Time: 10:00 a.m.

Defendant Motor Coach Industries, Inc has moved the Court for an Offset of the settlement proceeds paid by other defendants in its Brief Regarding Offset filed December 13, 2021. In addition to this motion, the corresponding answering brief and responding brief, the Court also heard oral argument June 28, 2022, regarding the offset. The Court now, having considered the briefs and materials submitted by the parties, oral argument, and the record before the Court, the Court orders as follows:

## FINDINGS OF FACT

7. The decedent Dr. Khiabani died when his bicycle collided with a motor coach designed by defendant Motor Coach Industries, Inc. ("MCl"). Defendant Edward Hubbard was driving the vehicle for his employer, Michelangelo Leasing Inc. d/b/a Ryan's Express ("Michelangelo"), taking passengers from the airport to the Red Rock Casino Resort.
8. The plaintiff-heirs sued MCl, Michelangelo, and Hubbard, as well as the manufacturer and seller of the helmet that Dr. Khiabani was wearing at the time of the accident. The helmet was manufactured by Bell Sports, Inc. d/b/a Giro Sport Design. The helmet was sold by SevenPlus Bicycles, Inc. d/b/a Pro Cyclery,
9. In their operative Second Amended Complaint ("SAC"), Plaintiffs alleged the following claims: (i) Strict Liability: Defective Condition or Failure to Warn against Defendant MCI, (ii) Negligence against Defendants Michelangelo and Hubbard, (iii) Negligence per se against Defendants Michelangelo and Hubbard, (iv) Negligent Training Against Michelangelo, (v) Strict Liability: Defective Condition or Failure to Warn against Defendants Bell Sports and SevenPlus, and (vi) Breach of Implied Warranty of Fitness for a Particular Purpose against Defendants

Bell Sports and SevenPlus.
4. Plaintiffs' complaint also alleged claims for punitive damages. With respect to Michelangelo, Plaintiffs alleged that, "[i]n carrying out its responsibility to adequately hire and train its drivers, Michelangelo acted with fraud, malice, oppression, and/or conscious disregard of the safety of others." 11/17/17 SAC, 9162.
5. Prior to trial, Plaintiffs settled with everyone but MC1. In exchange for a full release of all possible claims and damages against the settling defendants, Plaintiffs received $\$ 5$ million from Michelangelo and Hubbard, \$100,000 from Bell Sports, and \$10,000 from SevenPlus Bicycles. The Court granted motions for good faith settlement determinations with respect to each settlement, and Plaintiffs' claims against MCl proceeded to trial in February 2018.
6. The $\$ 5$ million settlement proceeds from Michelangelo and Hubbard, were satisfied through Michelangelo's insurance. Although the settlement was reached in principle prior to trial, the $\$ 5$ million was not paid until approximately four months after trial. Plaintiffs actually received the settlement proceeds on August 13, 2018.
7. Following a several-week trial on Plaintiffs' claims against MCl , the jury returned a verdict in favor of Plaintiffs under their failure-towarn theory. The jury awarded compensatory damages in the amount of $\$ 18,746,003 \cdot 62$. The jury did not award any punitive damages against MCl. On April 17, 2018, the court entered judgment on the jury's verdict.
8. On June 6, 2018, MCl filed a motion to alter or amend the judgment. In its motion, MCl argued that the judgment amount should be offset by the $\$ 5,110,000 \cdot 00$ paid by the settling defendants
pursuant to NRS 17.245(1)(a) and NRS 41.141(3). Plaintiffs opposed the motion on grounds that product_manufacturers are ineligible to offset settlement proceeds from co-defendants. The Court denied the motion and did not offset the judgment by any amounts paid by the settling defendants.
9. On April 24, 2019, MCl filed an appeal. In its appeal, MCl challenged the judgment and several of the Court's rulings, including the order denying its motion to offset the judgment by the full $\$ 5,110,000 \cdot 00$ paid by the settling defendants.
10. On August 20, 2020, the Nevada Supreme Court issued its opinion in J.E. Johns \& Assoc. v. Lindberg, 136 Nev.Adv.Op. 55, 470 P.3d 204 (2020). The Lindberg opinion was issued after briefing on MCl's appeal was completed but before oral arguments.
11. On March 1, 2021, the Nevada Supreme Court heard oral arguments on MCl's appeal. During oral arguments, Plaintiffs conceded that the "same injury" underlies their claims against both the settling and nonsettling defendants and, therefore, NRS 17•245(1)(a) applied to offset their judgment as to MCl under Lindberg. Plaintiffs also argued that Lindberg applied to the offset calculation as well because the settlement proceeds resolved Defendants' exposure to damages that were beyond actual damages and unique to the settling defendants.
12. On August 19, 2021, the Nevada Supreme Court issued its en banc decision in this case. The Supreme Court concluded as follows:

The district court properly denied the motions for judgment as a matter of law, for a new trial, and to retax costs, and we affirm the judgment and post-judgment orders as to those matters. However, the district court incorrectly denied the motion to alter or amend the judgment to offset the
settlement proceeds paid by other defendants. We therefore reverse the judgment as to its amount and remand to the district court to determine the amount of the offset to which MCl is entitled and enter a corrected judgment thereon. Motor Coach Indus:, Inc. v. Khiabani by \& through Rigaud, 137 Nev. Adv. Op. 42, 493 P.3d 1007, 1017 (2021).
13. The amount of the offset also affects the calculation of interest on the judgment. On December 13, 2021, the parties filed simultaneous briefs on these two issues-the amount of the offset and the calculation of interest. On January 20, 2022, the parties filed simultaneous answering briefs. A hearing was held on June 28, 2022.

## CONCLUSIONS OF LAW

## $1 \cdot$

## THE OFFSET UNDER NRS 17.245

14. NRS 17.245(1)(a) provides as follows:
15. When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death: (a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater...
16. In J.E. Johns \& Assoc. v. Lindberg, $136 \mathrm{Nev} \cdot \mathrm{Adv} \cdot \mathrm{Op} \cdot 55$, 470 P.3d 204, 208 (2020), the Nevada Supreme Court recently addressed the application of NRS 17.245(1)(a).
17. In Lindberg, an aggrieved home buyer sued both the home sellers and the real estate agents of both parties. "The Lindbergs specifically alleged that the sellers violated their statutory disclosure obligation under NRS 113•130, for which NRS 113•150(4) permits the



recovery of treble damages, and that the sellers' agents and the Lindbergs' agents violated their statutory duties of disclosure pursuant to NRS 645.252, which gave rise to a cause of action under NRS 645.257 to recover their actual damages. ld. at 206. Before trial, "the Lindbergs settled with the sellers for $\$ 50,000$ and with the Lindbergs' agents for \$7,500." ld.
18. Following a three-day bench trial against the remaining defendants (the sellers' agents), "the district court awarded the Lindbergs $\$ 27,663.95$ in damages-the cost of installing the proper-sized septic system [] pursuant to NRS 645.257." ld. "The district court also awarded $\$ 48,116.84$ in attorney fees and costs, plus interest, for a total award of $\$ 75,780 \cdot 79 \cdot "$ ld at 207.
19. "The sellers' agents then filed an NRCP 59(e) motion to amend or alter the judgment," which was granted in part. 1d. The district court reasoned that "NRS 17.245(1)(a) entitled the sellers" agents to offset the judgment by the settlement amounts, 'finding that all defendants, settling and remaining, were responsible for the same injury.'" ld. Following a hearing on the proper calculation of the offset, "the district court offset the $\$ 27,552.95$ award [to fix the septic tank] by the entire settlement amount paid by the Lindbergs' agents ( $\$ 7,500$ ), and by one-third of the settlement amount paid by the sellers $(\$ 50,000 \times 1 / 3=\$ 16,650)$ in recognition that the Lindbergs 'would be entitled to treble damages against the sellers associated with any claim established under NRS 113.250.'" ld at 210 .
20. Both parties appealed, claiming "that the district erred in determining the amount to be offset from the original judgment under NRS 17.245(1)(a). ld. at 207. The Lindbergs argued that NRS
KEMP JONES, LLP
17.245(1)(a) did not apply to offset the judgment "because the statute requires a finding of joint tortfeasor liability for all defendants for the same injury." ld. "The sellers' agents challenge[d] the district court's offset calculation, arguing that the district court erred by failing to offset the judgment by the full amount paid by the sellers'" ld.
21. In rejecting the Lindbergs' argument, the Nevada Supreme Court held that "NRS 17.245(1)(a) does not require that a party be found liable." ld at 208 (quotation omitted). "Instead, as the district court properly determined, the relevant question governing the applicability of NRS 17.245(1)(a) for the purposes of settlement offsets is whether both the settling and remaining defendants caused the same injury. ld. (Citation omitted) (italics in original). "To provide additional guidance, [the Supreme Court echo[ed] the district court's reasoning to further hold that independent causes of action, multiple legal theories, or facts unique to each defendant do not foreclose a determination that both the settling and nonsettling defendants bear responsibility for the same injury pursuant to NRS 17•245(1)(a)•" ld (Citation omitted) (italics in original). Because the district court's "same injury" finding was supported by substantial evidence, the Supreme Court affirmed the application of NRS 17.245(1)(a) in Lindberg. ld. at 210.
22. "Having concluded that the district court properly determined that NRS 17.245(1)(a) applie[d] to offset the Lindbergs' judgment as to the sellers' agents, [the Supreme Court next] consider[ed] whether the district court appropriately calculated the offset amount•" ld. "Whether NRS 17.245(1)(a) requires district courts to automatically deduct the entirety of a settlement award, without considering the makeup of the award in relation to the judgment against
the nonsettling defendants, present[ed] a question of law that [the Court] review[ed] de novo." ld. (Citation omitted). On this issue, the Nevada Supreme Court found as follows:

While the plain language of the statute could be interpreted as permitting the reduction of the entire settlement amount obtained-without regard to the type of exposure resolved by the settling defendants-we reason that such an interpretation violates the spirit of NRS 17.245(1)(a). (Citation omitted) (italics in original). The principal purpose of equitable settlement offsets under the statute is to prevent double recovery to the plaintiff-or in other words, to guard against windfalls.
Because the principal purpose of equitable settlement offsets is to avoid windfalls, we determine that it would be inconsistent with the legislative intent of NRS 17.245(1)(a) to then permit the blanket deduction of entire settlement amounts without scrutinizing the allocation of damages awarded therein. Specifically, actual damages "redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct." Cooper Indus', Inc. vLeatherman Tool Grp; Inc: 532 U.S. 424, 432, 121 S.Ct. 1678, 149 L•Ed•2d 674 (2001); see also Actual Damages, Black's Law Dictionary (11th ed- 2019) (defining "actual damages" as those "that repay actual losses"). Treble damages, on the other hand, represent "[d]amages that, by statute, are three times the amount of actual damages that the fact-finder determines is owed•" Treble Damages, Black's Law Dictionary (17th ed. 2019). Thus, ensuring that a plaintiff does not recover twice for the same injury does not mean that a plaintiff should otherwise be precluded from receiving the portion of a settlement award that resolves a
settling defendant's exposure beyond actual damages-such as treble or punitive damages - if such exposure is unique to the settling defendant. Cf. Mobil Oil Corp. v. Ellender, 968 S.W.2d 917, 927 (Tex. 1998) (explaining that a nonsettling defendant "cannot receive credit for settlement amounts representing punitive damages" due to their individual nature). To conclude otherwise would penalize the plaintiff, while granting a windfall to the nonsettling defendant. Id at 210-11.
22. On remand, there is no dispute that $M C l$ is entitled to an offset under NRS 17.245(1)(a), but the parties disagree over the application of Lindberg and the proper calculation of the offset amount.
23. Plaintiffs contend that Lindberg applies to the court's offset calculation in this case. See Plaintiffs' 12/13/21 Brief Regarding Offset, 2:5-3:24. They argue that, in paying the $\$ 5$ million settlement amount, Michelangelo and Hubbard resolved their exposure to damages beyond actual damages that are unique to Michelangelo and/or Hubbard. Id at 3:25-4:26. Specifically, "the principal settling defendant (Michelangelo) paid $\$ 5$ million to settle the compensatory and punitive damages claims asserted against it." ld. at 3:26-27. Plaintiffs also served offers of judgment on each of the settling defendants. Plaintiffs' 1/20/22 Ans. Brief, 4:3-4. This created an additional "exposure" to an award of attorneys' fees, which was also resolved as part of the settlement payment. Id at 4:4-5. This attorneys' fees "exposure" was unique to the settling defendants, as Plaintiffs did not serve an offer of judgment on MCl. Id. at 4:5-6. As in Lindberg, Plaintiffs contend that the offset calculation in this case should account for the resolution of
this exposure to punitive damages and attorneys' fees, as these damages are beyond actual damages and unique to Michelangelo and/or Hubbard. ld at 4:8-9.
24. MCl argues that lindberg does not apply here because the Lindberg case involved "a statutory entitlement to treble damages." MCl's 12/13/21 Brief Re Offset, 8:16-17. MCI contends that, unlike statutory treble damages, "the allowance or denial of exemplary or punitive damages rests entirely in the discretion of the trier of fact." ld. at 9:6-7, citing Evans v. Dean Witter Reynolds, Inc., 116 Nev. 598, 5 P.3d 1043 (2000). MCl asserts that the Nevada Supreme Court did not instruct this court to calculate the offset under Lindberg but rather "unambiguously directed the court to offset all the settlement proceeds." ld. at 6:25-26.
25. The court agrees with MCl . Lindberg does not apply, and the judgment will be offset by the entirety of the $\$ 5,110,000 \cdot 00$ in settlement proceeds. In Lindberg, there was a clear statute that allowed for treble damages. And here, that is not the case. In this court's view, the Lindberg case was not about punitive damages, and any discussion about punitive damages was dictum.
26. In this case, the jury found no punitive damages. Without the jury making a finding of punitive damages, the settling Defendants cannot be charged with punitive damages absent a settlement that specifies the amount. When an insurance policy pays an award, the settlement generally does not include an apportionment for punitive liability on behalf of their insured. The court has not seen any fact or case law that would warrant finding punitive damages against the settling defendants in this case, as that would be in the area of the jury or
finder of fact, and that did not happen here.
27. MCl also argues that "Plaintiffs are judicially estopped from alleging that Hubbard acted with conscious disregard of danger" because they presented evidence that Hubbard would have taken actions to avoid the accident if warned about the motor coach's air displacement. MCl's 12/13/21 Brief Regarding Offset, 13:14-19. Plaintiffs respond that the punitive damages exposure was based on Michelangelo's "corporate misconduct in driver screening and driver training-not on Hubbard's actions." 1/20/22 Ans. Brief, 5:10-11.
28. The Court agrees with MC1. Judicial estoppel prevents a party from taking inconsistent positions when "the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true)." In re Frei Irrevocable Tr. Dated Oct. 29, 1996, 133 Nev. 50, 390 P.3d 646, 652 (2017) (emphasis added). The court does not have to formally "adopt" the party's argument before judicial estoppel applies. See id. Plaintiffs are judicially estopped from alleging that the settling Defendant's conduct justified punitive damages based on their previous representation to the court and the orders procured from this court.
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/ / /

## 11.

## Interest Calculation Following Application of Offset

29. The prejudgment interest must be calculated following proper allocation of the settlement proceeds. By defendant's calculation, the correct amount of prejudgment interest is $\$ 182,826.85$ as detailed
below.
The Offset is applied to the verdict before Prejudgment interest is Calculated
30. For the purpose of calculating interest, Plaintiffs argued that the offset should be applied as of the date in which the settlement payments were actually received (August 13, 2018). MCl argued that the offset should be deducted as of the date of judgment and prior to the calculation of prejudgment interest, even though Plaintiffs did not receive the settlement proceeds until several months later.
31. In Nevada, prejudgment interest is calculated after settlement proceeds are deducted from jury's assessment of compensatory damages. Ramadanis v. Stupak, $107 \mathrm{Nev} \cdot 22,23-24,805 \mathrm{P} \cdot 2 \mathrm{~d}$ 65, 65-66 (1991); c.f. NRS 47.141(3) (directing the court to subtract settlement proceeds "the net sum otherwise recoverable by the plaintiff pursuant to the general and special verdicts," without reference prejudgment interest). Settlements with co-defendants are not presumed to include both principal and interest to date of settlement. Ramadanis, 107 Nev . at 23-24, 805 P.2d at 65-66.
32. Additionally, under Nevada law, the appropriate amount of the punitive damages under NRS 42.005 can only be calculated using the net compensatory damages following the offset. Coughlin, 879 F. Supp. at 1051 ("[T]he language 'compensatory damages awarded' in the punitive damages statute refers to the reduced [i.e•, after-offset,] compensatory damages award Plaintiff . . . is to receive according to Nevada's comparative negligence statute[, NRS 41.141(3)].").

## Apportionment of Offset

33. Plaintiffs' past compensatory damages were $\$ 4,546,003 \cdot 62$.

The pro rata share of the $\$ 5$ million offset attributable to those damages $(24 \cdot 25 \%)^{1}$ is $\$ 1,239,175 \cdot 00$ bringing the award of past compensatory damages to $\$ 3,306,828 \cdot 62$, on which prejudgment interest accrued.
34. Plaintiffs' future compensatory damages were $\$ 14,200,000 \cdot 00$. The pro rata share of the $\$ 5$ million offset attributable to those damages ( $75.75 \%)^{2}$ is $\$ 3,870,825.00$ bringing the award of future compensatory damages to $\$ 10,329,175 \cdot 00$. Calculation of Prejudgment Interest
35. The amount of prejudgment interest awardable to plaintiff is $\$ 182,826 \cdot 85$. That represents interest on Plaintiffs' past compensatory damages of $\$ 3,306,828.62$ at the statutory rate of $5.75 \%$ from June 1, 2017 through June 30, 2017 for a total of $\$ 15,628 \cdot 16$; the statutory rate of 6.25\% from July 7, 2017 through December 31, 2017 for a total of $\$ 104,187.75$; the statutory rate of $6.50 \%$ from January 1, 2018 through April 17, 2018 for a total of $\$ 63,010 \cdot 94$.
/ / /
/ / /
${ }^{1}$ Of the total $\$ 18,746,003.62$ in compensatory damages found by the jury, the past damages to plaintiffs $(\$ 4,546,003.62)$ account for $\% 24.25$.
${ }^{2}$ Of the total $\$ 18,746,003.62$ in compensatory damages found by the jury, the future damages to plaintiffs ( $\$ 14,200,000.00$ ) account for $\% 75.75$.

## ORDER

7. It is therefore ORDERED that the judgment will be offset by $\$ 5,110,000$ million.
8. It is further ORDERED that the amount of prejudgment interest awardable to plaintiff is $\$ 182,826 \cdot 85$.

IT IS SO ORDERED.

Submitted by:

## 1s/ Eric Pepperman

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Dated this 16 th day of March, 2023


109 28D F090 04C5
Adriana Escobar
District Court Judge
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/s/ Joel Henriod

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CSERV

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

| Keon Khiabani, Plaintiff(s) | CASE NO: A-17-755977-C |
| :--- | :--- |
| vs. | DEPT. NO. Department 14 |
| Motor Coach Industries Inc, <br> Defendant(s) |  |

## AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District 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:

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## DISTRICT COURT

Clark County, Nevada

KEON KHIABANI, an individual; ARIA KHIABANI, an individual; SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani, M.D. (Decedent), the Estate of Kayvan Khiabani, M.D.
(Decedent); SIAMAK BARIN, as Executor of the Estate of Katayoun Barin, DDS (Decedent); and the Estate of Katayoun Barin, DDS (Decedent);

Plaintiffs,
$v s$.
Motor Coach Industries, Inc., a DELAWARE CORPORATION;
Michelangelo Leasing Inc. D/B/A RYAN's EXPRESS, AN ARIZONA corporation; Edward Hubbard, a Nevada Resident; Bell Sports Inc. d/b/a Giro Sport Design, a Delaware CORPORATION; SEVENPLUS BICYCLES, INC. D/B/A Pro CyCLERY, A NEVADA CORPORATION; DOES 1 THROUGH 20; AND RoE Corporations 1 Through 20.

Defendants.

Case No. A-17-755977-C
Dept. No. XIV

PLAINTIFFS'
CASE APPEAL STATEMENT

## CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

KEON KHIABANI, an individual; ARIA KHIABANI, an individual; SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani, M.D. (Decedent), the Estate of Kayvan Khiabani, M.D. (Decedent); SIAMAK BARIN, as Executor of the Estate of Katayoun Barin, DDS (Decedent); and the Estate of Katayoun Barin, DDS (Decedent) (collectively referred to as "Appellants").
2. Identify the judge issuing the decision, judgment, or order appealed from:

## THE HONORABLE ADRIANA ESCOBAR

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

KEON KHIABANI, an individual; ARIA KHIABANI, an individual; SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani, M.D. (Decedent), the Estate of Kayvan Khiabani, M.D. (Decedent); SIAMAK BARIN, as Executor of the Estate of Katayoun Barin, DDS (Decedent); and the Estate of Katayoun Barin, DDS (Decedent)

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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):

The only Respondent is Motor Coach Industries, Inc.

Represented by:
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5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed 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):

All attorneys identified in response to questions 3 and 4 are licensed to practice law in Nevada.
6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Appellants were represented by retained counsel in the district court.
7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Appellants are represented by retained counsel on appeal.
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:

Appellants did not request and were not granted leave to proceed in forma pauperis.
9. Indicate the date the proceedings commenced in the district court, e.g., date complaint, indictment, information, or petition was filed:

Plaintiffs/Appellants filed their Complaint in the district court on May 25, 2017.
10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This wrongful death action arose from the tragic death of Dr. Kayvan Khiabani. On April 18, 2017, Dr. Khiabani was killed in a collision with a motor coach while riding his bicycle in Las Vegas. The motor coach was designed and sold by Motor Coach Industries, Inc. ("MCI"). It was owned and operated by Michelangelo Leasing Inc.

On May 25, 2017, Plaintiffs/Appellants filed suit against MCI, Michelangelo Leasing, and other defendants. Prior to trial, Plaintiffs/Appellants settled with all Defendants except MCI. Following a several week trial beginning in February 2018, the jury returned a verdict in favor of Plaintiffs and awarded compensatory damages in the amount of $\$ 18,746,003.62$. On April 17, 2018, the district court entered judgment on the jury's verdict.

On June 6, 2018, MCI filed a motion to alter or amend the judgment. In its motion, MCI argued that the judgment should be offset by the combined sum of $\$ 5,110,000.00$ paid by the settling defendants. Of this amount, $\$ 5$ million was paid by Michelangelo. The district court denied MCI's motion on grounds that, as a strictly liable defendant, MCI was not entitled to an offset under NRS 17.245(1)(a).

On April 24, 2019, MCI filed an appeal from the underlying judgment (Docket No. 78701). In its appeal, MCI challenged the judgment and several of the district court's rulings, including the order denying its motion to offset the judgment by the proceeds paid by the settling defendants.

On August 20, 2020, the Nevada Supreme Court issued its opinion in J.E. Johns \& Assoc. v. Lindberg, 136 Nev.Adv.Op. 55, 470 P.3d 204 (2020). Lindberg addressed offsets under NRS $17.245(1)(a)$ and involved similar facts and nearly identical issues to those raised by MCI's appeal. In Lindberg, the Nevada Supreme Court held that, when considering settlement offsets under NRS 17.245(1)(a), the relevant question is "whether both the settling and remaining defendants caused the same injury." Id. at 208. The Court
clarified that "independent causes of action, multiple legal theories, or facts unique to each defendant do not foreclose a determination that both the settling and nonsettling defendants bear responsibility for the same injury pursuant to NRS 17.245(1)(a)." Id.

After establishing the "same injury" test, the Lindberg Court addressed "[w]hether NRS 17.245(1)(a) requires district courts to automatically deduct the entirety of a settlement award, without considering the makeup of the award in relation to the judgment against the nonsettling defendants." Id. at 210. The Court found that, "[w]hile the plain language of the statute could be interpreted as permitting the reduction of the entire settlement amount obtained-without regard to the type of exposure resolved by the settling defendants-we reason that such an interpretation violates the spirit of NRS 17.245(1)(a)." Id. The Court held that, under NRS 17.245(1)(a), offsets should not include any "portion of a settlement award that resolves a settling defendant's exposure beyond actual damages - such as treble or punitive damages - if such exposure is unique to the settling defendant." Id. at 211 (citation omitted) (italics in original).

The Lindberg opinion was issued after briefing on MCl's appeal was completed but before oral arguments, which were held on March 1, 2021. In light of the new Lindberg decision, Plaintiffs acknowledged at oral arguments that a portion of Michelangelo's settlement proceeds resolved Michelangelo's exposure to actual damages for the "same injury" caused by MCI. Plaintiffs further noted, however, that a portion of Michelangelo's settlement proceeds also resolved Michelangelo's exposure beyond actual damages, including punitive damages, which were unique to Michelangelo.

On August 19, 2021, the Nevada Supreme Court issued its published en banc decision on MCI's appeal. The Court affirmed the judgment and post-judgment orders as to all matters except the district court's order denying MCI's motion for offset. The Court reversed the judgment as to its amount and "remand[ed] to the district court to determine the amount of the offset to which MCI is entitled and enter a corrected judgment thereon."

Motor Coach Indus., Inc. v. Khiabani by \& through Rigaud, 137 Nev. Adv. Op. 42, 493 P.3d 1007, 1017 (2021).

On remand, Plaintiffs contended that Lindberg applied to the court's offset calculation. Michelangelo's settlement payment resolved exposure beyond actual damages, including punitive damages and attorneys' fees, that were unique to Michelangelo. Under Lindberg, Plaintiffs argued that the district court's offset calculation must consider and account for the resolution of this exposure.

MCI argued that Lindberg did not apply and that the district court did not need to consider the exposure beyond actual damages, such as punitive damages, resolved by Michelangelo's settlement payment. MCI asserted that both NRS 17.245(1)(a) and the Supreme Court's decision on its appeal required the court to automatically deduct the entirety of the settlement award, without considering the makeup of the award in relation to the judgment against MCI.

On March 16, 2023, the district court entered an order granting MCI's motion for offset. In its order, the district court adopted MCI's arguments and automatically deducted the entirety of the proceeds paid by the settling defendants without considering the makeup of the award in relation to the judgment against MCI. The district court found that Lindberg did not apply, that Lindberg's requirement to consider exposure beyond actual damages was limited to statutory treble damages, and that any discussion in Lindberg about punitive damages was dictum.

Plaintiffs/Appellants appeal from the district court's order granting MCI's motion for offset. They respectfully submit that the district court erred by automatically deducting the entirety of the $\$ 5$ million settlement paid by Michelangelo, without considering the makeup of the settlement in relation to the judgment against MCI. Michelangelo's settlement payment resolved exposure beyond actual damages, including punitive damages and attorneys' fees, that were unique to Michelangelo. / / /
11. Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding.

This case has previously been the subject of an appeal filed by Motor Coach Industries, Inc. The Supreme Court docket number of the prior proceeding is Docket No. 78701. The caption was as follows:

MOTOR COACH INDUSTRIES, INC.,
Supreme Court Case No. 78701
Appellant,
vs.
A.K. and K.K., minors, by and through their Guardian, MARIE-CLAUDE RIGAUD; SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani, M.D. (Decedent); the ESTATE OF KAYVAN KHIABANI, M.D. (Decedent); SIAMAK BARIN, as Executor of the Estate of Katayoun Barin, DDS (Decedent); and the ESTATE OF KATAYOUN BARIN, DDS (Decedent);

## Respondents.

12. Indicate whether this appeal involves child custody or visitation: This case does not involve child custody or visitation.

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

Settlement is possible.

DATED this 12th of April, 2023
KEMP JONES, LLP
/s/ Eric Pepperman
WILL KEMP, ESQ. (\#1205)
ERIC PEPPERMAN, ESQ. (\#11679)
3800 Howard Hughes Parkway, $17^{\text {th }}$ Floor
Las Vegas, Nevada 89169
-and-
CHRISTIANSEN TRIAL LAWYERS
PETER S. CHRISTIANSEN, ESQ. (\#5254)
KENDELEE L. WORKS, ESQ. (\#9611)
710 S. 7th Street, Suite B
Las Vegas, Nevada 89101
Attorneys for Appellants

## CERTIFICATE OF SERVICE

I hereby certify that on the 12 th day of April, 2023, I served a true and correct copy of the foregoing Plaintiffs' Case Appeal Statement via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.
/s/ Maria T. San Juan
An Employee of KEMP JONES, LLP

# Eighth Judicial District Court 

## Case Summary

## CASE NO. A-17-755977-C



# Eighth Judicial District Court 

## Case Summary

## Motor Coach Industries Inc <br> CASE NO. A-17-755977-C

Polsenberg, Daniel F
Retained 702-949-8200(W)

## Sevenplus Bicycles Inc

Sevenplus Bicyles Inc
Nunez, Michael J.
Retained
Removed: 10/17/2018
Dismissed 7023603956(W)

Vista Outdoor Inc
Removed: 06/06/2017
Inactive


|  | EVENTS |
| :---: | :---: |
| 05/25/2017 | Complaint With Jury Demand <br> Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin <br> [1] Complaint and Demand for Jury Trial |
| 05/25/2017 | Initial Appearance Fee Disclosure <br> [2] Initial Appearance Fee Disclosure (NRS Chapter 19) |
| 05/26/2017 | Summons <br> [3] Summons Edward Hubbard |
| 05/26/2017 | Summons |

## Eighth Judicial District Court <br> Case Summary

CASE NO. A-17-755977-C

| 05/26/2017 | [4] Summons Michelangelo Leasing, Inc. <br> Summons <br> [5] Summons Motor Coach Industries, Inc. |
| :---: | :---: |
| 05/26/2017 | Summons <br> [6] Summons Vista Outdoor, Inc., d/b/a Giro Sport Design |
| 05/26/2017 | Peremptory Challenge <br> Filed by: Plaintiff Estate of Katayoun Barin [7] Peremptory Challenge |
| 05/30/2017 | Notice of Department Reassignment <br> [8] Notice of Department Reassignment |
| 05/30/2017 | Ex Parte Motion <br> Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin <br> [9] Ex Parte Motion for Order Requiring Bus Company and Driver to Preserve and Immediately Turn Over Relevant Electronic Monitoring Information from Bus and Driver Cell Phone |
| 06/06/2017 | Acceptance of Service [10] Acceptance of Service |
| 06/06/2017 | Amended Complaint <br> Filed By: Plaintiff Estate of Katayoun Barin [11] Amended Complaint and Demand for Jury Trial |
| 06/06/2017 | Initial Appearance Fee Disclosure <br> Filed By: Plaintiff Estate of Katayoun Barin <br> [12] Initial Appearance Fee Disclosure (NRS Chapter 19) |
| 06/09/2017 | Summons Electronically Issued - Service Pending [13] Summons |
| 06/09/2017 | Summons Electronically Issued - Service Pending [14] Summons Bell Sports, Inc. |
| 06/12/2017 | Acceptance of Service <br> Filed By: Plaintiff Estate of Katayoun Barin [15] Acceptance of Service for Bell Sports, Inc. |
| 06/12/2017 | Application <br> Filed By: Plaintiff Khiabani, Keon [16] Application for TRO |
| 06/12/2017 | Motion for Preferential Trial Setting <br> Filed By: Plaintiff Khiabani, Keon [17] Plaintiffs' Motion for Preferential Trial Setting Under NRS 16.025(2) |
| 06/14/2017 | Summons <br> Filed by: Plaintiff Khiabani, Keon [18] Summons |

# Eighth Judicial District Court <br> Case Summary 

CASE NO. A-17-755977-C

Summons
Filed by: Plaintiff Khiabani, Keon [19] Summons

Summons
Filed by: Plaintiff Khiabani, Keon [20] Summons

Summons
Filed by: Plaintiff Khiabani, Keon [21] Summons

Order
[22] Order Denying Without Prejudice Plaintiffs' Ex Parte Motion for Order Requiring Bus COmpany and Bus Driver to Preserve and Immediately Turn Over Relevant Electronic Monitoring Information From Bus and Drive Cell Phone

Notice of Entry
[23] Notice of Entry of Order Denying Without Prejudice Plaintiffs' Ex Parte MOtion for Order Requiring Bus Company and Bus Driver to Preserve and Immediately Turn Over Relevant Electronic Monitoring Information from BUs and Driver Cell Phone

Answer to Amended Complaint
Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward [24] Defendants Michelangelo Leasing Inc. dba Ryan's Express and Edward Hubbard's Answer to Plaintiffs' Amended Complaint

Initial Appearance Fee Disclosure Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward [25] Initial Appearance Fee Disclosure

Demand for Jury Trial Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward [26] Demand for Jury Trial

Opposition
Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward [27] Defendants Michelangelo Leasing Inc. dba Ryan's Express and Edward Hubbard's Opposition to Plaintiffs' Motion for Preferential Trial Setting

Opposition to Motion Filed By: Defendant Bell Sports Inc [28] Defendant Bell Sports, Inc.'s Opposition To Plaintiffs' Motion For Preferential Trial Setting Under NRS 16.025(2)

Answer to Amended Complaint
Filed By: Defendant Motor Coach Industries Inc
[29] Defendant Motor Coach Industries, Inc.'s Answer to Plaintiffs' Amended Complaint

Initial Appearance Fee Disclosure Filed By: Defendant Motor Coach Industries Inc [30] Initial Appearance Fee Disclosure (NRS Chapter 19)

# Eighth Judicial District Court <br> Case Summary 

CASE No. A-17-755977-C

Answer to Amended Complaint
Filed By: Defendant Sevenplus Bicyles Inc [31] Defendant Sevenplus Bicycles, Inc d/b/a Pro Cyclery's Answer to Plaintiff's Amended Complaint

Initial Appearance Fee Disclosure
[32] Defendant Sevenplus Bicycles Inc. d/b/a Pro Cyclery's Initial Apperance Fee Disclosure

Demand for Jury Trial
[33] Defendant Sevenplus Bicycles, Inc . d/b/a Pro Cyclery's Demand for Jury Trial
Opposition to Motion Filed By: Defendant Motor Coach Industries Inc [34] Defendant Motor Coach Industries, Inc.'s Opposition to Plaintiff's Motion for Preferential Trial Setting Under NRS 16.025(2)

Notice of Early Case Conference
Filed By: Plaintiff Estate of Katayoun Barin
[35] Notice of Early Case Conference
$\checkmark$ Answer to Amended Complaint Filed By: Defendant Bell Sports Inc
[36] Defendant Bell Sports, Inc.'s Answer To Plaintiff's Amended Complaint

Initial Appearance Fee Disclosure
Filed By: Defendant Bell Sports Inc
[37] Defendant Bell Sports, Inc.'s Initial Appearance Fee Disclosure

Demand for Jury Trial
Filed By: Defendant Bell Sports Inc
[38] Defendant Bell Sports, Inc.'s Demand For Jury Trial

Order
Filed By: Plaintiff Estate of Katayoun Barin
[39] Order Granting in Part and Denying in Part Plaintiffs' Application Under NRCP 65(b) for Temporary Restraining Order

完Amended Notice of Early Case Conference Filed By: Plaintiff Estate of Katayoun Barin [40] Amended Notice of Early Case Conference

Joinder
Filed By: Defendant Sevenplus Bicyles Inc
[41] Defendant Sevenplus Bicycles Inc dba Pro Cyclery's Joinder to Defendant Bell Sport Inc's Opposition to Plaintiffs' motion for Preferential Trial Setting Under NRS 16.025(2)Joinder
Filed By: Defendant Sevenplus Bicyles Inc
[42] Defendant Sevenplus Bicycles Inc dba pro Cycler's Joinder to Defendant Motion Coach Industries Inc's Opposition to Plaintiffs' Motion for Preferential Trial Setting Under NRS 16.025(2)

Soinder
Filed By: Defendant Sevenplus Bicyles Inc [43] Defendant Sevenplus Bicycles Inc dba Pro Cyclery's Joinder to Defendant michelangelo

## Eighth Judicial District Court <br> Case Summary

Case No. A-17-755977-C

|  | Leasing Inc dba Ryan's Express and Edward Hubbard's Opposition to Plaintiffs' Motion for Preferential Trial Setting |
| :---: | :---: |
| 07/11/2017 | Notice of Entry of Order <br> Filed By: Plaintiff Estate of Katayoun Barin [44] Notice of Entry of Order |
| 07/11/2017 | Order Admitting to Practice <br> Filed By: Defendant Motor Coach Industries Inc [45] Order Admitting to Practice |
| 07/11/2017 | Motion to Associate Counsel <br> Filed By: Defendant Motor Coach Industries Inc [46] Motion to Associate Counsel on Order Shortening Time (Darrell L Barger, John C Dacus and Brian Rawson) |
| 07/11/2017 | Notice of Entry of Order <br> Filed By: Defendant Motor Coach Industries Inc [47] Notice of Entry of Order Admitting to Practice |
| 07/13/2017 | Notice of Early Case Conference <br> Filed By: Plaintiff Estate of Katayoun Barin [48] Notice of Continued Early Case Conference |
| 07/13/2017 | Reply to Opposition <br> Filed by: Plaintiff Estate of Katayoun Barin <br> [49] Plaintiffs' Combined Reply to Defendants Three Oppositions to Motion for Preferential Trial Setting |
| 07/19/2017 | Supplemental Brief <br> Filed By: Defendant Motor Coach Industries Inc <br> [50] Defendant Motor Coach Industries, Inc.'s Supplemental Brief in Opposition to Plaintiffs' Request for Preferential Trial Setting |
| 07/20/2017 | Order <br> [51] Order Granting Plaintiffs' Motion for Preferential Trial Setting |
| 07/20/2017 | Notice of Entry of Order <br> [52] Notice of Entry of Order Granting Plaintiffs' Motion for Preferential Trial Setting |
| 07/24/2017 | Special Master Order <br> Filed By: Special Master Hale, Floyd <br> [53] Special Master Report re: July 24, 2017 hearing |
| 07/25/2017 | Special Master Order [54] Special Master Report |
| 07/25/2017 | Notice of Special Master Hearing <br> Filed By: Other Hale, Floyd [55] Notice of Special Master Hearing |
| 07/25/2017 | Application for Issuance of Commission to Take Deposition <br> Party: Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <br> [56] Application for Issuance of Commission to Take Deposition Out of State of Custodian of |

# Eighth Judicial District Court <br> <br> Case Summary 

 <br> <br> Case Summary}

CASE NO. A-17-755977-C

Records of Keck Hospital of USC (Pathology)

Commission to Take Deposition Outside the State of Nevada [57] Commission to Take Deposition Out of State Of Custodian Records of Keck Hospital of USC

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

Disclosure Statement
Party: Defendant Bell Sports Inc
[59] Defendant Bell Sports, Inc.'s Rule 7.1 Disclosure Statement

Disclosure of Documents and Witnesses Pursuant to NRCP 16.1 Filed By: Defendant Motor Coach Industries Inc [60] Motor Coach Industries, Inc.'s Initial Disclosure Pursuant to NRCP 16.1

Objection
Filed By: Defendant Motor Coach Industries Inc
[61] Objections to Plaintiffs' Early Case Conference Disclosures Pursuant to NRCP 16.1(a)(1)

Motion to Reconsider
Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward
[62] Defendants Michelangelo Leasing Inc. and Edward Hubbard's Motion for
Reconsideration Regarding the Court Granting Plaintiffs' Motion for Preferential Trial Setting

Notice of Special Master Hearing
[63] Notice of Special Master Hearing

Disclosure Statement
Party: Defendant Motor Coach Industries Inc
[64] Motor Coach Industries, Inc.'s NRCP 7.1 Disclosure

Order Admitting to Practice
Filed By: Defendant Bell Sports Inc
[65] Order Admitting to Practice - Brian Keith Gibson

Order Admitting to Practice
Filed By: Defendant Bell Sports Inc
[66] Order Admitting to Practice - C. Scott Toomey

茵 Joinder
Filed By: Defendant Sevenplus Bicyles Inc
[67] Defendant SevenPlus Bicycles, Inc. dba Pro Cyclery's Joinder to Defendant Ryan's Express and Edward Hubbard's Motion for Reconsideration

Soinder
Filed By: Defendant Motor Coach Industries Inc
[68] Defendant Motor Coach Industries, Inc.'s Joinder to Michelangelo Leasing Inc. and
Edward Hubbard's Motion for Reconsideration Regarding the Court Granting Plaintiffs'
Motion for Preferential Trial Setting

Notice of Deposition
[69] Notice of Deposition of Custodian of Records Only Of Cricket Communications, Inc., In

# Eighth Judicial District Court <br> Case Summary 

CASE NO. A-17-755977-C

|  | C/O Neustar |
| :---: | :---: |
| 08/16/2017 | Subpoena Duces Tecum <br> [70] Subpoena Duces Tecum To Custodian of Records of Cricket Communications, Inc., In C/o Neustar |
| 08/16/2017 | Application for Issuance of Commission to Take Deposition <br> [71] Application for Issuance of Commission TO Take Deposition Out of State Of Custodian Of Records of Cricket Communications, Inc., In C/o Neustar |
| 08/16/2017 | Supplement to List of Witnesses \& Documents <br> Party: Defendant Motor Coach Industries Inc [72] Motor Coach Industries, Inc.'s First Supplement to Initial Disclosure Pursuant to NRCP 16.1 |
| 08/16/2017 | Case Management Order <br> [73] Case Management Order |
| 08/17/2017 | Commission to Take Deposition Outside the State of Nevada <br> Filed By: Plaintiff Khiabani, Keon <br> [74] Commission to Take Deposition Out of State Of Custodian of Records of Cricket Communications, Inc., In C/O Neustar |
| 08/18/2017 | Opposition <br> [75] Plaintiffs' Opposition to Defendants Michelangelo Leasing Inc. and Edward Hubbard's Motion for Reconsideration Regarding the Court Granting Plaintiffs' Motion for Preferential Trial Setting and All Joinders Thereto |
| 08/18/2017 | Notice of Entry of Order [76] Notice of Entry of Order (CMO) |
| 08/18/2017 | Supplement to List of Witnesses \& Documents <br> Party: Defendant Motor Coach Industries Inc <br> [77] Motor Coach Industries, Inc.'s Second Supplement to Initial Disclosure Pursuant to NRCP 16.1 |
| 08/18/2017 | Subpoena Electronically Issued <br> Filed by: Defendant Motor Coach Industries Inc <br> [78] Subpoena Duces Tecum to the Custodian of Records of Nevada State Board of Medical Examiners |
| 08/18/2017 | Special Master Order <br> [79] Special Master Order |
| 08/21/2017 | Notice of Entry of Order <br> Filed By: Defendant Bell Sports Inc <br> [80] Notice of Entry of Order Admitting to Practice - Gibson |
| 08/21/2017 | Notice of Entry of Order <br> Filed By: Defendant Bell Sports Inc <br> [81] Notice of Entry of Order Admitting to Practice - Toomey |
| 08/21/2017 | Objection <br> Filed By: Defendant Motor Coach Industries Inc [82] Objections to Defendant Bell Sports, Inc.'s Initial Early Case Conference Disclosure of |

# Eighth Judicial District Court <br> Case Summary 

CASE NO. A-17-755977-C

|  | Witnesses and Documents |
| :---: | :---: |
| 08/22/2017 | Notice of Special Master Hearing [83] Notice of Special Master Hearing |
| 08/23/2017 | Order Admitting to Practice <br> Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward [84] Order Admitting to Practice |
| 08/23/2017 | Amended Subpoena Duces Tecum <br> Filed By: Plaintiff Khiabani, Keon <br> [85] Amended Subpoena Duces Tecum to Custodian of Records of Cricket Communications, INc., in c/o Neustar |
| 08/23/2017 | Notice of Entry <br> Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward [86] Notice of Entry of Order |
| 08/24/2017 | Special Master Order [87] Special Master Report |
| 08/24/2017 | Stipulation and Order <br> Filed by: Defendant Motor Coach Industries Inc [88] Stipulated Protective Order |
| 08/24/2017 | Order <br> Filed By: Defendant Motor Coach Industries Inc [89] Order Admitting to Practice |
| 08/24/2017 | Motion to Associate Counsel <br> Filed By: Defendant Motor Coach Industries Inc [90] Motion to Associate Counsel on Order Shortening Time |
| 08/24/2017 | Motion to Associate Counsel <br> Filed By: Defendant Bell Sports Inc <br> [91] Motion to Associate Counsel on Order Shortening Time - Ughetta |
| 08/25/2017 | Order Admitting to Practice <br> Filed By: Defendant Bell Sports Inc [92] Order Admitting to Practice - Ughetta |
| 08/25/2017 | Notice of Entry of Order <br> Filed By: Defendant Bell Sports Inc [93] Notice of Entry of Order Admitting to Practice - James Ughetta |
| 08/25/2017 | Notice of Entry of Order <br> Filed By: Defendant Motor Coach Industries Inc [94] Notice of Entry of Stipulated Protective Order |
| 08/25/2017 | Notice of Entry of Order <br> Filed By: Defendant Motor Coach Industries Inc [95] Notice of Entry of Order Admitting to Practice |
| 08/29/2017 |  |

# Eighth Judicial District Court <br> <br> Case Summary 

 <br> <br> Case Summary}

CASE No. A-17-755977-C

08/29/2017

08/30/2017

08/31/2017

08/31/2017

09/01/2017

09/01/2017

09/01/2017

09/01/2017

09/01/2017

09/07/2017

Motion to Associate Counsel
Filed By: Defendant Motor Coach Industries Inc [96] Motion to Associate Counsel

Objection Filed By: Defendant Motor Coach Industries Inc [97] Objections to Plaintiffs' First Supplemental Disclosures Pursuant to NRCP 16.1(a)(1)

Reply to Opposition Filed by: Defendant Sevenplus Bicyles Inc [98] Defendant SevenPlus Bicycles, Inc. d/b/a Pro Cyclery's Reply to Plaintiffs' Opposition to Ryan's Express and Edward Hubbard's Mtn for Reconsideration

Errata
Filed By: Defendant Sevenplus Bicyles Inc
[99] Defendant SevenPlus Bicycles, Inc. d/b/a Pro Cyclerly's ERRATA to Reply to Plaintiffs' Oppsoition to Defendant Ryan's Express and Edward Hubbard's Motion for Reconsideration Regarding the Court Granting Plaintiffs' Motion for Preferential Trial Setting and All Joinders Thereto

Objection
Filed By: Defendant Motor Coach Industries Inc [100] Objections to Plaintiffs' Second Supplemental Disclosures Pursuant to NRCP 16.1(a)(1)

家Notice of Deposition
[101] Amended Notice of Videotape/Video-Conference Deposition of Porcia Hubbard

Deposition Subpoena
[102] Subpoena

Application for Issuance of Commission to Take Deposition [103] Application for Issuance of Commission to Take Deposition Out of State of Porcia Hubbard

Commission Issued Filed by: Plaintiff Khiabani, Keon [104] Commission to Take Deposition Out of State of Porcia Hubbard

Commission to Take Deposition Outside the State of Nevada [105] Commission to Take Deposition Out of State of Porcia Hubbard

# Eighth Judicial District Court <br> <br> Case Summary 

 <br> <br> Case Summary}

CASE NO. A-17-755977-C

Filed By: Defendant Motor Coach Industries Inc
[109] Notice of Entry of Stipulation and Order to Continue Hearing on Motion for Reconsideration

Objection
Filed By: Defendant Motor Coach Industries Inc
[110] Objections to Michaelangelo Leasing, Inc. dba Ryan's Express and Edward Hubbard's
Initial 16.1 Disclosure of Witnesses and Documents

Notice of Change of Address
Filed By: Defendant Sevenplus Bicyles Inc
[111] Notice of Change of Address

Supplement to List of Witnesses \& Documents
Party: Defendant Motor Coach Industries Inc
[112] Motor Coach Industries, Inc.'s Third Supplement to Initial Disclosure Pursuant to NRCP 16.1

Objection Filed By: Defendant Motor Coach Industries Inc [113] Objections to Plaintiffs' Third Supplemental Disclosures Pursuant to NRCP 16.1(a)(1)

Objection Filed By: Defendant Motor Coach Industries Inc [114] Objections to Plaintiffs' Notice of Filing Partial Expert Report of Larry D. Stokes, Ph.D.

Special Master Order
[115] Special Master Report and Order Allowing Motor Coach Industries to Commence Edward Hubbard Deposition

Notice of Special Master Hearing
[116] Notice of Special Master Hearing
Objection Filed By: Defendant Motor Coach Industries Inc [117] Objections to Plaintiffs' Notice of Filing Second Partial Expert Report of Larry D. Stokes, Ph.D.
$\Delta$ Notice of Deposition [118] Notice of Video Conference / Videotape Deposition of Pablo Fierros

Deposition Subpoena [119] Subpoena

Application for Issuance of Commission to Take Deposition [120] Application for Issuance of Commission to Take Deposition Out of State of Pablo Fierros

Objection Filed By: Defendant Motor Coach Industries Inc [121] Objections to Plaintiffs' Notice of Filing Third Partial Expert Report of Larry D. Stokes, Ph.D.

Supplement
[122] Plaintiffs' Supplement to Opposition to Defendants Michelangelo Leasing Inc. and

## Eighth Judicial District Court <br> Case Summary

## CASE NO. A-17-755977-C

Edward Hubbard's Motion for Reconsideration Regarding the court Granting Plaintiffs' Motion for Preferential Trial Setting and All Joinders Thereto

Brief
Filed By: Defendant Bell Sports Inc
[123] Bell Sports, Inc's Brief In Support of Discovery Status

Commission Issued [124] Commission to Take Deposition Out of State of Pablo Fierros

Objection Filed By: Defendant Motor Coach Industries Inc [125] Objections to Plaintiffs' Fourth Supplemental Disclosures Pursuant to NRCP 16.1(a)(1)

Supplement
Filed by: Defendant Motor Coach Industries Inc
[126] Supplement to Motor Coach Industries, Inc.'s Joinder to Michelangelo Leasing Inc. and Edward Hubbard's Motion for Reconsideration Regarding the Court Granting Plaintiffs' Motion for Preferential Trial Setting

Supplement to List of Witnesses \& Documents
Party: Defendant Motor Coach Industries Inc
[127] Motor Coach Industries, Inc.'s Fourth Supplement to Initial Disclosure Pursuant to NRCP 16.1

Motion for Good Faith Settlement Filed By: Defendant Sevenplus Bicyles Inc [128] Defendant SevenPlus Bicycles, Inc d/b/a Pro Cyclery's Motion for Determination of Good Fiath Settlement

Objection
Filed By: Defendant Motor Coach Industries Inc
[129] Objections to Plaintiffs' Fifth Supplemental Disclosures Pursuant to NRCP 16.1(a)(1)

Special Master Order
[130] Special Master Report

Notice of Special Master Hearing
[131] Notice of Special Master Hearing

Objection
Filed By: Defendant Motor Coach Industries Inc
[132] Objections to Defendant Bell Sports, Inc.'s First Supplement to Initial Early Case Conference Disclosure of Witnesses and Documents

Special Master Order
[133] Special Master Report Regarding Dr. Jack E. Hubbard Deposition

Motion to Compel
Filed By: Defendant Motor Coach Industries Inc
[134] Defendant Motor Coach Industries, Inc.'s Motion to Compel Production of Documents by Las Vegas Metropolitan Police Department on Order Shortening Time

Reporters Transcript
Filed By: Defendant Motor Coach Industries Inc; Plaintiff Estate of Katayoun Barin

# Eighth Judicial District Court <br> <br> Case Summary 

 <br> <br> Case Summary}

CASE NO. A-17-755977-C
[135] Reporter's Transcription of Motion for Temporary Restraining Order - June 15, 2017

Reporters Transcript
Filed By: Defendant Motor Coach Industries Inc; Plaintiff Estate of Katayoun Barin [136] Reporter's Transcription of Motion for Preferential Trial Setting - July 20, 2017

Reporters Transcript
Filed By: Defendant Motor Coach Industries Inc; Plaintiff Estate of Katayoun Barin [137] Reporter's Transcription of Motion of Status Check and Motion for Reconsideration with Joinder - September 21, 2017

Votice of Hearing
Filed By: Defendant Motor Coach Industries Inc
[138] Notice of Hearing on Defendant Motor Coach Industries, Inc.'s Motion to Compel Production of Documents By Las Vegas Metropolitan Police Department on Order Shortening Time

Objection
Filed By: Defendant Motor Coach Industries Inc
[139] Objections to Defendant Bell Sports, Inc.'s Second Supplement to Initial Early Case Conference Disclosure of Witnesses and Documents

Objection Filed By: Defendant Motor Coach Industries Inc [140] Objections to Michelangelo Leasing, Inc. dba Ryan's Express and Edward Hubbard's First Supplemental 16.1 Disclosure of Witnesses and Documents

Objection
Filed By: Defendant Motor Coach Industries Inc
[141] Objections to Plaintiffs' Sixth Supplemental Disclosures Pursuant to NRCP 16.1(a)(1)

家
Notice of Special Master Hearing Filed By: Other Hale, Floyd
[142] Notice of Special Master Hearing

Special Master Order [143] Special Master Report

完Motion
[144] Plaintiffs' Motion to Allow Plaintiffs To Present a Jury Questionnaire Prior to Voir Dire On Order Shortening Time

Supplement to List of Witnesses \& Documents Party: Defendant Motor Coach Industries Inc
[145] Motor Coach Industries, Inc.'s Fifth Supplement to Initial Disclosure Pursuant to NRCP 16.1

Declaration Filed By: Plaintiff Khiabani, Keon [146] Declaration of service Detective Kenneth Salisbury

Notice of Special Master Hearing [147] Notice of Rescheduled Special Master Hearing

## Eighth Judicial District Court <br> Case Summary

CASE No. A-17-755977-C

|  | Objection <br> Filed By: Defendant Motor Coach Industries Inc [148] Objections to Plaintiffs' Expert Witness Disclosure Pursuant to NRCP 16.1(a)(2) (Damages Only) |
| :---: | :---: |
| 10/16/2017 | Designation of Expert Witness <br> Filed By: Defendant Motor Coach Industries Inc [149] Designation of Expert Witnesses |
| 10/16/2017 | Special Master Order [150] Special Master Order |
| 10/17/2017 | Designation of Expert Witness <br> Filed By: Defendant Motor Coach Industries Inc [151] First Supplement to Designation of Expert Witnesses |
| 10/17/2017 | Notice of Association of Counsel [152] Notice of Association of Counsel |
| 10/17/2017 | Notice <br> [153] Notice of Submittal |
| 10/17/2017 | Notice of Removal <br> Filed By: Defendant Motor Coach Industries Inc [154] Defendant's Notice of Filing Notice of Removal |
| 10/24/2017 | Order to Statistically Close Case [155] Civil Order to Statistically Close Case |
| 10/25/2017 | Notice of Special Master Hearing <br> Filed By: Other Hale, Floyd <br> [156] Notice of Cancellation of Special Master Hearing |
| 10/27/2017 | Motion for Summary Judgment <br> Filed By: Plaintiff Estate of Katayoun Barin <br> [157] Motion for Summary Judgment On Foreseeability of Bus Interaction With Pedestrians or Bicyclists (Including Sudden Bicycle Movement) |
| 10/27/2017 | Motion in Limine <br> Filed By: Plaintiff Estate of Katayoun Barin <br> [158] Motion In Limine No. 1 to Preclude Reference Or Argument Regarding The Alleged <br> Negligence of Third Parties (I.E.,Michelangelo and Hubbard) |
| 10/27/2017 | Motion in Limine <br> [159] Motion In Limine No. 2 To Preclude Any Reference To Settling Defendants (Including Claims, Settlement and Amounts) |
| 10/27/2017 | Motion in Limine <br> [160] Motion In Limine No. 3 To Preclude Defendant MCI from Arguing That Decedent Was Contributorily Negligent |
| 10/27/2017 | Motion in Limine <br> Filed By: Plaintiff Estate of Katayoun Barin <br> [161] Motion In Limine No. 4 To PReclude MCI From Making Excessive Reference to the |

# Eighth Judicial District Court <br> <br> Case Summary 

 <br> <br> Case Summary}

CASE NO. A-17-755977-C

| 10/27/2017 | Fact that Plaintiffs Are of Iranian or "Persian" Descent <br> Motion in Limine <br> Filed By: Plaintiff Estate of Katayoun Barin <br> [162] Motion In Limine No. 5 To Preclude Defendants From Arguing Or Suggesting That <br> Plaintiffs Must Prove That The Bus Had Any Specific Defect |
| :---: | :---: |
| 10/27/2017 | Motion in Limine <br> Filed By: Plaintiff Estate of Katayoun Barin [163] Motion In Limine No. 6 To Preclude Defendants From Mentioning That Defense Expert Dr. Michael Baden ("OJ's Medical Examiner) Worked For the Christiansen Law Firm |
| 10/27/2017 | Motion in Limine <br> Filed By: Plaintiff Estate of Katayoun Barin [164] Motion In Limine No. 7 To Preclude Defendant MCI From Arguing That The Alleged Lack of Proximity Sensors From A Third party ("Commercial Availability") As A Defense Where the True Issue Is Whether Proximity Sensors Were Technologically "Feasible" |
| 10/27/2017 | Motion in Limine <br> Filed By: Plaintiff Estate of Katayoun Barin [165] Motion In Limine No. 8 To Pre Instruct THe Jury With Standard Instructions For Product Liability Claims |
| 10/27/2017 | Motion in Limine <br> Filed By: Plaintiff Estate of Katayoun Barin [166] Motion In Limine No. 9 To Preclude Metro Report And/Or Opinions From Metro Officers |
| 10/27/2017 | Motion in Limine <br> Filed By: Plaintiff Estate of Katayoun Barin [167] Motion In Limine No. 10 To Pre Admit Funeral Video and Funeral Slide Show |
| 10/27/2017 | Motion in Limine <br> Filed By: Plaintiff Estate of Katayoun Barin <br> [168] Motion In Limine No. 11 Pre Admit 1993 Generic Bus Wind Testing By MCI |
| 10/27/2017 | Motion in Limine <br> [169] Motion In Limine No. 12 To Preclude MCI Expert Rucoba From Offering Meteorologist Opinions Regarding Wind Speed At The Time Of the Accident (Including But Not LImited To The Wildly Unsupported Claim That Wind Speeds At 10:30 a.m. Were "16 to 17 MIles Per Hours" And "Winds Were Gusting to 30 Miles Per Hour" |
| 10/27/2017 | Motion in Limine <br> [170] Motion In Limine No. 13 Preclude Defendants From Arguing Or Referencing Rigged Air Blast Testing That Is Not Substantially Similar Because It Used Stationary Bike and Not A Moving Bike |
| 10/27/2017 | Motion in Limine <br> [171] Motion In Limine No. 14 To Designate Virgil Hoogestraat As Managing Speaking Agent of MCI |
| 10/27/2017 | Motion in Limine <br> Filed By: Plaintiff Estate of Katayoun Barin [172] Motion In Limine No. 15 To Designate Bryan Couch as Managing Speaking Agent Of Motor Coach Industries, Inc. |

# Eighth Judicial District Court <br> <br> Case Summary 

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CASE NO. A-17-755977-C

Motion in Limine [173] Motion In Limine No. 16 To Pre Admit June 2001 Article As Notice of Potential Rear Tire Suction Hazard And Need For Protective Guard

Votice of Hearing
Filed By: Defendant Sevenplus Bicyles Inc
[174] Notice of Hearing on Defendant SevenPlus Bicycles, Inc d/b/a Pro Cyclery's Motion for Determination of Good Faith Settlement

Q Motion
Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria
[175] Plaintiffs' Motion to Amend Complaint to Substitute Parties on Order Shortening Time

Opposition and Countermotion
[176] Opposition to Plaintiffs' Motion to Amend Complaint and Countermotion to Set a Reasonable Date Upon Changed Circumstance that Nullifies the Reason for Preferential Trial Setting

Supplement to List of Witnesses \& Documents Party: Defendant Motor Coach Industries Inc [177] Motor Coach Industries, Inc.'s Sixth Supplement to Initial Disclosure Pursuant to NRCP 16.1

Designation of Expert Witness Filed By: Defendant Motor Coach Industries Inc [178] Fourth Supplement to Designation of Expert Witnesses

Application Filed By: Defendant Motor Coach Industries Inc [179] Application to Issue Commission to Serve Subpoena Duces Tecum Outside the State of Nevada

Commission Issued Filed by: Defendant Motor Coach Industries Inc [180] Commission to Serve Subpoena Duces Tecum Outside the State of Nevada

Application
Filed By: Defendant Motor Coach Industries Inc
[181] Application to Issue Commission to Serve Subpoena Duces Tecum Outside the State of Nevada

Commission Issued
Filed by: Defendant Motor Coach Industries Inc
[182] Commission to Serve Subpoena Duces Tecum Outside the State of Nevada

Supplement to List of Witnesses \& Documents
Party: Defendant Motor Coach Industries Inc
[183] Motor Coach Industries, Inc.'s Seventh Supplement to Initial Disclosure Pursuant to NRCP 16.1

Amended Complaint
Filed By: Plaintiff Estate of Katayoun Barin
[184] Second Amended Complaint And Demand for Jury Trial
Order

# Eighth Judicial District Court <br> <br> Case Summary 

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## CASE NO. A-17-755977-C

[185] Order Regarding "Plaintiffs' Motion to Amend Complaint to Substitute Parties" and "Countermotion to Set a Reasonable Trial Date Upon Changed Circumstance that Nullifies the Reason for Preferential Trial Setting"

Application
Filed By: Defendant Motor Coach Industries Inc
[186] Application to Issue Commission to Serve Subpoena Duces Tecum Outside the State of Nevada

Commission Issued Filed by: Defendant Motor Coach Industries Inc [187] Commission to Serve Subpoena Duces Tecum Outside the State of Nevada

Notice of Deposition
[188] Notice of VIdeo tape/Video Conference Deposition of Jose Parada

Deposition Subpoena
[189] Subpoena to Jose Parada

Application for Issuance of Commission to Take Deposition [190] Application for Issuance of Commission to Take Deposition Out of State of Jose Parada

Commission Issued [191] Commission to Take Deposition Out of State of Jose Parada

Objection
Filed By: Defendant Motor Coach Industries Inc
[192] Objections to Plaintiffs' Eighth Supplemental Disclosures Pursuant to NRCP 16.1(a)(1)

Deposition Subpoena
[193] Amended Subpoena to Jose Parada

Commission to Take Deposition Outside the State of Nevada [194] Commission to Take Deposition Out of State of Jose Parada

Filed By: Defendant Motor Coach Industries Inc [195] Objections to Plaintiffs' Addendum to Report of Rebuttal Expert Witness Jay Rosenthal, CCM

Votice
[196] Notice of Briefing Schedule and Stay of December 8, 2017, Deposition of Glenn Asham and Notice of Special Master Hearing

Motion for Summary Judgment
Filed By: Defendant Motor Coach Industries Inc
[197] Motion for Summary Judgment on Punitive Damages


Appendix
Filed By: Defendant Motor Coach Industries Inc
[198] Volume I: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages
Appendix
Filed By: Defendant Motor Coach Industries Inc

# Eighth Judicial District Court <br> <br> Case Summary 

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## CASE NO. A-17-755977-C

[199] Volume II: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages

Appendix
Filed By: Defendant Motor Coach Industries Inc
[200] Volume III: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages

Motion for Summary Judgment Filed By: Defendant Motor Coach Industries Inc [201] Motor Coach Industries, Inc.'s Motion for Summary Judgment on All Claims Alleging a Product Defect

Notice of Special Master Hearing [202] Notice of Special Master Hearing

Designation of Expert Witness Filed By: Defendant Motor Coach Industries Inc [203] Fifth Supplement to Designation of Expert Witnesses

Motion in Limine Filed By: Defendant Motor Coach Industries Inc [204] Defendant's Motion in Limine No. 2 to Exclude Illustrations by Plaintiffs' Expert Joshua Cohen That Have No Basis in Fact

Motion in Limine
Filed By: Defendant Motor Coach Industries Inc [205] Defendant's Motion in Limine No. 3 to Preclude Plaintiffs From Making Reference To a "Bullet Train"

Motion in Limine
Filed By: Defendant Motor Coach Industries Inc [206] Defendant's Motion in Limine No. 13 to Exclude Plaintiffs' Expert Witness Robert Cunitz, Ph.D., or in the Alternative, to Limit His Testimony

Motion to Dismiss
Filed By: Defendant Motor Coach Industries Inc [207] Defendant's Motion to Dismiss Wrongful Death Claim for Death of Katayoun Barin, DDS

Motion in Limine
Filed By: Defendant Motor Coach Industries Inc
[208] Defendant's Motion in Limine No. 14 to Exclude Articles Regarding or Reference to Transit Buses

Motion in Limine
Filed By: Defendant Motor Coach Industries Inc
[209] Defendant's Motion in Limine No. 7 to Exclude Any Claims That the Subject Motor Coach Was Defective Based on Alleged Dangerous "Air Blasts"

Appendix Filed By: Defendant Motor Coach Industries Inc
[210] Appendix of Exhibits to Defendant's Motion in Limine No. 13 to Exclude Plaintiffs'
Expert Witness Robert Cunitz, Ph.D., or in the Alternative, to Limit His Testimony

Motion in Limine

## Eighth Judicial District Court <br> Case Summary

CASE NO. A-17-755977-C

12/07/2017

12/07/2017

12/07/2017

12/08/2017

Filed By: Defendant Motor Coach Industries Inc
[211] Defendant's Motion in Limine No. 16 to Exclude Opinions by Plaintiffs' Expert Dipak Panigrahy

Supplement to List of Witnesses \& Documents Party: Defendant Motor Coach Industries Inc [212] Motor Coach Industries, Inc.'s Eighth Supplement to Initial Disclosure Pursuant to NRCP 16.1

Motion in Limine
Filed By: Defendant Motor Coach Industries Inc [213] Defendant's Motion in Limine No. 15 to Exclude Opinion Testimony From Lay Witnesses on Causation and Engineering Principles
$\Delta$ Appendix
Filed By: Defendant Motor Coach Industries Inc
[214] Appendix of Exhibits to Defendant's Motion in Limine No. 7 to Exclude Any Claims That the Subject Motor Coach Was Defective Based on Alleged Dangerous "Air Blasts"

Motion in Limine
Filed By: Defendant Motor Coach Industries Inc
[215] Defendant's Motion in Limine No. 1 to Limit Opinions by Plaintiffs' Expert Robert Caldwell

Motion in Limine
Filed By: Defendant Motor Coach Industries Inc
[216] Defendant's Motion in Limine No. 5 to Exclude Any Claim of Defect Based on S-1 Gard

家
Motion in Limine
Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
[217] Plaintiffs Motion in Limine No. 18 to Preclude the Admission of Prejudicial and Irrelevant Information Regarding Unrelated Disputes

Motion in Limine
Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D
[218] Plaintiffs' Motion in Limine No. 17 To Admit Evidence of Facts Establishing Defendant s Consciousness of Responsibility

Motion in Limine
[219] Motion in Limine No. 4 to Preclude Plaintiffs from Presenting Evidence that Proximity Sensors were a Safer Alternative Design

Motion in Limine
[220] Motion in Limine No. 6 to Exclude Reference to New Flyer Industries, Inc. (NFI Group)

Motion in Limine
[221] Defendant's Motion in Limine No. 11 to Exclude Plaintiffs' Expert Witness David Roger

Motion in Limine
[222] Motion in Limine No. 8 to Exclude Any Reference to Seatlbelts.

Motion in Limine
[223] Plaintiffs' Motion In Limine To Exclude The Testimony Of Untimely Disclosed Expert

# Eighth Judicial District Court <br> Case Summary 

CASE NO. A-17-755977-C

Witness Robert Stahl, MD

Appendix Filed By: Defendant Motor Coach Industries Inc [224] Appendix of Exhibits to Defendant's Motion in Limine No. 5 to Exclude Any Claim of Defect Based on S-1 Gard

Exhibits
[225] Exhibits to Plaintiffs' Motion In Limine To Exclude The Testimony of Untimely Disclosed Expert Witness Robert Stahl, MD

Motion in Limine
Filed By: Defendant Motor Coach Industries Inc [226] Defendant's Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes

Motion in Limine
[227] Motion in Limine No. 10 to Exclude Speculation as to Decendent's Thoughts About the Motor Coach

Motion in Limine
[228] Motion in Limine No. 9 to Exclude Reference to the Ghost Bike Memorial

Motion in Limine
[229] Motion in Limine No. 12 to Exclude Reference to the Cost of the S-1 Gard or Proximity Sensors

Motion in Limine
[230] Plaintiffs' Motion In Limine To Exclude Any Testimony On The Untimely Supplemental Expert Report Filed By Defense Expert Carhart

Objection
Filed By: Defendant Motor Coach Industries Inc
[231] Objections to Plaintiffs' 8th Supplemental Expert Witness Disclosure of Robert Breidenthal and Joshua Cohen and/or Disclosure of Demonstrative Exhibits

Transcript of Proceedings [232] Transcript of Proceedings taken on November 2, 2017

Application for Issuance of Commission to Take Deposition Party: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria [233] Application for Issuance of Commission to Take Deposition of Steven M. Day, PhD

Commission to Take Deposition Outside the State of Nevada
Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria [234] Commission to Take Out of State Deposition of Steven M. Day, PhD

Supplement to List of Witnesses \& Documents Party: Defendant Motor Coach Industries Inc [235] Motor Coach Industries, Inc.'s Ninth Supplement to Initial Disclosure Pursuant to NRCP 16.1

Designation of Expert Witness
Filed By: Defendant Motor Coach Industries Inc [236] Sixth Supplement to Designation of Expert Witnesses

# Eighth Judicial District Court <br> Case Summary 

CASE No. A-17-755977-C

| 12/21/2017 | Supplement to List of Witnesses \& Documents <br> Party: Defendant Motor Coach Industries Inc [237] Motor Coach Industries, Inc.'s Tenth Supplement to Initial Disclosure Pursuant to NRCP 16.1 |
| :---: | :---: |
| 12/21/2017 | Opposition <br> [238] Plaintiffs' Joint Opposition to MCI Motion For Summary Judgment On All Claims Alleging A Product Defect and to MCI Motion for Summary Judgment on Punitive Damages |
| 12/21/2017 | Appendix <br> [239] Appendix of Exhibits to Plaintiffs' Joint Opposition To MCI Motion For Summary Judgment On All Claims Alleging A Product Defect And to MCI Motion for Summary Judgment On Punitive Damages |
| 12/22/2017 | Notice of Special Master Hearing <br> [240] Notice of Rescheduled Special Master Hearing |
| 12/22/2017 | Notice of Hearing <br> Filed By: Defendant Motor Coach Industries Inc [241] Notice of Hearing on Defendant's Motion for Leave to File Third Party Complaint on Order Shortening Time |
| 12/22/2017 | Motion for Leave to File <br> Party: Defendant Motor Coach Industries Inc <br> [242] Defendant's Motion for Leave to File Third Party Complaint on Order Shortening Time |
| 12/26/2017 | Objection <br> Filed By: Defendant Motor Coach Industries Inc [243] Objections to Plaintiffs' 9th Supplemental Expert Disclosure of Thomas P. Flanagan |
| 12/26/2017 | Objection <br> Filed By: Defendant Motor Coach Industries Inc [244] Objections to Plaintiffs' Amended Rebuttal Report of Alexander Lariviere |
| 12/27/2017 | Objection <br> Filed By: Defendant Motor Coach Industries Inc [245] Objections to Plaintiffs' Ninth Supplemental Disclosures Pursuant to NRCP 16.1(a)(1) |
| 12/27/2017 | Opposition to Motion For Summary Judgment <br> Filed By: Defendant Motor Coach Industries Inc [246] Opposition to "Motion for Summary Judgment on Foreseeability of Bus Interaction with Pedestrians of Bicyclists (Including Sudden Bicycle Movement)" |
| 01/05/2018 | Finding of Fact and Conclusions of Law <br> Filed By: Defendant Sevenplus Bicyles Inc <br> [247] Findings of Fact Conclusions of Law and Order on Motion for Determination of Good Faith Settlement |
| 01/08/2018 | Notice of Entry of Findings of Fact, Conclusions of Law <br> Filed By: Defendant Bell Sports Inc [248] Notice of Entry of Findings of Fact Conslusions of Law and Order on Motion for Determination of Good Faith Settlement |
| 01/08/2018 | Opposition to Motion in Limine |

## Eighth Judicial District Court Case Summary

Case No. A-17-755977-C

Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Kayvan Khibani M.D.
[249] Plaintiffs Opposition to Defendant s Motion in Limine No. 9 To Exclude Reference to the "Ghost Bike" Memorial
$\checkmark$ Opposition to Motion in Limine
[250] Plaintiffs' Opposition to Defendant's Motion In Limine No. 13 To Exclude Plaintiffs' Expert Witness Robert Cunitz, Ph.D. Or In The Alternative TO Limit His Testimony

Opposition to Motion in Limine
Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Kayvan Khibani M.D.
[251] Plaintiffs Opposition to Defendant s Motion in Limine No. 10 to Exclude Speculation as to Decedent s Thoughts About the Motor Coach

Opposition to Motion in Limine
Filed By: Defendant Motor Coach Industries Inc
[252] Motor Coach Industries, Inc.'s Partial Opposition to Plaintiffs' Motion in Limine No. 2 to Preclude Any Reference to Settling Defendants (Including Claim Settlement and Amounts)

Opposition to Motion in Limine
Filed By: Defendant Motor Coach Industries Inc
[253] Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 6 to Preclude Defendants from Mentioning That Defense Expert Dr. Michael Baden ("OJ's Medical Examiner") Worked for the Christiansen Law Firm

Opposition to Motion in Limine
[254] Plaintiffs' Joint Opposition to Defendant's Motion In Limine No. 3 To Preclude Plaintiffs From Making Reference To A "Bullet Train" And To Defendant's Motion In LImine No. 7 To
Exclude Any Claims That The Motor Coach Was Defective Based On Alleged Dangerous "Air
Blasts"

Opposition to Motion in Limine
Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Kayvan Khibani M.D.
[255] Plaintiffs Opposition to Defendant s Motion in Limine No. 11 to Exclude Plaintiffs Expert Witness David Roger

Opposition to Motion in Limine
Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Kayvan Khibani M.D.
[256] Plaintiffs Opposition to Defendant s Motion in Limine No. 6 to Exclude Reference to New Flyer Industries, Inc. (NFI Group)

Opposition to Motion in Limine
Filed By: Defendant Motor Coach Industries Inc
[257] Motor Coach Industries, Inc. 's Opposition to Plaintiffs' Motion in Limine No. 8 to PreInstruct the Jury With Standard Instructions for Product Liability Claims

Opposition to Motion in Limine
Filed By: Defendant Motor Coach Industries Inc
[258] Motor Coach Industries, Inc. 's Opposition to Plaintiffs' Motion in Limine No. 9 to
Preclude Metro Report and/or Opinions from Metro Officer
Opposition to Motion in Limine
Filed By: Defendant Motor Coach Industries Inc
[259] Motor Coach Industries, Inc,'s Opposition to Plaintiffs' Motion in Limine No. 11 to Pre-

# Eighth Judicial District Court <br> <br> Case Summary 

 <br> <br> Case Summary}

Case No. A-17-755977-C

|  | Admit 1993 Generic Bus Wind Testing by MCI |
| :---: | :---: |
| 01/08/2018 | Opposition to Motion in Limine <br> Filed By: Defendant Motor Coach Industries Inc [260] Motor Coach Industries, Inc.'s Joint Opposition to Plaintiffs' Motion in Limine No. 14 to Designate Virgil Hoogestraat as Mananging Speaking Agent of MCI and Motion in Limine No. 15 to Designate Bryan Couch as Managing Speaking Agent of Motor Coach Industries, Inc. |
| 01/08/2018 | Opposition to Motion in Limine <br> Filed By: Defendant Motor Coach Industries Inc [261] Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 18 to Preclude the Admission of Irrelevant Information Regarding Unrelated Disputes |
| 01/08/2018 | Opposition to Motion in Limine <br> Filed By: Defendant Motor Coach Industries Inc [262] Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine to Exclude Any Testimony of the Untimely Supplemental Expert Report Filed by Defense Expert Carhart |
| 01/08/2018 | Opposition to Motion in Limine <br> Filed By: Defendant Motor Coach Industries Inc <br> [263] Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine to Exclude the Testimony of Untimely Disclosed Expert Witness Robert Stahl, M.D. |
| 01/08/2018 | Opposition to Motion in Limine <br> Filed By: Defendant Motor Coach Industries Inc <br> [264] Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 16 to PreAdmit June 2011 Article as Notice of Potential Rear Tire Suction Hazard and Need for Protective Guard |
| 01/08/2018 | Opposition to Motion in Limine <br> Filed By: Plaintiff Khiabani, Keon [265] Plaintiffs' Opposition to Defendants' Motion In Limine No. 5 to Exclude Any Claim of Defect Based on S1 Gard |
| 01/08/2018 | Opposition to Motion in Limine <br> Filed By: Plaintiff Khiabani, Keon <br> [266] Plaintiffs' Opposition to Defendant's Motion In Limine No. 12 to Exclude Reference To The Cost of The S-1 Gard Or Proximity Sensors |
| 01/08/2018 | Opposition to Motion in Limine <br> Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Kayvan Khibani M.D. <br> [267] Plaintiffs Opposition to Defendants Motion in Limine No. 14 to Exclude Articles Regarding or Reference to Transit Buses |
| 01/08/2018 | Opposition to Motion to Dismiss <br> Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <br> [268] Plaintiffs Opposition To Defendant s Motion To Dismiss Wrongful Death Claim For Death Of Katayoun Barin, DDS |
| 01/08/2018 | Opposition to Motion in Limine <br> [269] Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 1 to Preclude Reference or Argument Regarding the Alleged Negligence of Third Parties (i.e. Michaelangelo and Hubbard) |
| 01/08/2018 |  |

# Eighth Judicial District Court <br> <br> Case Summary 

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CASE No. A-17-755977-C

Opposition to Motion in Limine
[270] Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 3 to Preclude Defendant MCI from Arguing that Decedent was Contributorily Negligent

Opposition to Motion in Limine
[271] Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 4 to Preclude MCI from Making Excessive Reference to the Fact that Plaintiffs are of Iranian or "Persian" Descent

Opposition to Motion in Limine
[272] Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 5 to Preclude Defendant from Arguing or Suggesting that Plaintiffs Must Prove that the Bus had any Specific Defect

Opposition to Motion in Limine
[273] Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 7 to Preclude Defendant MCI from Arguing that the Alleged Lack of Proximity Sensors from a Third Party ("Commercial Availability") as a Defense where the True Issue is Whether Proximity Sensors were Technologically "Feasible"

Opposition to Motion in Limine
[274] Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 10 (To Pre-Admit the Entire One-And-A-Half-Hour Funeral and Slide Show)

Opposition to Motion in Limine
[275] Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 17 to Admit Evidence of Facts Establishing Defendants' Consciousness of Responsibility

Opposition to Motion in Limine
Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
[277] Plaintiffs Opposition to Defendant s Motion in Limine No. 4 to Preclude Plaintiffs From
Presenting Evidence that Proximity Sensors Were a Safer Alternative Design

VErrata
Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
[276] Errata to Plaintiffs Opposition to Defendant s Motion in Limine No. 4 to Preclude
Plaintiffs From Presenting Evidence that Proximity Sensors Were a Safer Alternative Design

Opposition to Motion in Limine
[278] Plaintiffs' Opposition to Defendant's Motion In Limine No. 17 To Exclude Claim of Lost
Income, Including The August 28 Expert Report of Larry Stokes
Opposition to Motion in Limine
[279] Plaintiffs' Opposition to Defendant's Motion In Limine No. 1 to Limit Opinions By
Plaintiffs' Expert Robert Caldwell

Opposition to Motion in Limine
Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
[280] Plaintiffs Opposition to Defendant s Motion in Limine No. 8 to Exclude Any Reference to Seatbelts

Media Request and Order [281] Media Request And Order Allowing Camera Access To Court Proceedings

# Eighth Judicial District Court <br> <br> Case Summary 

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CASE NO. A-17-755977-C

Opposition to Motion in Limine Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
[282] Plaintiffs Opposition to Defendant s Motion in Limine No. 15 to Exclude Opinion Testimony from Lay Witnesses on Causation and Engineering Principles

Objection
Filed By: Defendant Motor Coach Industries Inc [283] Objections to Plaintiffs' Tenth Supplemental Disclosures Pursuant to NRCP 16.1(a)(1)

Opposition to Motion in Limine
Filed By: Defendant Motor Coach Industries Inc
[284] Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 12 to Preclude Expert Witness Robert Rucoba from Offering Meteorological Opinions Regarding Wind Speed at the Time of the Accident

Opposition to Motion in Limine
Filed By: Defendant Motor Coach Industries Inc
[285] Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Motion in Limine No. 13 to Preclude Defendants from Arguing or Referencing Rigged Air Blast Testing That is Not Substantially Similar Because it Used a Stationary Bike and Not a Moving Bike

Opposition to Motion in Limine Filed By: Plaintiff Estate of Katayoun Barin
[286] Plaintiffs' Opposition to Defendant's Motion in Limine No. 2 to Exclude Illustrations by Plaintiffs' Expert Joshua Cohen That Have No Basis in Fact

Opposition to Motion in Limine
Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
[287] Plaintiffs Opposition to Defendants Motion in Limine No. 16 to Exclude Opinions by Plaintiffs Expert Witness Dipak Panigrahy

Motion to Seal/Redact Records Filed By: Defendant Bell Sports Inc [288] Defendant Bell Sports, Inc.'s Ex Parte Motion To Seal Record

Opposition to Motion
[289] Plaintiffs' Opposition to Defendant Motorcoach Industries, Inc.'s Motion For Leave To File Third Party Complaint

Objection [292] Non-Party New Flyer Industries, Inc.'s Objection to Special Master Hale's January 4, 218 Order

Unitial Appearance Fee Disclosure Filed By: Other New Flyer Industries, Inc. [293] Initial Appearance Fee Disclosure - New Flyer Industries, Inc.

Stipulation and Order
[290] Stipulation and Order Allowing Jury Questionnaire
Reply to Opposition
[291] Reply to Opposition to Motion for Summary Judgment On Foreseeability Of Bus

## Eighth Judicial District Court <br> Case Summary

## CASE NO. A-17-755977-C



## Eighth Judicial District Court <br> Case Summary

## Case No. A-17-755977-C

|  | [306] Motor Coach Industries, Inc.'s Eleventh Supplement to Initial Disclosure Pursuant to NRCP 16.1 |
| :---: | :---: |
| 01/21/2018 | Opposition <br> Filed By: Plaintiff Khiabani, Keon [307] Plaintiffs' Opposition to New Flyer Industries Inc.'s Objection to Special Master Hale's January 4, 2018 Order |
| 01/22/2018 | Reply to Opposition <br> Filed by: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <br> [308] Reply to Defendant Motor Coach Industries, Inc. s Opposition to Plaintiffs Motion in Limine No. 9 to Preclude Metro Report and/or Opinions from Metro Officer |
| 01/22/2018 | Reply to Opposition <br> [309] Plaintiffs' Reply to Opposition to Motion In Limine No. 1 to Preclude Reference or Argument Regarding the Alleged Negligence of Third Parties (I.E., MIchelangelo and Hubbard) |
| 01/22/2018 | Reply to Opposition <br> [310] Plaintiffs' Reply to Opposition to Motion In LImine No. 2 to Preclude Any Reference To Settling Defendants (Including Claims, Settlement and Amounts) |
| 01/22/2018 | Reply to Opposition <br> [311] Plaintiffs' Reply to Opposition to Motion In LImine No. 3 To Preclude Defendant MCI From Arguing That Decedent Was Contributorily Negligent |
| 01/22/2018 | Reply to Opposition <br> [312] Plaintiffs' Reply to Opposition to Motion In Limine No. 5 To Preclude Defendants From Arguing Or Suggesting That Plaintiffs Must Prove That THe Bus Had Any Specific Defect |
| 01/22/2018 | Reply to Opposition <br> [313] Plaintiffs' Reply to Defendant's Opposition to Motion In Limine No. 8 To Pre-Instruct The Jury With Standard Instructions For Product Liability Claims |
| 01/22/2018 | Reply to Opposition <br> [314] Plaintiffs' Reply to Opposition to Motion In LImine No. 11 To Pre-Admit 1993 Generic Bus Wind Testing by MCI |
| 01/22/2018 | Reply to Opposition <br> [315] Plaintiffs' Reply to Opposition To Motion In LImine No. 13 To Preclude Defendants From Arguinig Or Referencing Rigged Air Blast Testing That Is Not Substantially Similar Because It Used Stationary Bike and Not a Moving Bike |
| 01/22/2018 | Reply to Opposition <br> [316] Plaintiffs' Reply to Defendant's Opposition to Motion In Limine To Exclude The Testimony Of Untimely Disclosed Expert Witness Robert Stahl, M.D. |
| 01/22/2018 | Reply to Opposition <br> [317] Plaintiffs' Reply to Defendants' Opposition to Motion In Limine To Exclude Any Testimony On The Untimely Supplemental Expert Report Filed by Defense Expert Carhart |
| 01/22/2018 | Reply to Opposition <br> Filed by: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <br> [318] Reply to Defendant Motor Coach Industries, Inc. s ( MCI) Opposition to Plaintiffs |

# Eighth Judicial District Court <br> <br> Case Summary 

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CASE NO. A-17-755977-C

Motion in Limine No. 18 to Preclude the Admission of Irrelevant Information Regarding Unrelated Disputes

Reply to Opposition
[319] Joint Reply to Joint Opposition to Motion In LImine No. 14 to Designate Virgil Hoogestraat as Managing Speaking Agent and Motion In Limine No. 15 to Designate Bryan Couch As Managing Speaking Agent

Reply to Opposition
[320] Plaintiffs' Reply to Opposition to Motion In LImine No. 12 To Preclude MCI Expert Rucoba From Offering Meteorrologist Opinions Regarding Wind Speed At The Time of the Accident, Etc.

Reply to Opposition
Filed by: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
[321] Reply to Defendant Motor Coach Industries, Inc. s (MCI) Opposition to Plaintiffs Motion in Limine No. 4 to Preclude MCI from Making Excessive Reference to the Fact that Plaintiffs Are of Iranian or Persian Descent

Reply to Opposition
Filed by: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
[322] Reply to Defendant Motor Coach Industries, Inc. s (MCI) Opposition to Plaintiffs Motion in Limine No. 6 to Preclude Defendants from Mentioning that Defense Expert Dr. Michael Baden (OJ s Medical Examiner ) Worked for the Christiansen Law Firm and Opposition to Countermotion to Preclude Reference to O.J. Simpson

Reply to Opposition
Filed by: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
[323] Reply to Defendant Motor Coach Industries, Inc. s (MCI) Opposition to Plaintiffs Motion in Limine No. 10 to Pre-Admit Funeral Video and Slide Show

Reply in Support
Filed By: Defendant Motor Coach Industries Inc
[324] Defendant's Reply in Support of Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes

Reply in Support
Filed By: Defendant Motor Coach Industries Inc
[325] Motor Coach Industries, Inc.'s Reply in Support of Its Motion in Limine No. 10 to Exclude Speculation as to Decedent's Thoughts About the Motor Coach

Reply to Opposition
Filed by: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
[326] Reply to Motor Coach Industries, Inc. s ( MCI) Opposition to Plaintiffs Motion in Limine No. 16 to Pre-Admit June 2001 Article as Notice of Potential Rear Tire Suction Hazard and Need for Protective Guard

Reply in Support
Filed By: Defendant Motor Coach Industries Inc
[327] Defendant's Reply in Support of Motion in Limine No. 1 to Limit Opinions by Plaintiffs' Expert Robert Caldwell

Reply in Support

# Eighth Judicial District Court <br> <br> Case Summary 

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CASE NO. A-17-755977-C

|  | Filed By: Defendant Motor Coach Industries Inc [328] Defendant's Reply in Support of Motion in Limine No. 2 to Exclude Illustrations by Plaintiffs' Expert Joshua Cohen That Have No Basis in Fact |
| :---: | :---: |
| 01/22/2018 | Reply in Support <br> Filed By: Defendant Motor Coach Industries Inc [329] Defendant's Reply in Support of Motion in Limine No. 3 to Preclude Plaintiffs From Making Reference to a "Bullet Train" |
| 01/22/2018 | Reply in Support <br> Filed By: Defendant Motor Coach Industries Inc [330] Defendant's Reply in Support of Motion in Limine No. 7 to Exclude Any Claims that the Subject Motor Coach Was Defective Based on Alleged Dangerous "Air Blasts" |
| 01/22/2018 | Reply in Support <br> Filed By: Defendant Motor Coach Industries Inc [331] Defendant's Reply in Support of Motion in Limine No. 13 to Exclude Plaintiffs' Expert Witness Robert Cunitz, Ph.D., or in the Alternative, to Limit His Testimony |
| 01/22/2018 | Reply in Support <br> Filed By: Defendant Motor Coach Industries Inc [332] Defendant's Reply in Support of Motion in Limine No. 14 to Exclude Articles Regarding or Reference to Transit Buses |
| 01/22/2018 | Reply in Support <br> Filed By: Defendant Motor Coach Industries Inc <br> [333] Defendant's Reply in Support of Motion in Limine No. 15 to Exclude Opinion Testimony From Lay Witnesses on Causation and Enginerring Principles |
| 01/22/2018 | Reply in Support <br> Filed By: Defendant Motor Coach Industries Inc [334] Defendant's Reply in Support of Motion in Limine No. 16 to Exclude Opinions by Plaintiffs' Expert Dipak Panigrahy |
| 01/22/2018 | Reply in Support <br> [335] Motor Coach Industries, Inc.'s Reply in Support of its Motion in Limine No. 4 to Preclude Plaintiffs from Presenting Evidence that Proximity Sensors were a Safer Alternative Design |
| 01/22/2018 | Reply in Support <br> [336] Motor Coach Industries, Inc.'s Reply in Support of its Motion in Limine No. 6 to Exclude Reference to New Flyer Industries, Inc. (NFI Group) |
| 01/22/2018 | Reply in Support <br> [337] Motor Coach Industries, Inc.'s Reply in Support of its Motion in Limine No. 8 to Exclude Any Reference to Seatbelts |
| 01/22/2018 | Reply in Support <br> [338] Motor Coach Industries, Inc.'s Reply in Support of its Motion in Limine No. 9 to Exclude Reference to the "Ghost Bike" Memorial |
| 01/22/2018 | Reply in Support <br> [339] Motor Coach Industries, Inc.'s Reply in Support of its Motion in Limine No. 11 to Exclude Plaintiffs' Expert Witness David Roger |
| 01/22/2018 | Reply in Support |

## Eighth Judicial District Court <br> Case Summary

CASE NO. A-17-755977-C
[340] Motor Coach Industries, Inc.'s Reply in Support of its Motion in Limine No. 12 to
Exclude Reference to the Cost of the $S-1$ Gard or Proximity Sensors

Reply to Opposition
Filed by: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
[341] Reply to Defendant Motor Coach Industries, Inc. s ( MCI) Opposition to Plaintiffs Motion in Limine No. 17 to Admit Evidence of Facts Establishing Defendants Consciousness of Responsibility

Reply to Opposition
[342] Plaintiffs' Reply To Opposition to Motion In LImine No. 7 To Preclude Defendant MCI
From Arguing That The Alleged Lack of Proximity Sensors From A THird Party ("Commercial Availiability"') As A Defense Where The True Issue Is Whether Proximity Sensors Were Technologically "Feasible"

Joinder
Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward [343] Defendants Michelangelo Leasing, Inc. dba Ryan's Express and Edward Hubbard's Joinder to Plaintiffs' Motion for Determination of Good Faith Settlement with Michelangelo Leasing, Inc. dba Ryan's Express and Edward Hubbard

Reply in Support
Filed By: Defendant Motor Coach Industries Inc
[344] Defendant's Reply in Support of Motion in Limine No. 5 to Exclude Any Claim of Defect Based on S-1 Gard

Supplemental
Filed by: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.
[345] Plaintiffs' Supplemental Reply to Defendant Motor Coach Industries, Inc. s Opposition to Plaintiffs Motion in Limine No. 17 to Admit Evidence of Facts Establishing Defendant s Consciousness of Responsibility

Response
Filed by: Defendant Motor Coach Industries Inc
[346] MCI's Response to "Supplemental Reply" in Support of Plaintiffs' Motion (MIL\#17)
Requesting Leave to Inflame the Jury by Demonizing Legitimate Legislation Proceudre
Objection
Filed By: Defendant Motor Coach Industries Inc [347] Objections to Plaintiffs' Tenth Supplemental Expert Disclosure

Objection Filed By: Defendant Motor Coach Industries Inc [348] Objections to Plaintiffs' Eleventh Supplemental Disclosures Pursuant to NRCP 16.1(a) (1)

Designation of Expert Witness
Filed By: Defendant Motor Coach Industries Inc
[349] Eighth Supplement to Designation of Expert Witnesses

Objection
Filed By: Defendant Motor Coach Industries Inc
[350] Motor Coach Industries, Inc.'s Objection to Media Request

# Eighth Judicial District Court <br> <br> Case Summary 

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CASE NO. A-17-755977-C

|  | Objection <br> Filed By: Defendant Motor Coach Industries Inc [351] Objections to Plaintiffs' Twelfth Supplemental Disclosures Pursuant to NRCP 16.1(a)(1) |
| :---: | :---: |
| 02/02/2018 | Findings of Fact, Conclusions of Law and Order [352] Findings of Fact, Conclusions of Law, and Order |
| 02/05/2018 | Findings of Fact, Conclusions of Law and Order [353] Supplemental Findings of Fact, Conclusions of Law and Order |
| 02/06/2018 | Answer <br> Filed By: Defendant Motor Coach Industries Inc [354] Motor Coach Industries, Inc.'s Answer to Second Amended Complaint |
| 02/08/2018 | Objection <br> Filed By: Defendant Motor Coach Industries Inc [355] Motor Coach Industries, Inc.'s Objections to Plaintiffis' 1st, 2nd and 3rd Supplemental Pretrial Disclosures Pursuant to NRCP 16.1(a)(3)(C) |
| 02/08/2018 | Joint Pre-Trial Memorandum [356] Joint Pretrial Memorandum |
| 02/09/2018 | Miscellaneous Filing <br> Filed by: Plaintiff Khiabani, Keon [357] Plaintiffs' Page and Line Designations |
| 02/09/2018 | Brief <br> Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <br> [358] Plaintiffs Trial Brief Regarding Direct and Cross-Examination of Adverse Witnesses |
| 02/09/2018 | Brief <br> [359] Plaintiffs' Trial Brief Regarding Voir Dire |
| 02/09/2018 | Notice of Entry <br> Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <br> [360] Notice of Entry of Order |
| 02/09/2018 | Errata <br> [361] Errata to Plaintiffs' Trial Brief Regarding Voir Dire |
| 02/13/2018 | Objection <br> Filed By: Defendant Motor Coach Industries Inc [362] Defendant Motor Coach Industries, Inc.'s Objections and Cross-Designations to Plaintiffs' Deposition Designations and Defendant Motor Coach Industries, Inc.'s Deposition Designations |
| 02/14/2018 | Trial Subpoena <br> Filed by: Defendant Motor Coach Industries Inc [363] Trial Subpoena - Edward Hubbard |
| 02/14/2018 | Trial Subpoena <br> Filed by: Defendant Motor Coach Industries Inc |

## Eighth Judicial District Court <br> Case Summary

## CASE NO. A-17-755977-C

|  | [364] Trial Subpoena - Erica Bradley |
| :---: | :---: |
| 02/14/2018 | Trial Subpoena <br> Filed by: Defendant Motor Coach Industries Inc [365] Trial Subpoena - Dale Horba |
| 02/14/2018 | Trial Subpoena <br> Filed by: Defendant Motor Coach Industries Inc [366] Trial Subpoena - Tiffiny Brown, M.D. |
| 02/14/2018 | Trial Subpoena <br> Filed by: Defendant Motor Coach Industries Inc [367] Trial Subpoena - Luis Saccarias |
| 02/14/2018 | Trial Subpoena <br> Filed by: Defendant Motor Coach Industries Inc [368] Trial Subpoena: Det. Kenneth Salisbury |
| 02/15/2018 | Brief <br> [369] Bench Brief On Contributory Negligence |
| 02/16/2018 | Response <br> Filed by: Defendant Motor Coach Industries Inc [370] Motor Coach Industries, Inc.'s Response to "Bench Brief on Contributory Negligence" |
| 02/20/2018 | Brief <br> Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <br> [371] Plaintiffs' Trial Brief Regarding Prospective Juror No. 11-1222 |
| 02/20/2018 | Brief <br> Filed By: Defendant Motor Coach Industries Inc [372] Defendant's Trial Brief in Support of a Level Playing Field |
| 02/20/2018 | Trial Subpoena <br> [373] Trial Subpoena Erika Bradley |
| 02/20/2018 | Trial Subpoena <br> [374] Trial Subpoena Luis Fernando Sacarias Pina |
| 02/20/2018 | Motion to Seal/Redact Records <br> Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward [375] Motion to Seal Findings of Fact and Conclusions of Law and Order on Motion for Determination of Good Faith Settlement |
| 02/20/2018 | Objection <br> Filed By: Defendant Motor Coach Industries Inc [376] Defendant Motor Coach Industries, Inc. 's Supplemental Objections to Plaintiffs' Deposition Designation of Mark Barron |
| 02/21/2018 | Miscellaneous Filing <br> [377] Plaintiffs' Page and Line Designations of Bryan Couch |
| 02/22/2018 | Findings of Fact, Conclusions of Law and Order |

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| 02/22/2018 | [378] Findings of Fact, Conclusions of Law and Order <br> Brief <br> Filed By: Plaintiff Estate of Kayvan Khibani M.D. <br> [379] Bench Brief in Support of Preinstructing the Jury that Contributory Negligence is Not a Defense in a Product Liability Action |
| :---: | :---: |
| 02/22/2018 | Jury List [380] |
| 02/23/2018 | Objection <br> Filed By: Defendant Motor Coach Industries Inc [381] Defendant Motor Coach Industries, Inc.'s Objections and Cross-Designations to Plaintiffs' Page and Line Designations of Bryan Couch |
| 02/23/2018 | Miscellaneous Filing <br> [382] Plaintiffs' Response to Defendants' Objection to Virgil Hoogesraat Page and Line |
| 02/26/2018 | Miscellaneous Filing <br> Filed by: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <br> [383] Plaintiffs' Page and Line Designations of Aria Khiabani |
| 02/26/2018 | Miscellaneous Filing <br> Filed by: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <br> [384] Plaintiffs' Page and Line Designations of Keon Khiabani |
| 02/26/2018 | Miscellaneous Filing <br> Filed by: Plaintiff Khiabani, Keon <br> [385] Plaintiffs' Response to Defendants' Objections to Page and LInes of Brad Lamothe, Pablo Fierros and Mary Witherell |
| 02/26/2018 | Miscellaneous Filing <br> [386] Plaintiffs' Response to Defendants' Objections to Page and Line of Jose Parada |
| 02/26/2018 | Order Granting Motion <br> Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward [387] Order Granting Defendants Michelangelo Leasing, Inc. dba Ryan's Express and Edward Hubbard's Motion to Seal Findings of Fact and Conclusions of Law and Order on Motion to for Determination of Good Faith Settlement |
| 02/26/2018 | Miscellaneous Filing <br> [388] Notice of Filing of Plaintiffs' Power Point Slides From Motions for Summary Judgment Hearings Part 1 |
| 02/26/2018 | Miscellaneous Filing <br> [389] Notice of Filing of Plaintiffs' Power Point Slides From Motions for Summary Judgment Hearings Part 2 |
| 02/26/2018 | Miscellaneous Filing <br> [390] Notice of Filing of Plaintiffs' Power Point Slides From Motions for Summary Judgment Hearings Part 3 |
| 02/26/2018 | Viscellaneous Filing |

## Eighth Judicial District Court <br> Case Summary

## CASE NO. A-17-755977-C

|  | [391] Notice of Filing of Plaintiffs' Power Point Slides From Motions for Summary Judgment Hearings Part 4 |
| :---: | :---: |
| 02/26/2018 | Miscellaneous Filing <br> Filed by: Plaintiff Khiabani, Keon [392] Notice of Filing Plaintiffs' Power Point Slides From Defendants' Motions In Limine Hearings Part 1 |
| 02/26/2018 | Miscellaneous Filing <br> Filed by: Plaintiff Khiabani, Keon [393] Notice of Filing Plaintiffs' Power Point Slides From Defendants' Motions In Limine Hearings Part 2 |
| 02/26/2018 | Miscellaneous Filing <br> Filed by: Plaintiff Khiabani, Keon [394] Notice of Filing Plaintiffs' Power Point Slides From Defendants' Motions In Limine Hearings Part 3 |
| 02/26/2018 | Miscellaneous Filing <br> Filed by: Plaintiff Khiabani, Keon [395] Notice of Filing Plaintiffs' Power Point Slides From Defendants' Motions In Limine Hearings Part 4 |
| 02/26/2018 | Miscellaneous Filing <br> Filed by: Plaintiff Khiabani, Keon [396] Notice of Filing Plaintiffs' Power Point Slides From Defendants' Motions In Limine Hearings Part 5 |
| 02/26/2018 | Miscellaneous Filing <br> [397] Notice of Filing Plaintiffs' Power Point Slides From Opening Statements Part 1 |
| 02/26/2018 | Miscellaneous Filing <br> [398] Notice of Filing Plaintiffs' Power Point Slides From Opening Statements Part 2 |
| 02/26/2018 | Miscellaneous Filing <br> [399] Notice of Filing Plaintiffs' Power Point Slides From Opening Statements Part 3 |
| 02/26/2018 | Miscellaneous Filing [400] Notice of Filing Plaintiffs' Power Point Slides From Opening Statements Part 4 |
| 02/26/2018 | Miscellaneous Filing [401] Notice of Filing Plaintiffs' Power Point Slides From Opening Statements Part 5 |
| 02/27/2018 | Notice of Entry <br> Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward [402] Notice of Entry of Order |
| 02/27/2018 | Miscellaneous Filing <br> Filed by: Plaintiff Khiabani, Keon [403] Notice of Filing Plaintiffs' Power Point Slides From Plaintiffs' Motions In Limine Hearings |
| 02/27/2018 | Brief <br> Filed By: Plaintiff Khiabani, Keon <br> [404] Bench Brief on Substantial Similarity of S1 Gard Demonstration Video |

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| 02/28/2018 | Miscellaneous Filing <br> [405] Notice of Filing Plaintiffs' Power Point Slides From Plaintiffs' Motions In Limine Hearings |
| :---: | :---: |
| 02/28/2018 | Response <br> Filed by: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <br> [406] Responses to Defendant's Objections to Plaintiffs' Page and Line Designations of Brad Ellis |
| 02/28/2018 | Miscellaneous Filing <br> [407] Plaintiffs' Response to Defendants' Objections to Page and Line of Mark Barron |
| 03/01/2018 | Miscellaneous Filing <br> Filed by: Plaintiff Khiabani, Keon [408] Plaintiffs' Page and Line Designations of David Dorr |
| 03/02/2018 | Miscellaneous Filing <br> Filed by: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <br> [409] Plaintiffs' Page and Line Designations of Robert Anthony Pears |
| 03/03/2018 | Objection <br> Filed By: Defendant Motor Coach Industries Inc [410] Defendant Motor Coach Industries, Inc's Objections to Plaintiffs' Page and Line Designations of Keon Khiabani and Aria Khiabani and Supplemental Objections to Designations of Brad Lamothe |
| 03/05/2018 | Objection <br> Filed By: Defendant Motor Coach Industries Inc [411] Defendant Motor Coach Industries, Inc.'s Objections and Cross-Designations to Plaintiffs' Page and Line Designations of Dave Dorr |
| 03/05/2018 | Addendum <br> Filed By: Defendant Motor Coach Industries Inc [412] Addendum to Stipulated Protective Order |
| 03/05/2018 | Miscellaneous Filing <br> Filed by: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <br> [413] Plaintiffs Page and Line Designations of Marie-Claude Rigaud |
| 03/05/2018 | Miscellaneous Filing <br> Filed by: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <br> [414] Plaintiffs Page and Line Designations of Siamak Barin |
| 03/07/2018 | Miscellaneous Filing <br> Filed by: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. [415] Responses to Defendant Motor Coach Industries, Inc. s Objections to Plaintiffs Page and Line Designations of Katayoun Katy Barin |
| 03/07/2018 | VRequest |

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|  | Filed by: Plaintiff Khiabani, Keon [416] Audiovisual Transmission Equipment Appearance Request |
| :---: | :---: |
| 03/07/2018 | Objection <br> Filed By: Defendant Motor Coach Industries Inc [417] Defendant Motor Coach Industries, Inc.'s Objections to Plaintiffs' Page and Line Designations of Marie-Claude Rigaud |
| 03/07/2018 | Objection <br> Filed By: Defendant Motor Coach Industries Inc [418] Defendant Motor Coach Industries, Inc.'s Objections to Plaintiffs' Page and Line Designations of Siamak Barin |
| 03/07/2018 | Amended Notice <br> Filed By: Plaintiff Khiabani, Keon [419] Amendment to Notice of Filing Plaintiffs' Power Point Slides from Opening Statements Part 4 |
| 03/07/2018 | Brief <br> [422] DEFENDANT S TRIAL BRIEF ON DR. JACK HUBBARD AND ALLOWABILITY OF OPINIONS ON UNCONSCIOUS PAIN |
| 03/08/2018 | Response <br> [420] Plaintiffs' Response to Defendants' Objections to Page and Line of Dave Dorr |
| 03/08/2018 | Notice <br> Filed By: Plaintiff Khiabani, Keon [421] Notice of Submission of Plaintiffs' Responses to Defendants' Objections to Page and Line |
| 03/11/2018 | Brief <br> Filed By: Plaintiff Khiabani, Keon <br> [423] Plaintiffs' Bench Brief on the Two-Week Juror Funding Agreement |
| 03/12/2018 | Brief <br> [424] Motor Coach Industries, Inc.'s Brief in Support of Oral Motion for Judgment as a Matter of Law (NRCP 50(a)) |
| 03/12/2018 | Trial Brief <br> Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <br> [425] Plaintiffs' Trial Brief Regarding Admissibility of Taxation Issues and Gross Versus Net Lost Income |
| 03/13/2018 | Brief <br> [426] Motor Coach Industries, Inc.'s Bench Brief in Support of Jury View of Interior of Motor Coach |
| 03/13/2018 | Response <br> Filed by: Defendant Motor Coach Industries Inc [427] Defendant Motor Coach Industires, Inc.'s Response to Plaintiffs' Bench on the TwoWeek Funding Agreement |
| 03/13/2018 | Brief <br> [428] Plaintiffs' Trial Brief Regarding Jury Bus View |

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## CASE NO. A-17-755977-C

| 03/13/2018 | Objection <br> Filed By: Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin [429] Plaintiffs Objections and Cross-Designations to Defendant s Page and Line Designations of Robert Pears and Michael Plantz |
| :---: | :---: |
| 03/14/2018 | Brief <br> [430] Plaintiffs Response to Defendants Trial Brief on Dr. Jack Hubbard and Allowability of Opinions on Unconscious Pain |
| 03/14/2018 | Filed Under Seal <br> Filed By: Defendant Michelangelo Leasing Inc [431] Findings of Fact and Conclusions of Law and Order on Motion for Determination of Good Faith Settlement |
| 03/14/2018 | Miscellaneous Filing <br> Filed by: Plaintiff Khiabani, Keon [432] Plaintiff's Page and Line Designations of Claude "Sony" Hildreth |
| 03/18/2018 | Brief <br> Filed By: Plaintiff Khiabani, Keon [433] Bench Brief Regarding Limitations on the Testimony of Virgil Hoogestraat |
| 03/18/2018 | Brief <br> Filed By: Defendant Motor Coach Industries Inc [435] MOTOR COACH INDUSTRIES, INC. S OPPOSITION TO PLAINTIFFS TRIAL BRIEF REGARDING ADMISSIBILITY OF TAXATION ISSUES AND GROSS VERSUS NET LOST INCOME |
| 03/19/2018 | Notice of Entry <br> Filed By: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward [434] Notice of Entry of Order |
| 03/20/2018 | Miscellaneous Filing <br> Filed by: Plaintiff Estate of Katayoun Barin [436] Plaintiffs Trial Brief Regarding Testimony Of Defendant s Expert Stan Smith, Ph.D |
| 03/20/2018 | Opposition <br> Filed By: Defendant Motor Coach Industries Inc [437] Motor Coach Industries, Inc.'s Opposition to Plaintiffs' Trial Brief Regarding Virgil Hoogestraat |
| 03/21/2018 | Brief <br> Filed By: Defendant Motor Coach Industries Inc [438] DEFENDANT MOTOR COACH INDUSTRIES, INC. S TRIAL BRIEF ON LAY WITNESS OPINIONS |
| 03/23/2018 | Proposed Jury Instructions Not Used At Trial [439] Proposed Jury Instructions Not Given |
| 03/23/2018 | Amended Jury List [440] |
| 03/23/2018 | 5pecial Jury Verdict [441] Special Verdict |

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| 03/23/2018 | Jury Instructions [442] |
| :---: | :---: |
| 03/26/2018 | Proposed Verdict Forms Not Used at Trial <br> Party: Defendant Motor Coach Industries Inc [443] Proposed Jury Verdict Form Not Used at Trial |
| 03/30/2018 | Jury Instructions <br> Party: Plaintiff Khiabani, Keon <br> [444] Jury Instructions Reviewed with the Court on March 21, 2018 |
| 04/17/2018 | Judgment [445] Judgment |
| 04/17/2018 | Notice of Special Master Hearing <br> [446] Notice of Emergency Special Master Hearing |
| 04/18/2018 | Notice of Entry of Judgment [447] Notice of Entry of Judgment |
| 04/24/2018 | Special Master Order <br> [448] Special Master Order Staying Post-Trial Discovery Including May 2, 2018, Deposition of the Custodian of Records of the Board of Regents NSHE |
| 04/24/2018 | Memorandum of Costs and Disbursements <br> Filed By: Plaintiff Khiabani, Keon <br> [449] Plaintiffs' Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110 |
| 04/24/2018 | Appendix <br> Filed By: Plaintiff Khiabani, Keon [450] Appendix of Exhibits in Support of Plaintiffs' Verified Memorandum of Costs (Volume 2 of 2) |
| 04/24/2018 | Appendix <br> Filed By: Plaintiff Khiabani, Keon [451] Appendix of Exhibits in Support of Plaintiffs' Verified Memorandum of Costs (Volume 1 of 2) |
| 04/24/2018 | Order <br> [452] Order Regarding Deposition Designations and Objections Relating to Brad Ellis, Brad Lamothe and Bryan Couch |
| 04/25/2018 | Notice of Entry of Order <br> [453] Notice of Entry of Order Regarding Deposition and Objections Relating to Brad Ellis, Brad Lamothe and Bryan Couch |
| 04/25/2018 | Declaration <br> [454] Amended Declaration of Peter S. Christiansen, Esq. In Support of Plaintiffs' 4/24/18 Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110 |
| 04/30/2018 | V Motion to Retax |

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CASE NO. A-17-755977-C


## Eighth Judicial District Court <br> Case Summary

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|  | Filed Under Seal <br> Filed By: Defendant Motor Coach Industries Inc [463] Appendix of Exhibits to: Motor Coach Industries Inc's Motion for a Limited New Trial |
| :---: | :---: |
| 05/08/2018 | Supplement <br> [468] Supplement to Motor Coach Industries, Inc. s Motion for a Limited New Trial |
| 05/08/2018 | Notice of Hearing <br> [469] Notice of Hearing |
| 05/09/2018 | Supplement <br> [470] Plaintiff's Supplemental Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110 |
| 05/14/2018 | Opposition to Motion <br> [471] Opposition to Defendant's Motion to Retax Costs |
| 05/18/2018 | Notice of Appeal <br> Filed By: Defendant Motor Coach Industries Inc [472] Notice of Appeal |
| 05/18/2018 | Case Appeal Statement [473] Case Appeal Statement |
| 05/23/2018 | Order [474] Order |
| 06/06/2018 | Opposition to Motion <br> [475] Plaintiff's Opposition to MCI's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid By Other Defendants |
| 06/08/2018 | Petition for Compromise of Minors Claim <br> [476] Verified Petition to Compromise Minors' Claims Against Defendants Michelangelo Leasing, Inc., Edward Hubbard, Bell Sports, Inc., and Sevenplus Bicycles, Inc. Only and to Approve Partial Payment of Attorneys' Fees and Costs |
| 06/08/2018 | Opposition to Motion <br> [477] Combined Opposition to Motion for A Limited New Trial and MCI's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim |
| 06/13/2018 | Motion to Seal/Redact Records <br> Filed By: Plaintiff Khiabani, Keon <br> [478] Plaintiff's Motion to Seal and/or Redact: (1) The Exhibits to the Verified Petition to Compromise Minors' Claims Against Defendants Michelangelo Leasing, Inc., Edward Hubbard, Bell Sports, Inc., and Sevenplus Bicycles, Inc. Only and to Approve Partial Payment of Attorney's Fees and Costs, and (2) The Order Compromising the Minors' Claims Against Defendants Michelangelo Leasing, Inc., Edward Hubbard, Bell Sports, Inc., and Sevenplus Bicycles, Inc. Only |
| 06/13/2018 | Motion <br> [479] Plaintiffs Motion to Exceed Page Limit as to Combined Opposition to Motion for Limited New Trial and MCI s Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim |
| 06/20/2018 |  |

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Motion to Strike
[480] Motor Coach Industries, Inc.'s Motion to Strike Plaintiffs' "Combined Opposition to Motion for a Limited New Trial and MCI's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim" and Opposition to Untimely Motion to Exceed Page Limit and Request for Order Shortening Time

Order Granting Motion
[481] Order Granting Motion to Seal and/or Redact Exhibits and Order Regarding Minors' Compromise

Transcript of Proceedings
[482] Recorder's Transcript of Hearing Defendant's Motion for Summary Judgment on All Claims Alleging A Product Defect heard on January 23, 2018

Notice of Entry of Order
[483] Notice of Entry of Order Granting Motion to Seal And/Or Redact Exhibits and Order Regarding Minors' Compromise

国
Filed Under Seal
Filed By: Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. [484] Exhibits to Verified Petition to Compromise Minors' Claims Against Defendant s Michaelangelo Leasing, Inc., Edward Hubbard, Bell Sports, Inc., and Sevenplus Bicycles, Inc. Only and to Approve Partial Payment of Attorneys' Fees and Costs (Filed Under Sealed)Filed Under Seal
Filed By: Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. [485] Order Compromising Minors' Claims Against Defendants Michaelangelo Leasing, Inc., Edward Hubbard, Bell Sports, Inc., and Sevenplus Bicycles, Inc. Only and Approving Partial Payment of Attorneys' Fees and Costs (Filed Under Seal)

Order Compromising Minors Claim
[486] Order Compromising Minors' Claims Against Defendants Michelangelo Leasing, Inc., Edward Hubbard, Bell Sports, Inc., and Sevenplus Bicycles, Inc. Only and Approving Partial Payment of Attorneys' Fees and Costs

Reply
[487] Motor Coach Industries, Inc.'s Reply in Support of Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim
[488] Motor Coach Industries, Inc.'s Reply in Support of Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants (Filed Under Seal)

Reply
[489] Reply on Motion to Retax Costs

Reply in Support
Filed By: Defendant Motor Coach Industries Inc [490] Reply in Support of Motion for a Limited New Trial (Redacted)

Motion
Filed By: Defendant Motor Coach Industries Inc [491] Motion to Seal and Redact "Reply in Support of Motion for a Limited New Trial"

# Eighth Judicial District Court <br> Case Summary 

CASE No. A-17-755977-C

|  | Filed By: Defendant Motor Coach Industries Inc <br> [492] Motion to Seal and Redact "Motor Coach Industries, Inc.'s Reply in Support of Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants" |
| :---: | :---: |
| 07/02/2018 | Filed Under Seal <br> [493] Reply in Support of Motion for a Limited New Trial |
| 07/02/2018 | Filed Under Seal <br> [494] Motor Coach Industries, Inc.'s Reply in Support of Motion to Alter or Amend Judgment to Offset Settlement Proceed's Paid by Other Defendants |
| 07/02/2018 | Opposition to Motion <br> Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D. <br> [495] Plaintiffs Opposition to Motor Coach Industries, Inc. s Motion to Strike Plaintiffs Combined Opposition and Reply to Opposition to Untimely Motion to Exceed Page Limit |
| 07/23/2018 | Notice of Entry of Order <br> [496] Notice of Entry of Order Compromising Minors' Claims Against Defendants Michelangelo Leasing, Inc., Edward Hubbard, Bell Sports, Inc., and Sevenplus Bicycles, Inc. Only and Approving Partial Payment of Attorneys' Fees and Costs |
| 08/20/2018 | Order Granting Motion <br> [497] Order Granting Motions to Seal and Redact |
| 08/22/2018 | Stipulation and Order <br> Filed by: Defendant Michelangelo Leasing Inc; Defendant Hubbard, Edward [498] Stipulation and Order Dismissing Plaintiffs' Claims Against Defendants Michelangelo Leasing, Inc. and Edward Hubbard Only |
| 08/23/2018 | Notice of Entry [499] Notice of Entry of Order |
| 08/28/2018 | Notice of Withdrawal <br> Filed By: Defendant Motor Coach Industries Inc [500] Notice of Withdrawal of David A. Dial, Esq. |
| 08/29/2018 | Request <br> [501] Request for Transcripts |
| 09/10/2018 | Transcript of Proceedings [502] 02-12-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT |
| 09/10/2018 | Transcript of Proceedings <br> [503] Reporter's Transcription of Proceedings 2/13/18 |
| 09/10/2018 | Transcript of Proceedings <br> [504] Reporter's Transcription of Proceedings 2/14/18 |
| 09/10/2018 | Transcript of Proceedings <br> [505] Reporter's Transcription of Proceedings 2/21/18 |
| 09/10/2018 | Transcript of Proceedings <br> [506] Reporter's Transcription of Proceedings 02-15-18 |

# Eighth Judicial District Court <br> Case Summary 

CASE NO. A-17-755977-C

| 09/10/2018 | Transcript of Proceedings <br> [507] Reporter's Transcription of Proceedings 02-16-18 |
| :---: | :---: |
| 09/10/2018 | Transcript of Proceedings <br> [508] Reporter's Transcription of Proceedings 02-20-18 |
| 09/10/2018 | Transcript of Proceedings <br> [509] Reporter's Transcription of Proceedings 02-22-18 |
| 09/10/2018 | Transcript of Proceedings <br> [510] Reporter's Transcription of Proceedings 02-23-18 |
| 09/10/2018 | Transcript of Proceedings <br> [511] Reporter's Transcription of Proceedings 02-26-18 |
| 09/10/2018 | Transcript of Proceedings <br> [512] Reporter's Transcription of Proceedings 02-27-18 |
| 09/10/2018 | Transcript of Proceedings <br> [513] Reporter's Transcription of Proceedings 02-28-18 |
| 09/12/2018 | Transcript of Proceedings <br> [514] Reporter's Transcription of Proceedings Heard on 03-01-18 |
| 09/12/2018 | Transcript of Proceedings <br> [515] Reporter's Transcription of Proceedings Heard on 3-2-18 |
| 09/12/2018 | Transcript of Proceedings <br> [516] Reporter's Transcript of Proceedings Heard on 03-05-18 |
| 09/12/2018 | Transcript of Proceedings <br> [517] 03-06-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT |
| 09/12/2018 | Transcript of Proceedings <br> [518] Reporter's Transcription of Proceedings Heard On 03-07-18 |
| 09/12/2018 | Transcript of Proceedings <br> [519] 03-08-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT |
| 09/12/2018 | Transcript of Proceedings <br> [520] Reporter's Transcription of Proceedings Heard on 03-12-18 |
| 09/12/2018 | Transcript of Proceedings <br> [521] 03-13-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT |
| 09/12/2018 | Transcript of Proceedings <br> [522] 03-13-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT |
| 09/12/2018 | Transcript of Proceedings <br> [523] 03-14-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT |

# Eighth Judicial District Court <br> Case Summary 

CASE No. A-17-755977-C

| 09/12/2018 | Transcript of Proceedings <br> [524] 03-15-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT |
| :---: | :---: |
| 09/12/2018 | Transcript of Proceedings <br> [525] 03-16-18 A755977-C BARIN V MCI JURY TRIAL TRANSCRIPT |
| 09/12/2018 | Transcript of Proceedings <br> [526] 03-19-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT |
| 09/13/2018 | Transcript of Proceedings <br> [527] Reporter's Transcription of Proceedings March 20, 2018 |
| 09/13/2018 | Transcript of Proceedings <br> [528] Reporter's Transcription of Proceedings March 21, 2018 |
| 09/13/2018 | Transcript of Proceedings <br> [529] 03-22-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT |
| 09/13/2018 | Transcript of Proceedings [530] 03-23-18 A755977 BARIN V MCI JURY TRIAL TRANSCRIPT |
| 09/18/2018 | Filed Under Seal <br> Filed By: Attorney Kemp, William Simon; Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Kayvan Khibani M.D. [531] Proof of Establishment of Blocked Financial Investments |
| 09/18/2018 | Supplement to Opposition <br> Filed By: Plaintiff Khiabani, Keon <br> [532] Plaintiffs' Supplemental Opposition to MCI's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants |
| 09/24/2018 | Response <br> [533] Motor Coach Industries, Inc.'s Response to "Plaintiff's Supplemental Opposition to MCI's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid to Other Defendants" |
| 10/17/2018 | Stipulation and Order <br> [534] Stipulation and Order Dismissing Plaintiffs' Claims Against Defendant Bell Sports, Inc. Only |
| 10/17/2018 | Stipulation and Order <br> [535] Stipulation and Order Dismissing Plaintiffs' Claims Against Defendant SevenPlus Bicycles, Inc. Only |
| 10/17/2018 | Notice of Entry of Stipulation and Order <br> [536] Notice of Entry of Stipulation and Order Dismissing Plaintiffs' Claims Against Defendant SevenPlus Bicycles, Inc. Only |
| 10/17/2018 | Notice of Entry of Stipulation and Order <br> [537] Notice of Entry of Stipulation and Order Dismissing Plaintiffs' Claims Against Defendant Bell Sports, Inc. Only |
| 10/18/2018 |  |

# Eighth Judicial District Court <br> Case Summary 

CASE No. A-17-755977-C

| 10/18/2018 | Transcript of Proceedings <br> [539] A755977 1-18-18 BARIN V MCI CALENDAR CALL TRANSCRIPT |
| :---: | :---: |
| 10/18/2018 | Transcript of Proceedings <br> [540] A755977 2-9-18 BARIN V MCI STATUS CHECK TRANSCRIPT |
| 10/18/2018 | Transcript of Proceedings <br> [541] A755977 1-29-18 BARIN V MCI MOTIONS IN LIMINE TRANSCRIPTS |
| 10/23/2018 | Transcript of Proceedings <br> [542] A755977 1-31-18 BARIN VS MCI ALL PENDING MOTIONS TRANSCRIPTS |
| 01/03/2019 | Finding of Fact and Conclusions of Law <br> [543] Findings of Fact and Conclusion of Law on Defendant's Motion to Retax |
| 01/31/2019 | Order Granting Motion <br> [544] Order Granting Motion to Dismiss Wrongful Death Claim |
| 02/01/2019 | Findings of Fact, Conclusions of Law and Order <br> [545] Combined Order 1. Denying Motion for Judgment as a Matter of Law and 2. Denying Motion for Limited New Trial |
| 02/01/2019 | Notice of Entry of Order <br> Filed By: Plaintiff Khiabani, Keon [546] Notice of Entry of Combined Order (1) Denying Motion for Judgment as a Matter of Law and (2) Denying Motion for Limited New Trial |
| 02/01/2019 | Findings of Fact, Conclusions of Law and Order <br> Filed By: Defendant Bell Sports,Inc [547] Findings Of Fact Conclusions Of Law And Order On Motion For Determination Of Good Faith Settlement |
| 02/01/2019 | Notice of Entry of Order <br> Filed By: Defendant Bell Sports,Inc <br> [548] Notice Of Entry Of Findings Of Fact Conclusions Of Law And Order On Motion For Good Faith Settlement |
| 03/21/2019 | NV Supreme Court Clerks Certificate/Judgment - Dismissed [549] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed |
| 03/26/2019 | Filed Under Seal [550] Order |
| 04/09/2019 | Stipulation and Order <br> Filed by: Plaintiff Khiabani, Keon <br> [551] Stipulation and Order Allowing the Order Denying Defendant Motor Coach Industries, Inc.'s Motion to Alter or Amend Judgment to Offset Settlement Proceeds to be Filed with Redactions and Under Seal |
| 04/10/2019 |  |

## Eighth Judicial District Court <br> Case Summary

CASE NO. A-17-755977-C

|  | Notice of Entry of Stipulation and Order <br> Filed By: Plaintiff Khiabani, Keon [552] Notice of Entry of Stipulation and Order Allowing the Order Denying Defendant Motor Coach Industries, Inc.'s Motion to Alter or Amend Judgment to Alter or Amend Judgment to Offset Settlement Proceeds to Be Filed With Redactions and Under Seal |
| :---: | :---: |
| 04/24/2019 | Notice of Entry <br> Filed By: Defendant Motor Coach Industries Inc [553] Notice of Entry of "Findings of Fact and Conclusions of Law on Defendant's Motion to Retax" |
| 04/24/2019 | Notice of Appeal [554] Notice of Appeal |
| 04/24/2019 | Case Appeal Statement [555] Case Appeal Statement |
| 05/03/2019 | Notice of Entry of Order <br> Filed By: Plaintiff Khiabani, Keon <br> [556] Notice of Entry of Court's Order Denying Defendant's Motion to Alter or Amend Judgment to Offset Settlement Proceeds P by Other Defendants Filed Under Seal on March 26, 2019 |
| 05/20/2019 | Request [557] Request for Transcripts |
| 06/25/2019 | Transcript of Proceedings <br> [558] A755977 9-25-18 KATAYOUN BARIN VS MCI TRANSCRIPT |
| 12/19/2019 | Stipulation and Order <br> Filed by: Defendant Motor Coach Industries Inc [559] Stipulation and Order for Stay of Execution |
| 12/19/2019 | Notice of Entry of Order <br> Filed By: Defendant Motor Coach Industries Inc [560] Notice of Entry of Order for Stay of Execution |
| 09/14/2021 | NV Supreme Court Clerks Certificate/Judgment - Affd/Rev Part <br> [561] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed in Part, Reversed in Part and Remand |
| 09/21/2021 | Order <br> [562] Order Setting Further Proceedings Re: Supreme Court Order |
| 10/22/2021 | Stipulation and Order <br> [563] Stipulation and Order Regarding Post-Appeal Briefing Schedule |
| 11/23/2021 | Stipulation and Order <br> [564] Stipulation and Order Extending Briefing Schedule |
| 12/13/2021 | Brief <br> [565] Brief Regarding Offset |
| 12/13/2021 |  |

# Eighth Judicial District Court <br> <br> Case Summary 

 <br> <br> Case Summary}

CASE NO. A-17-755977-C

|  | Motion to Seal/Redact Records <br> Filed By: Defendant Motor Coach Industries Inc [566] Motion to Seal and Redact Brief Regarding Offset |
| :---: | :---: |
| 12/13/2021 | Brief <br> [567] Brief Regarding Offset (Redacted) |
| 12/13/2021 | Temporary Seal Pending Court Approval [568] Brief Regarding Offset (Filed Under Seal) |
| 12/14/2021 | Clerk's Notice of Hearing [569] Notice of Hearing |
| 12/21/2021 | Stipulation and Order <br> [570]Stipulation and Order Extending Post-Appeal Briefing Schedule |
| 01/20/2022 | Answering Brief [571] Answering Brief to MCI's Brief Regarding Offset |
| 01/21/2022 | Brief <br> Filed By: Defendant Motor Coach Industries Inc [572] MCI's Responding Brief Regarding Offset |
| 02/01/2022 | Notice of Change of Hearing [573] Notice of Change of Hearing |
| 03/09/2022 | Notice of Hearing [574] Notice of Hearing |
| 04/11/2022 | Notice of Hearing [575] Notice of Hearing |
| 07/11/2022 | Court Recorders Invoice for Transcript [576] |
| 07/13/2022 | Recorders Transcript of Hearing <br> Party: Defendant Motor Coach Industries Inc [577] Recorder's Transcript of Hearing Re: Hearing heard June 28, 2022 |
| 08/09/2022 | Stipulation and Order <br> [578] Stipulation and Order to Substitute Parties and Amend Caption |
| 03/16/2023 | Order <br> [579] Order Granting Defendant Motor Coach Industries, Inc.'s Motion for Offset |
| 03/24/2023 | Notice of Entry of Order <br> Filed By: Defendant Motor Coach Industries Inc [580] Notice of Entry of "Order Granting Defendant Motor Coach Industries, Inc.'s Motion for Offset |
| 04/12/2023 | Notice of Appeal <br> Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun |

## Eighth Judicial District Court <br> Case Summary

CASE NO. A-17-755977-C
Barin; Plaintiff Estate of Kayvan Khibani M.D.; Executor Barin, Siamak [581] Plaintiff's Notice of Appeal

Case Appeal Statement
Filed By: Plaintiff Khiabani, Keon; Plaintiff Khiabani, Aria; Plaintiff Estate of Katayoun Barin; Plaintiff Estate of Kayvan Khibani M.D.; Executor Barin, Siamak [582] Plaintiffs' Case Appeal Statement

## DISPOSITIONS

Summary Judgment (Judicial Officer: Escobar, Adriana)
Debtors: Motor Coach Industries Inc (Defendant), Michelangelo Leasing Inc (Defendant), Edward Hubbard (Defendant), Bell Sports Inc (Defendant)
Creditors: Estate of Katayoun Barin (Plaintiff)
Judgment: 02/22/2018, Docketed: 02/22/2018
Comment: In part
Verdict (Judicial Officer: Escobar, Adriana)
Debtors: Motor Coach Industries Inc (Defendant)
Creditors: Keon Khiabani (Subject Minor)
Judgment: 03/23/2018, Docketed: 03/30/2018
Total Judgment: 9,200,000.00
Debtors: Motor Coach Industries Inc (Defendant)
Creditors: Aria Khiabani (Subject Minor)
Judgment: 03/23/2018, Docketed: 03/30/2018
Total Judgment: 7,000,000.00
Debtors: Motor Coach Industries Inc (Defendant)
Creditors: Keon Khiabani (Subject Minor), Aria Khiabani (Subject Minor), Estate of Kayvan Khibani M.D. (Plaintiff)
Judgment: 03/23/2018, Docketed: 03/30/2018
Total Judgment: 1,000,000.00
Debtors: Motor Coach Industries Inc (Defendant)
Creditors: Estate of Kayvan Khibani M.D. (Plaintiff)
Judgment: 03/23/2018, Docketed: 03/30/2018
Total Judgment: 46,003.62

Judgment Plus Interest (Judicial Officer: Escobar, Adriana)
Debtors: Motor Coach Industries Inc (Defendant)
Creditors: Keon Khiabani (Subject Minor)
Judgment: 04/17/2018, Docketed: 04/18/2018
Total Judgment: 9,533,333.34
Debtors: Motor Coach Industries Inc (Defendant)
Creditors: Aria Khiabani (Subject Minor)
Judgment: 04/17/2018, Docketed: 04/18/2018
Total Judgment: 7,333,333.33
Debtors: Motor Coach Industries Inc (Defendant)
Creditors: Estate of Katayoun Barin (Plaintiff)
Judgment: 04/17/2018, Docketed: 04/18/2018
Total Judgment: 1,833,333.33
Debtors: Motor Coach Industries Inc (Defendant)
Creditors: Estate of Kayvan Khibani M.D. (Plaintiff)
Judgment: 04/17/2018, Docketed: 04/18/2018
Total Judgment: 46,003.62
Debtors: Motor Coach Industries Inc (Defendant)
Creditors: Keon Khiabani (Subject Minor), Aria Khiabani (Subject Minor), Estate of Katayoun
Barin (Plaintiff), Estate of Kayvan Khibani M.D. (Plaintiff)
Judgment: 04/17/2018, Docketed: 04/18/2018
Total Judgment: 246,480.55
Order Approving Minor's Compromise (Judicial Officer: Escobar, Adriana)
Debtors: Motor Coach Industries Inc (Defendant), Michelangelo Leasing Inc (Defendant), Edward Hubbard (Defendant), Bell Sports Inc (Defendant), Sevenplus Bicyles Inc (Defendant)
Creditors: Keon Khiabani (Subject Minor), Aria Khiabani (Subject Minor)

## Eighth Judicial District Court <br> Case Summary

CASE NO. A-17-755977-C

09/14/2021

06/06/2017

Order of Dismissal With Prejudice (Judicial Officer: Escobar, Adriana)
Debtors: Michelangelo Leasing Inc (Defendant), Edward Hubbard (Defendant)
Creditors: Estate of Katayoun Barin (Plaintiff)
Judgment: 08/22/2018, Docketed: 08/22/2018

Order of Dismissal (Judicial Officer: Escobar, Adriana)
Debtors: Bell Sports Inc (Defendant)
Creditors: Keon Khiabani (Subject Minor), Aria Khiabani (Subject Minor), Estate of Katayoun
Barin (Plaintiff), Estate of Kayvan Khibani M.D. (Plaintiff)
Judgment: 10/17/2018, Docketed: 10/17/2018

Order of Dismissal With Prejudice (Judicial Officer: Escobar, Adriana)
Debtors: Sevenplus Bicyles Inc (Defendant)
Creditors: Keon Khiabani (Subject Minor), Aria Khiabani (Subject Minor), Estate of Katayoun
Barin (Plaintiff), Estate of Kayvan Khibani M.D. (Plaintiff)
Judgment: 10/17/2018, Docketed: 10/17/2018

Order of Dismissal With Prejudice (Judicial Officer: Escobar, Adriana)
Debtors: Estate of Katayoun Barin (Plaintiff), Estate of Kayvan Khibani M.D. (Plaintiff)
Creditors: Motor Coach Industries Inc (Defendant)
Judgment: 01/31/2019, Docketed: 02/01/2019
Comment: Certain Claims
Clerk's Certificate (Judicial Officer: Escobar, Adriana)
Debtors: Motor Coach Industries Inc (Defendant)
Creditors: Keon Khiabani (Subject Minor), Aria Khiabani (Subject Minor), Estate of Katayoun Barin (Plaintiff), Estate of Kayvan Khibani M.D. (Plaintiff), Marie Claude-Rigaud (Guardian), Siamak Barin (Executor)
Judgment: 03/21/2019, Docketed: 03/28/2019
Comment: Supreme Court No. 75953 Appeal Dismissed
Clerk's Certificate (Judicial Officer: Escobar, Adriana)
Debtors: Keon Khiabani (Subject Minor), Aria Khiabani (Subject Minor), Estate of Katayoun Barin (Plaintiff), Estate of Kayvan Khibani M.D. (Plaintiff)
Creditors: Motor Coach Industries Inc (Defendant), Bell Sports,Inc (Defendant)
Judgment: 09/14/2021, Docketed: 09/14/2021
Comment: Supreme Court No. 78701 "Appeal Affirmed in Part, Reverserd in Part and Remanded "

## HEARINGS

2. Minute Order (12:30 PM) (Judicial Officer: Escobar, Adriana)

Denied; Ex-Parte Motion for Order Requiring Bus Company and Driver to Preserve and Immediately Turn Over Relevant Electronic Monitoring Information from Bus and Driver Cell Phone
Journal Entry Details:
Plaintiffs ex parte motion for order requiring bus company and driver to preserve and immediately turn over relevant electronic monitoring information from bus and driver cell phone was filed in Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on May 30, 2017. The Court notes that the motion is not the appropriate method for seeking the requested relief, as Plaintiffs are essentially requesting a temporary restraining order and an order compelling production of evidence. Thus, the Court DENIES Plaintiffs motion, as each of these motions require additional procedural steps, such as an attempt at notice to the other party which have apparently not been undertaken here. If Plaintiffs refile the request to preserve evidence as an application for temporary restraining order in line with NRCP 65(b), including making efforts to serve the Defendants with notice of that application, the Court will consider the matter at that time. The Court will not grant a motion to compel on an ex parte basis. Finally, the Court notes that both parties have a common law duty to preserve documents, tangible items, and information relevant to litigation that are reasonably calculated to lead to the discovery of admissible evidence when litigation

## Eighth Judicial District Court Case Summary

CASE NO. A-17-755977-C
is reasonably foreseeable. See Bass-Davis v. Davis, 122 Nev. 442 (2006). Plaintiffs are directed to submit a proposed order denying their motion, and to serve a copy of this minute order on Defendants. CLERK'S NOTE: Copies of this minute order placed in the attorney folders of: William Kemp (KEMP JONES \& COULTHARD, LLP) Peter S. Christiansen (CHRISTIANSEN LAW OFFICES);

Motion for Temporary Restraining Order (9:30 AM) (Judicial Officer: Escobar, Adriana) Per Pltf's App for TRO requiring Bus Co. \& Driver to Preserve \& Immediately Turn over Relevant Electronic Monitoring Information from Bus and Driver Cell Phone on OST. Decision Made; Per Pltf's App for TRO requiring Bus Co. \& Driver to Preserve \& Immediately Turn over Relevant Electronic Monitoring Information from Bus and Driver Cell Phone on OST.
Journal Entry Details:
Per Pltf's App for TRO requiring Bus Co. \& Driver to Preserve \& Immediately Turn over Relevant Electronic Monitoring Information from Bus and Driver Cell Phone on OST. Eric Freeman, Esq. appeared by CourtCall on behalf of Defts Michelangelo Leasing Inc. d/b/a Ryan's Express and Edward Hubbard. Judge Escobar disclosed that it had represented Mr. Kemp's firm prior to taking the Bench, but will be fair and impartial. There was no opposition from any counsel to this Court hearing this matter. Following Mr. Kemp's argument in support of the Application for TRO, both Mr. Russell and Mr. Stoberski stated they had no opposition to the proposed changes to the order, but requested to review it prior to signing off. Mr. Freeman presented his objection to the Temporary Restraining Order, arguing it was too broad. He also noted that Sevenplus Bicycles Inc., a defendant that it affects, was served but has made no appearance yet and they need to make an appearance. Mr. Kemp confirmed that Michelangelo and Hubbard were served and argued that they will need to look at the evidence and get started. Mr. Freeman responded that he needs the opportunity to discuss this with his potential client and reiterated his opposition to the TRO at this time, but he will work with counsel. Mr. Kemp reiterated his request for the TRO. COURT STATED it has given a lot of thought to this and did find that the preservation of evidence is critical and required; however, the Court needs to read the changed Order. COURT ORDERED, Application for TRO GRANTED IN PART and DENIED IN PART. COURT STATED it did not find it was something it wanted to come without the other parties being informed. The preservation of evidence is critical and required. COURT STATED it has not yet read the changed order, but at this time read from its notes, citing the electronic information that Mr. Kemp believes the bus has in its possession. COURT ORDERED within five business days, all of the cited items are to be preserved from the accident which occurred on 4/18/17. With respect to the Smart Phone, those items that Plaintiff requested are to be preserved. Under Bass-Davis, a party has the duty to preserve discoverable evidence, within five business days. COURT NOTED that the evidence already discussed may not be discoverable, but it is to be downloaded within five business days and is to be preserved by the Defendants; Mr. Freeman would have a duty to preserve this. Defendants are not to discuss the evidence with Plaintiff's, or anyone else involved in the case, until the appropriate time. Mr. Kemp stated his concern is that all data is downloaded. COURT ADVISED it wants a Declaration from the experts who are proficient to download the data from the date of the accident. It was noted that there are two such experts who would be proficient to do that. COURT ORDERED that the experts are to submit a Declaration to the Court as to what was downloaded and the dates of the data generation from the bus and the cell phone. The information will not be shared with Plaintiff until the appropriate time. Mr. Kemp noted that METRO may request the information. COURT REITERATED that the information is not to be shared with the Plaintiff, but METRO'S requests may be required. Mr. Freeman stated he will cooperate with Mr. Kemp's office and requested Mr. Kemp to forward the proposed revised Order to him along with the information as to whom could download all of this and preserve the data. Mr. Freeman's contact information was provided at this time. COURT SO NOTED. Mr. Kemp advised he will redraft the proposed Order, get it to all counsel, and then get it back to the Court within the next few days. COURT REITERATED, the TEMPORARY RESTRAINING ORDER, GRANTED IN PART; DENIED AS TO IMMEDIATELY TURNING OVER THE INFORMATION/EVIDENCE.;

Motion for Preferential Trial Setting (9:30 AM) (Judicial Officer: Jones, Tierra)
Plaintiffs' Motion for Preferential Trial Setting Under NRS 16.025(2)
Granted; Plaintiff's Motion for Preferential Trial Setting Under NRS 16.025(2) Journal Entry Details:
Mr. Kemp argued that parties can be ready for trial in six months. He advised that the widow does not have long to live which necessitates an expedited trial setting. He further stated he listed all witnesses at the early case conference and will provide counsel all documents by

## Eighth Judicial District Court <br> Case Summary

CASE NO. A-17-755977-C

CANCELED Motion to Associate Counsel (3:00 AM)
Vacated - per Order
On OST

CANCELED Motion to Associate Counsel (3:00 AM)
Vacated

Status Check (9:30 AM) (Judicial Officer: Escobar, Adriana)
Trial Readiness
Matter Continued;
Removed to USDC 10/17/2017

Motion For Reconsideration (9:30 AM) (Judicial Officer: Escobar, Adriana)
Defendants Michelangelo Leasing Inc. and Edward Hubbard's Motion for Reconsideration Regarding the Court Granting Plaintiffs' Motion for Preferential Trial Setting Matter Continued;
Removed to USDC 10/17/2017

Joinder (9:30 AM) (Judicial Officer: Escobar, Adriana)
Defendant SevenPlus Bicycles, Inc. dba Pro Cyclery's Joinder to Defendant Ryan's Express and Edward Hubbard's Motion for Reconsideration
Matter Continued;
Removed to USDC 10/17/2017

Joinder (9:30 AM) (Judicial Officer: Escobar, Adriana)
Defendant Motor Coach Industries, Inc.'s Joinder to Michelangelo Leasing Inc. and Edward Hubbard's Motion for Reconsideration Regarding the Court Granting Plaintiffs' Motion for
Preferential Trial Setting
Matter Continued;
Removed to USDC 10/17/2017

All Pending Motions (9:30 AM) (Judicial Officer: Escobar, Adriana)
Matter Heard; Journal Entry Details:
TRIAL READINESS ... DEFENDANTS MICHELANGELO LEASING INC. AND EDWARD HUBBARD'S MOTION FOR RECONSIDERATION REGARDING THE COURT GRANTING PLAINTIFFS' MOTION FOR PREFERENTIAL TRIAL SETTING ... DEFENDANT SEVENPLUS BICYCLES, INC. DBA PRO CYCLERY'S JOINDER TO DEFENDANT RYAN'S EXPRESS AND EDWARD HUBBARD'S MOTION FOR RECONSIDERATION .. DEFENDANT MOTOR COACH INDUSTRIES, INC.'S JOINDER TO MICHELANGELO LEASING INC. AND EDWARD HUBBARD'S MOTION FOR RECONSIDERATION REGARDING THE COURT GRANTING PLAINTIFFS' MOTION FOR PREFERENTIAL trial Setting Scott Tooney, Esq., present on behalf of Bell Sports Inc. Paul Stephen, Esq., appearing Pro Hac Vice on behalf of Motor Coach Industries Inc. Michael G. Terry, Esq., appearing Pro Hac Vice on behalf of Katayoun Barin. Arguments by counsel regarding trial readiness and the Motion for Reconsideration. COURT STATED FINDINGS and ORDERED, trial and discovery is to move forward on the schedule that was set. Court noted the status of each Pro Hac Vice application. COURT FURTHER ORDERED, matter SET for Status Check regarding trial readiness. CLERK'S NOTE: Subsequent to Court, COURT ORDERED, matter SET for Status Check on October 30, 2017 to monitor the progress of discovery closer to the trial date; Motions for Reconsideration CONTINUED. hvp/10/9/17;

CANCELED Motion (9:30 AM) (Judicial Officer: Escobar, Adriana)
Vacated - per Stipulation and Order
Plaintiffs' Motion to Allow Plaintiffs to Present a Jury Questionnaire Prior to Voir Dire on OST

# Eighth Judicial District Court <br> Case Summary 

CASE No. A-17-755977-C

CANCELED Motion for Determination of Good Faith Settlement (9:30 AM) (Judicial Officer: Hardcastle, Kathy)

Vacated
Defendant Sevenplus Bicycles Inc dba Pro Cycler's Motion for Determination of Good Faith Settlement

CANCELED Motion to Compel (9:30 AM) (Judicial Officer: Escobar, Adriana)
Vacated
Defendant Motor Coach Industries Inc's Motion to Compel Production of Documents by Las
Vegas Metropolitan Police Department on OST

CANCELED Calendar Call (9:30 AM) (Judicial Officer: Escobar, Adriana)
Vacated
Motion to Amend Complaint (9:30 AM) (Judicial Officer: Escobar, Adriana)
Set On an OST
Granted;
Motion to Amend Complaint (9:30 AM) (Judicial Officer: Escobar, Adriana) Plaintiffs' Motion to Amend Complaint to Substitute Parties on Order Shortening Time Granted;

All Pending Motions (9:30 AM) (Judicial Officer: Escobar, Adriana)
Granted; Plaintiff's Motion to Amend Cojmplaint to Substitute Parties on Order Shortening Time...Defendant's Opposition to Plaintiffs' Motion to Amend Complaint/Countermotion to Set a Reasonable Trial Date Upon Changed Circumstance that Nullifies the Reason for Preferential Trial Setting Journal Entry Details: Mr. Kemp stated that the amendment being sought is to replace the co-guardian into the case. He advised that Defendant's opposition is actually a request to continue the trial. He informed the Court the status of taking of depositions and argued opposition to Defendant's request for trial continuance. Mr. Polsenberg stated he does not want to try a case in which he is not prepared; a continuance is required to fully prepare. Following further arguments, COURT ORDERED, Plaintiff's Motion to Amend Complaint is GRANTED and Defendant's Countermotion to Set a Reasonable Trial Date is GRANTED. Trial, which is anticipated to take four weeks, is set to a Firm Setting. 1/18/18 9:30 AM CALENDAR CALL 2/12/18 9:30 AM JURY TRIAL - FIRM SETTING;

CANCELED Jury Trial (9:30 AM) (Judicial Officer: Escobar, Adriana) Vacated

Motion for Determination of Good Faith Settlement (9:30 AM) (Judicial Officer: Escobar, Adriana)

Notice of Hearing on Defendant SevenPlus Bicycles, Inc d/b/a Pro Cyclery's Motion for Determination of Good Faith Settlement
Granted;
Journal Entry Details:
COURT FINDS no collusion or fraud and the settlement negotiations were at arms length, and ORDERED, Good Faith Settlement is APPROVED. Ms. Igeleke to prepare the order to include Findings of Fact and Conclusions of Law, circulate proposed order to counsel and provide proposed order to Court's Chambers in Word format.;

Calendar Call (9:30 AM) (Judicial Officer: Escobar, Adriana)
Matter Heard;
Journal Entry Details:
Colloquy regarding trial date and the jury questionnaire. COURT ORDERED, trial date STANDS.;

Motion for Summary Judgment (9:30 AM) (Judicial Officer: Escobar, Adriana)
Plaintiff's Motion for Summary Judgment On Foreseeability of Bus Interaction With

## Eighth Judicial District Court <br> Case Summary

Case No. A-17-755977-C
Pedestrians or Bicyclists (Including Sudden Bicycle Movement)Mot Granted;

Motion for Summary Judgment (9:30 AM) (Judicial Officer: Escobar, Adriana) Defendant's Motion for Summary Judgment on Punitive Damages Denied;

Motion for Summary Judgment (9:30 AM) (Judicial Officer: Escobar, Adriana) Motor Coach Industries, Inc.'s Motion for Summary Judgment on All Claims Alleging a Product Defect
Denied;

Motion to Dismiss (9:30 AM) (Judicial Officer: Escobar, Adriana) Defendant's Motion to Dismiss Wrongful Death Claim for Death of Katavoun Barin DDS Granted;

Motion for Leave (9:30 AM) (Judicial Officer: Escobar, Adriana) Defendant Motor Coach Industries, Inc. Motion for Leave to File Third Party Complaint on OST
Moot;
Motion for Leave (9:30 AM) (Judicial Officer: Escobar, Adriana)
Defendant's Motion for Leave to File Third Party Complaint on Order Shortening Time Moot;

Motion for Determination of Good Faith Settlement (9:30 AM) (Judicial Officer: Escobar, Adriana)

Defendant Bell Sports, Inc.'s Motion for Determination of Good Faith Settlement on OST Granted;

Objection (9:30 AM) (Judicial Officer: Escobar, Adriana)
Non- Party New Flyer Industries Inc's Objection to Special Master Hale's January 4, 2018 Granted in Part;

Motion for Determination of Good Faith Settlement (9:30 AM) (Judicial Officer: Escobar, Adriana)

Plaintiffs' Motion for Determination of Good Faith Settlement with Defendants Michelangelo Leasing, Inc. d/b/a Ryan's Express and Edward Hubble Only on OST
Granted;

Joinder (9:30 AM) (Judicial Officer: Escobar, Adriana)
Plaintiffs' Joinder to Defendant Bell Sports, Inc.'s Motion for Determination of Good Faith Settlement On Order Shortening Time
Matter Heard;

All Pending Motions (9:30 AM) (Judicial Officer: Escobar, Adriana)
Granted in Part;
Journal Entry Details:
Following arguments by counsel, COURT ORDERED, the following: Defendant's Motion for Summary Judgment on Forseeability of Bus Interaction with Pedestrians or Bicyclists (Including Sudden Bicycle Movement) is GRANTED. Plaintiff's Motion for Determination of Good Faith Settlement with Defendants Michelangelo Leasing, Inc. dba Ryan's Express and Edward Hubble Only is GRANTED; Motion to Seal Settlement GRANTED as well. Defendant Bell Sports, Inc.'s Motion for Determination of Good Faith Settlement on OST is GRANTED; Motion to Seal GRANTED as well. Plaintiff's Joinder to Defendant Bell Sports, Inc.'s Motion for Determination of Good Faith Settlement on Order Shortening Time is GRANTED.
Defendant's Motion for Summary Judgment on Punitive Damages is DENIED as Plaintiff provided sufficient evidence supporting punitive damages instruction. Motor Coach Industries, Inc." Motion for Summary Judgment on All Claims Alleging a Product Defect is DENIED as the theories have issues of material fact remaining. Defendant's Motion to Dismiss Wrongful Death Claim for Death of Katavoun Brain DDS is GRANTED. Defendant Motor Coach Industries, Inc. Motion for Leave to File Third Party Complaint on OST is MOOT. Defendant's

# Eighth Judicial District Court Case Summary 

CASE NO. A-17-755977-C
Motion for Leave to File Third Party Complaint on OST is MOOT. Non-Party New Flyer Industries Inc.'s Objection to Special Master Hale's January 23, 2018. Court informed parties that a minute order will issue. Parties to prepare their respective orders.;

5 Minute Order (11:00 AM) (Judicial Officer: Escobar, Adriana)
Granted in Part; Non-Party New Flyer Industries, Inc.'s Objection to Special Master Hales's 1/4/18 Order
Journal Entry Details:
Non-party New Flyer Industries, Inc. s Objection to Special Master Hale s January 4, 2018 Order came on for a hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on January 23, 2018. After considering the pleadings and argument of counsel, the Court GRANTS IN PART and DENIES IN PART New Flyer s motion. Plaintiffs will be permitted to conduct a deposition of Mr. Asham by video conference, to last no more than two hours. However, the deposition will be for the limited purpose of discovery of the financial status of the Defendant, Motor Coach Industries. Plaintiffs are directed to prepare a proposed order for the Court s signature, and to submit the proposed order in Microsoft Word format, by e-mail to dept14lc@clarkcountycourts.us Additionally, in regard to the various other motions heard on January 23, 2018, the Court directs Plaintiffs to prepare proposed orders for (1) Bell Sports Inc. s motion for determination of good faith settlement; (2) Michelangelo Leasing Inc. and Edward Hubbards motion for determination of good faith settlement; (3) Plaintiffs motion for summary judgment on foreseeability of bus interactions with pedestrians or bicyclists; (4) Defendant s motion for summary judgment on punitive damages; and (5) Defendants motion for summary judgment on all claims alleging a product defect. Defendant is directed to prepare proposed orders for (1) Defendant s motion to dismiss wrongful death claim for death of Katy Brain; and (2) Defendant s motion for leave to file third-party complaint. Each proposed order shall be reviewed by opposing counsel for approval as to form and content, should be submitted in Microsoft word format, by e-mail to dept14lc@clarkcountycourts.us, and must include detailed findings of fact and conclusions of law. CLERK'S NOTE: Counsel notified via e-mail.;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)
Plaintiffs' Motion In Limine No. 1 to Preclude Reference Or Argument Regarding the Alleged Negligence of Third Parties (I.E.,Michelangelo and Hubbard)
Matter Heard;
Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)
Plaintiffs' Motion In Limine No. 2 to Preclude Any Reference to Settling Defendants (Including Claims, Settlement and Amounts)
Matter Heard;
Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)
Plaintiff's Motion In Limine No. 3 to Preclude Defendant MCI from Arguing That Decedent Was Contributorily Negligent
Matter Heard;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)
Plaintiffs' Motion In Limine No. 4 to Preclude MCI From Making Excessive Reference to the Fact that Plaintiffs Are of Iranian or "Persian" Descent Matter Heard;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)
Plaintiffs' Motion In Limine No. 5 to Preclude Defendants From Arguing Or Suggesting That Plaintiffs Must Prove That the Bus Had Any Specific Defect
Matter Heard;
Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)
Plaintiffs' Motion In Limine No. 6 to Preclude Defendants From Mentioning That Defense Expert Dr. Michael Baden ("OJ's Medical Examiner) Worked for the Christiansen Law Firm Matter Heard;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)
Plaintiffs' Motion In Limine No. 7 to Preclude Defendant MCI From Arguing That the Alleged

## Eighth Judicial District Court <br> Case Summary

CaSE No. A-17-755977-C

Lack of Proximity Sensors From a Third party ("Commercial Availability") As a Defense Where the True Issue Is Whether Proximity Sensors Were Technologically "Feasible" Matter Heard;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) Plaintiffs' Motion In Limine No. 8 to Pre Instruct the Jury With Standard Instructions for Product Liability Claims
Matter Heard;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)
Plaintiffs' Motion In Limine No. 9 to Preclude Metro Report and/or Opinions From Metro Officers
Matter Heard;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)
Plaintiffs' Motion In Limine No. 10 to Pre Admit Funeral Video and Funeral Slide Show Matter Heard

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)
Plaintiffs' Motion In Limine No. 11 Pre Admit 1993 Generic Bus Wind Testing By MCI Matter Heard;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)
Plaintiffs' Motion In Limine No. 12 to Preclude MCI Expert Rucoba From Offering Meteorologist Opinions Regarding Wind Speed At the Time of the Accident (Including But Not Limited to the Wildly Unsupported Claim That Wind Speeds At 10:30 a.m. Were "16 to 17 MIles Per Hours" And "Winds Were Gusting to 30 Miles Per Hour"
Matter Heard;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)
Plaintiffs' Motion In Limine No. 13 Preclude Defendants From Arguing Or Referencing Rigged Air Blast Testing That Is Not Substantially Similar Because It Used Stationary Bike and Not a Moving Bike
Matter Heard;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)
Plaintiffs' Motion In Limine No. 14 to Designate Virgil Hoogestraat As Managing Speaking Agent of MCI
Matter Heard;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)
Plaintiffs' Motion In Limine No. 15 to Designate Bryan Couch as Managing Speaking Agent of Motor Coach Industries, Inc.
Matter Heard;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)
Plaintiffs' Motion In Limine No. 16 to Pre Admit June 2001 Article As Notice of Potential Rear Tire Suction Hazard and Need For Protective Guard

Matter Heard;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)
01/29/2018, 01/31/2018
Defendant's Motion In Limine No. 2 to Exclude Illustrations by Plaintiffs' Expert Joshua Cohen that Have no Basis In Fact
Continued;
Matter Heard;
Continued;
Matter Heard

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018

# Eighth Judicial District Court <br> <br> Case Summary 

 <br> <br> Case Summary}

CASE NO. A-17-755977-C


# Eighth Judicial District Court 

## Case Summary

CASE No. A-17-755977-C

Continued;
Matter Heard;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)
Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018

Defendants' Motion In Limine No 4 to Preclude Plaintiffs from Presenting Evidence that Proximity Sensors Were a Safer Alternative Design
Continued;
Matter Heard
Continued;
Matter Heard;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018

Defendant's Motion In Limine No 6 to Exclude Reference to New Flyer Industriesc (NFI Group)
Continued;
Matter Heard;
Continued;
Matter Heard;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018

Defendant's Motion In Limine No 11 to Exclude Plaintiffs' Expert Witness David Roger Continued;
Matter Heard;
Continued;
Matter Heard;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018

Plaintiff's Motion In Limine No. 17 to Admit Evidence of Facts Establishing Defendant's Consciousness of Responsibility
Continued;
Matter Heard;
Continued;
Matter Heard;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018

Defendant's Motion In Limine No 8 to Exclude Any Reference to Seatbelts
Continued;
Matter Heard;
Continued;
Matter Heard;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana)
Plaintiffs' Motion In Limine to Exclude the Testimony of Untimely Disclosed Expert Witness Robert Stahl, MD

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018

Defendant's Motion In Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes
Continued;
Matter Heard;
Continued;
Matter Heard;

# Eighth Judicial District Court <br> Case Summary 

CASE NO. A-17-755977-C

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018

Defendant's Motion In Limine No. 10 to Exclude Speculation As to Decendent's Thoughts About the Motor Coach
Continued;
Matter Heard;
Continued;
Matter Heard;
Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018

Defendant's Motion In Limine No. 9 to Exclude Reference to the Ghost Bike Memorial
Continued;
Matter Heard;
Continued;
Matter Heard;

Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) 01/29/2018, 01/31/2018

Defendant's Motion In Limine No. 12 to Exclude Reference to the Cost of the S-1 Gard or Proximity Sensors
Continued;
Matter Heard;
Continued;
Matter Heard;
Motion in Limine (9:30 AM) (Judicial Officer: Escobar, Adriana) Plaintiff's Motion In Limine to Exclude any Testimony on the Untimely Supplemental Expert Report filed by Defense Expert Carhart

All Pending Motions (9:30 AM) (Judicial Officer: Escobar, Adriana)
Granted in Part;
Journal Entry Details:
Michael Terry appearing for Motor Coach Industries. Following arguments of counsel, COURT ORDERED, the following. Plaintiff's Motion in Limine No. 1 to Preclude Reference or Argument Regarding the Alleged Negligence of Third Parties (i.e.: Michelangelo and Hubbard). Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 2 to Preclude any Reference to settling Defendants (Including Claims, Settlement and Amounts). Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 3 to Preclude Defendant MCI from Arguing that Decedent was Contributory Negligent. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 4 to Preclude MCI from Making Excessive Reference to the Fact that Plaintiffs are of Iranian or "Persian" Descent. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 5 to Preclude Defendants from Arguing or Suggesting that Plaintiffs Must Prove that the Bus had any Specific Defect. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 6 to Preclude Defendants from Mentioning that Defense Expert Dr. Michael Baden (OJ's Medical Examiner) Worked for the Christiansen Law Firm is GRANTED IN PART; Court will allow hypothicals in for the case he has testified to in the past. Plaintiff's Motion in Limine No. 7 to Preclude Defendant MCI from Arguing that the Alleged Lack of Proximity Sensors from a Third Party ("Commercial Availability") as a Defense Where the True Issue is Whether Proximity Sensors were Technologically "Feasible", Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 8 to Pre-Instruct the Jury with Standard Instructions for Product Liability Claims. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 9 to Preclude Metro Report and/or Opinions from Metro Officers. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 10 to Pre-Admit Funeral Video and Funeral Slide Show. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 11 Pre-Admit 1993 Generic Bus Wind Testing by MCI. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 12 to Preclude MCI Expert Rucoba from Offering Meteorologist Opinions Regarding Wind Speed at the Time of the Accident (Including but Not Limited to the Wildly Unsupported Claim that Wind Speeds at 10:30 am were (16 to 17 Miles Per Hour" and "Winds were Gusting to 30 MPH". Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 13 Preclude Defendants from Arguing or Referencing Rigged Air Blast Testing that is Not Substantially

## Eighth Judicial District Court Case Summary

CASE NO. A-17-755977-C
Similar Because it used Stationary Bike and not a Moving Bike. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 14 to Designate Virgil Hoogestraat as Managing Speaking Agent of MCI. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 15 to Designate Bryan Couch as Managing Speaking Agent of Motor. Court informed parties an order will be issued. Plaintiff's Motion in Limine No. 16 Pre-Admit June 2001 Article as Notice of Potential Rear Tire Suction Hazard and Need for Protective Guard is WITHDRAWN. Plaintiff's Motion in Limine No. 17 to Admit Evidence of Fact Establishing Defendant's Consciousness of Responsibility. Court informed parties an order will be issued. Plaintiff's Motion in Limine to Exclude the Testimony of Untimely Disclosed Expert Witness Robert Stahl, MD is MOOT. Plaintiff's Motion in Limine to Exclude any Testimony on the Untimely Supplemental Expert Report Filed by Defense Expert Robert Stahl is irrelevent. Defendant's Motion in Limine No. 1 to Limit Opinions by Plaintiff's Expert Robert Caldwell, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 2 to Exclude Illustrations by Plaintiff's Expert Joshua Cohen that Have No Basis in Fact, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 3 to Preclude Plaintiff's from Making Reference to a "Bullet Train", CONTINUED to 1/31/18. Defendant's Motion in Limine No. 4 to Preclude Plaintiff's from Presenting Evidence that Proximity Sensors were a Safer Alternative Design CONTINUED to 1/31/18. Defendant's Motion in Limine No. 5 to Exclude any Claims of Defect Based on S-1 Gard Motion in Limine, CONTINUED to 1/31/18. Defendant's Motion in Limine NO. 6 to Exclude Reference to New Flyer Industries ((NFI Group), CONTINUED to 1/31/18. Defendant's Motion Limine No. 7 to Exclude any Claims that the Subject Motor Coach was Defective Based on Alleged Dangerous "Air Blasts", CONTINUED to 1/31/18. Defendant's Motion in Limine No. 8 to Exclude any Reference to Seatbelts, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 9 to Exclude Reference to the Ghost Bike Memorial, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 10 to Exclude Speculation as to Descendant's Thoughts about the Motor Coach, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 11 to Exclude Plaintiff's Expert Witness David Roger, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 12 to Exclude Reference to the Cost of the S-1 Gard or Proximity Sensors, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 13 to Exclude Plaintiff's Expert Witness Robert Cunitz, Ph.D. or in the Alternative, to Limit his Testimony, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 14 to Exclude Articles Regarding or Reference to Transit Buses, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 15 to Exclude Opinion Testimony from LV Witnesses on Causation and Engineering Principles, CONTINUED to 1/31/18. Defendant's Motion in Limine No. 16 to Exclude Opinions by Plaintiff's Expert Dipak Panigrahy is WITHDRAWN as request of counsel. Defendant's Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes, CONTINUED to 1/31/18.;

Following arguments of counsel, COURT ORDERED, the following: Defendant's Motion in Limine No. 1 to Limit Opinions by Plaintiff's Expert Robert Caldwell. Court informed parties an order will be issued. Defendant's Motion in Limine No. 2 to Exclude Illustrations by Plaintiff's Expert Joshua Cohen that have No Basis in Fact. Court informed parties an order will be issued. Defendant's Motion in Limine No. 3 to Preclude Plaintiffs from Making Reference to a "Bullet Train." Court informed parties an order will be issued. Defendant's Motion in Limine No. 4 to Preclude Plaintiffs from Presenting Evidence that Proximity Sensors were a Safer Alternative Design. Court informed parties an order will be issued. Defendant's Motion i Limine No. 5 to Exclude any Claims of Defect Based on S-1 Gard Motion in Limine. Court informed parties an order will be issued. Defendant's Motion in Limine No. 6 to Exclude Reference to New Flyer Industries ((NFI Group). Court informed parties an order will be issued. Defendant's Motion in Limine No. 7 to Exclude any Claims that the Subject Motor Coach was Defective Based on Alleged Dangerous "Air Blasts." Court informed parties an order will be issued. Defendant's Motion in Limine No. 8 to Exclude any Reference to Seatbelts. Court informed parties an order will be issued. Defendant's Motion in Limine No. 9 to Exclude Reference to the Ghost Bike Memorial. Court informed parties an order will be issued. Defendant's Motion in Limine No. 10 to Exclude Speculation as to Decedent's Thoughts about the Motor Coach. Court informed parties an order will be issued. Defendant's Motion in Limine No. 11 to Exclude Plaintiff's Expert Witness David Roger. Court informed parties an order will be issued. Defendant's Motion in Limine No. 12 to Exclude Reference to the Cost of the S-1 Gard of Proximity Sensors. Court informed parties an order will be issued. Defendant's Motion in Limine No. 13 to Exclude Plaintiff's Expert Witness Robert Cunitz, Ph.D. or in the Alternative, to Limit his Testimony. Court informed parties an order will be issued. Defendant's Motion in Limine No. 14 to Exclude Articles Regarding or Reference to Transit Buses. Court informed parties an order will be issued. Defendant's Motion in Limine No. 15 to Exclude

## Eighth Judicial District Court Case Summary

CASE NO. A-17-755977-C
Opinion Testimony from LV Witnesses on Causation and Engineering Principles. Court informed parties an order will be issued. Defendant's Motion in Limine No. 16 to Exclude Opinions by Plaintiff's Expert Dipak Panigrahy. Court informed parties an order will be issued. Defendant's Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes. Court informed parties an order will be issued.;
2. Minute Order (3:00 PM) (Judicial Officer: Escobar, Adriana)

Decision Made;
Journal Entry Details:
Defendant Motor Coach Industries, Inc. filed an objection to media request on January 31, 2018, in light of the impending trial and the media request and order filed on January 10, 2018 from Courtroom View Network. Under Supreme Court Rule 230(2), a court considering whether to allow electronic coverage of a trial shall consider several factors. Defendant has asserted that the media request should be denied in consideration of these factors, as the coverage will impact Defendants right to a fair trial, will impact the Defendants right of privacy over confidential information, and will likely distract trial participants. The Court notes there is a presumption that court documents be open to the public, but in some cases a significant competing interest may outweigh the public right to access. Howard v. State, 128 Nev. 736, 291 P.3d 137, 139 (2012). Here the Court finds that none of Defendant s claimed prejudices is sufficient to close the courtroom to public access. The Court has limited media access to one camera at a time, so the Court finds there is minimal risk of distracting jurors or witnesses. Further, the Court finds there is little practical danger of jurors viewing pre-trial announcements of the intention to televise the trial, much less any likelihood that viewing such announcements alone would impute sufficient knowledge that a juror should be disqualified, as the trial will not be broadcast by any major media source. Finally, to the extent that the trial will involve confidential information that is subject to a stipulated protective order, the Court finds that concerns of avoiding dissemination of this information is not sufficiently significant to outweigh the presumption of public access. ;

Minute Order (1:45 PM) (Judicial Officer: Escobar, Adriana)
Plaintiff's Motion in Limine \#10
Granted in Part;
Journal Entry Details:
This Court previously ruled on the parties motions in limine, but deferred ruling on Plaintiffs motion in limine \#10 (to pre-admit funeral video and funeral slide show), requesting Plaintiffs to submit the specific videos which Plaintiffs desire to use at trial. Plaintiffs counsel submitted a CD-Rom to chambers and opposing counsel on February 6, 2018, containing four proposed videos that Plaintiffs seek to pre-admit. The Court received no further objection or opposition from Defendant beyond the opposition to Plaintiffs motion in limine \#10. After reviewing the proposed videos, the Court GRANTS Plaintiffs motion in limine \#10 as to the fourth file, titled Kayvan Memorial Aria Speech, which lasts four minutes and twenty-nine seconds, and which shows Aria Khiabani s speech at his father s funeral. The Court finds this video is a fair depiction of the grief and sorrow felt by the two minor Plaintiffs, Aria and Keon, due to the loss of their father, and thus is relevant to prove the damages that Plaintiffs would be able to recover on their wrongful death claim. The Court further finds that the probative value of this testimony is not substantially outweighed by the danger of unfair prejudice, confusion of issues, or misleading the jury. Although Aria and Keon may testify at trial, the video depicts the Plaintiffs grief and sorrow experienced soon after their fathers death, and is sufficiently short that the probative value is not substantially outweighed by considerations of waste of time and presentation of cumulative evidence. The Court DENIES Plaintiffs motion in limine \#10 as to the other three offered videos. First, the slideshow from Katy Brain s funeral and Aria s speech from Katy s funeral are depictions of the value of Katy Brains life and the impact of her death on Aria, but these issues are not relevant to the claims at issue, considering the Court dismissed the cause of action for wrongful death of Katy Brain. The remaining video, of the slideshow showed at Kayvan Khiabani s funeral, will not be preadmitted. The Court finds that some photographs in the slideshow may have probative value of proving the loss of companionship, society, comfort, and consortium felt by the decedent s heirs, however because the slideshow is over sixteen minutes long and shows the value of Kayvan Khiabani slife in general, including his own positive experiences in travel and other activities, to the extent the slideshow is slightly probative of any of these categories, the Court finds any probative value of the slideshow as a whole is substantially outweighed by danger of unfair prejudice, confusion of issues, and undue delay, especially considering the wrongful death statute does not allow recovery based on the quality of the decedent s life generally. If Plaintiffs seek to utilize individual photographs at trial, the Court will entertain requests on an

# Eighth Judicial District Court <br> Case Summary 

CASE NO. A-17-755977-C
individual basis, but the slideshow video will not be pre-admitted.;

Status Check: Trial Readiness (2:00 PM) (Judicial Officer: Escobar, Adriana)
Matter Heard;
Journal Entry Details:
Colloquy regarding jury selection and scheduling for the upcoming jury trial. The Court informed counsel that an order will be issued regarding jury selection regarding the order of seating and the alternates. Additionally, the Court directed counsel to provide a list of any jury instructions they have stipulated to.;

Minute Order (7:00 AM) (Judicial Officer: Escobar, Adriana)
Jury Selection - A755977
Matter Heard; Journal Entry Details:
The parties appeared before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on February 9, 2018, for a status check on trial readiness. Counsel asked the Court whether the parties would be allowed more than one peremptory challenge in light of the agreement to utilize five alternate jurors. The Court will not allow more than five peremptory challenges per side four which can be used only for potential regular jurors (seats 1 through 16), and one of which can be used only for a potential alternate jurors (seats 17, 18, 19, 20, 21, 22, or 23). If a party does not use all four regular juror challenges, that party may not use one of those challenges as a second alternate juror challenge, and the unused challenge will be waived. CLERK'S NOTE: Parties notified via email.;

Jury Trial - FIRM (9:30 AM) (Judicial Officer: Escobar, Adriana)
Trial Continues;
Journal Entry Details:
OUTSIDE THE PRESENCE OF THE JURY. Counsel stipulated to waive the reading of potential witnesses to the jurors as they were listed in the jury questionnaire. Exclusionary rule invoked, however counsel stipulated that expert witnesses may remain in court. IN THE PRESENCE OF THE JURY. Roll of jurors called by the clerk. Counsel stipulated to the presence of the jury. OUTSIDE THE PRESENCE OF THE JURY. The Court reminded counsel to keep voir dire relevant and not to use one juror to educate the others. IN THE PRESENCE OF THE JURY. Jury selection. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding jury selection. Evening recess. MATTER CONTINUED.;

Jury Trial - FIRM (0:00 AM) (Judicial Officer: Escobar, Adriana)
Trial Continues; Journal Entry Details:
Michael Terry present for Motor Coach Industries. Roll of jurors called. Counsel stipulated to the presence of the jury. Jury selection. Evening recess. MATTER CONTINUED.;

Jury Trial - FIRM (9:30 AM) (Judicial Officer: Escobar, Adriana)
Trial Continues;
Journal Entry Details:
Michael Terry present for Motor Coach Industries. Roll of jurs called. Voir dire/jury selection commenced. Evening recess. MATTER CONTINUED.;

Jury Trial - FIRM (1:00 PM) (Judicial Officer: Escobar, Adriana)
Trial Continues;
Journal Entry Details:
Michael Terry present for Motor Coach Industries. OUTSIDE THE PRESENCE OF THE
JURY. Colloquy regarding jury selection. IN THE PRESENCE OF THE JURY. Roll of jurors called. Jury selection. Evening recess. MATTER CONTINUED.;

Jury Trial - FIRM (9:30 AM) (Judicial Officer: Escobar, Adriana) 02/16/2018, 02/20/2018-02/23/2018, 02/26/2018-03/02/2018, 03/05/2018, 03/07/2018-03/08/2018, 03/12/2018-03/16/2018, 03/19/2018-03/23/2018

Trial Continues;

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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
JURY PRESENT Deliberations continued by the jury at 9:30 am. VERDICT REACHED at 2:04 pm. All parties present. Verdict read by the Clerk. The Court thanked and excused the jury. TRIAL ENDED.,
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding Mr. Henriod requesting there be two attorneys for closing argument. The Court stated it would consider one attorney arguing compensatory damages and the other liability and punitive damages but, it will not be a cumulative argument. Parties stipulate to closing argument. Mr. Smith made an oral motion regarding 50(b) motion. Mr. Kemp made his objections to the motion. COURT ORDERED, MOTION DENIED. The Court will issue a minute order at a later date. JURY PRESENT The Court gives instruction to the jury. Plaintiff's give closing arguments. Lunch break. OUTSIDE THE PRESENCE OF THE JURY Colloquy regarding Defense closing arguments. JURY PRESENT Defendants give their closing arguments. Plaintiff's give rebuttal argument. JURY TO DELIBERATE at 6:15 PM. OUTSIDE THE PRESENCE OF THE JURY Colloquy regarding not admitted exhibits being picked up. JURY PRESENT The Court recessed the jury for the evening. COURT ORDERED, TRIAL CONTINUED. 3-23-18 9:00 AM JURY TRIAL (DEPT. XIV) ;

# Eighth Judicial District Court <br> Case Summary 

CASE NO. A-17-755977-C
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding the 30(b)6 witness an offer of proof. JURY PRESENT Testimony and exhibits presented (see worksheet). Jury recessed for the evening. COURT ORDERED, TRIAL CONTINUED. OUTSIDE THE PRESENCE OF THE
JURY. Argument of counsel regarding designated witness. Jury instructions proposed verdict forms submitted by both sides to the Court. 3-21-18 9:00 AM JURY TRIAL (DEPT. XIV);
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
JURY PRESENT Testimony and exhibits presented (see worksheet). OUTSIDE THE
PRESENCE OF THE JURY. Argument of counsel regarding limits on damages and exhibits being admitted. JURY PRESENT Testimony and exhibits presented (see worksheet). Lunch break. OUTSIDE THE PRESENCE OF THE JURY Argument of counsel regarding taxes. JURY PRESENT Testimony and exhibits presented (see worksheet). Jury recessed for the evening. COURT ORDERED, TRIAL CONTINUED. OUTSIDE THE PRESENCE OF THE JURY Colloquy regarding jury instructions. Colloquy regarding closing arguments. Colloquy regarding special verdict forms, legal cause issue being put on form, Plaintiff's damages will be at the end. 3-22-18 9:00 AM JURY TRIAL (DEPT. XIV) ,
Trial Continues;

# Eighth Judicial District Court <br> Case Summary 

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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues; Verdict;
Journal Entry Details:
Michael Terry, out-of-State counsel for Defense, also present. 9:50 AM OUTSIDE PRESENCE OF THE JURY: Statements by Mr. Christiansen as to the proposed exhibit \#579 and feels it is outside the Order of the Court. Statements by Mr. Roberts. Court advised it will allow the statement in question. Continued arguments by Mr. Christiansen, Mr. Kemp and Mr. Roberts. Court noted the exhibit will be admitted. 10:23 AM JURY PRESENT: Roll call by Clerk. Counsel stipulated to the presence of the Jury. Testimony and exhibits continued (see worksheets). 10:47 AM BREAK. 11:28 AM OUTSIDE PRESENCE OF THE JURY: Statements by Mr. Roberts in response to the objections by Mr. Kemp and Mr. Christiansen as to exhibit \#579. Court stated its findings. Continued arguments by Mr. Henriod and Mr. Kemp. 12:04 PM JURY PRESENT: Counsel stipulated to the presence of the Jury. Testimony and exhibits continued (see worksheets). 1:38 PM LUNCH BREAK. 2:48 PM OUTSIDE PRESENCE OF THE JURY: Statements by Ms. Works and Mr. Barger as to video deposition of Mr. Plantz. Court noted it has been resolved. 3:12 PM JURY PRESENT: Counsel stipulated to the presence of the Jury. Testimony and exhibits continued (see worksheets). 3:49 PM BREAK. OUTSIDE PRESENCE OF JURY: Ms. Works advised that they had agreed that certain statements would not come in during Mr. Plantz video deposition, however, there was a reference to "left turn" that was not in the written transcript and would request it be stricken. Mr. Barger concurred and had no objection. COURT ORDERED, that portion is STRICKEN. 4:04 PM OUTSIDE PRESENCE OF JURY: Statements by Mr. Kemp, Mr. Barger, Mr. Henriod and Mr. Pepperman as to the testimony of Mr. Hoogestraat. Mr. Kemp argued that Mr. Hoogestraat is not an expert and his testimony should be limited. Mr. Barger argued that Mr. Hoogestraat is an engineer. Continued arguments by counsel. Following, COURT ORDERED, Mr. Hoogestraat can only testify as to personal knowledge as he was not designated as an expert. Mr. Henriod advised at some point they will need to do an offer of proof. Court so noted. 4:47 PM JURY PRESENT: Counsel stipulated to the presence of the Jury. Court admonished Jury who were released and directed to return tomorrow at 1:00 PM. EVENING RECESS. OUTSIDE PRESENCE OF THE JURY: Colloquy as to procedures for next day. Additionally, exhibits \#573-576 used during Mr. Granite's testimony were offered by Mr. Roberts. Mr. Kemp had no objection. COURT ORDERED, these exhibits are admitted. Court directed counsel return at 12:30 to discuss any issues prior to the Jury arriving. EVENING RECESS. ... CONTINUED 3/20/18 1:00 PM;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;

# Eighth Judicial District Court <br> Case Summary 

CASE No. A-17-755977-C
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
Michael Terry, Esq., out of state Counsel, also present on behalf of Defendant Motor Coach Industries, Inc. OUTSIDE THE PRESENCE OF THE JURY. Court noted it reviewed its rulings on the motion in limine as it applies to the depositions at issue. Colloquy regarding scheduling settling of jury instructions. Court further noted its comments under the 403 analysis and advised it received trial briefs from Plaintiff and Court noted nothing received from Defense who advised they would file a brief this weekend. Arguments by Ms. Works as to why the issue needs to be decided today. Court stated it would take him outside the presence of the jury. Mr. Kemp and Mr. Terry stipulated to the admittance of Exhibits 263 and 264. JURY PRESENT. Continued testimony and exhibits presented. (See worksheet.) OUTSIDE THE
PRESENCE OF THE JURY. Colloquy regarding Dr. Smith's report regarding criticism of Dr.
Stokes. Colloquy regarding witness scheduling and settling jury instructions. Court recessed
for the evening. CONTINUED TO: 3/19/18 9:30 AM;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
Court Clerk Denise Husted present. Michael Terry present for Motor Coach Industries. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. Court Clerk Katherine Streuber present: Michael Terry Esq, Pro Hac Vice present on behalf of Defendant Motor Coach Industries Inc. CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. OUTSIDE THE PRESENCE OF THE JURY. Court noted examination and cross examination cannot be cumulative although there are two Plaintiffs with different counsel. Arguments by counsel regarding constitutional right and ethical rules. Court advised it will look into the matter and make a determination. Mr. Kemp argued defense had a "shadow jury" watching the trial and noted a shadow juror had spoken with an actual juror in this trial. Statement by the Court. Court Marshal advised Juror had actually approached the shadow juror in the restroom and asked "How their day was going." Argument by Mr. Barger stating they do not know who the shadow jurors are, advised they do hire an independent company who controls the shadow

# Eighth Judicial District Court <br> Case Summary 

CASE NO. A-17-755977-C
jurors, believed they would have been instructed not to speak with any trial jurors and assured the Court and counsel they would contact the company to have the shadow jury removed. Court believed the discussion between the actual juror and shadow juror did not rise to the level of a mistrial and cautioned there would be sanctions imposed for any rule infractions. Court then advised it would do research and make a ruling in regards to examination and cross examination when there are more than one client with separate counsel. JURY PRESENT. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE
BENCH. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE
BENCH. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. COURT ORDERED, matter CONTINUED. 03-16-18 9:30 AM TRIAL BY JURY; Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY.
Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY.
Colloquy regarding scheduling. Evening recess. MATTER CONTINUED.;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:

# Eighth Judicial District Court <br> Case Summary 

Case No. A-17-755977-C
Michael Terry present for Motor Coach Industries. OUTSIDE THE PRESENCE OF THE
JURY. Arguments by counsel regarding the motion for jury to view the bus. COURT FINDS, there will be no out of Court experiments, such as line of sight experiments allowed, and ORDERED, jury view will be allowed. Counsel agreed to the wording of the admonition to be given to the jury prior to viewing the bus. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. At 3:00 PM, the Court, counsel, jurors and staff left to view the bus. Evening recess. MATTER CONTINUED.;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
Michael Terry present for Motor Coach Industries. OUTSIDE THE PRESENCE OF THE
JURY. Colloquy regarding exhibits. IN THE PRESENCE OF THE JURY. Roll of jurors called.
Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Mr. Roberts stated that during the video testimony of Katy Brain, she stated that her children feared they were broke after the death of their father. He requested that he be allowed to question further and bring in the other settlement amounts as her testimony opened the door regarding this issue. Opposition by Mr. Kemp regarding the motion in limine granted by the Court disallowing mentioning settlement amounts. Additionally, he stated that Ms. Brain's testimony has been available and an objection could have been made by the defense much sooner than this. Mr. Roberts stated the jurors have been mislead by this particular statement. COURT FINDS, after reviewing applicable law, and being consistent with Court rules, no discussion about settlement will be allowed. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Plaintiff RESTED. OUTSIDE THE PRESENCE OF THE JURY. Mr. Henriod argued for a directed verdict. COURT FINDS, the Plaintiff has shown sufficient evidence that a jury could decide this case. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;

# Eighth Judicial District Court <br> Case Summary 

CASE No. A-17-755977-C
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding jury view of the bus. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding the video deposition of Katy Brain. Evening recess. MATTER CONTINUED.;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
Court Clerk, Denise Husted present. Michael Terry, representing Motor Coach Industries also present. IN THE PRESENCE OF THE JURY: Testimony and exhibits presented per worksheet Court Clerk, Louisa Garcia present. OUTSIDE THE PRESENCE OF THE JURY: Arguments by counsel regarding video clips of David Dorr and Mr. Pears. JURY PRESENT: Plaintiffs called witness David Dorr through video deposition. (See worksheet). COURT ORDERED, TRIAL CONTINUED. CONTINUED TO 3/8/18 1:00 P.M.;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;

# Eighth Judicial District Court <br> Case Summary 

CASE No. A-17-755977-C
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding exhibits numbered next in order. Mr. Terry stated objections regarding certain questions being asked of Plaintiff's witness Joshua Cohen. Mr. Kemp advised he wants to show picutures with Mr. Cohen rather than Dr. Stalnecker. COURT ORDERED, objection is SUSTAINED;
foundation must be laid in questioning the doctor. IN THE PRESENCE OF THE JURY.
Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Mr. Kemp stated objections to exhibits 508, 509 \& 510. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;

# Eighth Judicial District Court <br> Case Summary 

CASE No. A-17-755977-C
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
Michael Terry, Esq. appearing for Motor Coach Industries. OUTSIDE THE PRESENCE OF THE JURY. Upon Court's inquiry, Mr. Pepperman stated he relied on the fact that Mr. Lamont is in Canada and couldn't be subpoenaed to appear. Colloquy regard deposition testimony. IN THE PRESENCE OF THE JURY. Roll of jurors called by the Clerk. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE
PRESENCE OF THE JURY. Mr. Roberts questioned witness Larry Stokes regarding testimony pertaining to issues concerning taxes. Mr. Henriod asked to clarify the questions he could ask with the upcoming witness. Statement by Mr. Kemp. The Court advised that questioning has to be consistent with previous ruling regarding not discussing any parties involved in the litigation. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.,
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding witness depositions and agreement regarding line by line testimony to be allowed. IN THE
PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;

## Eighth Judicial District Court <br> Case Summary

CASE NO. A-17-755977-C
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
Michael Terry present for Motor Coach Industries. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Mr. Kemp stated opposition to Mr. Robert's questioning of witness Mary Witherell. He argued that the questions asked violated Motion in Limine \#1, and the Court's previous ruling. Mr. Lee advised the photograph used was taken from the Plaintiff's exhibits and that he didn't feel he violated the Court's ruling. Following further arguments by counsel, the Court advised that a curative statement will be given to the jury. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding scheduling of witnesses. Evening recess. MATTER CONTINUED.;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
9:30 AM - Court Clerk Denise Husted present. OUTSIDE THE PRESENCE OF THE JURY.
Mr. Kemp moved to admit selected Plaintiff's exhibits (see worksheet). There being no opposition, COURT ORDERED, exhibits are admitted. Mr. Barger noted that Plaintiff's exhibit \#126 was previously admitted, but requested that his objection to that admission be noted on the record. Court so noted. IN THE PRESENCE OF THE JURY. Roll of jurors called by the Clerk. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding the designated deposition selection of Mr. Hoogestraat discussed on the record. Court stated its findings and informed counsel a minute order regarding this issue is forthcoming. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. 4:00 PM - Court Clerk Phyllis Irby present. Testimony and exhibits presented (see worksheet). Jury questions asked and answered. The Court thanked and recessed the jury for the evening. OUTSIDE THE
PRESENCE OF THE JURY. Colloquy between the Court and counsel regarding pre-trial Motions in Limine. Mr. Pepperman requested to have Plaintiff's witness give testimony via video conference. COURT ORDERED, TRIAL CONTINUED. CLERK'S NOTE: Court's ruling regarding deposition of Mr. Hoogestraat is as follows: After hearing the oral argument of counsel and upon further consideration, the Court has determined that the designated deposition selections between 34:24 and 44:21 are all admissible. Because Mr. Hoogestraat was designated as Defendant's person most knowledgeable on hazard identification and reduction/mitigation/elimination on MCI buses, Mr. Hoogestraat's testimony on the existence of air displacement around a coach bus is within the scope of his 30(b)(6) testimony. Further, the Court finds Mr. Hoogestraat may be designated as managing-speaking agent for Defendant in regard to these statements, and no other reason not to admit the testimony has been

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presented. Thus, in addition to those noted during the hearing, Plaintiff will be permitted to present the video testimony of the following lines: 35:3-24, 36:15-25, 37:1-20, 38:8-25, 39:115, 40:18-25, 41:1-25, 42:1-8 and 44:9-21. dh 2/27/18 ;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Exclusionary rule invoked. Opening statements by Mr. Kemp. Opening statements by Mr. Terry. OUTSIDE THE PRESENCE OF THE JURY. Mr. Kemp stated there were procedural violations during Mr. Terry's opening statements. He requested that a curative instruction be given to the jury. Opposition by Mr. Henriod. COURT FINDS, there were only statements regarding causation and ORDERED, motion DENIED. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding scheduling. Evening recess. MATTER CONTINUED.;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Jury SELECTED and SWORN. Evening recess. MATTER CONTINUED.;

# Eighth Judicial District Court <br> Case Summary 

CASE No. A-17-755977-C
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Jury selection. 2:00 PM -COURT CLERK: Kathy Klein; OUTSIDE THE
PRESENCE OF THE PROSPECTIVE JURY: Court explained based on the Court's review of the Summary Judgment on unforseeability it appears we may need a clear order; It was oral, However not effective until an order is written/submitted. Court was provided the opposition and reply and both trial briefs earlier and suggested we continue the trial and begin in the morning. Mr. Roberts requested a brief recess to discuss the Courts suggestion regarding the evening break with each other. Court trailed matter. Later recalled: Mr. Roberts stated after confiring with his counsel, they would agree not to proceed with the trial until a written order is completed. PROSPECTIVE JURY PANEL PRESENT: Court informed the jury panel they would return tomorrow and admonished the Jury Panel for the evening recess. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Jurors \#1155 (E.M.), 110926 (E.T.) \& 110798 (B.L.), upon inqiury of the Court, the Jurors provided phone numbers of their supervisors/managers and available times to be reached. Jurors to return tomorrow. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Mr. Roberts argued regarding
Mr. Christiansen's voir dire of saftey conscience individuals. Colloquy regarding the proposed jury instrcution. Mr. Kemp suggested eliminating the practicality argument in the instruction. Arguments by Counsel. Court noted its concerns and stated the instruction is not to refer to the Doctor being negligent in any way. Counsel to submit the instruction to ask to follow the law or that they would ask for a higher burden. Mr. Roberts to prepare the instruction. Evening recess. 02/22/18 12:30 PM JURY TRIAL;
Trial Continues;
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Trial Continues;
Trial Continues;

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Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Jury selection. Evening recess. MATTER CONTINUED.;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Trial Continues;
Verdict;
Journal Entry Details:
OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding jury selection. IN THE
PRESENCE OF THE JURY. Jury selection continued. Evening recess. MATTER
CONTINUED.;

CANCELED Jury Trial (9:30 AM) (Judicial Officer: Escobar, Adriana)
Vacated - Duplicate Entry

Jury Trial (0:00 AM) (Judicial Officer: Escobar, Adriana)
Trial Continues;
Journal Entry Details:
Michael Terry present for Motor Coach Industries. OUTSIDE THE PRESENCE OF THE
JURY. Mr. Roberts objected to playing the gardener's video during Dr. Gavin's testimony as her testimony should be limited to the scope of her treatment. Arguments by Mr. Kemp. The Court sustained Mr. Robert's objection. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding scheduling. Evening recess. MATTER CONTINUED.;

CANCELED Jury Trial (0:00 AM) (Judicial Officer: Escobar, Adriana)
Vacated - Duplicate Entry

Jury Trial (9:30 AM) (Judicial Officer: Escobar, Adriana) Trial Continues;
Journal Entry Details:
Michael Terry, representing Motor Coach Industries also present. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding jury instructions. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.;

# Eighth Judicial District Court Case Summary 

CASE NO. A-17-755977-C

04/03/2018

05/04/2018

CANCELED Motion to Seal/Redact Records (9:30 AM) (Judicial Officer: Escobar, Adriana) Vacated - per Order
Motion to Seal Findings of Fact and Conclusions of Law and Order on Motion for Determination of Good Faith Settlement

Objection (1:00 PM) (Judicial Officer: Escobar, Adriana)
Defendant Motor Coach Industries' Objection to "Special Master Order Staying Post-Trial Discovery Including 05/02/18 Depo of the Custodian of Records of the Board of Regents NSHE" and Alternatively, Motion for Limited Post-Trial Discovery on OST
Denied; Defendant Motor Coach Ind. Objection to Special Master Order Staying Post-Trial Discovery Including 5/2/18 Depo of the Custodian of Records of the Board of Regents NSHE and Alternatively, Motion for Limited Post-Trial Discovery on OST
Journal Entry Details:
Mr. Henriod stated there is a Motion to Seal and under the circumstances of this hearing, he feels that it should be granted. Mr. Kemp concurred. COURT ORDERED, the motion is GRANTED. Arguments by Mr. Henriod in support of the Objection to Special Master's Order Staying Post-Trial Discovery and Motion for Limited Post-Trial Discovery. He stated that recent revelations by the news media undermine the integrity of the judgment. He further advised that the required information would not have been identified by forwarding the releases. Mr. Kemp argued that the releases were signed and executed on 7/26/17. The release for the employment file was not forwarded by the defense and is the same discovery they are now seeking. He further argued that the post judgment discovery standard is exceedingly high and has not been met. The Court STATED ITS FINDINGS, and ORDERED, motion is DENIED. FURTHER, the subpoena is QUASHED and no post judgment discovery will be allowed. The Court informed parties that an order/minute order will follow with full findings.;
2. Minute Order (7:00 AM) (Judicial Officer: Escobar, Adriana)

Motion to Seal
Granted;
Journal Entry Details:
Defendant Motor Coach Industries filed the following motions to seal: (1) Motion to seal Motor Coach Industries, Inc. s objections to special master order staying post-trial discovery including May 2, 2018 deposition of the custodian of records of the board of regents NSHE, and alternatively, motion for limited post-trial discovery; (2) Motion to seal and redact Motor Coach Industries, Inc s motion to alter or amend judgment to offset settlement proceeds paid by other defendants and accompanying exhibits, particular motions and exhibits; and (3) Motion to seal and redact Motor Coach Industries, Inc. s motion for new trial and accompanying exhibits $G$ - $L$ and $O$. The matter was subsequently discussed at the hearing on Defendants objection to special master order and motion for limited post-trial discovery. Plaintiffs have not filed an opposition and indicated at the hearing that they were in agreement with Defendant s suggested sealing and redactions. First, the Court agrees that Defendant s objection to special master order and motion for post-trial discovery contains unconfirmed and scandalous assertions which bear directly on the character of the deceased. The Court finds that the Plaintiffs compelling privacy interests outweigh the presumption that court documents be open to the public. However, under SRCR 3(4)(b), this Court has a duty to protect the Plaintiffs interest by reasonable redaction, rather than outright sealing, when possible, and the Court finds that reasonable redaction is possible here to protect Plaintiffs privacy. The Court therefore GRANTS the first motion, in that Defendants must file a redacted version of the motion, redacting pages 5 8, all of page 9 except lines 7 20, all of page 10 except lines 313 , all of page 11 except lines 420 , all of page 12 except lines 22 26, all of page 13 except lines 12 , page 14, and lines 15 of page 15, and omitting all attached exhibits. Additionally, the hearing on this motion is to be sealed for the same reasons. The unredacted version of the motion with all exhibits and the hearing must remain under seal until June 1, 2028. Second, the Court agrees that the motion to alter or amend judgment contains settlement terms that are confidential by agreement of the parties, that the settling defendants have a compelling interest in maintaining the confidentiality of these terms which outweighs the presumption that court documents be open to the public, and that the redacted version of the motion filed on May 7, 2018 is reasonably redacted to balance both the interests of the Defendants and the public. The Court therefore GRANTS the second motion to seal, and orders that the sealed version of the motion to alter or amend judgment, filed on May 8, 2018, remain under seal until June 1, 2028. Third, the Court agrees that Defendant s motion for a limited new trial contains the same unconfirmed and scandalous assertions which bear directly on the character of the deceased as are present in the Defendant s objection to the special master order and motion for post-trial discovery. The Court finds that the Plaintiffs compelling privacy interests outweigh the

## Eighth Judicial District Court Case Summary

CASE NO. A-17-755977-C
presumption that court documents be open to the public, and that reasonable redaction is possible to protect Plaintiffs privacy. The Court further finds the redacted version of the motion filed by Defendant on May 7, 2018 and the accompanying appendix omitting exhibits $G$ $L$ and $O$ are reasonably redacted to balance both the interests of the Plaintiffs and the public. The Court therefore GRANTS the third motion to seal, and orders that the sealed version of the motion for a limited new trial and accompanying appendix, both filed on May 8, 2018, remain under seal until June 1, 2028. Defendant is directed to prepare a proposed order and to circulate it to opposing counsel for approval as to form and content before submitting it to chambers for signature. CLERK'S NOTE: Counsel notified via e-mail. Joel Henriod (JHenriod@LRRC.com);

Motion to Retax (10:30 AM) (Judicial Officer: Escobar, Adriana)
Defendant's Motion to Retax Costs
Matter Heard;

CANCELED Motion to Seal/Redact Records (10:30 AM) (Judicial Officer: Escobar, Adriana) Vacated - Moot
Motion to Seal and Redact "Motor Coach Industries Inc's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendant's" and Accompanying Exhibits

07/06/2018
CANCELED Motion to Seal/Redact Records (10:30 AM) (Judicial Officer: Escobar, Adriana)
Vacated - Moot
Motion to Seal "Motor Coach Industries, Inc's Objections to 'Special Master Order Staying Post-Trial Discovery Including May 2, 2018 Deposition of Custodian of Records of the Board of Regents NSHE, ' and Alternatively, Motion for Limited Post-Trial Discovery"

敖 Motion to Amend (10:30 AM) (Judicial Officer: Escobar, Adriana) 07/06/2018, 09/25/2018

Motor Coach Industries, Inc's Motion to Alter or Amend Judgment to Offset Settlement Proceedings Paid By Other Defendants
Matter Continued;
Denied;
Journal Entry Details:
Following arguments, opposition and reply, COURT ORDERED, an order will be issued. Defendant s Motion to Alter or Amend Judgment to Offset Settlement Proceeds paid by other defendants came on for a hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on September 25, 2018. After considering the moving papers and argument of counsel, the Court DENIES Defendants motion. In this matter, the Plaintiffs settled with Defendants Michelangelo Leasing Inc, Edward Hubbard, Bell Sports Inc., and SevenPlus Bicycles Inc. for a total settlement of \$5,110,000.00. Plaintiffs and the remaining defendant, Motor Coach Industries (MCI), proceeded to trial. The jury awarded $\$ 18,746,003.62$ in favor of the Plaintiffs. Defendant MCI moved to offset the jury award by the settlement proceeds pursuant to NRS 17.245(1)(a). Specifically, it asked the court to reduce the jury award ( $\$ 18,746,003.62$ ) by the total settlement proceeds $(\$ 5,110,000.00)$ for a total reduced judgment resulting in \$13,636,003.62. Under NRS 17.245(1)(a), when a release ... is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death...it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant... However, MCI is not entitled to an offset under NRS 17.245 because defendants that are liable for strict products liability, such as MCI, have no right to contribution from any other defendants. Norton v. Fergstrom, 2001 WK 1628302 *5 (Nev. Nov. 9, 2001); see also Andrews v. Harley Davidson, 106 Nev. 533, 537-38, 796 P.2d 1092, 1094 (1990); Central Telephone Co. v. Fixtures Mfg., 103 Nev. 298, 299, 738 P.2d 510, 511 (1987); NRS 17.225, NRS 41.141. While the Court understands that Norton is unpublished and cannot be used as precedent because it was decided prior to 2016, the Court finds its rationale persuasive and agrees with the Nevada Supreme Court s rationale. Moreover, this case was decided in 2001, after NRS 17.245 was enacted in 1973 and amended in 1997. Additionally, NRS 41.141 was enacted in 1973, and amended in 1979, 1987, and 1989, which also precedes the Court s decision in Norton. Contributory negligence is not a defense in strict products liability. Andrews v. Harley Davidson, 796 P.2d 1092 (Nev. 1990). Moreover, because contributory negligence is not a defense in products liability, MCI is not entitled to contribution. Id. Here, MCI has no right to contribution from the settling Defendants because plaintiff s judgment against MCI is based on strict products liability failure to warn and strict products liability has no right to contribution. To the extent that MCI would have otherwise been able to assert contribution claims against the settling defendants, those claims would have

## Eighth Judicial District Court Case Summary

## CASE NO. A-17-755977-C

necessarily been premised on contributory negligence. But, because contributory negligence is not a defense to a strict products liability claim, MCI has no right to receive contribution from the settling defendants. Moreover, NRS 17.245 applies to joint tortfeasors but is silent concerning an offset for defendants found liable in strict products liability. But, it follows logically, that similar to NRS 17.255, which bars intentional tortfeasors from contribution, a defendant found liable in strict products liability would also be barred from receiving contribution from the other defendants. Unlike other products liability cases where defendants receive offsets, here, none of the other defendants in this case acted in concert with MCI in manufacturing the coach. MCI also argues it is entitled to an offset under NRS 41.141. Pursuant to NRS 41.141, defendants are responsible for $100 \%$ of plaintiffs injuries if their liability arises from a claim based on strict liability, an intentional tort, or any of the other enumerated categories. Caf Moda v. Palma, 272 P. $3 d 137$ (Nev. 2012). However, MCI is not entitled to an offset under NRS 41.141. The jury found against MCI based on strict liability failure to warn. Any alleged fault of the settling defendants had nothing to do with this failure to warn. Thus, MCI is not entitled to apportion any percentage of its responsibility to the settling defendants. Plaintiffs analogized this matter to Evans v. Dean Witter Reynolds, Inc., 5 P.3d 1043 (Nev. 2000). In Evans, the Court enforced the principle that although offsets are typically allowed in a case that involves joint tortfeasors, there is a carve out for intentional torts. Intentional tortfeasors may not apply credits from settlements by their joint tortfeasors in reduction of judgments against them arising from their intentional misconduct. Id. Moreover, equitable offsets are based on a right to contribution and intentional tortfeasors have no right to contribution under NRS 17.255. Id. Similarly here, just like the intentional tortfeasors in Evans, MCI has no right to contribution from the settling defendants. As in Evans, MCI has no right to receive contribution from the settling dependents either directly through a contribution claim or indirectly through a post-judgment offset. MCI was never entitled to seek contribution or indemnity from any other tortfeasors. NRS 17.245 cannot and did not bar MCI from pursuing contribution claims that never existed in the first place; and MCI is not entitled to indirectly receive a nonexistent right to contribution under the guise of an offset. MCI also asserts that Plaintiffs will receive a double recovery if no offset is granted. However, for the foregoing reasons, an offset is not permissible, thus no double recovery will occur. Finally, MCI argues that Plaintiffs are judicially estopped from asserting that the defendant has no right to offset. Plaintiffs motion for good faith settlement stated: Indeed, the proposed settlement is favorable to any remaining defendants. Plaintiffs remaining claims will be reduced by the settlement amounts contributed by Michelangelo and Hubbard. NRS 17.245(1) (a). As set forth above, the remaining defendants will receive a contribution toward any future judgment entered against them. When considering a claim of judicial estoppel, Nevada's courts look for the following five elements: (1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake. Matter of Frei Irrevocable Tr. Dated Oct. 29, 1996, 133 Nev. 8, 390 P.3d 646, 652 (2017). All five elements are necessary to sustain a finding of judicial estoppel. Id. Here, element three is not be met. The plaintiff did not successfully assert their prior position because the Court granted the motion for good faith settlement based on Plaintiffs assertion that the non-settling defendants will receive an offset. When conducting the analysis of Plaintiffs good faith settlement, the Court considered the relative liability of the defendants and determined that the settlement amount was proper. The Court did not adopt the plaintiffs argument that the non-settling defendant would be entitled to an offset. Further, the jury verdict was based on failure to warn, which has absolutely no bearing on the plaintiffs claim against the other defendants. The settling defendants. Now, considering the jury verdict, it appears that the settling defendants might have paid even more than their fair share of the liability. Collectively, the defendants settled for $\$ 5,110,000.00$ which constitutes almost $30 \%$ of the total award in this matter. When looking at the potential liability of all defendants, the Court finds that MCI was responsible for a large majority of the damages. Thus, judicial estoppel does not apply here. Counsel for Plaintiff is directed to prepare a proposed order including detailed findings of fact and conclusions of law, which is to be approved by opposing counsel as to form and content prior to submitting the order to chambers in Microsoft word format, by email to dept14lc@clarkcountycourts.us and PowellD@clarkcountycourts.us. CLERK'S NOTE: Minute order modified on 2/21/19. sdh;
Matter Continued;
Denied;
07/06/2018
CANCELED Motion to Seal/Redact Records (10:30 AM) (Judicial Officer: Escobar, Adriana)
Vacated - Moot
Motion to Seal and Redact "Motor Coach Industries Inc's Motion for New Trial and Accompanying Exhibits G-6 and $O$

## Eighth Judicial District Court <br> Case Summary

CASE No. A-17-755977-C

Motion for Judgment (10:30 AM) (Judicial Officer: Escobar, Adriana) Motor Coach Industries Inc's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim
Matter Heard;
Motion (10:30 AM) (Judicial Officer: Escobar, Adriana) Motor Coach Industries Inc's Motion for a Limited New Trial Matter Heard;

Motion to Strike (10:30 AM) (Judicial Officer: Escobar, Adriana)
Motor Coach Industries, Inc.'s (MCI) Motion to Strike Plaintiffs' "Combined Opposition to Motion for a Limited New Trial, and MCI's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim", and Opposition to Untimely Motion to Exceed Page Limited on OST
Matter Heard;

Motion to Strike (10:30 AM) (Judicial Officer: Escobar, Adriana) Motor Coach Industries, Inc.'s Motion to Strike Plaintiffs' "Combined Opposition to Motion for a Limited New Trial and MCI's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim" and Opposition to Untimely Motion to Exceed Page Limit and Request for Order Shortening Time
Matter Heard;

All Pending Motions (10:30 AM) (Judicial Officer: Escobar, Adriana)
Matter Heard;
Journal Entry Details:
Mr. Kemp stated parties have agreed to submit three of the motions now without oral argument, Motor Coach Industries Inc's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim, Motor Coach Industries Inc's Motion for a Limited New Trial, and Defendant's Motion to Retax Costs; as to Motor Coach Industries Inc's Motion to Alter or Amend Judgment to Offset Settlement Proceedings Paid By Other Defendants, it should be put off until after the projected funding date. Upon inquiry by the Court regarding the motions to strike, counsel stated those could be submitted too. COURT ORDERED, Motor Coach Industries Inc's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim, Motor Coach Industries Inc's Motion for a Limited New Trial, Defendant's Motion to Retax Costs, Motor Coach Industries, Inc.'s (MCI) Motion to Strike Plaintiffs' "Combined Opposition to Motion for a Limited New Trial, and MCI's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim", and Opposition to Untimely Motion to Exceed Page Limited on OST, and Motor Coach Industries, Inc.'s Motion to Strike Plaintiffs' "Combined Opposition to Motion for a Limited New Trial and MCI's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim" and Opposition to Untimely Motion to Exceed Page Limit and Request for Order Shortening Time TAKEN UNDER ADVISEMENT; Motor Coach Industries Inc's Motion to Alter or Amend Judgment to Offset Settlement Proceedings Paid By Other Defendants CONTINUED. Motor Coach Industries Inc's Motion to Alter or Amend Judgment to Offset Settlement Proceedings Paid By Other Defendant's CONTINUED TO 8/28/2018 10:30 AM;

CANCELED Motion (9:30 AM) (Judicial Officer: Escobar, Adriana)
Vacated - Moot
Plaintiffs Motion to Exceed Page Limit as to Combined Opposition to Motion for Limited New Trial and MCI s Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim

CANCELED Motion to Seal/Redact Records (9:30 AM) (Judicial Officer: Escobar, Adriana) Vacated - Moot
Defendant's Motion to Seal and Redact "Reply In Support of Motion for a Limited New Trial"

CANCELED Motion to Seal/Redact Records (9:30 AM) (Judicial Officer: Escobar, Adriana) Vacated - Moot
Defendant's Motion to Seal and Redact "Motor Coach Industries, Inc.'s Reply In Support of Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants"

## Eighth Judicial District Court Case Summary

CASE NO. A-17-755977-C as a Matter of Law Regarding Failure to Warn Claim, Motion to Strike Plaintiffs' Combined Opposition...Plaintiffs' Motion to Exceed Page Limit as to Combined Opposition Journal Entry Details:
Defendant MCI s motion to retax costs, motion to alter or amend judgment to offset settlement proceeds, motion for limited new trial, renewed motion for judgment as a matter of law regarding failure to warn claim, and motion to strike Plaintiffs combined opposition, as well as Plaintiffs motion to exceed page limit as to combined opposition came on for a hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on July 6, 2018. Upon the stipulation of counsel, all motions were submitted on the briefs without oral argument except for Defendants motion to alter or amend judgment, which was continued to August 28, 2018, at 10:30 AM. Therefore, after considering the briefs of the parties, the Court holds as follows: A. Motion to strike combined opposition and Plaintiffs motion to exceed page limit First, the Court GRANTS Plaintiffs motion to exceed page limit as to combined opposition and DENIES Defendant s motion to strike Plaintiffs combined opposition. The Court notes that Plaintiffs combined opposition contains one facts section with separate arguments and conclusions responding to two motions (Defendant s motion for limited new trial and Defendants renewed motion for judgment as a matter of law), that the combined opposition is fifty three pages long, and that Plaintiffs did seek leave of court to file a brief in excess of thirty pages, albeit after the brief was already filed. Considering the complexity of this case and the legal arguments presented by Defendant s motions, as well as the significant factual overlap of these two particular motions, the Court finds an opposition in excess of thirty pages is warranted. The proper procedure would have been for the Plaintiffs to seek leave of court before filing the over-long opposition, or at least to include a motion to exceed page limit at the beginning of the opposition. However, the Court finds Defendant suffered little prejudice from the untimely motion or from Plaintiffs filing their oppositions together so as not to repeat eight pages of facts, and thus the Court will not impose the grave penalty of striking the opposition. B. Renewed motion for judgment as a matter of law The Court DENIES Defendant s renewed motion for judgment as a matter of law regarding failure to warn claim. Defendant first argues that Plaintiffs failed to prove causation on this theory because the facts showed that Dr. Khiabani suddenly appeared in Mr. Hubbard s peripheral vision, and the accident happened too quickly for a reasonable jury to find that Mr. Hubbard could have avoided the accident. This argument ignores the full facts as presented in the Plaintiffs case-in-chief, specifically the testimony of Mr. Hubbard that he observed the bicycle while both Dr. Khiabani and the coach were on Charleston, and saw the bicycle turn onto Pavilion Center before Mr. Hubbard turned the coach onto Pavilion Center. Thus, although Mr. Hubbard testified that he did not see Dr. Khiabani s bicycle for 450 feet before the accident, the split-second that the accident occurred was not the first time Mr. Hubbard was made aware of the bicycle s presence. Taking all inferences in Plaintiffs favor, Plaintiffs elicited sufficient evidence for a reasonable jury to find that, had Mr. Hubbard been adequately warned about the dangerous nature of the coach, he would have driven differently as early as when he turned onto Pavilion Center for example by driving in the left lane instead of the right lane, or by driving slower so as to not pass the bicycle and that this different action would have avoided the accident. Thus, the accident did not happen too quickly for a reasonable jury to find that a warning would have made a difference. The parties next dispute to what extent a plaintiff in a failure to warn claim must prove causation. Defendant argues that insufficient evidence of causation was presented by Hubbard s testimony that he absolutely heeds warnings he is given when he is trained about something relative to safety, because Plaintiffs needed to additionally prove that the accident would have been avoided by the user heeding the warning. Defendant cites to numerous other jurisdictions for this notion, and argues that it is further supported by the Nevada Supreme Court s Rivera v. Philip Morris, Inc. decision. This Court disagrees. It is undisputed that, under Rivera, the Plaintiffs bear the burden of producing evidence demonstrating that, among other things, the defect caused the injury. Rivera also held that the burden of proving causation can be satisfied in failure-to-warn cases by demonstrating that a different warning would have altered the way the plaintiff used the product or would have prompted plaintiff to take precautions to avoid the injury. Taking all inferences in Plaintiffs favor, the Court finds that Hubbard s testimony that he would have complied with a warning, combined with the facts listed above regarding Hubbard s perception of the events leading up to the accident, was sufficient to satisfy Plaintiffs burden of proving causation under Nevada law. Similarly, the Court disagrees with Defendant s suggestion that the open and obvious nature of the danger reinforces the conclusion that a warning would have been superfluous. Mot. at 10. Taking all inferences in Plaintiffs favor, the presence of testimony by Hubbard, Mary Witherell, and some of Defendants own employees, that they were not aware of the significance of the air displacement created by the coach s design refutes Defendant s

## Eighth Judicial District Court Case Summary

CASE NO. A-17-755977-C
classification of the danger as open and obvious. Further, even if the evidence enabled this Court to find as a matter of law that Hubbard should have known generally of the risk of driving next to a bicyclist, which this Court has not done, no Nevada law holds that this would prevent a reasonable jury from finding that an adequate warning would have avoided the accident. Next, Defendant suggests that Plaintiffs duty to prove causation required Plaintiffs to craft an adequate warning. Failure-to-warn claims can be classified as one of two types: allegations that the warning given by the defendant was crafted in such a way to be ineffective in preventing the injury; or allegations that the product is dangerous enough that a warning should have been provided but the defendant did not provide any warning. In cases of the first variety, the jury must consider whether the warning was adequate under the factors provided in Lewis v. Sea Ray Boats, Inc., However, in the second category, the warning provided nothing could not possibly be considered adequate under the Sea Ray factors, and thus the only required findings are that the product was unreasonably dangerous and that an adequate warning would have avoided the injury. This case falls into the second category, where MCI undisputedly did not provide any warnings about any of the alleged defects which Plaintiffs alleged. In such a case, the Court finds no support for Defendant s assertion that no reasonable jury could find that the product was unreasonably dangerous and that an adequate warning would have avoided the injury without a specific warning being proposed by the plaintiff. While it is true that providing a model warning to show what the defendant could have done to make the product reasonably safe may be a helpful illustration for the plaintiffs case, it is not required for the jury to find in Plaintiffs favor. Cf. Ford Motor Co. v. Trejo (in a design defect claim, a plaintiff may choose to support their case with evidence that a safer alternative design was feasible at the time of manufacture. ). Plaintiffs need not prove precisely how the facts would have been different had there been an adequate warning, as this would amount to speculation; Plaintiffs need only provide the facts sufficient to allow the jury to draw the conclusion that the presence of an adequate warning would have avoided the accident. As noted above, Plaintiffs did so here. In line with the above, the Court disagrees that the jury s verdict was consistent with judgment as a matter of law on causation, as the jury could have, and evidently did, find that the lack of an adequate warning caused the accident. The Court disagrees with Defendants suggestion that the jury finding no liability on the defective design claim means when the jury was actually asked whether the allegedly defective design was the legal cause of damage, the jury concluded that it was not. In reality, the jury found no liability after being instructed that liability required both a design defect and causation, so a simple no answer does not necessarily mean the jury found causation to be lacking. Defendant next argues that, MCI was not required to make a coach that does not create air disturbance, and therefore MCI was not required to provide a warning at all. While the Court notes that this argument was not raised in MCI s NRCP 50(a) motion during trial, the argument misstates the question actually posed to the jury. The failure-to-warn claim does not ask whether the coach created an air disturbance, but rather whether the coach was unreasonably dangerous due to the air disturbance it created. Thus, regardless of whether MCI had a duty to minimize or remove any air disturbance from its product, there was sufficient evidence for the jury to find that any air disturbance created by the coach was unreasonably dangerous and that the injury could have been avoided by an adequate warning. Finally, Defendant argues that Nevada s wrongful-death statute requires proof of fault, while the nature of a strict liability claim does not require proving fault, and therefore that the elements of a wrongful death claim could not be satisfied by allegations founded in strict liability. The Court finds no support in Nevada case law for this notion, and indeed finds myriad wrongful death actions founded in strict liability, and thus the Court will not apply the law differently for this case. Moreover, Defendant s interpretation of the wrongful act or neglect language in NRS 41.085(2) would lead to an absurd result: A defendant who, by no intentional act or malice, creates an unreasonably dangerous product would still be held strictly liable if a user were merely injured, but would no longer be held accountable if the injuries were grave enough to end the user slife. C. Motion for limited new trial The Court DENIES Defendant s motion for limited new trial, as none of the arguments presented by Defendant exhibits an issue which materially affect[ed] the substantial rights of an aggrieved party. NRCP 59(a). First, Defendant argues that the jury was excused from considering causation of the failure to warn claim because the verdict form did not mention this step of the analysis, and instead allowed the jury to return a verdict in Plaintiffs favor solely by finding that Defendant failed to provide an adequate warning that would have been heeded. First, as noted above, the Court disagrees with Defendant s position that Plaintiff must prove that an adequate warning would have actually avoided the injury, or that the accident happened too quickly for a jury to find that an adequate warning could have avoided the accident. However, the Court also notes that the jury instructions sufficiently informed the jury on all findings required for the jury to return a verdict in Plaintiffs favor including causation and that this remedied any potential errors with the verdict form. Taking into consideration the totality of the jury instructions and the verdict form, the Court does not find that the absence of causation on the fifth question was prejudicial to Defendant. Finally, the Court finds no support for the notion that the special verdict form was required to include a

## Eighth Judicial District Court Case Summary

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finding for every element of every claim. Second, the Court does not agree that precluding evidence of NRS 484B.270, the statute requiring a motorist to maintain a three-foot distance from a bicyclist, constituted an error of law that warrants a new trial. The safety statute in its current form did not exist at the time the coach was sold, and the version of the statute that did exist at the time the coach was sold contained only a mandate that a motorist passing a bicyclist do so safely, which does not offer any support for Dr. Krauss s opinion that the law already required vehicles to maintain a certain distance from bicycles. Thus, the existence of the statute has no probative value as to why Defendant chose not to provide a warning with the coach. Further, the Court maintains that the JI 32, on nondelegation, was rightfully included due to evidence being presented at trial that at least one of Defendant s employees believed another entity would warn drivers about the danger of the coach. If JI 32 caused any prejudice to Defendants case, the Court does not agree that it materially affected Defendant s substantial rights. Third, as noted in this Court s order denying Defendant s motion for posttrial discovery, the Court does not agree that any newly discovered evidence warrants a new trial. For the same reasons iterated in that order, the Court has not been convinced that the new evidence could not have been found with reasonable diligence, so NRCP 59(a)(4) is not met here. The Court is also not convinced by Defendant s argument that the difficulty in discovering this evidence is exhibited by Plaintiffs lack of knowledge, or that Defendant was entitled to rely on Plaintiffs duty to disclose such information. NRCP 16.1 requires a party to disclose the identity of individuals likely to have discoverable information, but it does not require a party to conduct discovery for the other parties. Here, it appears Plaintiffs disclosed Dr. Khiabani s employer, which was sufficient to satisfy Plaintiffs duty under NRCP 16.1; Plaintiffs were under no duty to actually discover any information from Dr. Khiabani s employer, just to enable Defendant to do so. As stated in the Court s prior order, Defendant had access to the new evidence had it simply attempted to get it. Moreover, even if the Court were to find that Plaintiffs lapsed on their discovery obligations, this Court does not find that such a finding would render the new evidence undiscoverable with due diligence, so a new trial is not warranted on these grounds. Fourth, the Court does not agree that it erred by precluding evidence of the impact of income taxes. While the Court recognizes the difference between damages for lost wages and damages for loss of probable support, Nevada law is clear that evidence of tax implications is not admissible in a wrongful death case. See, e.g. Otis Elevator Co. v. Reid, 101 Nev. 515 (1985). Defendant is correct that certain special circumstances allow jury instructions on tax consequences, but only when tax issues are discussed at trial. Id. Here, tax issues were not discussed at trial under the general rule that tax implications are not admissible, and thus there was no indication that the jury would consider tax implications. Therefore, Otis Elevator Co. v. Reid s special circumstances exception does not apply, and Defendant s substantial rights were not materially affected. D. Motion to Retax The Court is unable to award costs under NRS 18.005 unless the prevailing party provides justifying documentation to demonstrate how such [claimed costs] were necessary to and incurred in the present action. Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1352 (1998) and Cadle Co. v. Woods \& Erickson, LLP, 345 P. $3 d 1049$ (Nev. 2015). The Nevada Supreme Court will reverse an award of costs as an abuse of discretion if the party does not provide evidence, such as a declaration of counsel, that explains how the [costs] were necessary and incurred rather than simply telling the district court that the costs were reasonable and necessary. Matter of DISH Network Derivative Litigation, 133 Nev. Adv. Op. 16, 401 P.3d 1081 (2017). Here, Plaintiffs provided a detailed and verified memorandum of costs, over 1,300 pages of documentation including itemized lists and invoices, and a declaration of counsel in support of the memorandum of costs which discusses (1) the expert fees being sought; (2) reporter s fees for depositions and deposition transcripts; (3) online legal research; (4) trial support services; and (5) other necessary and unavoidable costs including photocopies, travel expenses for necessary fact and expert witness depositions, postage, witness fees, juror fees, process server fees, official court reporter fees, and run services for delivery of time sensitive documents and filing. Although the Court finds that Plaintiffs opposition to Defendants motion to retax provides some argument for why many costs were reasonable or necessary, and further that many of Plaintiffs claimed costs appear reasonable and necessary based on the Courts own experience and knowledge of this case, binding case law precludes this Court from awarding costs for which Plaintiffs have not provided sufficient documentation. In light of the above, the Court GRANTS Defendants motion to retax IN PART, as to the following items: 1. \$70.00 cost for a paralegal to file a subpoena. Paralegal time is not a cost of litigation under NRS 18.005, and is more appropriately categorized as legal fees. See, e.g. Las Vegas Metropolitan Police Department v. Yeghiazarian, 129 Nev. 760, 770 (2013) (concluding that reasonable attorney s fees includes charges for persons such as paralegals and law clerks). 2. \$22,553.75 for videography services and related expedite fees. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 3. \$5,075.00 for synchronized DVD costs. These costs are not specifically

## Eighth Judicial District Court Case Summary

CASE NO. A-17-755977-C
allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 4. \$1,736.00 for rough drafts of depositions. NRS 18.005(2) provides for one copy of each deposition, but does not provide for rough drafts, and Plaintiffs have not shown in its declaration how this service was necessary. 5. \$3,450.00 for Live Note and Zoom connection fees. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 6. \$4,550.00 for videoconference costs. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 7. \$100.00 for After 5 PM charges. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 8. \$185.00 for flash drives, apparently for depositions of expert witnesses. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 9 . $\$ 300.00$ for video files for expert witnesses. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 10. \$1,385.40 for conference rooms for depositions of various witnesses. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 11. $\$ 100.00$ for read and sign fees. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 12. \$315.00 for equipment rental. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 13. $\$ 100.00$ for non-writing wait time for two witnesses. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 14. \$79.00 for parking for depositions. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005 (17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 15. $\$ 356.40$ for food provided at depositions. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 16. \$1,050.00 for professional fees for Dr. Gavin. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 17. $\$ 140.00$ for duplicate service on Portia Hubbard. In examining the documents provided by Plaintiffs, it appears Ms. Hubbard was served with a subpoena on both on $8 / 26 / 2017$ and on 10/1/2017, with no explanation for why the second subpoena was necessary. NRS 18.005(7) does not allow costs for service which the Court finds to be unnecessary. Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 18. \$35.00 for wait time of process server(s). This cost is not enumerated in NRS 18.005(7), and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 19. \$61.60

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for faxes. While reasonable costs for telecopies are allowed under NRS 18.005(11), under Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1352 (1998) and Cadle Co. v. Woods \& Erickson, LLP, 345 P.3d 1049 (Nev. 2015), the documentation submitted is insufficient for the Court to find that the costs were reasonable or necessary, because Plaintiffs have provided no information stating what documents were faxed, and in most cases provide no information of who the fax was sent to. Further, Plaintiffs have offered no explanation for why certain faxes have a higher per-page cost than others. Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary or reasonable. 20. $\$ 4,141.77$ for scanning (internal and outside vendor). NRS 18.005 does not provide for costs of scanning, and Plaintiffs have not provided any information about how costs were incurred at all due to internal scanning, or how each scan was necessary. While the Court agrees that the DISH Network Court found the party in that case provided the district court with sufficient justifying documentation to support the award of costs for photocopying and scanning under NRS 18.005(12), Plaintiffs here have provided no such documentation explaining the reasonableness or necessity of these costs. 21. $\$ 39.00$ for an unsubstantiated Las Vegas Metropolitan Police Department cost. Defendant s motion states that this cost appears to be either for a police report or for a subpoena, and Plaintiffs do not offer any opposition to this cost being retaxed. Moreover, while Plaintiffs provided documentation showing that these costs were incurred, these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 22. \$1,219.98 for hotels for trial witnesses. NRS $18.005(15)$ only includes travel and lodging incurred while conducting discovery, and while Plaintiffs provided documentation showing that these costs were incurred, the declaration of counsel only discusses the necessity of costs incurred in travel expenses for depositions. Plaintiffs thus provided no documentation explaining how the costs were necessary. 23. $\$ 30,018.77$ in legal research. As stated in DISH Network, the reasonable and necessary expenses for computerized services for legal research allowed in NRS 18.005 (17) pertain to costs incurred in the process of electronic discovery. The declaration of Plaintiffs counsel states that these costs were incurred to provide the Court with the most recent applicable caselaw on various points of dispute throughout pre-trial motions and during the course of trial... The argument contained in Plaintiffs opposition to the motion to retax reinforces that these costs were incurred not as a part of discovery, but rather to assist Plaintiffs counsel in making legal arguments in motion practice and at trial. Further, the itemized list of research provided in Plaintiffs appendix of documents provides only the date and cost of each transaction. Thus, under DISH Network s holding that this expense does not fall under NRS 18.005(17), this cost is not taxable. In total, the Court reduces Plaintiffs taxable costs by $\$ 77,061.67$. As to the remaining specific costs Defendant seeks to retax, the Court finds that each cost falls under NRS 18.005(17) as an expense that is reasonable, necessary, and actually incurred, based on the documentation and declaration of counsel. This conclusion contemplates that the parties conducted discovery on an extremely expedited schedule due to the preferential trial setting. Further, the complex nature of the claims and gravity of damages at issue required Plaintiffs to expend costs that may be considered luxuries in different cases, such as oversize color printing and trial support services. Finally, the Court examined in detail the requested expert fees under Frazier v. Drake, 357 P. $3 d 365$ (Nev. App. 2015) and found that the fees in excess of $\$ 1,500$ for each witness was warranted in light of the factors enumerated in Frazier. Counsel for Plaintiffs is directed to prepare a proposed order including detailed findings of fact and conclusions of law on Defendants motion for judgment as a matter of law Defendant s motion for new trial, Defendant s motion to strike Plaintiffs opposition, and Plaintiffs motion to exceed page limit. Counsel for Defendant is directed to prepare a separate proposed order including detailed findings of fact and conclusions of law on Defendant s motion to retax. Both proposed orders are to be approved by opposing counsel as to form and content prior to submitting the order to chambers in Microsoft word format, by e-mail to dept14lc@clarkcountycourts.us CLERK'S NOTE: Counsel notified via e-mail: William Kemp (jk@hkj-law.com) Peter S. Christiansen (pete@christiansenlaw.com) Kendalee Works (kworks@christiansenlaw.com) Lee Roberts (lroberts@wwhgd.com) Howard Russell (hrussell@wwhgd.com) Eric Pepperman (e.pepperman@kempjones.com); Vacated

国] Minute Order (11:32 AM) (Judicial Officer: Escobar, Adriana)
Defendants Motion to Alter or Amend Judgment to Offset Settlement Proceeds Minute Order - No Hearing Held;

Motion (10:00 AM) (Judicial Officer: Escobar, Adriana)

## Eighth Judicial District Court <br> Case Summary

CASE No. A-17-755977-C


# Eighth Judicial District Court 

## Case Summary

## CASE NO. A-17-755977-C

Defendant Motor Coach Industries Inc
Total Charges
1,353.09
Total Payments and Credits $\quad 1,353.09$
Balance Due as of 4/14/2023 0.00
Other New Flyer Industries, Inc.
Total Charges
Total Payments and Credits 223.00
Balance Due as of 4/14/2023 0.00

Plaintiff Estate of Katayoun Barin
Total Charges
Total Payments and Credits 448.50
Balance Due as of 4/14/2023

Plaintiff Estate of Kayvan Khibani M.D.
Total Charges 3.50

Total Payments and Credits 3.50
Balance Due as of 4/14/2023 0.00
Plaintiff Khiabani, Keon
Total Charges
1,069.00
Total Payments and Credits $\quad 1,069.00$
Balance Due as of $4 / 14 / 2023 \quad 0.00$
Defendant Motor Coach Industries Inc
Appeal Bond Balance as of $4 / 14 / 2023$

# DISTRICT COURT CIVIL COVER SHEET 

Case No.
(Assigned by (ferk's Office)


See other side for family-related case filings.

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## DISTRICT COURT

 Clark County, NevadaKEON KHIABANI AN INDIVIDUAL; ARIA KHIABANI, aN INDIVIDUAL;
SIAMAK BARIN, AS EXECUTOR OF THE ESTATE OF KAYVAN KHIABANI, M•D. (DECEDENT), THE ESTATE OF KAYVAN KHIABANI, M•D• (DECEDENT); SIAMAK BARIN, AS EXECUTOR OF THE ESTATE OF KATAYOUN BARIN, DDS (DECEDENT); and the estate of katayoun barin DDS (DECEDENT),

Plaintiffs,
vs.
Motor Coach Industries, Inc. a DELAWARE CORPORATION: Michelangelo Leasing INC. D/B/a RYAN'S EXPRESS, AN ARIZONA CORPORATION; EDWARD HUBBARD, A NEVADA RESIDENT; BELL SPORTS Inc. d/B/a GIRO SPORT DESIGN, A DELAWARE CORPORATION; SEVENPLUS BICYCLES, INC• D/B/a PRO CYCLERY, A NEVADA CORPORATION; DOES 1 THROUGH 20; AND ROE CORPORATIONS 1 THROUGH 20.

Defendants.

Case No. A-77-755977-C
Dept. No XIV
(PROPOSED)
Order granting defendant Motor COACH INDUSTRIES, INC.'S MOTION FOR OFFSET

Hearing Date: June 28, 2022 Hearing Time: 10:00 a.m.

Defendant Motor Coach Industries, Inc has moved the Court for an Offset of the settlement proceeds paid by other defendants in its Brief Regarding Offset filed December 13, 2021. In addition to this motion, the corresponding answering brief and responding brief, the Court also heard oral argument June 28, 2022, regarding the offset. The Court now, having considered the briefs and materials submitted by the parties, oral argument, and the record before the Court, the Court orders as follows:

## FINDINGS OF FACT

7. The decedent Dr. Khiabani died when his bicycle collided with a motor coach designed by defendant Motor Coach Industries, Inc. ("MCl"). Defendant Edward Hubbard was driving the vehicle for his employer, Michelangelo Leasing Inc. d/b/a Ryan's Express ("Michelangelo"), taking passengers from the airport to the Red Rock Casino Resort.
8. The plaintiff-heirs sued MCl, Michelangelo, and Hubbard, as well as the manufacturer and seller of the helmet that Dr. Khiabani was wearing at the time of the accident. The helmet was manufactured by Bell Sports, Inc. d/b/a Giro Sport Design. The helmet was sold by SevenPlus Bicycles, Inc. d/b/a Pro Cyclery,
9. In their operative Second Amended Complaint ("SAC"), Plaintiffs alleged the following claims: (i) Strict Liability: Defective Condition or Failure to Warn against Defendant MCI, (ii) Negligence against Defendants Michelangelo and Hubbard, (iii) Negligence per se against Defendants Michelangelo and Hubbard, (iv) Negligent Training Against Michelangelo, (v) Strict Liability: Defective Condition or Failure to Warn against Defendants Bell Sports and SevenPlus, and (vi) Breach of Implied Warranty of Fitness for a Particular Purpose against Defendants

Bell Sports and SevenPlus.
4. Plaintiffs' complaint also alleged claims for punitive damages. With respect to Michelangelo, Plaintiffs alleged that, "[i]n carrying out its responsibility to adequately hire and train its drivers, Michelangelo acted with fraud, malice, oppression, and/or conscious disregard of the safety of others." 11/17/17 SAC, 9162.
5. Prior to trial, Plaintiffs settled with everyone but MC1. In exchange for a full release of all possible claims and damages against the settling defendants, Plaintiffs received $\$ 5$ million from Michelangelo and Hubbard, \$100,000 from Bell Sports, and \$10,000 from SevenPlus Bicycles. The Court granted motions for good faith settlement determinations with respect to each settlement, and Plaintiffs' claims against MCl proceeded to trial in February 2018.
6. The $\$ 5$ million settlement proceeds from Michelangelo and Hubbard, were satisfied through Michelangelo's insurance. Although the settlement was reached in principle prior to trial, the $\$ 5$ million was not paid until approximately four months after trial. Plaintiffs actually received the settlement proceeds on August 13, 2018.
7. Following a several-week trial on Plaintiffs' claims against MCl , the jury returned a verdict in favor of Plaintiffs under their failure-towarn theory. The jury awarded compensatory damages in the amount of $\$ 18,746,003 \cdot 62$. The jury did not award any punitive damages against MCl. On April 17, 2018, the court entered judgment on the jury's verdict.
8. On June 6, 2018, MCl filed a motion to alter or amend the judgment. In its motion, MCl argued that the judgment amount should be offset by the $\$ 5,110,000 \cdot 00$ paid by the settling defendants
pursuant to NRS 17.245(1)(a) and NRS 41.141(3). Plaintiffs opposed the motion on grounds that product_manufacturers are ineligible to offset settlement proceeds from co-defendants. The Court denied the motion and did not offset the judgment by any amounts paid by the settling defendants.
9. On April 24, 2019, MCl filed an appeal. In its appeal, MCl challenged the judgment and several of the Court's rulings, including the order denying its motion to offset the judgment by the full $\$ 5,110,000 \cdot 00$ paid by the settling defendants.
10. On August 20, 2020, the Nevada Supreme Court issued its opinion in J.E. Johns \& Assoc. v. Lindberg, 136 Nev.Adv.Op. 55, 470 P.3d 204 (2020). The Lindberg opinion was issued after briefing on MCl's appeal was completed but before oral arguments.
11. On March 1, 2021, the Nevada Supreme Court heard oral arguments on MCl's appeal. During oral arguments, Plaintiffs conceded that the "same injury" underlies their claims against both the settling and nonsettling defendants and, therefore, NRS 17•245(1)(a) applied to offset their judgment as to MCl under Lindberg. Plaintiffs also argued that Lindberg applied to the offset calculation as well because the settlement proceeds resolved Defendants' exposure to damages that were beyond actual damages and unique to the settling defendants.
12. On August 19, 2021, the Nevada Supreme Court issued its en banc decision in this case. The Supreme Court concluded as follows:

The district court properly denied the motions for judgment as a matter of law, for a new trial, and to retax costs, and we affirm the judgment and post-judgment orders as to those matters. However, the district court incorrectly denied the motion to alter or amend the judgment to offset the
settlement proceeds paid by other defendants. We therefore reverse the judgment as to its amount and remand to the district court to determine the amount of the offset to which MCl is entitled and enter a corrected judgment thereon. Motor Coach Indus:, Inc. v. Khiabani by \& through Rigaud, 137 Nev. Adv. Op. 42, 493 P.3d 1007, 1017 (2021).
13. The amount of the offset also affects the calculation of interest on the judgment. On December 13, 2021, the parties filed simultaneous briefs on these two issues-the amount of the offset and the calculation of interest. On January 20, 2022, the parties filed simultaneous answering briefs. A hearing was held on June 28, 2022.

## CONCLUSIONS OF LAW

## $1 \cdot$

## THE OFFSET UNDER NRS 17.245

14. NRS 17.245(1)(a) provides as follows:
15. When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death: (a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater...
16. In J.E. Johns \& Assoc. v. Lindberg, $136 \mathrm{Nev} \cdot \mathrm{Adv} \cdot \mathrm{Op} \cdot 55$, 470 P.3d 204, 208 (2020), the Nevada Supreme Court recently addressed the application of NRS 17.245(1)(a).
17. In Lindberg, an aggrieved home buyer sued both the home sellers and the real estate agents of both parties. "The Lindbergs specifically alleged that the sellers violated their statutory disclosure obligation under NRS 113•130, for which NRS 113•150(4) permits the



recovery of treble damages, and that the sellers' agents and the Lindbergs' agents violated their statutory duties of disclosure pursuant to NRS 645.252, which gave rise to a cause of action under NRS 645.257 to recover their actual damages. ld. at 206. Before trial, "the Lindbergs settled with the sellers for $\$ 50,000$ and with the Lindbergs' agents for \$7,500." ld.
18. Following a three-day bench trial against the remaining defendants (the sellers' agents), "the district court awarded the Lindbergs $\$ 27,663.95$ in damages-the cost of installing the proper-sized septic system [] pursuant to NRS 645.257." ld. "The district court also awarded $\$ 48,116.84$ in attorney fees and costs, plus interest, for a total award of $\$ 75,780 \cdot 79 \cdot "$ ld at 207.
19. "The sellers' agents then filed an NRCP 59(e) motion to amend or alter the judgment," which was granted in part. 1d. The district court reasoned that "NRS 17.245(1)(a) entitled the sellers" agents to offset the judgment by the settlement amounts, 'finding that all defendants, settling and remaining, were responsible for the same injury.'" ld. Following a hearing on the proper calculation of the offset, "the district court offset the $\$ 27,552.95$ award [to fix the septic tank] by the entire settlement amount paid by the Lindbergs' agents ( $\$ 7,500$ ), and by one-third of the settlement amount paid by the sellers $(\$ 50,000 \times 1 / 3=\$ 16,650)$ in recognition that the Lindbergs 'would be entitled to treble damages against the sellers associated with any claim established under NRS 113.250.'" ld at 210 .
20. Both parties appealed, claiming "that the district erred in determining the amount to be offset from the original judgment under NRS 17.245(1)(a). ld. at 207. The Lindbergs argued that NRS
KEMP JONES, LLP
17.245(1)(a) did not apply to offset the judgment "because the statute requires a finding of joint tortfeasor liability for all defendants for the same injury." ld. "The sellers' agents challenge[d] the district court's offset calculation, arguing that the district court erred by failing to offset the judgment by the full amount paid by the sellers'" ld.
21. In rejecting the Lindbergs' argument, the Nevada Supreme Court held that "NRS 17.245(1)(a) does not require that a party be found liable." ld at 208 (quotation omitted). "Instead, as the district court properly determined, the relevant question governing the applicability of NRS 17.245(1)(a) for the purposes of settlement offsets is whether both the settling and remaining defendants caused the same injury. ld. (Citation omitted) (italics in original). "To provide additional guidance, [the Supreme Court echo[ed] the district court's reasoning to further hold that independent causes of action, multiple legal theories, or facts unique to each defendant do not foreclose a determination that both the settling and nonsettling defendants bear responsibility for the same injury pursuant to NRS 17•245(1)(a)•" ld (Citation omitted) (italics in original). Because the district court's "same injury" finding was supported by substantial evidence, the Supreme Court affirmed the application of NRS 17.245(1)(a) in Lindberg. ld. at 210.
22. "Having concluded that the district court properly determined that NRS 17.245(1)(a) applie[d] to offset the Lindbergs' judgment as to the sellers' agents, [the Supreme Court next] consider[ed] whether the district court appropriately calculated the offset amount•" ld. "Whether NRS 17.245(1)(a) requires district courts to automatically deduct the entirety of a settlement award, without considering the makeup of the award in relation to the judgment against
the nonsettling defendants, present[ed] a question of law that [the Court] review[ed] de novo." ld. (Citation omitted). On this issue, the Nevada Supreme Court found as follows:

While the plain language of the statute could be interpreted as permitting the reduction of the entire settlement amount obtained-without regard to the type of exposure resolved by the settling defendants-we reason that such an interpretation violates the spirit of NRS 17.245(1)(a). (Citation omitted) (italics in original). The principal purpose of equitable settlement offsets under the statute is to prevent double recovery to the plaintiff-or in other words, to guard against windfalls.
Because the principal purpose of equitable settlement offsets is to avoid windfalls, we determine that it would be inconsistent with the legislative intent of NRS 17.245(1)(a) to then permit the blanket deduction of entire settlement amounts without scrutinizing the allocation of damages awarded therein. Specifically, actual damages "redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct." Cooper Indus', Inc. vLeatherman Tool Grp; Inc: 532 U.S. 424, 432, 121 S.Ct. 1678, 149 L•Ed•2d 674 (2001); see also Actual Damages, Black's Law Dictionary (11th ed- 2019) (defining "actual damages" as those "that repay actual losses"). Treble damages, on the other hand, represent "[d]amages that, by statute, are three times the amount of actual damages that the fact-finder determines is owed•" Treble Damages, Black's Law Dictionary (17th ed. 2019). Thus, ensuring that a plaintiff does not recover twice for the same injury does not mean that a plaintiff should otherwise be precluded from receiving the portion of a settlement award that resolves a
settling defendant's exposure beyond actual damages-such as treble or punitive damages - if such exposure is unique to the settling defendant. Cf. Mobil Oil Corp. v. Ellender, 968 S.W.2d 917, 927 (Tex. 1998) (explaining that a nonsettling defendant "cannot receive credit for settlement amounts representing punitive damages" due to their individual nature). To conclude otherwise would penalize the plaintiff, while granting a windfall to the nonsettling defendant. Id at 210-11.
22. On remand, there is no dispute that $M C l$ is entitled to an offset under NRS 17.245(1)(a), but the parties disagree over the application of Lindberg and the proper calculation of the offset amount.
23. Plaintiffs contend that Lindberg applies to the court's offset calculation in this case. See Plaintiffs' 12/13/21 Brief Regarding Offset, 2:5-3:24. They argue that, in paying the $\$ 5$ million settlement amount, Michelangelo and Hubbard resolved their exposure to damages beyond actual damages that are unique to Michelangelo and/or Hubbard. Id at 3:25-4:26. Specifically, "the principal settling defendant (Michelangelo) paid $\$ 5$ million to settle the compensatory and punitive damages claims asserted against it." ld. at 3:26-27. Plaintiffs also served offers of judgment on each of the settling defendants. Plaintiffs' 1/20/22 Ans. Brief, 4:3-4. This created an additional "exposure" to an award of attorneys' fees, which was also resolved as part of the settlement payment. Id at 4:4-5. This attorneys' fees "exposure" was unique to the settling defendants, as Plaintiffs did not serve an offer of judgment on MCl. Id. at 4:5-6. As in Lindberg, Plaintiffs contend that the offset calculation in this case should account for the resolution of
this exposure to punitive damages and attorneys' fees, as these damages are beyond actual damages and unique to Michelangelo and/or Hubbard. ld at 4:8-9.
24. MCl argues that lindberg does not apply here because the Lindberg case involved "a statutory entitlement to treble damages." MCl's 12/13/21 Brief Re Offset, 8:16-17. MCI contends that, unlike statutory treble damages, "the allowance or denial of exemplary or punitive damages rests entirely in the discretion of the trier of fact." ld. at 9:6-7, citing Evans v. Dean Witter Reynolds, Inc., 116 Nev. 598, 5 P.3d 1043 (2000). MCl asserts that the Nevada Supreme Court did not instruct this court to calculate the offset under Lindberg but rather "unambiguously directed the court to offset all the settlement proceeds." ld. at 6:25-26.
25. The court agrees with MCl . Lindberg does not apply, and the judgment will be offset by the entirety of the $\$ 5,110,000 \cdot 00$ in settlement proceeds. In Lindberg, there was a clear statute that allowed for treble damages. And here, that is not the case. In this court's view, the Lindberg case was not about punitive damages, and any discussion about punitive damages was dictum.
26. In this case, the jury found no punitive damages. Without the jury making a finding of punitive damages, the settling Defendants cannot be charged with punitive damages absent a settlement that specifies the amount. When an insurance policy pays an award, the settlement generally does not include an apportionment for punitive liability on behalf of their insured. The court has not seen any fact or case law that would warrant finding punitive damages against the settling defendants in this case, as that would be in the area of the jury or
finder of fact, and that did not happen here.
27. MCl also argues that "Plaintiffs are judicially estopped from alleging that Hubbard acted with conscious disregard of danger" because they presented evidence that Hubbard would have taken actions to avoid the accident if warned about the motor coach's air displacement. MCl's 12/13/21 Brief Regarding Offset, 13:14-19. Plaintiffs respond that the punitive damages exposure was based on Michelangelo's "corporate misconduct in driver screening and driver training-not on Hubbard's actions." 1/20/22 Ans. Brief, 5:10-11.
28. The Court agrees with MC1. Judicial estoppel prevents a party from taking inconsistent positions when "the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true)." In re Frei Irrevocable Tr. Dated Oct. 29, 1996, 133 Nev. 50, 390 P.3d 646, 652 (2017) (emphasis added). The court does not have to formally "adopt" the party's argument before judicial estoppel applies. See id. Plaintiffs are judicially estopped from alleging that the settling Defendant's conduct justified punitive damages based on their previous representation to the court and the orders procured from this court.
/ / /
/ / /

## 11.

## Interest Calculation Following Application of Offset

29. The prejudgment interest must be calculated following proper allocation of the settlement proceeds. By defendant's calculation, the correct amount of prejudgment interest is $\$ 182,826.85$ as detailed
below.
The Offset is applied to the verdict before Prejudgment interest is Calculated
30. For the purpose of calculating interest, Plaintiffs argued that the offset should be applied as of the date in which the settlement payments were actually received (August 13, 2018). MCl argued that the offset should be deducted as of the date of judgment and prior to the calculation of prejudgment interest, even though Plaintiffs did not receive the settlement proceeds until several months later.
31. In Nevada, prejudgment interest is calculated after settlement proceeds are deducted from jury's assessment of compensatory damages. Ramadanis v. Stupak, $107 \mathrm{Nev} \cdot 22,23-24,805 \mathrm{P} \cdot 2 \mathrm{~d}$ 65, 65-66 (1991); c.f. NRS 47.141(3) (directing the court to subtract settlement proceeds "the net sum otherwise recoverable by the plaintiff pursuant to the general and special verdicts," without reference prejudgment interest). Settlements with co-defendants are not presumed to include both principal and interest to date of settlement. Ramadanis, 107 Nev . at 23-24, 805 P.2d at 65-66.
32. Additionally, under Nevada law, the appropriate amount of the punitive damages under NRS 42.005 can only be calculated using the net compensatory damages following the offset. Coughlin, 879 F. Supp. at 1051 ("[T]he language 'compensatory damages awarded' in the punitive damages statute refers to the reduced [i.e•, after-offset,] compensatory damages award Plaintiff . . . is to receive according to Nevada's comparative negligence statute[, NRS 41.141(3)].").

## Apportionment of Offset

33. Plaintiffs' past compensatory damages were $\$ 4,546,003 \cdot 62$.

The pro rata share of the $\$ 5$ million offset attributable to those damages $(24 \cdot 25 \%)^{1}$ is $\$ 1,239,175 \cdot 00$ bringing the award of past compensatory damages to $\$ 3,306,828 \cdot 62$, on which prejudgment interest accrued.
34. Plaintiffs' future compensatory damages were $\$ 14,200,000 \cdot 00$. The pro rata share of the $\$ 5$ million offset attributable to those damages ( $75.75 \%)^{2}$ is $\$ 3,870,825.00$ bringing the award of future compensatory damages to $\$ 10,329,175 \cdot 00$. Calculation of Prejudgment Interest
35. The amount of prejudgment interest awardable to plaintiff is $\$ 182,826 \cdot 85$. That represents interest on Plaintiffs' past compensatory damages of $\$ 3,306,828.62$ at the statutory rate of $5.75 \%$ from June 1, 2017 through June 30, 2017 for a total of $\$ 15,628 \cdot 16$; the statutory rate of 6.25\% from July 7, 2017 through December 31, 2017 for a total of $\$ 104,187.75$; the statutory rate of $6.50 \%$ from January 1, 2018 through April 17, 2018 for a total of $\$ 63,010 \cdot 94$.
/ / /
/ / /
${ }^{1}$ Of the total $\$ 18,746,003.62$ in compensatory damages found by the jury, the past damages to plaintiffs $(\$ 4,546,003.62)$ account for $\% 24.25$.
${ }^{2}$ Of the total $\$ 18,746,003.62$ in compensatory damages found by the jury, the future damages to plaintiffs ( $\$ 14,200,000.00$ ) account for $\% 75.75$.

## ORDER

7. It is therefore ORDERED that the judgment will be offset by $\$ 5,110,000$ million.
8. It is further ORDERED that the amount of prejudgment interest awardable to plaintiff is $\$ 182,826 \cdot 85$.

IT IS SO ORDERED.

Submitted by:

## 1s/ Eric Pepperman

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Dated this 16 th day of March, 2023


109 28D F090 04C5
Adriana Escobar
District Court Judge
Disapproved as to form and content by:
/s/ Joel Henriod

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CSERV

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

| Keon Khiabani, Plaintiff(s) | CASE NO: A-17-755977-C |
| :--- | :--- |
| vs. | DEPT. NO. Department 14 |
| Motor Coach Industries Inc, <br> Defendant(s) |  |

## AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District 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:

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## District Court

Clark County, Nevada

Keon Khiabani and Aria Khiabani, minors, by and through their guardian, MARIE-ClaUdE RIGAUD; SIAMAK BARIN, as executor of the EsTATE OF KAYVAN Khiabani, M.D., (Decedent); the Estate of Kayvan Khiabani, m.D. (Decedent); SIAMAK BARIN, as executor of the Estate of Katayoun Barin, Dds (Decedent); and the Estate of KATAYOUN BARIN, DDS (Decedent),

## Plaintiffs,

vs.
Motor Coach Industries, Inc., a Delaware corporation; MICHELANGELO LEASING Inc. d/b/a RyAN'S Express, an Arizona corporation; EdWARD HUBBARD, a Nevada resident; BELL Sports, Inc. d/b/a Giro Sport Design, a Delaware corporation; SEVENPLUS BICYCLES, INC. d/b/a Pro Cyclery, a Nevada
corporation, DOES 1 through 20; and RoE CORPORATIONS 1 through 20,

Defendants.

Case No. A-17-755977-C
Dept. No. 14

Notice of Entry of "Order Granting Defendant Motor Coach Industries, Inc.'s MOTION FOR OFFSET"

Please take notice that on the $16^{\text {th }}$ day of March, 2023, an "Order Granting Defendant Motor Coach Industries, Inc.'s Motion for Offset" was entered in this case. A copy of the order is attached.

Dated this 24th day of March, 2023.
Lewis Roca Rothgerber Christie llp

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## Certificate of Service

I hereby certify that on the 24th day of March, 2023, a true and correct copy of the foregoing Notice of Entry of Order was served by e-service, in accordance with the Electronic Filing Procedures of the Eight Judicial District Court.

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## DISTRICT COURT

 Clark County, NevadaKEON KHIABANI AN INDIVIDUAL; aria Khiabani, an individual;
SIAMAK BARIN, AS EXECUTOR OF THE ESTATE OF KAYVAN KHIABANI, M•D. (DECEDENT), THE ESTATE OF KAYVAN KHIABANI, M•D• (DECEDENT); SIAMAK BARIN, AS EXECUTOR OF THE ESTATE OF KATAYOUN BARIN, DDS (DECEDENT); and the estate of katayoun barin DDS (DECEDENT),

Plaintiffs,
vs.
Motor Coach industries, Inc. a DELAWARE CORPORATION: Michelangelo Leasing INC. D/b/a RYAN'S EXPRESS, AN ARIZONA CORPORATION; EDWARD HUBBARD, A NEVADA RESIDENT; BELL SPORTS INC. d/B/a GIRO SPORT DESIGN, A DELAWARE CORPORATION; SEVENPLUS BICYCLES, INC• D/B/a PRO CYCLERY, A NEVADA CORPORATION; DOES 1 THROUGH 20; and Roe corporations 1 THROUGH 20.

Defendants.

Case No. A-77-755977-C
Dept. No XIV
(PROPOSED)
Order granting defendant Motor COACH INDUSTRIES, INC.'S MOTION FOR OFFSET

Hearing Date: June 28, 2022 Hearing Time: 10:00 a.m.

Defendant Motor Coach Industries, Inc has moved the Court for an Offset of the settlement proceeds paid by other defendants in its Brief Regarding Offset filed December 13, 2021. In addition to this motion, the corresponding answering brief and responding brief, the Court also heard oral argument June 28, 2022, regarding the offset. The Court now, having considered the briefs and materials submitted by the parties, oral argument, and the record before the Court, the Court orders as follows:

## FINDINGS OF FACT

7. The decedent Dr. Khiabani died when his bicycle collided with a motor coach designed by defendant Motor Coach Industries, Inc. ("MCl"). Defendant Edward Hubbard was driving the vehicle for his employer, Michelangelo Leasing Inc. d/b/a Ryan's Express ("Michelangelo"), taking passengers from the airport to the Red Rock Casino Resort.
8. The plaintiff-heirs sued MCl, Michelangelo, and Hubbard, as well as the manufacturer and seller of the helmet that Dr. Khiabani was wearing at the time of the accident. The helmet was manufactured by Bell Sports, Inc. d/b/a Giro Sport Design. The helmet was sold by SevenPlus Bicycles, Inc. d/b/a Pro Cyclery,
9. In their operative Second Amended Complaint ("SAC"), Plaintiffs alleged the following claims: (i) Strict Liability: Defective Condition or Failure to Warn against Defendant MCI, (ii) Negligence against Defendants Michelangelo and Hubbard, (iii) Negligence per se against Defendants Michelangelo and Hubbard, (iv) Negligent Training Against Michelangelo, (v) Strict Liability: Defective Condition or Failure to Warn against Defendants Bell Sports and SevenPlus, and (vi) Breach of Implied Warranty of Fitness for a Particular Purpose against Defendants

Bell Sports and SevenPlus.
4. Plaintiffs' complaint also alleged claims for punitive damages. With respect to Michelangelo, Plaintiffs alleged that, "[i]n carrying out its responsibility to adequately hire and train its drivers, Michelangelo acted with fraud, malice, oppression, and/or conscious disregard of the safety of others." 11/17/17 SAC, 9162.
5. Prior to trial, Plaintiffs settled with everyone but MC1. In exchange for a full release of all possible claims and damages against the settling defendants, Plaintiffs received $\$ 5$ million from Michelangelo and Hubbard, \$100,000 from Bell Sports, and \$10,000 from SevenPlus Bicycles. The Court granted motions for good faith settlement determinations with respect to each settlement, and Plaintiffs' claims against MCl proceeded to trial in February 2018.
6. The $\$ 5$ million settlement proceeds from Michelangelo and Hubbard, were satisfied through Michelangelo's insurance. Although the settlement was reached in principle prior to trial, the $\$ 5$ million was not paid until approximately four months after trial. Plaintiffs actually received the settlement proceeds on August 13, 2018.
7. Following a several-week trial on Plaintiffs' claims against MCl , the jury returned a verdict in favor of Plaintiffs under their failure-towarn theory. The jury awarded compensatory damages in the amount of $\$ 18,746,003 \cdot 62$. The jury did not award any punitive damages against MCl. On April 17, 2018, the court entered judgment on the jury's verdict.
8. On June 6, 2018, MCl filed a motion to alter or amend the judgment. In its motion, MCl argued that the judgment amount should be offset by the $\$ 5,110,000 \cdot 00$ paid by the settling defendants
pursuant to NRS 17.245(1)(a) and NRS 41.141(3). Plaintiffs opposed the motion on grounds that product_manufacturers are ineligible to offset settlement proceeds from co-defendants. The Court denied the motion and did not offset the judgment by any amounts paid by the settling defendants.
9. On April 24, 2019, MCl filed an appeal. In its appeal, MCl challenged the judgment and several of the Court's rulings, including the order denying its motion to offset the judgment by the full $\$ 5,110,000 \cdot 00$ paid by the settling defendants.
10. On August 20, 2020, the Nevada Supreme Court issued its opinion in J.E. Johns \& Assoc. v. Lindberg, 136 Nev.Adv.Op. 55, 470 P.3d 204 (2020). The Lindberg opinion was issued after briefing on MCl's appeal was completed but before oral arguments.
11. On March 1, 2021, the Nevada Supreme Court heard oral arguments on MCl's appeal. During oral arguments, Plaintiffs conceded that the "same injury" underlies their claims against both the settling and nonsettling defendants and, therefore, NRS 17•245(1)(a) applied to offset their judgment as to MCl under Lindberg. Plaintiffs also argued that Lindberg applied to the offset calculation as well because the settlement proceeds resolved Defendants' exposure to damages that were beyond actual damages and unique to the settling defendants.
12. On August 19, 2021, the Nevada Supreme Court issued its en banc decision in this case. The Supreme Court concluded as follows:

The district court properly denied the motions for judgment as a matter of law, for a new trial, and to retax costs, and we affirm the judgment and post-judgment orders as to those matters. However, the district court incorrectly denied the motion to alter or amend the judgment to offset the
settlement proceeds paid by other defendants. We therefore reverse the judgment as to its amount and remand to the district court to determine the amount of the offset to which MCl is entitled and enter a corrected judgment thereon. Motor Coach Indus:, Inc. v. Khiabani by \& through Rigaud, 137 Nev. Adv. Op. 42, 493 P.3d 1007, 1017 (2021).
13. The amount of the offset also affects the calculation of interest on the judgment. On December 13, 2021, the parties filed simultaneous briefs on these two issues-the amount of the offset and the calculation of interest. On January 20, 2022, the parties filed simultaneous answering briefs. A hearing was held on June 28, 2022.

## CONCLUSIONS OF LAW

## $1 \cdot$

## THE OFFSET UNDER NRS 17.245

14. NRS 17.245(1)(a) provides as follows:
15. When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death: (a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater...
16. In J.E. Johns \& Assoc. v. Lindberg, $136 \mathrm{Nev} \cdot \mathrm{Adv} \cdot \mathrm{Op} \cdot 55$, 470 P.3d 204, 208 (2020), the Nevada Supreme Court recently addressed the application of NRS 17.245(1)(a).
17. In Lindberg, an aggrieved home buyer sued both the home sellers and the real estate agents of both parties. "The Lindbergs specifically alleged that the sellers violated their statutory disclosure obligation under NRS 113•130, for which NRS 113•150(4) permits the



recovery of treble damages, and that the sellers' agents and the Lindbergs' agents violated their statutory duties of disclosure pursuant to NRS 645.252, which gave rise to a cause of action under NRS 645.257 to recover their actual damages. ld. at 206. Before trial, "the Lindbergs settled with the sellers for $\$ 50,000$ and with the Lindbergs' agents for \$7,500." ld.
18. Following a three-day bench trial against the remaining defendants (the sellers' agents), "the district court awarded the Lindbergs $\$ 27,663.95$ in damages-the cost of installing the proper-sized septic system [] pursuant to NRS 645.257." ld. "The district court also awarded $\$ 48,116.84$ in attorney fees and costs, plus interest, for a total award of $\$ 75,780 \cdot 79 \cdot "$ ld at 207.
19. "The sellers' agents then filed an NRCP 59(e) motion to amend or alter the judgment," which was granted in part. 1d. The district court reasoned that "NRS 17.245(1)(a) entitled the sellers" agents to offset the judgment by the settlement amounts, 'finding that all defendants, settling and remaining, were responsible for the same injury.'" ld. Following a hearing on the proper calculation of the offset, "the district court offset the $\$ 27,552.95$ award [to fix the septic tank] by the entire settlement amount paid by the Lindbergs' agents ( $\$ 7,500$ ), and by one-third of the settlement amount paid by the sellers $(\$ 50,000 \times 1 / 3=\$ 16,650)$ in recognition that the Lindbergs 'would be entitled to treble damages against the sellers associated with any claim established under NRS 113.250.'" ld at 210 .
20. Both parties appealed, claiming "that the district erred in determining the amount to be offset from the original judgment under NRS 17.245(1)(a). ld. at 207. The Lindbergs argued that NRS
KEMP JONES, LLP
17.245(1)(a) did not apply to offset the judgment "because the statute requires a finding of joint tortfeasor liability for all defendants for the same injury." ld. "The sellers' agents challenge[d] the district court's offset calculation, arguing that the district court erred by failing to offset the judgment by the full amount paid by the sellers'" ld.
21. In rejecting the Lindbergs' argument, the Nevada Supreme Court held that "NRS 17.245(1)(a) does not require that a party be found liable." ld at 208 (quotation omitted). "Instead, as the district court properly determined, the relevant question governing the applicability of NRS 17.245(1)(a) for the purposes of settlement offsets is whether both the settling and remaining defendants caused the same injury. ld. (Citation omitted) (italics in original). "To provide additional guidance, [the Supreme Court echo[ed] the district court's reasoning to further hold that independent causes of action, multiple legal theories, or facts unique to each defendant do not foreclose a determination that both the settling and nonsettling defendants bear responsibility for the same injury pursuant to NRS 17•245(1)(a)•" ld (Citation omitted) (italics in original). Because the district court's "same injury" finding was supported by substantial evidence, the Supreme Court affirmed the application of NRS 17.245(1)(a) in Lindberg. ld. at 210.
22. "Having concluded that the district court properly determined that NRS 17.245(1)(a) applie[d] to offset the Lindbergs' judgment as to the sellers' agents, [the Supreme Court next] consider[ed] whether the district court appropriately calculated the offset amount•" ld. "Whether NRS 17.245(1)(a) requires district courts to automatically deduct the entirety of a settlement award, without considering the makeup of the award in relation to the judgment against
the nonsettling defendants, present[ed] a question of law that [the Court] review[ed] de novo." ld. (Citation omitted). On this issue, the Nevada Supreme Court found as follows:

While the plain language of the statute could be interpreted as permitting the reduction of the entire settlement amount obtained-without regard to the type of exposure resolved by the settling defendants-we reason that such an interpretation violates the spirit of NRS 17.245(1)(a). (Citation omitted) (italics in original). The principal purpose of equitable settlement offsets under the statute is to prevent double recovery to the plaintiff-or in other words, to guard against windfalls.
Because the principal purpose of equitable settlement offsets is to avoid windfalls, we determine that it would be inconsistent with the legislative intent of NRS 17.245(1)(a) to then permit the blanket deduction of entire settlement amounts without scrutinizing the allocation of damages awarded therein. Specifically, actual damages "redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct." Cooper Indus', Inc. vLeatherman Tool Grp; Inc: 532 U.S. 424, 432, 121 S.Ct. 1678, 149 L•Ed•2d 674 (2001); see also Actual Damages, Black's Law Dictionary (11th ed- 2019) (defining "actual damages" as those "that repay actual losses"). Treble damages, on the other hand, represent "[d]amages that, by statute, are three times the amount of actual damages that the fact-finder determines is owed•" Treble Damages, Black's Law Dictionary (17th ed. 2019). Thus, ensuring that a plaintiff does not recover twice for the same injury does not mean that a plaintiff should otherwise be precluded from receiving the portion of a settlement award that resolves a
settling defendant's exposure beyond actual damages-such as treble or punitive damages - if such exposure is unique to the settling defendant. Cf. Mobil Oil Corp. v. Ellender, 968 S.W.2d 917, 927 (Tex. 1998) (explaining that a nonsettling defendant "cannot receive credit for settlement amounts representing punitive damages" due to their individual nature). To conclude otherwise would penalize the plaintiff, while granting a windfall to the nonsettling defendant. Id at 210-11.
22. On remand, there is no dispute that $M C l$ is entitled to an offset under NRS 17.245(1)(a), but the parties disagree over the application of Lindberg and the proper calculation of the offset amount.
23. Plaintiffs contend that Lindberg applies to the court's offset calculation in this case. See Plaintiffs' 12/13/21 Brief Regarding Offset, 2:5-3:24. They argue that, in paying the $\$ 5$ million settlement amount, Michelangelo and Hubbard resolved their exposure to damages beyond actual damages that are unique to Michelangelo and/or Hubbard. Id at 3:25-4:26. Specifically, "the principal settling defendant (Michelangelo) paid $\$ 5$ million to settle the compensatory and punitive damages claims asserted against it." ld. at 3:26-27. Plaintiffs also served offers of judgment on each of the settling defendants. Plaintiffs' 1/20/22 Ans. Brief, 4:3-4. This created an additional "exposure" to an award of attorneys' fees, which was also resolved as part of the settlement payment. Id at 4:4-5. This attorneys' fees "exposure" was unique to the settling defendants, as Plaintiffs did not serve an offer of judgment on MCl. Id. at 4:5-6. As in Lindberg, Plaintiffs contend that the offset calculation in this case should account for the resolution of
this exposure to punitive damages and attorneys' fees, as these damages are beyond actual damages and unique to Michelangelo and/or Hubbard. ld at 4:8-9.
24. MCl argues that lindberg does not apply here because the Lindberg case involved "a statutory entitlement to treble damages." MCl's 12/13/21 Brief Re Offset, 8:16-17. MCI contends that, unlike statutory treble damages, "the allowance or denial of exemplary or punitive damages rests entirely in the discretion of the trier of fact." ld. at 9:6-7, citing Evans v. Dean Witter Reynolds, Inc., 116 Nev. 598, 5 P.3d 1043 (2000). MCl asserts that the Nevada Supreme Court did not instruct this court to calculate the offset under Lindberg but rather "unambiguously directed the court to offset all the settlement proceeds." ld. at 6:25-26.
25. The court agrees with MCl . Lindberg does not apply, and the judgment will be offset by the entirety of the $\$ 5,110,000 \cdot 00$ in settlement proceeds. In Lindberg, there was a clear statute that allowed for treble damages. And here, that is not the case. In this court's view, the Lindberg case was not about punitive damages, and any discussion about punitive damages was dictum.
26. In this case, the jury found no punitive damages. Without the jury making a finding of punitive damages, the settling Defendants cannot be charged with punitive damages absent a settlement that specifies the amount. When an insurance policy pays an award, the settlement generally does not include an apportionment for punitive liability on behalf of their insured. The court has not seen any fact or case law that would warrant finding punitive damages against the settling defendants in this case, as that would be in the area of the jury or
finder of fact, and that did not happen here.
27. MCl also argues that "Plaintiffs are judicially estopped from alleging that Hubbard acted with conscious disregard of danger" because they presented evidence that Hubbard would have taken actions to avoid the accident if warned about the motor coach's air displacement. MCl's 12/13/21 Brief Regarding Offset, 13:14-19. Plaintiffs respond that the punitive damages exposure was based on Michelangelo's "corporate misconduct in driver screening and driver training-not on Hubbard's actions." 1/20/22 Ans. Brief, 5:10-11.
28. The Court agrees with MC1. Judicial estoppel prevents a party from taking inconsistent positions when "the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true)." In re Frei Irrevocable Tr. Dated Oct. 29, 1996, 133 Nev. 50, 390 P.3d 646, 652 (2017) (emphasis added). The court does not have to formally "adopt" the party's argument before judicial estoppel applies. See id. Plaintiffs are judicially estopped from alleging that the settling Defendant's conduct justified punitive damages based on their previous representation to the court and the orders procured from this court.
/ / /
/ / /

## 11.

## Interest Calculation Following Application of Offset

29. The prejudgment interest must be calculated following proper allocation of the settlement proceeds. By defendant's calculation, the correct amount of prejudgment interest is $\$ 182,826.85$ as detailed
below.
The Offset is applied to the verdict before Prejudgment interest is Calculated
30. For the purpose of calculating interest, Plaintiffs argued that the offset should be applied as of the date in which the settlement payments were actually received (August 13, 2018). MCl argued that the offset should be deducted as of the date of judgment and prior to the calculation of prejudgment interest, even though Plaintiffs did not receive the settlement proceeds until several months later.
31. In Nevada, prejudgment interest is calculated after settlement proceeds are deducted from jury's assessment of compensatory damages. Ramadanis v. Stupak, $107 \mathrm{Nev} \cdot 22,23-24,805 \mathrm{P} \cdot 2 \mathrm{~d}$ 65, 65-66 (1991); c.f. NRS 47.141(3) (directing the court to subtract settlement proceeds "the net sum otherwise recoverable by the plaintiff pursuant to the general and special verdicts," without reference prejudgment interest). Settlements with co-defendants are not presumed to include both principal and interest to date of settlement. Ramadanis, 107 Nev . at 23-24, 805 P.2d at 65-66.
32. Additionally, under Nevada law, the appropriate amount of the punitive damages under NRS 42.005 can only be calculated using the net compensatory damages following the offset. Coughlin, 879 F. Supp. at 1051 ("[T]he language 'compensatory damages awarded' in the punitive damages statute refers to the reduced [i.e•, after-offset,] compensatory damages award Plaintiff . . . is to receive according to Nevada's comparative negligence statute[, NRS 41.141(3)].").

## Apportionment of Offset

33. Plaintiffs' past compensatory damages were $\$ 4,546,003 \cdot 62$.

The pro rata share of the $\$ 5$ million offset attributable to those damages $(24 \cdot 25 \%)^{1}$ is $\$ 1,239,175 \cdot 00$ bringing the award of past compensatory damages to $\$ 3,306,828 \cdot 62$, on which prejudgment interest accrued.
34. Plaintiffs' future compensatory damages were $\$ 14,200,000 \cdot 00$. The pro rata share of the $\$ 5$ million offset attributable to those damages ( $75.75 \%)^{2}$ is $\$ 3,870,825.00$ bringing the award of future compensatory damages to $\$ 10,329,175 \cdot 00$. Calculation of Prejudgment Interest
35. The amount of prejudgment interest awardable to plaintiff is $\$ 182,826 \cdot 85$. That represents interest on Plaintiffs' past compensatory damages of $\$ 3,306,828.62$ at the statutory rate of $5.75 \%$ from June 1, 2017 through June 30, 2017 for a total of $\$ 15,628 \cdot 16$; the statutory rate of 6.25\% from July 7, 2017 through December 31, 2017 for a total of $\$ 104,187.75$; the statutory rate of $6.50 \%$ from January 1, 2018 through April 17, 2018 for a total of $\$ 63,010 \cdot 94$.
/ / /
/ / /
${ }^{1}$ Of the total $\$ 18,746,003.62$ in compensatory damages found by the jury, the past damages to plaintiffs $(\$ 4,546,003.62)$ account for $\% 24.25$.
${ }^{2}$ Of the total $\$ 18,746,003.62$ in compensatory damages found by the jury, the future damages to plaintiffs ( $\$ 14,200,000.00$ ) account for $\% 75.75$.

## ORDER

7. It is therefore ORDERED that the judgment will be offset by $\$ 5,110,000$ million.
8. It is further ORDERED that the amount of prejudgment interest awardable to plaintiff is $\$ 182,826 \cdot 85$.

IT IS SO ORDERED.

Submitted by:

## 1s/ Eric Pepperman

WILL KEMP (SBN 1205)
ERIC PEPPERMAN (SBN 11679)
KEMP JONES, LLP
3800 Howard Hughes Parkway
17 ${ }^{\text {th }}$ Floor
Las Vegas, Nevada 89169
-and-
PETER CHRISTIANSEN (SBN 5254)
KENDELEE L. WORKS (SBN 9671)
CHRISTENSEN LAW OFFICES
810 South Casino Center Blvd-
Las Vegas, Nevada 89101

Dated this 16 th day of March, 2023


109 28D F090 04C5
Adriana Escobar
District Court Judge
Disapproved as to form and content by:
/s/ Joel Henriod

DANIEL F. Polsenberg (SbN 2376)
JOEL D. HENRIOD (SBN 8492)
Abraham G. Smith (SbN 13250)
ADRIENNE BRANDLEY-LOMELI (14486)
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Weinberg Wheeler Hudgins


Attorneys for Plaintiffs

GUNN \& DIAL, LLC
6385 S. Rainbow blvd•, Suite 400
Las Vegas, Nevada 89118 (702) 938-3838

Attorneys for Defendant Motor Coach Industries, Inc.

CSERV

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

| Keon Khiabani, Plaintiff(s) | CASE NO: A-17-755977-C |
| :--- | :--- |
| vs. | DEPT. NO. Department 14 |
| Motor Coach Industries Inc, <br> Defendant(s) |  |

## AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District 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:

Service Date: 3/16/2023
Peter Christiansen pete@christiansenlaw.com
Whitney Barrett
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Raiza Anne Torrenueva
Eric Freeman

Crystal Martin
Patricia Stoppard

Chandi Melton

Nicole Garcia
Michael Nunez

Darrell Barger, Esq.
Michael Terry, Esq.

John Dacus, Esq.
Alisa Hayslett
Eric Pepperman

Floyd Hale
Jessie Helm

Paul Stephan
Candice Farnsworth

Esther Barrios Sandoval

Daniel Polsenberg
Joel Henriod

Flor Gonzalez-Pacheco
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Mrosenberg@wwhgd.com

Julie Richards
jrichards@wwhgd.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 3/17/2023

Michael Stoberski
Olson Cannon Gormley \& Stoberski
Attn: Michael Stoberski, Esq
9950 W. Cheyenne Avenue
Las Vegas, NV, 89129
Whitney Welch

William Kemp
Greenberg Traurig, LLP
Attn: Whitney Welch, Esq
10845 Griffith Peak Drive, Ste 600
Las Vegas, NV, 89135
3800 Howard Hughes Pkwy.
17th Floor
Las Vegas, NV, 89109

## DISTRICT COURT

CLARK COUNTY, NEVADA

Product Liability
COURT MINUTES
June 06, 2017

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |
| :--- | :--- |

June 06, 2017 12:30 AM Minute Order

Ex-Parte Motion for<br>Order Requiring Bus<br>Company and Driver<br>to Preserve and<br>Immediately Turn<br>Over Relevant<br>Electronic<br>Monitoring<br>Information from Bus and Driver Cell Phone

COURTROOM: RJC Courtroom 14C

COURT CLERK: Denise Husted
RECORDER: Sandra Anderson

REPORTER:
PARTIES
PRESENT:

## JOURNAL ENTRIES

- Plaintiffs ex parte motion for order requiring bus company and driver to preserve and immediately turn over relevant electronic monitoring information from bus and driver cell phone was filed in Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on May 30, 2017.

The Court notes that the motion is not the appropriate method for seeking the requested relief, as Plaintiffs are essentially requesting a temporary restraining order and an order compelling

PRINT DATE: 04/14/2023 Page 1 of 97 Minutes Date: June 06, 2017
production of evidence. Thus, the Court DENIES Plaintiffs motion, as each of these motions require additional procedural steps, such as an attempt at notice to the other party which have apparently not been undertaken here. If Plaintiffs refile the request to preserve evidence as an application for temporary restraining order in line with NRCP 65(b), including making efforts to serve the Defendants with notice of that application, the Court will consider the matter at that time. The Court will not grant a motion to compel on an ex parte basis.

Finally, the Court notes that both parties have a common law duty to preserve documents, tangible items, and information relevant to litigation that are reasonably calculated to lead to the discovery of admissible evidence when litigation is reasonably foreseeable. See Bass-Davis v. Davis, 122 Nev. 442 (2006).

Plaintiffs are directed to submit a proposed order denying their motion, and to serve a copy of this minute order on Defendants.

CLERK'S NOTE: Copies of this minute order placed in the attorney folders of:
William Kemp (KEMP JONES \& COULTHARD, LLP)
Peter S. Christiansen (CHRISTIANSEN LAW OFFICES)

## DISTRICT COURT

CLARK COUNTY, NEVADA

Product Liability
COURT MINUTES
June 15, 2017

A-17-755977-C
Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

June 15, 2017
9:30 AM

| Motion for Temporary | Per Pltf's App for |
| :--- | :--- |
| Restraining Order | TRO requiring Bus |
|  | Co. \& Driver to |
|  |  |
|  | Immediately Turn |
|  | over Relevant |
|  | Electronic |
|  | Monitoring |
|  | Information from Bus |
|  | and Driver Cell |
|  | Phone on OST. |

HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Sharon Chun
RECORDER: Sandra Anderson
REPORTER:

PARTIES

PRESENT: Christiansen, Peter S
Freeman, Eric O.
Kemp, William Simon
Pepperman, Eric
Russell, Howard J., ESQ
Stoberski, Michael E

Attorney
Attorney
Attorney
Attorney
Attorney
Attorney

## JOURNAL ENTRIES

- Per Pltf's App for TRO requiring Bus Co. \& Driver to Preserve \& Immediately Turn over Relevant Electronic Monitoring Information from Bus and Driver Cell Phone on OST.
PRINT DATE: 04/14/2023 Page 3 of 97 Minutes Date: June 06, 2017

Eric Freeman, Esq. appeared by CourtCall on behalf of Defts Michelangelo Leasing Inc. d/b/a Ryan's Express and Edward Hubbard.

Judge Escobar disclosed that it had represented Mr. Kemp's firm prior to taking the Bench, but will be fair and impartial. There was no opposition from any counsel to this Court hearing this matter.

Following Mr. Kemp's argument in support of the Application for TRO, both Mr. Russell and Mr. Stoberski stated they had no opposition to the proposed changes to the order, but requested to review it prior to signing off.

Mr. Freeman presented his objection to the Temporary Restraining Order, arguing it was too broad. He also noted that Sevenplus Bicycles Inc., a defendant that it affects, was served but has made no appearance yet and they need to make an appearance. Mr. Kemp confirmed that Michelangelo and Hubbard were served and argued that they will need to look at the evidence and get started. Mr. Freeman responded that he needs the opportunity to discuss this with his potential client and reiterated his opposition to the TRO at this time, but he will work with counsel. Mr. Kemp reiterated his request for the TRO.

COURT STATED it has given a lot of thought to this and did find that the preservation of evidence is critical and required; however, the Court needs to read the changed Order. COURT ORDERED, Application for TRO GRANTED IN PART and DENIED IN PART. COURT STATED it did not find it was something it wanted to come without the other parties being informed. The preservation of evidence is critical and required. COURT STATED it has not yet read the changed order, but at this time read from its notes, citing the electronic information that Mr. Kemp believes the bus has in its possession.

COURT ORDERED within five business days, all of the cited items are to be preserved from the accident which occurred on $4 / 18 / 17$. With respect to the Smart Phone, those items that Plaintiff requested are to be preserved. Under Bass-Davis, a party has the duty to preserve discoverable evidence, within five business days. COURT NOTED that the evidence already discussed may not be discoverable, but it is to be downloaded within five business days and is to be preserved by the Defendants; Mr. Freeman would have a duty to preserve this.

Defendants are not to discuss the evidence with Plaintiff's, or anyone else involved in the case, until the appropriate time. Mr. Kemp stated his concern is that all data is downloaded. COURT ADVISED it wants a Declaration from the experts who are proficient to download the data from the date of the accident. It was noted that there are two such experts who would be proficient to do that.

COURT ORDERED that the experts are to submit a Declaration to the Court as to what was downloaded and the dates of the data generation from the bus and the cell phone. The information will not be shared with Plaintiff until the appropriate time. Mr. Kemp noted that METRO may

[^1]request the information. COURT REITERATED that the information is not to be shared with the Plaintiff, but METRO'S requests may be required.

Mr. Freeman stated he will cooperate with Mr. Kemp's office and requested Mr. Kemp to forward the proposed revised Order to him along with the information as to whom could download all of this and preserve the data. Mr. Freeman's contact information was provided at this time. COURT SO NOTED.

Mr. Kemp advised he will redraft the proposed Order, get it to all counsel, and then get it back to the Court within the next few days.

COURT REITERATED, the TEMPORARY RESTRAINING ORDER, GRANTED IN PART; DENIED AS TO IMMEDIATELY TURNING OVER THE INFORMATION/EVIDENCE.

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
July 20, 2017

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |
| :--- | :--- |


| July 20, 2017 | 9:30 AM | Motion for Preferential <br> Trial Setting |
| :--- | :--- | :--- |

## Plaintiff's Motion for Preferential Trial Setting Under NRS 16.025(2)

COURTROOM: RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

## REPORTER:

PARTIES
PRESENT: Christiansen, Peter S
Kemp, William Simon
Nunez, Michael J.
Stoberski, Michael E
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Mr. Kemp argued that parties can be ready for trial in six months. He advised that the widow does not have long to live which necessitates an expedited trial setting. He further stated he listed all witnesses at the early case conference and will provide counsel all documents by noon today. Opposition by defense counsel. Colloquy regarding scheduling of depositions, dispositive motions and motions in limine. COURT ORDERED, motion is GRANTED; trial date is SET, with the understanding that it may not go, and a status check regarding trial readiness is SET in sixty days.

9/21/17 9:30 AM STATUS CHECK: TRIAL READINESS

PRINT DATE: $\quad 04 / 14 / 2023$

11/2/17 9:30 AM CALENDAR CALL
11/20/17 9:30 AM JURY TRIAL

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
September 21, 2017

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |
| :--- | :--- |

September 21, 2017 9:30 AM All Pending Motions
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Haly Pannullo
RECORDER: Sandra Anderson

## REPORTER:

## PARTIES

PRESENT: Christiansen, Peter S
Freeman, Eric O.
Kemp, William Simon
Roberts, D Lee, Jr.
Stoberski, Michael E
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- TRIAL READINESS ... DEFENDANTS MICHELANGELO LEASING INC. AND EDWARD HUBBARD'S MOTION FOR RECONSIDERATION REGARDING THE COURT GRANTING PLAINTIFFS' MOTION FOR PREFERENTIAL TRIAL SETTING ... DEFENDANT SEVENPLUS BICYCLES, INC. DBA PRO CYCLERY'S JOINDER TO DEFENDANT RYAN'S EXPRESS AND EDWARD HUBBARD'S MOTION FOR RECONSIDERATION ... DEFENDANT MOTOR COACH INDUSTRIES, INC.'S JOINDER TO MICHELANGELO LEASING INC. AND EDWARD HUBBARD'S MOTION FOR RECONSIDERATION REGARDING THE COURT GRANTING PLAINTIFFS' MOTION FOR PREFERENTIAL TRIAL SETTING

Scott Tooney, Esq., present on behalf of Bell Sports Inc. Paul Stephen, Esq., appearing Pro Hac Vice on behalf of Motor Coach Industries Inc. Michael G. Terry, Esq., appearing Pro Hac Vice on behalf of

Katayoun Barin.
Arguments by counsel regarding trial readiness and the Motion for Reconsideration. COURT STATED FINDINGS and ORDERED, trial and discovery is to move forward on the schedule that was set. Court noted the status of each Pro Hac Vice application. COURT FURTHER ORDERED, matter SET for Status Check regarding trial readiness.

CLERK'S NOTE: Subsequent to Court, COURT ORDERED, matter SET for Status Check on October 30, 2017 to monitor the progress of discovery closer to the trial date; Motions for Reconsideration CONTINUED. hvp/10/9/17

## DISTRICT COURT

CLARK COUNTY, NEVADA

Product Liability
COURT MINUTES
November 02, 2017

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |
| :--- | :--- |

November 02, 2017 9:30 AM All Pending Motions Plaintiff's Motion to
Amend Cojmplaint to
Substitute Parties on
Order Shortening
Time...Defendant's
Opposition to
Plaintiffs' Motion to
Amend
Complaint/Counterm
otion to Set a
Reasonable Trial
Date Upon Changed
Circumstance that Nullifies the Reason for Preferential Trial Setting

HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Sandra Anderson

REPORTER:
PARTIES
PRESENT: Christiansen, Peter S
Henriod, Joel D.
Kemp, William Simon
Polsenberg, Daniel F.
Roberts, D Lee, Jr.
Russell, Howard J., ESQ
Attorney
Attorney
Attorney
Attorney
Attorney
Attorney
PRINT DATE: $04 / 14 / 2023 \quad$ Page 10 of 97 Minutes Date: June 06, 2017

Works, Kendelee Leascher Attorney

## JOURNAL ENTRIES

- Mr. Kemp stated that the amendment being sought is to replace the co-guardian into the case. He advised that Defendant's opposition is actually a request to continue the trial. He informed the Court the status of taking of depositions and argued opposition to Defendant's request for trial continuance. Mr. Polsenberg stated he does not want to try a case in which he is not prepared; a continuance is required to fully prepare. Following further arguments, COURT ORDERED, Plaintiff's Motion to Amend Complaint is GRANTED and Defendant's Countermotion to Set a Reasonable Trial Date is GRANTED. Trial, which is anticipated to take four weeks, is set to a Firm Setting.

1/18/18 9:30 AM CALENDAR CALL
2/12/18 9:30 AM JURY TRIAL - FIRM SETTING

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

A-17-755977-C Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

December 07, 2017 9:30 AM Motion for Determination of Good Faith Settlement

HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Sandra Anderson
REPORTER:

PARTIES
PRESENT: Pepperman, Eric
Attorney

## JOURNAL ENTRIES

- COURT FINDS no collusion or fraud and the settlement negotiations were at arms length, and ORDERED, Good Faith Settlement is APPROVED. Ms. Igeleke to prepare the order to include Findings of Fact and Conclusions of Law, circulate proposed order to counsel and provide proposed order to Court's Chambers in Word format.


# DISTRICT COURT CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
January 18, 2018
A-17-755977-C
Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)
January 18, 2018
9:30 AM Calendar Call
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Sandra Anderson

## REPORTER:

PARTIES
PRESENT: Henriod, Joel D. Pepperman, Eric Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney
Attorney
Attorney
Attorney

## JOURNAL ENTRIES

- Colloquy regarding trial date and the jury questionnaire. COURT ORDERED, trial date STANDS.


# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
January 23, 2018
A-17-755977-C
Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)
January 23, 2018
9:30 AM
All Pending Motions
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Sandra Anderson

## REPORTER:

## PARTIES

PRESENT:

| Christiansen, Peter S | Attorney |
| :--- | :--- |
| Ferrario, Mark E., ESQ | Attorney |
| Freeman, Eric O. | Attorney |
| Henriod, Joel D. | Attorney |
| Kemp, William Simon | Attorney |
| Pepperman, Eric | Attorney |
| Polsenberg, Daniel F. | Attorney |
| Roberts, D Lee, Jr. | Attorney |
| Russell, Howard J., ESQ | Attorney |
| Stoberski, Michael E | Attorney |
| Welch, Whitney L | Attorney |
| Works, Kendelee Leascher | Attorney |

## JOURNAL ENTRIES

- Following arguments by counsel, COURT ORDERED, the following:

Defendant's Motion for Summary Judgment on Forseeability of Bus Interaction with Pedestrians or Bicyclists (Including Sudden Bicycle Movement) is GRANTED.

Plaintiff's Motion for Determination of Good Faith Settlement with Defendants Michelangelo Leasing, Inc. dba Ryan's Express and Edward Hubble Only is GRANTED; Motion to Seal Settlement GRANTED as well.

Defendant Bell Sports, Inc.'s Motion for Determination of Good Faith Settlement on OST is GRANTED; Motion to Seal GRANTED as well.

Plaintiff's Joinder to Defendant Bell Sports, Inc.'s Motion for Determination of Good Faith Settlement on Order Shortening Time is GRANTED.

Defendant's Motion for Summary Judgment on Punitive Damages is DENIED as Plaintiff provided sufficient evidence supporting punitive damages instruction.

Motor Coach Industries, Inc." Motion for Summary Judgment on All Claims Alleging a Product Defect is DENIED as the theories have issues of material fact remaining.

Defendant's Motion to Dismiss Wrongful Death Claim for Death of Katavoun Brain DDS is GRANTED.

Defendant Motor Coach Industries, Inc. Motion for Leave to File Third Party Complaint on OST is MOOT.

Defendant's Motion for Leave to File Third Party Complaint on OST is MOOT.
Non-Party New Flyer Industries Inc.'s Objection to Special Master Hale's January 23, 2018. Court informed parties that a minute order will issue.

Parties to prepare their respective orders.

## DISTRICT COURT

CLARK COUNTY, NEVADA

Product Liability
COURT MINUTES
January 26, 2018

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |
| :--- | :--- |

January 26, 2018 11:00 AM Minute Order
Non-Party New Flyer Industries, Inc.'s
Objection to Special
Master Hales's 1/4/18 Order

HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER:

## REPORTER:

## PARTIES

PRESENT:

## JOURNAL ENTRIES

- Non-party New Flyer Industries, Inc. s Objection to Special Master Hale s January 4, 2018 Order came on for a hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on January 23, 2018.

After considering the pleadings and argument of counsel, the Court GRANTS IN PART and DENIES IN PART New Flyer s motion. Plaintiffs will be permitted to conduct a deposition of Mr. Asham by video conference, to last no more than two hours. However, the deposition will be for the limited purpose of discovery of the financial status of the Defendant, Motor Coach Industries. Plaintiffs are directed to prepare a proposed order for the Court s signature, and to submit the proposed order in Microsoft Word format, by e-mail to dept14lc@clarkcountycourts.us

Additionally, in regard to the various other motions heard on January 23, 2018, the Court directs Plaintiffs to prepare proposed orders for (1) Bell Sports Inc. s motion for determination of good faith PRINT DATE: 04/14/2023 Page 16 of 97 Minutes Date: June 06, 2017
settlement; (2) Michelangelo Leasing Inc. and Edward Hubbard s motion for determination of good faith settlement; (3) Plaintiffs motion for summary judgment on foreseeability of bus interactions with pedestrians or bicyclists; (4) Defendant s motion for summary judgment on punitive damages; and (5) Defendant s motion for summary judgment on all claims alleging a product defect. Defendant is directed to prepare proposed orders for (1) Defendant s motion to dismiss wrongful death claim for death of Katy Brain; and (2) Defendant s motion for leave to file third-party complaint. Each proposed order shall be reviewed by opposing counsel for approval as to form and content, should be submitted in Microsoft word format, by e-mail to dept14lc@clarkcountycourts.us, and must include detailed findings of fact and conclusions of law.

CLERK'S NOTE: Counsel notified via e-mail.

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
January 29, 2018
A-17-755977-C
Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)
January 29, 2018
9:30 AM
All Pending Motions
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

## REPORTER:

PARTIES
PRESENT: Barger, Darrell
Christiansen, Peter S
Henriod, Joel D.
Kemp, William Simon
Pepperman, Eric
Polsenberg, Daniel F.
Roberts, D Lee, Jr.
Russell, Howard J., ESQ
Smith, Abraham G.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Michael Terry appearing for Motor Coach Industries.

Following arguments of counsel, COURT ORDERED, the following.
Plaintiff's Motion in Limine No. 1 to Preclude Reference or Argument Regarding the Alleged Negligence of Third Parties (i.e.: Michelangelo and Hubbard). Court informed parties an order will be issued.

PRINT DATE: $04 / 14 / 2023 \quad$ Page 18 of 97 Minutes Date: June 06, 2017

Plaintiff's Motion in Limine No. 2 to Preclude any Reference to settling Defendants (Including Claims, Settlement and Amounts). Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 3 to Preclude Defendant MCI from Arguing that Decedent was Contributory Negligent. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 4 to Preclude MCI from Making Excessive Reference to the Fact that Plaintiffs are of Iranian or "Persian" Descent. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 5 to Preclude Defendants from Arguing or Suggesting that Plaintiffs Must Prove that the Bus had any Specific Defect. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 6 to Preclude Defendants from Mentioning that Defense Expert Dr. Michael Baden (OJ's Medical Examiner) Worked for the Christiansen Law Firm is GRANTED IN PART; Court will allow hypothicals in for the case he has testified to in the past.

Plaintiff's Motion in Limine No. 7 to Preclude Defendant MCI from Arguing that the Alleged Lack of Proximity Sensors from a Third Party ("Commercial Availability") as a Defense Where the True Issue is Whether Proximity Sensors were Technologically "Feasible", Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 8 to Pre-Instruct the Jury with Standard Instructions for Product Liability Claims. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 9 to Preclude Metro Report and/or Opinions from Metro Officers. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 10 to Pre-Admit Funeral Video and Funeral Slide Show. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 11 Pre-Admit 1993 Generic Bus Wind Testing by MCI. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 12 to Preclude MCI Expert Rucoba from Offering Meteorologist Opinions Regarding Wind Speed at the Time of the Accident (Including but Not Limited to the PRINT DATE: 04/14/2023 Page 19 of 97 Minutes Date: June 06, 2017

Wildly Unsupported Claim that Wind Speeds at 10:30 am were (16 to 17 Miles Per Hour" and "Winds were Gusting to $30 \mathrm{MPH}{ }^{\prime \prime}$. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 13 Preclude Defendants from Arguing or Referencing Rigged Air Blast Testing that is Not Substantially Similar Because it used Stationary Bike and not a Moving Bike. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 14 to Designate Virgil Hoogestraat as Managing Speaking Agent of MCI. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 15 to Designate Bryan Couch as Managing Speaking Agent of Motor. Court informed parties an order will be issued.

Plaintiff's Motion in Limine No. 16 Pre-Admit June 2001 Article as Notice of Potential Rear Tire Suction Hazard and Need for Protective Guard is WITHDRAWN.

Plaintiff's Motion in Limine No. 17 to Admit Evidence of Fact Establishing Defendant's Consciousness of Responsibility. Court informed parties an order will be issued.

Plaintiff's Motion in Limine to Exclude the Testimony of Untimely Disclosed Expert Witness Robert Stahl, MD is MOOT.

Plaintiff's Motion in Limine to Exclude any Testimony on the Untimely Supplemental Expert Report Filed by Defense Expert Robert Stahl is irrelevent.

Defendant's Motion in Limine No. 1 to Limit Opinions by Plaintiff's Expert Robert Caldwell, CONTINUED to $1 / 31 / 18$.

Defendant's Motion in Limine No. 2 to Exclude Illustrations by Plaintiff's Expert Joshua Cohen that Have No Basis in Fact, CONTINUED to 1/31/18.

Defendant's Motion in Limine No. 3 to Preclude Plaintiff's from Making Reference to a "Bullet Train", CONTINUED to $1 / 31 / 18$.

Defendant's Motion in Limine No. 4 to Preclude Plaintiff's from Presenting Evidence that Proximity Sensors were a Safer Alternative Design CONTINUED to $1 / 31 / 18$.

Defendant's Motion in Limine No. 5 to Exclude any Claims of Defect Based on S-1 Gard Motion in Limine, CONTINUED to $1 / 31 / 18$.

Defendant's Motion in Limine NO. 6 to Exclude Reference to New Flyer Industries ((NFI Group), CONTINUED to $1 / 31 / 18$.

Defendant's Motion Limine No. 7 to Exclude any Claims that the Subject Motor Coach was Defective Based on Alleged Dangerous "Air Blasts", CONTINUED to 1/31/18.

Defendant's Motion in Limine No. 8 to Exclude any Reference to Seatbelts, CONTINUED to $1 / 31 / 18$.

Defendant's Motion in Limine No. 9 to Exclude Reference to the Ghost Bike Memorial, CONTINUED to $1 / 31 / 18$.

Defendant's Motion in Limine No. 10 to Exclude Speculation as to Descendant's Thoughts about the Motor Coach, CONTINUED to $1 / 31 / 18$.

Defendant's Motion in Limine No. 11 to Exclude Plaintiff's Expert Witness David Roger, CONTINUED to $1 / 31 / 18$.

Defendant's Motion in Limine No. 12 to Exclude Reference to the Cost of the S-1 Gard or Proximity Sensors, CONTINUED to $1 / 31 / 18$.

Defendant's Motion in Limine No. 13 to Exclude Plaintiff's Expert Witness Robert Cunitz, Ph.D. or in the Alternative, to Limit his Testimony, CONTINUED to $1 / 31 / 18$.

Defendant's Motion in Limine No. 14 to Exclude Articles Regarding or Reference to Transit Buses, CONTINUED to $1 / 31 / 18$.

Defendant's Motion in Limine No. 15 to Exclude Opinion Testimony from LV Witnesses on Causation and Engineering Principles, CONTINUED to $1 / 31 / 18$.

Defendant's Motion in Limine No. 16 to Exclude Opinions by Plaintiff's Expert Dipak Panigrahy is WITHDRAWN as request of counsel.

Defendant's Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes, CONTINUED to $1 / 31 / 18$.

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# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
January 31, 2018
A-17-755977-C
Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)
January 31, 2018 9:30 AM All Pending Motions
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Sandra Anderson

## REPORTER:

PARTIES
PRESENT: Barger, Darrell
Christiansen, Peter S
Henriod, Joel D.
Kemp, William Simon
Pepperman, Eric
Polsenberg, Daniel F.
Roberts, D Lee, Jr.
Russell, Howard J., ESQ
Smith, Abraham G.
Works, Kendelee Leascher
Attorney
Attorney
Attorney
Attorney
Attorney
Attorney
Attorney
Attorney
Attorney
Attorney

## JOURNAL ENTRIES

- Following arguments of counsel, COURT ORDERED, the following:

Defendant's Motion in Limine No. 1 to Limit Opinions by Plaintiff's Expert Robert Caldwell. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 2 to Exclude Illustrations by Plaintiff's Expert Joshua Cohen that have No Basis in Fact. Court informed parties an order will be issued.

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Defendant's Motion in Limine No. 3 to Preclude Plaintiffs from Making Reference to a "Bullet Train." Court informed parties an order will be issued.

Defendant's Motion in Limine No. 4 to Preclude Plaintiffs from Presenting Evidence that Proximity Sensors were a Safer Alternative Design. Court informed parties an order will be issued.

Defendant's Motion i Limine No. 5 to Exclude any Claims of Defect Based on S-1 Gard Motion in Limine. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 6 to Exclude Reference to New Flyer Industries ((NFI Group). Court informed parties an order will be issued.

Defendant's Motion in Limine No. 7 to Exclude any Claims that the Subject Motor Coach was Defective Based on Alleged Dangerous "Air Blasts." Court informed parties an order will be issued.

Defendant's Motion in Limine No. 8 to Exclude any Reference to Seatbelts. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 9 to Exclude Reference to the Ghost Bike Memorial. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 10 to Exclude Speculation as to Decedent's Thoughts about the Motor Coach. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 11 to Exclude Plaintiff's Expert Witness David Roger. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 12 to Exclude Reference to the Cost of the S-1 Gard of Proximity Sensors. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 13 to Exclude Plaintiff's Expert Witness Robert Cunitz, Ph.D. or in the Alternative, to Limit his Testimony. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 14 to Exclude Articles Regarding or Reference to Transit Buses. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 15 to Exclude Opinion Testimony from LV Witnesses on Causation and Engineering Principles. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 16 to Exclude Opinions by Plaintiff's Expert Dipak Panigrahy. Court informed parties an order will be issued.

Defendant's Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes. Court informed parties an order will be issued.

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
February 06, 2018

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |
| :--- | :--- |

## February 06, 2018 3:00 PM Minute Order

HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted

## RECORDER:

## REPORTER:

## PARTIES

PRESENT:

## JOURNAL ENTRIES

- Defendant Motor Coach Industries, Inc. filed an objection to media request on January 31, 2018, in light of the impending trial and the media request and order filed on January 10, 2018 from Courtroom View Network.

Under Supreme Court Rule 230(2), a court considering whether to allow electronic coverage of a trial shall consider several factors. Defendant has asserted that the media request should be denied in consideration of these factors, as the coverage will impact Defendant s right to a fair trial, will impact the Defendant s right of privacy over confidential information, and will likely distract trial participants. The Court notes there is a presumption that court documents be open to the public, but in some cases a significant competing interest may outweigh the public right to access. Howard v. State, 128 Nev. 736, 291 P.3d 137, 139 (2012).

Here the Court finds that none of Defendant s claimed prejudices is sufficient to close the courtroom to public access. The Court has limited media access to one camera at a time, so the Court finds there is minimal risk of distracting jurors or witnesses. Further, the Court finds there is little practical danger of jurors viewing pre-trial announcements of the intention to televise the trial, much less any

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likelihood that viewing such announcements alone would impute sufficient knowledge that a juror should be disqualified, as the trial will not be broadcast by any major media source. Finally, to the extent that the trial will involve confidential information that is subject to a stipulated protective order, the Court finds that concerns of avoiding dissemination of this information is not sufficiently significant to outweigh the presumption of public access.

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
February 07, 2018

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |
| :--- | :--- |

## February 07, 2018 1:45 PM Minute Order

HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C

## COURT CLERK: Denise Husted

## RECORDER:

## REPORTER:

## PARTIES

PRESENT:

## JOURNAL ENTRIES

- This Court previously ruled on the parties motions in limine, but deferred ruling on Plaintiffs motion in limine \#10 (to pre-admit funeral video and funeral slide show), requesting Plaintiffs to submit the specific videos which Plaintiffs desire to use at trial. Plaintiffs counsel submitted a CDRom to chambers and opposing counsel on February 6, 2018, containing four proposed videos that Plaintiffs seek to pre-admit. The Court received no further objection or opposition from Defendant beyond the opposition to Plaintiffs motion in limine \#10. After reviewing the proposed videos, the Court GRANTS Plaintiffs motion in limine \#10 as to the fourth file, titled Kayvan Memorial Aria Speech, which lasts four minutes and twenty-nine seconds, and which shows Aria Khiabani s speech at his father s funeral. The Court finds this video is a fair depiction of the grief and sorrow felt by the two minor Plaintiffs, Aria and Keon, due to the loss of their father, and thus is relevant to prove the damages that Plaintiffs would be able to recover on their wrongful death claim. The Court further finds that the probative value of this testimony is not substantially outweighed by the danger of unfair prejudice, confusion of issues, or misleading the jury. Although Aria and Keon may testify at trial, the video depicts the Plaintiffs grief and sorrow experienced soon after their father s death, and is sufficiently short that the probative value is not substantially outweighed by considerations of waste of time and presentation of cumulative evidence.

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The Court DENIES Plaintiffs motion in limine \#10 as to the other three offered videos. First, the slideshow from Katy Brain s funeral and Aria s speech from Katy s funeral are depictions of the value of Katy Brain s life and the impact of her death on Aria, but these issues are not relevant to the claims at issue, considering the Court dismissed the cause of action for wrongful death of Katy Brain. The remaining video, of the slideshow showed at Kayvan Khiabani s funeral, will not be pre-admitted. The Court finds that some photographs in the slideshow may have probative value of proving the loss of companionship, society, comfort, and consortium felt by the decedent s heirs, however because the slideshow is over sixteen minutes long and shows the value of Kayvan Khiabani s life in general, including his own positive experiences in travel and other activities, to the extent the slideshow is slightly probative of any of these categories, the Court finds any probative value of the slideshow as a whole is substantially outweighed by danger of unfair prejudice, confusion of issues, and undue delay, especially considering the wrongful death statute does not allow recovery based on the quality of the decedent s life generally. If Plaintiffs seek to utilize individual photographs at trial, the Court will entertain requests on an individual basis, but the slideshow video will not be preadmitted.

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
February 09, 2018

A-17-755977-C
Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)

February 09, 2018 2:00 PM Status Check: Trial Readiness

HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Sandra Anderson

## REPORTER:

PARTIES
PRESENT: Barger, Darrell Christiansen, Peter S
Kemp, William Simon
Roberts, D Lee, Jr. Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Colloquy regarding jury selection and scheduling for the upcoming jury trial. The Court informed counsel that an order will be issued regarding jury selection regarding the order of seating and the alternates. Additionally, the Court directed counsel to provide a list of any jury instructions they have stipulated to.


# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

February 12, 2018 7:00 AM Minute Order

HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted

## RECORDER:

## REPORTER:

## PARTIES

PRESENT:

## JOURNAL ENTRIES

- The parties appeared before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on February 9, 2018, for a status check on trial readiness. Counsel asked the Court whether the parties would be allowed more than one peremptory challenge in light of the agreement to utilize five alternate jurors. The Court will not allow more than five peremptory challenges per side four which can be used only for potential regular jurors (seats 1 through 16), and one of which can be used only for a potential alternate jurors (seats $17,18,19,20,21,22$, or 23 ). If a party does not use all four regular juror challenges, that party may not use one of those challenges as a second alternate juror challenge, and the unused challenge will be waived.

CLERK'S NOTE: Parties notified via e-mail.

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
February 12, 2018

A-17-755977-C
Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)
February 12, $2018 \quad$ 9:30 AM Jury Trial - FIRM
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Sandra Anderson

## REPORTER:

PARTIES
PRESENT: Barger, Darrell
Christiansen, Peter S
Kemp, William Simon
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY. Counsel stipulated to waive the reading of potential witnesses to the jurors as they were listed in the jury questionnaire. Exclusionary rule invoked, however counsel stipulated that expert witnesses may remain in court. IN THE PRESENCE OF THE JURY. Roll of jurors called by the clerk. Counsel stipulated to the presence of the jury. OUTSIDE THE PRESENCE OF THE JURY. The Court reminded counsel to keep voir dire relevant and not to use one juror to educate the others. IN THE PRESENCE OF THE JURY. Jury selection. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding jury selection. Evening recess. MATTER CONTINUED.


# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

February 13, $2018 \quad$ 12:00 AM Jury Trial - FIRM
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Sandra Anderson

## REPORTER:

PARTIES
PRESENT: Barger, Darrell
Christiansen, Peter S
Kemp, William Simon
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. Roll of jurors called. Counsel stipulated to the presence of the jury. Jury selection. Evening recess. MATTER CONTINUED.


# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
February 14, 2018

A-17-755977-C
Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)
February 14, $2018 \quad$ 9:30 AM Jury Trial - FIRM
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Sandra Anderson

## REPORTER:

PARTIES
$\begin{array}{ll}\text { PRESENT: } & \text { Barger, Darrell } \\ & \text { Christiansen, Peter S }\end{array}$
Kemp, William Simon
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. Roll of jurs called. Voir dire/jury selection commenced. Evening recess. MATTER CONTINUED.


# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
February 15, 2018

A-17-755977-C
Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)
February 15, 2018 1:00 PM Jury Trial - FIRM
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Sandra Anderson

## REPORTER:

PARTIES
$\begin{array}{ll}\text { PRESENT: } & \text { Barger, Darrell } \\ & \text { Christiansen, Peter S }\end{array}$
Kemp, William Simon
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding jury selection. IN THE PRESENCE OF THE JURY. Roll of jurors called. Jury selection. Evening recess. MATTER CONTINUED.


# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
February 16, 2018

A-17-755977-C
Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)
February 16, $2018 \quad$ 9:30 AM Jury Trial - FIRM
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Sandra Anderson

## REPORTER:

PARTIES
PRESENT: Barger, Darrell
Christiansen, Peter S
Kemp, William Simon
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding jury selection. IN THE PRESENCE OF THE JURY. Jury selection continued. Evening recess. MATTER CONTINUED.


# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

February 20, $2018 \quad$ 12:00 AM Jury Trial - FIRM
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Sandra Anderson

## REPORTER:

PARTIES
PRESENT: Barger, Darrell
Christiansen, Peter S
Kemp, William Simon
Pepperman, Eric
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Jury selection. Evening recess. MATTER CONTINUED.


# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

February 21, 2018

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |
| :--- | :--- |

February 21, $2018 \quad$ 9:30 AM Jury Trial - FIRM
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
Kathy Thomas
RECORDER: Sandra Anderson
REPORTER:
PARTIES
PRESENT: Barger, Darrell
Christiansen, Peter S
Henriod, Joel D.
Kemp, William Simon
Polsenberg, Daniel F.
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Jury selection.

2:00 PM -COURT CLERK: Kathy Klein;
OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Court explained based on the Court's review of the Summary Judgment on unforseeability it appears we may need a clear order; It was oral, However not effective until an order is written/submitted. Court was provided the opposition and reply and both trial briefs earlier and suggested we continue the trial and begin in the morning.

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Mr. Roberts requested a brief recess to discuss the Courts suggestion regarding the evening break with each other. Court trailed matter.

Later recalled: Mr. Roberts stated after confiring with his counsel, they would agree not to proceed with the trial until a written order is completed.

PROSPECTIVE JURY PANEL PRESENT: Court informed the jury panel they would return tomorrow and admonished the Jury Panel for the evening recess.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Jurors \#1155 (E.M.), 110926 (E.T.) \& 110798 (B.L.), upon inqiury of the Court, the Jurors provided phone numbers of their supervisors/managers and available times to be reached. Jurors to return tomorrow.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Mr. Roberts argued regarding Mr. Christiansen's voir dire of saftey conscience individuals. Colloquy regarding the proposed jury instrcution. Mr. Kemp suggested eliminating the practicality argument in the instruction. Arguments by Counsel. Court noted its concerns and stated the instruction is not to refer to the Doctor being negligent in any way. Counsel to submit the instruction to ask to follow the law or that they would ask for a higher burden. Mr. Roberts to prepare the instruction.

Evening recess.
02/22/18 12:30 PM JURY TRIAL

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
February 22, 2018

A-17-755977-C
Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)
February 22, $2018 \quad$ 12:30 AM Jury Trial - FIRM
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Sandra Anderson

## REPORTER:

PARTIES
$\begin{array}{ll}\text { PRESENT: } & \text { Barger, Darrell } \\ & \text { Christiansen, Peter S }\end{array}$
Kemp, William Simon
Pepperman, Eric
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Jury SELECTED and SWORN. Evening recess. MATTER CONTINUED.


# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
February 23, 2018

A-17-755977-C
Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)
February 23, $2018 \quad$ 9:30 AM Jury Trial - FIRM
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

## REPORTER:

PARTIES
PRESENT: Barger, Darrell
Christiansen, Peter S
Kemp, William Simon
Pepperman, Eric
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Exclusionary rule invoked. Opening statements by Mr. Kemp. Opening statements by Mr. Terry. OUTSIDE THE PRESENCE OF THE JURY. Mr. Kemp stated there were procedural violations during Mr. Terry's opening statements. He requested that a curative instruction be given to the jury. Opposition by Mr. Henriod. COURT FINDS, there were only statements regarding causation and ORDERED, motion DENIED. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding scheduling. Evening recess. MATTER CONTINUED.

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# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
February 26, 2018

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |
| :--- | :--- |

February 26, $2018 \quad$ 9:30 AM Jury Trial - FIRM
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Jessica Kirkpatrick

## REPORTER:

PARTIES
PRESENT:

Barger, Darrell
Christiansen, Peter S
Kemp, William Simon
Pepperman, Eric
Roberts, D Lee, Jr.
Russell, Howard J., ESQ
Works, Kendelee Leascher

Attorney
Attorney
Attorney
Attorney
Attorney
Attorney
Attorney

## JOURNAL ENTRIES

- 9:30 AM - Court Clerk Denise Husted present.

OUTSIDE THE PRESENCE OF THE JURY. Mr. Kemp moved to admit selected Plaintiff's exhibits (see worksheet). There being no opposition, COURT ORDERED, exhibits are admitted. Mr. Barger noted that Plaintiff's exhibit \#126 was previously admitted, but requested that his objection to that admission be noted on the record. Court so noted. IN THE PRESENCE OF THE JURY. Roll of jurors called by the Clerk. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding the designated deposition selection of Mr. Hoogestraat discussed on the record. Court stated its findings and informed counsel a minute order regarding this issue is forthcoming. IN THE PRESENCE OF THE

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JURY. Testimony and exhibits presented per worksheet.
4:00 PM - Court Clerk Phyllis Irby present.
Testimony and exhibits presented (see worksheet). Jury questions asked and answered. The Court thanked and recessed the jury for the evening. OUTSIDE THE PRESENCE OF THE JURY. Colloquy between the Court and counsel regarding pre-trial Motions in Limine. Mr. Pepperman requested to have Plaintiff's witness give testimony via video conference. COURT ORDERED, TRIAL CONTINUED.

CLERK'S NOTE: Court's ruling regarding deposition of Mr. Hoogestraat is as follows:
After hearing the oral argument of counsel and upon further consideration, the Court has determined that the designated deposition selections between 34:24 and 44:21 are all admissible. Because Mr. Hoogestraat was designated as Defendant's person most knowledgeable on hazard identification and reduction/mitigation/elimination on MCI buses, Mr. Hoogestraat's testimony on the existence of air displacement around a coach bus is within the scope of his $30(\mathrm{~b})(6)$ testimony. Further, the Court finds Mr. Hoogestraat may be designated as managing-speaking agent for Defendant in regard to these statements, and no other reason not to admit the testimony has been presented. Thus, in addition to those noted during the hearing, Plaintiff will be permitted to present the video testimony of the following lines:

35:3-24, 36:15-25, 37:1-20, 38:8-25, 39:1-15, 40:18-25, 41:1-25, 42:1-8 and 44:9-21. dh 2/27/18

PRINT DATE: 04/14/2023

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

February 27, $2018 \quad$ 11:00 AM Jury Trial - FIRM

HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Jessica Kirkpatrick

## REPORTER:

PARTIES
PRESENT: Barger, Darrell
Christiansen, Peter S
Kemp, William Simon
Pepperman, Eric
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Mr. Kemp stated opposition to Mr. Robert's questioning of witness Mary Witherell. He argued that the questions asked violated Motion in Limine \#1, and the Court's previous ruling. Mr. Lee advised the photograph used was taken from the Plaintiff's exhibits and that he didn't feel he violated the Court's ruling. Following further arguments by counsel, the Court advised that a curative statement will be given to the jury. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding scheduling of witnesses. Evening recess. MATTER CONTINUED.


# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
February 28, 2018

A-17-755977-C
Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)
February 28, $2018 \quad$ 9:30 AM Jury Trial - FIRM
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Sandra Pruchnic

## REPORTER:

PARTIES
PRESENT: Barger, Darrell
Christiansen, Peter S
Kemp, William Simon
Pepperman, Eric
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding witness depositions and agreement regarding line by line testimony to be allowed. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.

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# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
March 01, 2018

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |
| :--- | :--- | :--- |
| March 01, 2018 $\mathbf{1 : 0 0 ~ P M ~}$  <br> HEARD BY: Escobar, Adriana Jury Trial - FIRM  <br>  COURTROOM: RJC Courtroom 14C  |  |

COURT CLERK: Denise Husted
RECORDER: Sandra Pruchnic

## REPORTER:

PARTIES
PRESENT: Barger, Darrell
Christiansen, Peter S
Henriod, Joel D.
Kemp, William Simon
Pepperman, Eric
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Michael Terry, Esq. appearing for Motor Coach Industries.

OUTSIDE THE PRESENCE OF THE JURY. Upon Court's inquiry, Mr. Pepperman stated he relied on the fact that Mr. Lamont is in Canada and couldn't be subpoenaed to appear. Colloquy regard deposition testimony. IN THE PRESENCE OF THE JURY. Roll of jurors called by the Clerk. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Mr. Roberts questioned witness Larry Stokes regarding testimony pertaining to issues concerning taxes. Mr. Henriod asked to clarify the questions he could ask with the upcoming witness. Statement by Mr. Kemp. The Court advised that questioning has to be consistent with previous ruling regarding not discussing any parties involved in the litigation. IN

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THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
March 02, 2018

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |  |
| :--- | :--- | :--- |
| March 02, 2018 | $\mathbf{9 : 3 0 ~ A M ~}$ |  |
| HEARD BY: Escobar, Adriana | Jury Trial - FIRM |  |
|  | COURTROOM: RJC Courtroom 14C |  |

COURT CLERK: Denise Husted
RECORDER: Sandra Pruchnic

## REPORTER:

PARTIES
PRESENT: Barger, Darrell
Christiansen, Peter S
Pepperman, Eric
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Mr. Kemp stated objections to exhibits 508, 509 \& 510. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.

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## DISTRICT COURT

CLARK COUNTY, NEVADA

Product Liability
COURT MINUTES
March 05, 2018

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |
| :--- | :--- | :--- |
| March 05, 2018 $\mathbf{9 : 3 0}$ AM Jury Trial - FIRM |  |
| HEARD BY: Escobar, Adriana | COURTROOM: RJC Courtroom 03F |

COURT CLERK: Denise Husted

RECORDER: Sandra Pruchnic

## REPORTER:

PARTIES
PRESENT: Barger, Darrell
Christiansen, Peter S
Kemp, William Simon
Pepperman, Eric
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding exhibits numbered next in order. Mr. Terry stated objections regarding certain questions being asked of Plaintiff's witness Joshua Cohen. Mr. Kemp advised he wants to show picutures with Mr. Cohen rather than Dr. Stalnecker. COURT ORDERED, objection is SUSTAINED; foundation must be laid in questioning the doctor. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.

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# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
March 06, 2018

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, |
| :--- | :--- |
| March 06, 2018 | $\mathbf{1 2 : 0 0 ~ A M ~ J u r y ~ T r i a l ~}$ |

HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Sandra Pruchnic

## REPORTER:

PARTIES
PRESENT: Barger, Darrell
Christiansen, Peter S
Pepperman, Eric
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. OUTSIDE THE PRESENCE OF THE JURY. Mr. Roberts objected to playing the gardener's video during Dr. Gavin's testimony as her testimony should be limited to the scope of her treatment. Arguments by Mr. Kemp. The Court sustained Mr. Robert's objection. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding scheduling. Evening recess. MATTER CONTINUED.


# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
March 07, 2018

A-17-755977-C
Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)
March 07, $2018 \quad$ 9:30 AM Jury Trial - FIRM
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Sandra Anderson

## REPORTER:

PARTIES
PRESENT: Barger, Darrell Christiansen, Peter S
Kemp, William Simon
Pepperman, Eric
Roberts, D Lee, Jr.
Russell, Howard J., ESQ
Works, Kendelee Leascher
Attorney
Attorney
Attorney
Attorney
Attorney
Attorney
Attorney

JOURNAL ENTRIES

- Court Clerk, Denise Husted present.

Michael Terry, representing Motor Coach Industries also present.
IN THE PRESENCE OF THE JURY: Testimony and exhibits presented per worksheet.
Court Clerk, Louisa Garcia present.
OUTSIDE THE PRESENCE OF THE JURY: Arguments by counsel regarding video clips of David Dorr and Mr. Pears.

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JURY PRESENT: Plaintiffs called witness David Dorr through video deposition. (See worksheet). COURT ORDERED, TRIAL CONTINUED.

CONTINUED TO 3/8/18 1:00 P.M.

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
March 08, 2018

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |
| :--- | :--- | :--- |
| March 08, 2018 | $\mathbf{1 2 : 0 0 ~ A M ~}$ |
| HEARD BY: Escobar, Adriana |  |

COURT CLERK: Denise Husted
RECORDER: Sandra Pruchnic

## REPORTER:

PARTIES
PRESENT: Barger, Darrell
Christiansen, Peter S
Kemp, William Simon
Pepperman, Eric
Works, Kendelee Leascher

> Attorney
> Attorney
> Attorney
> Attorney
> Attorney

## JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding jury view of the bus. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Discussion regarding the video deposition of Katy Brain. Evening recess. MATTER CONTINUED.


# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
March 09, 2018

A-17-755977-C
Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)
March 09, 2018 9:30 AM Jury Trial
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted

RECORDER: Sandra Pruchnic

## REPORTER:

PARTIES
PRESENT:

| Barger, Darrell | Attorney |
| :--- | :--- |
| Christiansen, Peter S | Attorney |
| Kemp, William Simon | Attorney |
| Pepperman, Eric | Attorney |
| Roberts, D Lee, Jr. | Attorney |
| Works, Kendelee Leascher | Attorney |

## JOURNAL ENTRIES

- Michael Terry, representing Motor Coach Industries also present.

IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding jury instructions. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
March 12, 2018

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |  |
| :--- | :--- | :--- |
| March 12, 2018 | 9:30 AM |  |
| HEARD BY: Escobar, Adriana | Jury Trial - FIRM |  |
| COURTROOM: RJC Courtroom 14C |  |  |

COURT CLERK: Denise Husted
RECORDER: Sandra Anderson

## REPORTER:

PARTIES
PRESENT:
Barger, Darrell
Christiansen, Peter S
Henriod, Joel D.
Kemp, William Simon
Pepperman, Eric
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney
Attorney
Attorney
Attorney
Attorney
Attorney
Attorney

## JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding exhibits. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Mr. Roberts stated that during the video testimony of Katy Brain, she stated that her children feared they were broke after the death of their father. He requested that he be allowed to question further and bring in the other settlement amounts as her testimony opened the door regarding this issue. Opposition by Mr. Kemp regarding the motion in limine granted by the Court disallowing mentioning settlement amounts. Additionally, he stated that Ms. Brain's testimony has been available and an objection could have been made by the defense much sooner than this. Mr. Roberts stated the jurors have been mislead by this particular statement. COURT FINDS, after
reviewing applicable law, and being consistent with Court rules, no discussion about settlement will be allowed. IN THE PRESENCE OF THE JURY. Roll of jurors called. Counsel stipulated to the presence of the jury. Plaintiff RESTED. OUTSIDE THE PRESENCE OF THE JURY. Mr. Henriod argued for a directed verdict. COURT FINDS, the Plaintiff has shown sufficient evidence that a jury could decide this case. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. Evening recess. MATTER CONTINUED.


# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
March 13, 2018

A-17-755977-C
Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)
March 13, $2018 \quad$ 12:00 AM Jury Trial - FIRM
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

## REPORTER:

PARTIES
PRESENT: Barger, Darrell
Christiansen, Peter S
Pepperman, Eric
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. OUTSIDE THE PRESENCE OF THE JURY.

Arguments by counsel regarding the motion for jury to view the bus. COURT FINDS, there will be no out of Court experiments, such as line of sight experiments allowed, and ORDERED, jury view will be allowed. Counsel agreed to the wording of the admonition to be given to the jury prior to viewing the bus. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. At 3:00 PM, the Court, counsel, jurors and staff left to view the bus. Evening recess. MATTER CONTINUED.

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
March 14, 2018
A-17-755977-C
Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)
March 14, $2018 \quad$ 9:30 AM Jury Trial - FIRM
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Sandra Anderson

## REPORTER:

PARTIES
PRESENT: Barger, Darrell
Christiansen, Peter S
Pepperman, Eric
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Michael Terry present for Motor Coach Industries. IN THE PRESENCE OF THE JURY. Testimony and exhibits presented per worksheet. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding scheduling. Evening recess. MATTER CONTINUED.


# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
March 15, 2018

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |  |
| :--- | :--- | :--- |
| March 15, 2018 | 12:00 AM |  |
| HEARD BY: Escobar, Adriana | Jury Trial - FIRM |  |
| COURTROOM: RJC Courtroom 14C |  |  |

COURT CLERK: Denise Husted
RECORDER: Sandra Anderson

## REPORTER:

PARTIES
PRESENT: Barger, Darrell
Christiansen, Peter S
Henriod, Joel D.
Kemp, William Simon
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Court Clerk Denise Husted present. Michael Terry present for Motor Coach Industries. Roll of jurors called. Counsel stipulated to the presence of the jury. Testimony and exhibits presented per worksheet.

Court Clerk Katherine Streuber present: Michael Terry Esq, Pro Hac Vice present on behalf of Defendant Motor Coach Industries Inc. CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. OUTSIDE THE PRESENCE OF THE JURY. Court noted examination and cross examination cannot be cumulative although there are two Plaintiffs with different counsel. Arguments by counsel regarding constitutional right and ethical rules. Court advised it will look into the matter and make a determination. Mr. Kemp argued

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defense had a "shadow jury" watching the trial and noted a shadow juror had spoken with an actual juror in this trial. Statement by the Court. Court Marshal advised Juror had actually approached the shadow juror in the restroom and asked "How their day was going." Argument by Mr. Barger stating they do not know who the shadow jurors are, advised they do hire an independent company who controls the shadow jurors, believed they would have been instructed not to speak with any trial jurors and assured the Court and counsel they would contact the company to have the shadow jury removed. Court believed the discussion between the actual juror and shadow juror did not rise to the level of a mistrial and cautioned there would be sanctions imposed for any rule infractions. Court then advised it would do research and make a ruling in regards to examination and cross examination when there are more than one client with separate counsel. JURY PRESENT. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. COURT ORDERED, matter CONTINUED.

03-16-18 9:30 AM TRIAL BY JURY

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
March 16, 2018

A-17-755977-C
Keon Khiabani, Plaintiff(s) vs.
Motor Coach Industries Inc, Defendant(s)
March 16, $2018 \quad$ 9:30 AM Jury Trial - FIRM
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Katrina Hernandez
RECORDER: Sandra Anderson

## REPORTER:

PARTIES
PRESENT: Henriod, Joel D.
Kemp, William Simon
Roberts, D Lee, Jr.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Michael Terry, Esq., out of state Counsel, also present on behalf of Defendant Motor Coach Industries, Inc.

OUTSIDE THE PRESENCE OF THE JURY. Court noted it reviewed its rulings on the motion in limine as it applies to the depositions at issue. Colloquy regarding scheduling settling of jury instructions. Court further noted its comments under the 403 analysis and advised it received trial briefs from Plaintiff and Court noted nothing received from Defense who advised they would file a brief this weekend. Arguments by Ms. Works as to why the issue needs to be decided today. Court stated it would take him outside the presence of the jury. Mr. Kemp and Mr. Terry stipulated to the admittance of Exhibits 263 and 264.

JURY PRESENT. Continued testimony and exhibits presented. (See worksheet.)

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OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding Dr. Smith's report regarding criticism of Dr. Stokes. Colloquy regarding witness scheduling and settling jury instructions. Court recessed for the evening.

CONTINUED TO: 3/19/18 9:30 AM

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
March 19, 2018

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |  |
| :---: | :---: | :---: |
| March 19, 2018 | 9:30 AM Jury | Jury Trial - FIRM |
| HEARD BY: E | Escobar, Adriana | COURTROO |
| COURT CLERK: Linda Skinner |  |  |
| RECORDER: Sandra Anderson |  |  |
| REPORTER: |  |  |
| PARTIES |  |  |
| PRESENT: | Christiansen, Peter S | Attorney |
|  | Henriod, Joel D. | Attorney |
|  | Kemp, William Simon | Attorney |
|  | Pepperman, Eric | Attorney |
|  | Roberts, D Lee, Jr. | Attorney |
|  | Works, Kendelee Leascher | her Attorney |

## JOURNAL ENTRIES

- Michael Terry, out-of-State counsel for Defense, also present.

9:50 AM OUTSIDE PRESENCE OF THE JURY: Statements by Mr. Christiansen as to the proposed exhibit \#579 and feels it is outside the Order of the Court. Statements by Mr. Roberts. Court advised it will allow the statement in question. Continued arguments by Mr. Christiansen, Mr. Kemp and Mr. Roberts. Court noted the exhibit will be admitted.

10:23 AM JURY PRESENT: Roll call by Clerk. Counsel stipulated to the presence of the Jury. Testimony and exhibits continued (see worksheets). 10:47 AM BREAK.

11:28 AM OUTSIDE PRESENCE OF THE JURY: Statements by Mr. Roberts in response to the
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objections by Mr. Kemp and Mr. Christiansen as to exhibit \#579. Court stated its findings. Continued arguments by Mr. Henriod and Mr. Kemp. 12:04 PM JURY PRESENT: Counsel stipulated to the presence of the Jury. Testimony and exhibits continued (see worksheets). 1:38 PM LUNCH BREAK.

2:48 PM OUTSIDE PRESENCE OF THE JURY: Statements by Ms. Works and Mr. Barger as to video deposition of Mr. Plantz. Court noted it has been resolved. 3:12 PM JURY PRESENT: Counsel stipulated to the presence of the Jury. Testimony and exhibits continued (see worksheets). 3:49 PM BREAK. OUTSIDE PRESENCE OF JURY: Ms. Works advised that they had agreed that certain statements would not come in during Mr. Plantz video deposition, however, there was a reference to "left turn" that was not in the written transcript and would request it be stricken. Mr. Barger concurred and had no objection. COURT ORDERED, that portion is STRICKEN.

4:04 PM OUTSIDE PRESENCE OF JURY: Statements by Mr. Kemp, Mr. Barger, Mr. Henriod and Mr. Pepperman as to the testimony of Mr. Hoogestraat. Mr. Kemp argued that Mr. Hoogestraat is not an expert and his testimony should be limited. Mr. Barger argued that Mr. Hoogestraat is an engineer. Continued arguments by counsel. Following, COURT ORDERED, Mr. Hoogestraat can only testify as to personal knowledge as he was not designated as an expert. Mr. Henriod advised at some point they will need to do an offer of proof. Court so noted.

4:47 PM JURY PRESENT: Counsel stipulated to the presence of the Jury. Court admonished Jury who were released and directed to return tomorrow at 1:00 PM. EVENING RECESS.

OUTSIDE PRESENCE OF THE JURY: Colloquy as to procedures for next day. Additionally, exhibits \#573-576 used during Mr. Granite's testimony were offered by Mr. Roberts. Mr. Kemp had no objection. COURT ORDERED, these exhibits are admitted. Court directed counsel return at 12:30 to discuss any issues prior to the Jury arriving. EVENING RECESS.
... CONTINUED 3/20/18 1:00 PM

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
March 20, 2018

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |  |  |
| :---: | :---: | :---: | :---: |
| March 20, 2018 | 1:00 PM Ju | - FIRM |  |
| HEARD BY: | Escobar, Adriana | COURTROOM: | RJC Courtroom 14C |
| COURT CLERK: Phyllis Irby |  |  |  |
| RECORDER: Sandra Anderson |  |  |  |
| REPORTER: |  |  |  |
| PARTIES |  |  |  |
| PRESENT: | Christiansen, Peter S | Attorney |  |
|  | Henriod, Joel D. | Attorney |  |
|  | Kemp, William Simon | Attorney |  |
|  | Pepperman, Eric | Attorney |  |
|  | Polsenberg, Daniel F. | Attorney |  |
|  | Roberts, D Lee, Jr. | Attorney |  |
|  | Works, Kendelee Leasche | Attorney |  |
|  | JOURNAL ENTRIES |  |  |

- OUTSIDE THE PRESENCE OF THE JURY.

Colloquy regarding the $30(\mathrm{~b}) 6$ witness an offer of proof.

## JURY PRESENT

Testimony and exhibits presented (see worksheet).
Jury recessed for the evening. COURT ORDERED, TRIAL CONTINUED.
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## OUTSIDE THE PRESENCE OF THE JURY.

Argument of counsel regarding designated witness. Jury instructions proposed verdict forms submitted by both sides to the Court.

3-21-18 9:00 AM JURY TRIAL (DEPT. XIV)

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
March 21, 2018

| A-17-755977-C | Keon Khiabani, Plaint vs. <br> Motor Coach Industri | aintiff(s) <br> ustries Inc, Defendant(s) |
| :---: | :---: | :---: |
| March 21, 2018 | 9:00 AM Jury | Jury Trial - FIRM |
| HEARD BY: | Escobar, Adriana | COURTROO |
| COURT CLERK: Phyllis Irby |  |  |
| RECORDER: Sandra Anderson |  |  |
| REPORTER: |  |  |
| PARTIES |  |  |
| PRESENT: | Barger, Darrell | Attorney |
|  | Christiansen, Peter S | Attorney |
|  | Henriod, Joel D. | Attorney |
|  | Kemp, William Simon | Attorney |
|  | Pepperman, Eric | Attorney |
|  | Polsenberg, Daniel F. | Attorney |
|  | Roberts, D Lee, Jr. | Attorney |
|  | Works, Kendelee Leascher | her Attorney |

## JOURNAL ENTRIES

- JURY PRESENT

Testimony and exhibits presented (see worksheet).
OUTSIDE THE PRESENCE OF THE JURY.

Argument of counsel regarding limits on damages and exhibits being admitted.
JURY PRESENT
PRINT DATE: 04/14/2023 Page 66 of $97 \quad$ Minutes Date: June 06, 2017

Testimony and exhibits presented (see worksheet). Lunch break.
OUTSIDE THE PRESENCE OF THE JURY

Argument of counsel regarding taxes.
JURY PRESENT
Testimony and exhibits presented (see worksheet). Jury recessed for the evening. COURT ORDERED, TRIAL CONTINUED.

## OUTSIDE THE PRESENCE OF THE JURY

Colloquy regarding jury instructions. Colloquy regarding closing arguments. Colloquy regarding special verdict forms, legal cause issue being put on form, Plaintiff's damages will be at the end.

3-22-18 9:00 AM JURY TRIAL (DEPT. XIV)

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
March 22, 2018

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |
| :--- | :--- |

March 22, $2018 \quad$ 9:00 AM Jury Trial - FIRM
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Phyllis Irby
RECORDER: Sandra Anderson

## REPORTER:

PARTIES
PRESENT: Barger, Darrell
Christiansen, Peter S
Henriod, Joel D.
Kemp, William Simon
Pepperman, Eric
Polsenberg, Daniel F.
Roberts, D Lee, Jr.
Smith, Abraham G.
Works, Kendelee Leascher

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

## - OUTSIDE THE PRESENCE OF THE JURY.

Colloquy regarding Mr. Henriod requesting there be two attorneys for closing argument. The Court stated it would consider one attorney arguing compensatory damages and the other liability and punitive damages but, it will not be a cumulative argument. Parties stipulate to closing argument.

Mr. Smith made an oral motion regarding 50(b) motion. Mr. Kemp made his objections to the motion. COURT ORDERED, MOTION DENIED. The Court will issue a minute order at a later date.

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## JURY PRESENT

The Court gives instruction to the jury. Plaintiff's give closing arguments. Lunch break.
OUTSIDE THE PRESENCE OF THE JURY
Colloquy regarding Defense closing arguments.
JURY PRESENT
Defendants give their closing arguments. Plaintiff's give rebuttal argument.
JURY TO DELIBERATE at 6:15 PM.
OUTSIDE THE PRESENCE OF THE JURY
Colloquy regarding not admitted exhibits being picked up.

## JURY PRESENT

The Court recessed the jury for the evening. COURT ORDERED, TRIAL CONTINUED.
3-23-18 9:00 AM JURY TRIAL (DEPT. XIV)

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
March 23, 2018
A-17-755977-C
Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)
March 23, $2018 \quad$ 9:00 AM Jury Trial - FIRM
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Phyllis Irby
RECORDER: Sandra Anderson

## REPORTER:

PARTIES
PRESENT: Barger, Darrell Attorney
Christiansen, Peter S Attorney
Henriod, Joel D.
Kemp, William Simon
Pepperman, Eric
Polsenberg, Daniel F.
Roberts, D Lee, Jr.
Smith, Abraham G.
Works, Kendelee Leascher

Attorney
Attorney
Attorney
Attorney
Attorney
Attorney
Attorney

## JOURNAL ENTRIES

## - JURY PRESENT

Deliberations continued by the jury at 9:30 am.
VERDICT REACHED at 2:04 pm.
All parties present. Verdict read by the Clerk.

The Court thanked and excused the jury.
TRIAL ENDED.

## DISTRICT COURT

CLARK COUNTY, NEVADA

Product Liability
COURT MINUTES
May 04, 2018
A-17-755977-C
Keon Khiabani, Plaintiff(s)
vs.
Motor Coach Industries Inc, Defendant(s)
May 04, 2018 1:00 PM Objection Defendant Motor Coach Ind. Objection to Special Master Order Staying PostTrial Discovery Including 5/2/18 Depo of the Custodian of Records of the Board of Regents NSHE and Alternatively, Motion for Limited Post-Trial Discovery on OST

HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted

RECORDER: Sandra Anderson
REPORTER:
PARTIES
PRESENT: Christiansen, Peter S Attorney
Henriod, Joel D.
Kemp, William Simon
Pepperman, Eric
Russell, Howard J., ESQ
Works, Kendelee Leascher

Attorney
Attorney
Attorney
Attorney
Attorney

JOURNAL ENTRIES

- Mr. Henriod stated there is a Motion to Seal and under the circumstances of this hearing, he feels that it should be granted. Mr. Kemp concurred. COURT ORDERED, the motion is GRANTED. Arguments by Mr. Henriod in support of the Objection to Special Master's Order Staying Post-Trial Discovery and Motion for Limited Post-Trial Discovery. He stated that recent revelations by the news media undermine the integrity of the judgment. He further advised that the required information would not have been identified by forwarding the releases. Mr. Kemp argued that the releases were signed and executed on $7 / 26 / 17$. The release for the employment file was not forwarded by the defense and is the same discovery they are now seeking. He further argued that the post judgment discovery standard is exceedingly high and has not been met. The Court STATED ITS FINDINGS, and ORDERED, motion is DENIED. FURTHER, the subpoena is QUASHED and no post judgment discovery will be allowed. The Court informed parties that an order/minute order will follow with full findings.


# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |
| :--- | :--- |

May 23, 2018 7:00 AM Minute Order
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted

## RECORDER:

## REPORTER:

## PARTIES

PRESENT:

## JOURNAL ENTRIES

- Defendant Motor Coach Industries filed the following motions to seal: (1) Motion to seal Motor Coach Industries, Inc. s objections to special master order staying post-trial discovery including May 2, 2018 deposition of the custodian of records of the board of regents NSHE, and alternatively, motion for limited post-trial discovery; (2) Motion to seal and redact Motor Coach Industries, Inc s motion to alter or amend judgment to offset settlement proceeds paid by other defendants and accompanying exhibits, particular motions and exhibits; and (3) Motion to seal and redact Motor Coach Industries, Inc. s motion for new trial and accompanying exhibits G-L and O. The matter was subsequently discussed at the hearing on Defendant s objection to special master order and motion for limited post-trial discovery. Plaintiffs have not filed an opposition and indicated at the hearing that they were in agreement with Defendant s suggested sealing and redactions.

First, the Court agrees that Defendant s objection to special master order and motion for post-trial discovery contains unconfirmed and scandalous assertions which bear directly on the character of the deceased. The Court finds that the Plaintiffs compelling privacy interests outweigh the presumption that court documents be open to the public. However, under SRCR 3(4)(b), this Court has a duty to protect the Plaintiffs interest by reasonable redaction, rather than outright sealing, when possible,

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and the Court finds that reasonable redaction is possible here to protect Plaintiffs privacy. The Court therefore GRANTS the first motion, in that Defendants must file a redacted version of the motion, redacting pages 58 , all of page 9 except lines 720 , all of page 10 except lines 313 , all of page 11 except lines 420 , all of page 12 except lines 2226 , all of page 13 except lines 12 , page 14 , and lines 15 of page 15 , and omitting all attached exhibits. Additionally, the hearing on this motion is to be sealed for the same reasons. The unredacted version of the motion with all exhibits and the hearing must remain under seal until June 1, 2028.

Second, the Court agrees that the motion to alter or amend judgment contains settlement terms that are confidential by agreement of the parties, that the settling defendants have a compelling interest in maintaining the confidentiality of these terms which outweighs the presumption that court documents be open to the public, and that the redacted version of the motion filed on May 7, 2018 is reasonably redacted to balance both the interests of the Defendants and the public. The Court therefore GRANTS the second motion to seal, and orders that the sealed version of the motion to alter or amend judgment, filed on May 8, 2018, remain under seal until June 1, 2028.

Third, the Court agrees that Defendant s motion for a limited new trial contains the same unconfirmed and scandalous assertions which bear directly on the character of the deceased as are present in the Defendant s objection to the special master order and motion for post-trial discovery. The Court finds that the Plaintiffs compelling privacy interests outweigh the presumption that court documents be open to the public, and that reasonable redaction is possible to protect Plaintiffs privacy. The Court further finds the redacted version of the motion filed by Defendant on May 7, 2018 and the accompanying appendix omitting exhibits G L and O are reasonably redacted to balance both the interests of the Plaintiffs and the public. The Court therefore GRANTS the third motion to seal, and orders that the sealed version of the motion for a limited new trial and accompanying appendix, both filed on May 8, 2018, remain under seal until June 1, 2028.

Defendant is directed to prepare a proposed order and to circulate it to opposing counsel for approval as to form and content before submitting it to chambers for signature.

CLERK'S NOTE: Counsel notified via e-mail.
Joel Henriod (JHenriod@LRRC.com)

PRINT DATE: $\quad 04 / 14 / 2023$

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |
| :--- | :--- |

July 06, $2018 \quad$ 10:30 AM All Pending Motions
HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Nicole McDevitt
RECORDER: Sandra Anderson

## REPORTER:

PARTIES
PRESENT: Barrett, Whitney
Christiansen, Peter S
Henriod, Joel D.
Kemp, William Simon
Polsenberg, Daniel F.
Roberts, D Lee, Jr.
Russell, Howard J., ESQ Attorney

## JOURNAL ENTRIES

- Mr. Kemp stated parties have agreed to submit three of the motions now without oral argument, Motor Coach Industries Inc's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim, Motor Coach Industries Inc's Motion for a Limited New Trial, and Defendant's Motion to Retax Costs; as to Motor Coach Industries Inc's Motion to Alter or Amend Judgment to Offset Settlement Proceedings Paid By Other Defendants, it should be put off until after the projected funding date. Upon inquiry by the Court regarding the motions to strike, counsel stated those could be submitted too. COURT ORDERED, Motor Coach Industries Inc's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim, Motor Coach Industries Inc's Motion for a Limited New Trial, Defendant's Motion to Retax Costs, Motor Coach Industries, Inc.'s (MCI) Motion to Strike Plaintiffs' "Combined Opposition to Motion for a Limited New Trial, and MCI's Renewed

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Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim", and Opposition to Untimely Motion to Exceed Page Limited on OST, and Motor Coach Industries, Inc.'s Motion to Strike Plaintiffs' "Combined Opposition to Motion for a Limited New Trial and MCI's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim" and Opposition to Untimely Motion to Exceed Page Limit and Request for Order Shortening Time TAKEN UNDER ADVISEMENT; Motor Coach Industries Inc's Motion to Alter or Amend Judgment to Offset Settlement Proceedings Paid By Other Defendants CONTINUED.

Motor Coach Industries Inc's Motion to Alter or Amend Judgment to Offset Settlement Proceedings Paid By Other Defendant's CONTINUED TO 8/28/2018 10:30 AM

## DISTRICT COURT

CLARK COUNTY, NEVADA

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |
| :--- | :--- |

August 27, 2018 8:00 AM Minute Order Defendant MCI's

Motion to Retax
Costs, Motion to Alter or Amend
Judgment to Offset Settlement Proceeds, Motion for Limited
New Trial, Renewed
Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim, Motion to Strike Plaintiffs' Combined Opposition...Plaintiff
s' Motion to Exceed
Page Limit as to Combined
Opposition
COURTROOM: RJC Courtroom 14C
HEARD BY: Escobar, Adriana
COURT CLERK: Denise Husted

## RECORDER:

REPORTER:

PARTIES
PRESENT:
JOURNAL ENTRIES
PRINT DATE: $04 / 14 / 2023$
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Minutes Date: June 06, 2017

- Defendant MCI s motion to retax costs, motion to alter or amend judgment to offset settlement proceeds, motion for limited new trial, renewed motion for judgment as a matter of law regarding failure to warn claim, and motion to strike Plaintiffs combined opposition, as well as Plaintiffs motion to exceed page limit as to combined opposition came on for a hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on July 6, 2018. Upon the stipulation of counsel, all motions were submitted on the briefs without oral argument except for Defendant s motion to alter or amend judgment, which was continued to August 28, 2018, at 10:30 AM. Therefore, after considering the briefs of the parties, the Court holds as follows:
A. Motion to strike combined opposition and Plaintiffs motion to exceed page limit First, the Court GRANTS Plaintiffs motion to exceed page limit as to combined opposition and DENIES Defendant s motion to strike Plaintiffs combined opposition. The Court notes that Plaintiffs combined opposition contains one facts section with separate arguments and conclusions responding to two motions (Defendant s motion for limited new trial and Defendant s renewed motion for judgment as a matter of law), that the combined opposition is fifty three pages long, and that Plaintiffs did seek leave of court to file a brief in excess of thirty pages, albeit after the brief was already filed. Considering the complexity of this case and the legal arguments presented by Defendant s motions, as well as the significant factual overlap of these two particular motions, the Court finds an opposition in excess of thirty pages is warranted. The proper procedure would have been for the Plaintiffs to seek leave of court before filing the over-long opposition, or at least to include a motion to exceed page limit at the beginning of the opposition. However, the Court finds Defendant suffered little prejudice from the untimely motion or from Plaintiffs filing their oppositions together so as not to repeat eight pages of facts, and thus the Court will not impose the grave penalty of striking the opposition.


## B. Renewed motion for judgment as a matter of law

The Court DENIES Defendant s renewed motion for judgment as a matter of law regarding failure to warn claim.
Defendant first argues that Plaintiffs failed to prove causation on this theory because the facts showed that Dr. Khiabani suddenly appeared in Mr. Hubbard s peripheral vision, and the accident happened too quickly for a reasonable jury to find that Mr. Hubbard could have avoided the accident. This argument ignores the full facts as presented in the Plaintiffs case-in-chief, specifically the testimony of Mr. Hubbard that he observed the bicycle while both Dr. Khiabani and the coach were on Charleston, and saw the bicycle turn onto Pavilion Center before Mr. Hubbard turned the coach onto Pavilion Center. Thus, although Mr. Hubbard testified that he did not see Dr. Khiabani s bicycle for 450 feet before the accident, the split-second that the accident occurred was not the first time Mr. Hubbard was made aware of the bicycle s presence. Taking all inferences in Plaintiffs favor, Plaintiffs elicited sufficient evidence for a reasonable jury to find that, had Mr. Hubbard been adequately warned about the dangerous nature of the coach, he would have driven differently as early as when he turned onto Pavilion Center for example by driving in the left lane instead of the right lane, or by driving slower so as to not pass the bicycle and that this different action would have

[^2]avoided the accident. Thus, the accident did not happen too quickly for a reasonable jury to find that a warning would have made a difference.
The parties next dispute to what extent a plaintiff in a failure to warn claim must prove causation. Defendant argues that insufficient evidence of causation was presented by Hubbard s testimony that he absolutely heeds
warnings he is given when he is trained about something relative to safety, because Plaintiffs needed to additionally prove that the accident would have been avoided by the user heeding the warning. Defendant cites to numerous other jurisdictions for this notion, and argues that it is further supported by the Nevada Supreme Court s Rivera v. Philip Morris, Inc. decision. This Court disagrees. It is undisputed that, under Rivera, the Plaintiffs bear the burden of producing evidence demonstrating that, among other things, the defect caused the injury. Rivera also held that the burden of proving causation can be satisfied in failure-to-warn cases by demonstrating that a different warning would have altered the way the plaintiff used the product or would have prompted plaintiff to take precautions to avoid the injury. Taking all inferences in Plaintiffs favor, the Court finds that Hubbard s testimony that he would have complied with a warning, combined with the facts listed above regarding Hubbard s perception of the events leading up to the accident, was sufficient to satisfy Plaintiffs burden of proving causation under Nevada law.
Similarly, the Court disagrees with Defendant s suggestion that the open and obvious nature of the danger reinforces the conclusion that a warning would have been superfluous. Mot. at 10. Taking all inferences in Plaintiffs favor, the presence of testimony by Hubbard, Mary Witherell, and some of Defendant s own employees, that they were not aware of the significance of the air displacement created by the coach s design refutes Defendant s classification of the danger as open and obvious. Further, even if the evidence enabled this Court to find as a matter of law that Hubbard should have known generally of the risk of driving next to a bicyclist, which this Court has not done, no Nevada law holds that this would prevent a reasonable jury from finding that an adequate warning would have avoided the accident.
Next, Defendant suggests that Plaintiffs duty to prove causation required Plaintiffs to craft an adequate warning. Failure-to-warn claims can be classified as one of two types: allegations that the warning given by the defendant was crafted in such a way to be ineffective in preventing the injury; or allegations that the product is dangerous enough that a warning should have been provided but the defendant did not provide any warning. In cases of the first variety, the jury must consider whether the warning was adequate under the factors provided in Lewis v. Sea Ray Boats, Inc., However, in the second category, the warning provided nothing could not possibly be considered adequate under the Sea Ray factors, and thus the only required findings are that the product was unreasonably dangerous and that an adequate warning would have avoided the injury. This case falls into the second category, where MCI undisputedly did not provide any warnings about any of the alleged defects which Plaintiffs alleged. In such a case, the Court finds no support for Defendant s assertion that no reasonable jury could find that the product was unreasonably dangerous and that an adequate warning would have avoided the injury without a specific warning being proposed by the plaintiff. While it is true that providing a model warning to show what the defendant could have done to make the product reasonably safe may be a helpful illustration for the plaintiff s case, it is not required for the jury to find in Plaintiffs favor. Cf. Ford Motor Co. v. Trejo (in a design defect claim,
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a plaintiff may choose to support their case with evidence that a safer alternative design was feasible at the time of manufacture. ). Plaintiffs need not prove precisely how the facts would have been different had there been an adequate warning, as this would amount to speculation; Plaintiffs need only provide the facts sufficient to allow the jury to draw the conclusion that the presence of an adequate warning would have avoided the accident. As noted above, Plaintiffs did so here. In line with the above, the Court disagrees that the jury s verdict was consistent with judgment as a matter of law on causation, as the jury could have, and evidently did, find that the lack of an adequate warning caused the accident. The Court disagrees with Defendant s suggestion that the jury finding no liability on the defective design claim means when the jury was actually asked whether the allegedly defective design was the legal cause of damage, the jury concluded that it was not. In reality, the jury found no liability after being instructed that liability required both a design defect and causation, so a simple no answer does not necessarily mean the jury found causation to be lacking.
Defendant next argues that, MCI was not required to make a coach that does not create air disturbance, and therefore MCI was not required to provide a warning at all. While the Court notes that this argument was not raised in MCI s NRCP 50(a) motion during trial, the argument misstates the question actually posed to the jury.
The failure-to-warn claim does not ask whether the coach created an air disturbance, but rather whether the coach was unreasonably dangerous due to the air disturbance it created. Thus, regardless of whether MCI had a duty to minimize or remove any air disturbance from its product, there was sufficient evidence for the jury to find that any air disturbance created by the coach was unreasonably dangerous and that the injury could have been avoided by an adequate warning. Finally, Defendant argues that Nevada s wrongful-death statute requires proof of fault, while the nature of a strict liability claim does not require proving fault, and therefore that the elements of a wrongful death claim could not be satisfied by allegations founded in strict liability. The Court finds no support in Nevada case law for this notion, and indeed finds myriad wrongful death actions founded in strict liability, and thus the Court will not apply the law differently for this case. Moreover, Defendant s interpretation of the wrongful act or neglect language in NRS 41.085(2) would lead to an absurd result: A defendant who, by no intentional act or malice, creates an unreasonably dangerous product would still be held strictly liable if a user were merely injured, but would no longer be held accountable if the injuries were grave enough to end the user s life.

## C. Motion for limited new trial

The Court DENIES Defendant s motion for limited new trial, as none of the arguments presented by Defendant exhibits an issue which materially affect[ed] the substantial rights of an aggrieved party. NRCP 59(a).
First, Defendant argues that the jury was excused from considering causation of the failure to warn claim because the verdict form did not mention this step of the analysis, and instead allowed the jury to return a verdict in Plaintiffs favor solely by finding that Defendant failed to provide an adequate warning that would have been heeded. First, as noted above, the Court disagrees with Defendant s position that Plaintiff must prove that an adequate warning would have actually avoided the injury, or that the accident happened too quickly for a jury to find that an adequate warning could have

[^3]avoided the accident. However, the Court also notes that the jury instructions sufficiently informed the jury on all findings required for the jury to return a verdict in Plaintiffs favor including causation and that this remedied any potential errors with the verdict form. Taking into consideration the totality of the jury instructions and the verdict form, the Court does not find that the absence of causation on the fifth question was prejudicial to Defendant. Finally, the Court finds no support for the notion that the special verdict form was required to include a finding for every element of every claim.
Second, the Court does not agree that precluding evidence of NRS 484B.270, the statute requiring a motorist to maintain a three-foot distance from a bicyclist, constituted an error of law that warrants a new trial. The safety statute in its current form did not exist at the time the coach was sold, and the version of the statute that did exist at the time the coach was sold contained only a mandate that a motorist passing a bicyclist do so safely, which does not offer any support for Dr. Krauss s opinion that the law already required vehicles to maintain a certain distance from bicycles. Thus, the existence of the statute has no probative value as to why Defendant chose not to provide a warning with the coach. Further, the Court maintains that the JI 32, on nondelegation, was rightfully included due to evidence being presented at trial that at least one of Defendant s employees believed another entity would warn drivers about the danger of the coach. If JI 32 caused any prejudice to Defendant s case, the Court does not agree that it materially affected Defendant s substantial rights.
Third, as noted in this Court s order denying Defendant s motion for post-trial discovery, the Court does not agree that any newly discovered evidence warrants a new trial. For the same reasons iterated in that order, the Court has not been convinced that the new evidence could not have been found with reasonable diligence, so NRCP 59(a)(4) is not met here. The Court is also not convinced by Defendant s argument that the difficulty in discovering this evidence is exhibited by Plaintiffs lack of knowledge, or that Defendant was entitled to rely on Plaintiffs duty to disclose such information. NRCP 16.1 requires a party to disclose the identity of individuals likely to have discoverable information, but it does not require a party to conduct discovery for the other parties.
Here, it appears Plaintiffs disclosed Dr. Khiabani s employer, which was sufficient to satisfy Plaintiffs duty under NRCP 16.1; Plaintiffs were under no duty to actually discover any information from Dr. Khiabani s employer, just to enable Defendant to do so. As stated in the Court s prior order, Defendant had access to the new evidence had it simply attempted to get it. Moreover, even if the Court were to find that Plaintiffs lapsed on their discovery obligations, this Court does not find that such a finding would render the new evidence undiscoverable with due diligence, so a new trial is not warranted on these grounds.
Fourth, the Court does not agree that it erred by precluding evidence of the impact of income taxes. While the Court recognizes the difference between damages for lost wages and damages for loss of probable support, Nevada law is clear that evidence of tax implications is not admissible in a wrongful death case. See, e.g. Otis Elevator Co. v. Reid, 101 Nev. 515 (1985). Defendant is correct that certain special circumstances allow jury instructions on tax consequences, but only when tax issues are discussed at trial. Id. Here, tax issues were not discussed at trial under the general rule that tax implications are not admissible, and thus there was no indication that the jury would consider tax implications. Therefore, Otis Elevator Co. v. Reid s special circumstances exception does not apply, and Defendant s substantial rights were not materially affected.
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## D. Motion to Retax

The Court is unable to award costs under NRS 18.005 unless the prevailing party provides justifying documentation to demonstrate how such [claimed costs] were necessary to and incurred in the present action. Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1352 (1998) and Cadle Co. v. Woods \& Erickson, LLP, 345 P.3d 1049 (Nev. 2015). The Nevada Supreme Court will reverse an award of costs as an abuse of discretion if the party does not provide evidence, such as a declaration of counsel, that explains how the [costs] were necessary and incurred rather than simply telling the district court that the costs were reasonable and necessary. Matter of DISH Network Derivative Litigation, 133 Nev . Adv. Op. 16, 401 P.3d 1081 (2017).
Here, Plaintiffs provided a detailed and verified memorandum of costs, over 1,300 pages of documentation including itemized lists and invoices, and a declaration of counsel in support of the memorandum of costs which discusses (1) the expert fees being sought; (2) reporter sfees for depositions and deposition transcripts; (3) online legal research; (4) trial support services; and (5) other necessary and unavoidable costs including photocopies, travel expenses for necessary fact and expert witness depositions, postage, witness fees, juror fees, process server fees, official court reporter fees, and run services for delivery of time sensitive documents and filing. Although the Court finds that Plaintiffs opposition to Defendant s motion to retax provides some argument for why many costs were reasonable or necessary, and further that many of Plaintiffs claimed costs appear reasonable and necessary based on the Court s own experience and knowledge of this case, binding case law precludes this Court from awarding costs for which Plaintiffs have not provided sufficient documentation.
In light of the above, the Court GRANTS Defendant s motion to retax IN PART, as to the following items:

1. $\$ 70.00$ cost for a paralegal to file a subpoena. Paralegal time is not a cost of litigation under NRS 18.005 , and is more appropriately categorized as legal fees. See, e.g. Las Vegas Metropolitan Police Department v. Yeghiazarian, 129 Nev. 760, 770 (2013) (concluding that reasonable attorney s fees includes charges for persons such as paralegals and law clerks).
2. $\$ 22,553.75$ for videography services and related expedite fees. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.
3. $\$ 5,075.00$ for synchronized DVD costs. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 4. $\$ 1,736.00$ for rough drafts of depositions. NRS 18.005(2) provides for one copy of each deposition, but does not provide for rough drafts, and Plaintiffs have not shown in its declaration how this service was necessary.
4. $\$ 3,450.00$ for Live Note and Zoom connection fees. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the
PRINT DATE: 04/14/2023 Page 83 of 97 Minutes Date: June 06, 2017
declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.
5. $\$ 4,550.00$ for videoconference costs. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel.
Plaintiffs thus provided no documentation explaining how the costs were necessary.
6. $\$ 100.00$ for After 5 PM charges. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.
7. $\$ 185.00$ for flash drives, apparently for depositions of expert witnesses. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.
8. $\$ 300.00$ for video files for expert witnesses. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 10. $\$ 1,385.40$ for conference rooms for depositions of various witnesses. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.
9. $\$ 100.00$ for read and sign fees. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.
10. $\$ 315.00$ for equipment rental. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.
11. $\$ 100.00$ for non-writing wait time for two witnesses. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.
12. $\$ 79.00$ for parking for depositions. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel.
Plaintiffs thus provided no documentation explaining how the costs were necessary.
13. $\$ 356.40$ for food provided at depositions. These costs are not specifically allowed under NRS

PRINT DATE: 04/14/2023 Page 84 of 97 Minutes Date: June 06, 2017
18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 16. $\$ 1,050.00$ for professional fees for Dr. Gavin. These costs are not specifically allowed under NRS 18.005, and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 17. $\$ 140.00$ for duplicate service on Portia Hubbard. In examining the documents provided by Plaintiffs, it appears Ms. Hubbard was served with a subpoena on both on 8/26/2017 and on 10/1/2017, with no explanation for why the second subpoena was necessary. NRS 18.005(7) does not allow costs for service which the Court finds to be unnecessary. Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary. 18. $\$ 35.00$ for wait time of process server(s). This cost is not enumerated in NRS 18.005(7), and thus would only be recoverable under NRS 18.005(17). Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.
19. $\$ 61.60$ for faxes. While reasonable costs for telecopies are allowed under NRS 18.005(11), under Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1352 (1998) and Cadle Co. v. Woods \& Erickson, LLP, 345 P.3d 1049 (Nev. 2015), the documentation submitted is insufficient for the Court to find that the costs were reasonable or necessary, because Plaintiffs have provided no information stating what documents were faxed, and in most cases provide no information of who the fax was sent to. Further, Plaintiffs have offered no explanation for why certain faxes have a higher per-page cost than others. Plaintiffs provided documentation showing that these costs were incurred, but these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary or reasonable.
20. $\$ 4,141.77$ for scanning (internal and outside vendor). NRS 18.005 does not provide for costs of scanning, and Plaintiffs have not provided any information about how costs were incurred at all due to internal scanning, or how each scan was necessary. While the Court agrees that the DISH Network Court found the party in that case provided the district court with sufficient justifying documentation to support the award of costs for photocopying and scanning under NRS 18.005(12), Plaintiffs here have provided no such documentation explaining the reasonableness or necessity of these costs.
21. $\$ 39.00$ for an unsubstantiated Las Vegas Metropolitan Police Department cost. Defendant s motion states that this cost appears to be either for a police report or for a subpoena, and Plaintiffs do not offer any opposition to this cost being retaxed. Moreover, while Plaintiffs provided documentation showing that these costs were incurred, these costs are not discussed in the declaration of counsel. Plaintiffs thus provided no documentation explaining how the costs were necessary.
22. $\$ 1,219.98$ for hotels for trial witnesses. NRS 18.005(15) only includes travel and lodging incurred while conducting discovery, and while Plaintiffs provided documentation showing that these costs were incurred, the declaration of counsel only discusses the necessity of costs incurred in travel
PRINT DATE: 04/14/2023
Page 85 of 97
Minutes Date: June 06, 2017
expenses for depositions. Plaintiffs thus provided no documentation explaining how the costs were necessary.
23. $\$ 30,018.77$ in legal research. As stated in DISH Network, the reasonable and necessary expenses for computerized services for legal research allowed in NRS 18.005(17) pertain to costs incurred in the
process of electronic discovery. The declaration of Plaintiffs counsel states that these costs were incurred to provide the Court with the most recent applicable caselaw on various points of dispute throughout pre-trial motions and during the course of trial... The argument contained in Plaintiffs opposition to the motion to retax reinforces that these costs were incurred not as a part of discovery, but rather to assist Plaintiffs counsel in making legal arguments in motion practice and at trial. Further, the itemized list of research provided in Plaintiffs appendix of documents provides only the date and cost of each transaction. Thus, under DISH Network s holding that this expense does not fall under NRS 18.005(17), this cost is not taxable.
In total, the Court reduces Plaintiffs taxable costs by $\$ 77,061.67$.
As to the remaining specific costs Defendant seeks to retax, the Court finds that each cost falls under NRS 18.005(17) as an expense that is reasonable, necessary, and actually incurred, based on the documentation and declaration of counsel. This conclusion contemplates that the parties conducted discovery on an extremely expedited schedule due to the preferential trial setting. Further, the complex nature of the claims and gravity of damages at issue required Plaintiffs to expend costs that may be considered luxuries in different cases, such as oversize color printing and trial support services. Finally, the Court examined in detail the requested expert fees under Frazier v. Drake, 357 P.3d 365 (Nev. App. 2015) and found that the fees in excess of $\$ 1,500$ for each witness was warranted in light of the factors enumerated in Frazier.
Counsel for Plaintiffs is directed to prepare a proposed order including detailed findings of fact and conclusions of law on Defendant s motion for judgment as a matter of law Defendant s motion for new trial, Defendant s motion to strike Plaintiffs opposition, and Plaintiffs motion to exceed page limit. Counsel for Defendant is directed to prepare a separate proposed order including detailed findings of fact and conclusions of law on Defendant s motion to retax. Both proposed orders are to be approved by opposing counsel as to form and content prior to submitting the order to chambers in Microsoft word format, by e-mail to dept14lc@clarkcountycourts.us

CLERK'S NOTE: Counsel notified via e-mail:
William Kemp (jk@hkj-law.com)
Peter S. Christiansen (pete@christiansenlaw.com)
Kendalee Works (kworks@christiansenlaw.com)
Lee Roberts (lroberts@wwhgd.com)
Howard Russell (hrussell@wwhgd.com)
Eric Pepperman (e.pepperman@kempjones.com)

PRINT DATE: 04/14/2023 Page 86 of 97 Minutes Date: June 06, 2017

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

Product Liability
COURT MINUTES
September 25, 2018

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |
| :--- | :--- |

September 25, 2018 10:30 AM Motion to Amend

HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Denise Husted
RECORDER: Sandra Anderson

## REPORTER:

## PARTIES

PRESENT: Henriod, Joel D.
Kemp, William Simon
Pepperman, Eric
Polsenberg, Daniel F. Roberts, D Lee, Jr.

Attorney<br>Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Following arguments, opposition and reply, COURT ORDERED, an order will be issued.

Defendant s Motion to Alter or Amend Judgment to Offset Settlement Proceeds paid by other defendants came on for a hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on September 25, 2018.
After considering the moving papers and argument of counsel, the Court DENIES Defendants motion.
In this matter, the Plaintiffs settled with Defendants Michelangelo Leasing Inc, Edward Hubbard, Bell Sports Inc., and SevenPlus Bicycles Inc. for a total settlement of $\$ 5,110,000.00$. Plaintiffs and the remaining defendant, Motor Coach Industries (MCI ), proceeded to trial. The jury awarded $\$ 18,746,003.62$ in favor of the Plaintiffs.
Defendant MCI moved to offset the jury award by the settlement proceeds pursuant to NRS
17.245(1)(a). Specifically, it asked the court to reduce the jury award ( $\$ 18,746,003.62$ ) by the total settlement proceeds $(\$ 5,110,000.00)$ for a total reduced judgment resulting in $\$ 13,636,003.62$. Under NRS 17.245(1)(a), when a release ... is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death...it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant...
However, MCI is not entitled to an offset under NRS 17.245 because defendants that are liable for strict products liability, such as MCI, have no right to contribution from any other defendants. Norton v. Fergstrom, 2001 WK 1628302 *5 (Nev. Nov. 9, 2001); see also Andrews v. Harley Davidson, 106 Nev. 533, 537-38, 796 P.2d 1092, 1094 (1990); Central Telephone Co. v. Fixtures Mfg., 103 Nev. 298, 299, 738 P.2d 510, 511 (1987); NRS 17.225, NRS 41.141. While the Court understands that Norton is unpublished and cannot be used as precedent because it was decided prior to 2016, the Court finds its rationale persuasive and agrees with the Nevada Supreme Court s rationale. Moreover, this case was decided in 2001, after NRS 17.245 was enacted in 1973 and amended in 1997. Additionally, NRS 41.141 was enacted in 1973, and amended in 1979, 1987, and 1989, which also precedes the Court s decision in Norton. Contributory negligence is not a defense in strict products liability. Andrews v. Harley Davidson, 796 P.2d 1092 (Nev. 1990). Moreover, because contributory negligence is not a defense in products liability, MCI is not entitled to contribution. Id.
Here, MCI has no right to contribution from the settling Defendants because plaintiff s judgment against MCI is based on strict products liability failure to warn and strict products liability has no right to contribution. To the extent that MCI would have otherwise been able to assert contribution claims against the settling defendants, those claims would have necessarily been premised on contributory negligence. But, because contributory negligence is not a defense to a strict products liability claim, MCI has no right to receive contribution from the settling defendants.
Moreover, NRS 17.245 applies to joint tortfeasors but is silent concerning an offset for defendants found liable in strict products liability. But, it follows logically, that similar to NRS 17.255, which bars intentional tortfeasors from contribution, a defendant found liable in strict products liability would also be barred from receiving contribution from the other defendants. Unlike other products liability cases where defendants receive offsets, here, none of the other defendants in this case acted in concert with MCI in manufacturing the coach.
MCI also argues it is entitled to an offset under NRS 41.141. Pursuant to NRS 41.141, defendants are responsible for $100 \%$ of plaintiff s injuries if their liability arises from a claim based on strict liability, an intentional tort, or any of the other enumerated categories. Caf Moda v. Palma, 272 P.3d 137 (Nev. 2012).

However, MCI is not entitled to an offset under NRS 41.141. The jury found against MCI based on strict liability failure to warn. Any alleged fault of the settling defendants had nothing to do with this failure to warn. Thus, MCI is not entitled to apportion any percentage of its responsibility to the settling defendants.
Plaintiffs analogized this matter to Evans v. Dean Witter Reynolds, Inc., 5 P.3d 1043 (Nev. 2000). In Evans, the Court enforced the principle that although offsets are typically allowed in a case that involves joint tortfeasors, there is a carve out for intentional torts. Intentional tortfeasors may not apply credits from settlements by their joint tortfeasors in reduction of judgments against them arising from their intentional misconduct. Id. Moreover, equitable offsets are based on a right to

[^4]contribution and intentional tortfeasors have no right to contribution under NRS 17.255. Id. Similarly here, just like the intentional tortfeasors in Evans, MCI has no right to contribution from the settling defendants. As in Evans, MCI has no right to receive contribution from the settling dependents either directly through a contribution claim or indirectly through a post-judgment offset. MCI was never entitled to seek contribution or indemnity from any other tortfeasors. NRS 17.245 cannot and did not bar MCI from pursuing contribution claims that never existed in the first place; and MCI is not entitled to indirectly receive a nonexistent right to contribution under the guise of an offset.
MCI also asserts that Plaintiffs will receive a double recovery if no offset is granted. However, for the foregoing reasons, an offset is not permissible, thus no double recovery will occur.
Finally, MCI argues that Plaintiffs are judicially estopped from asserting that the defendant has no right to offset. Plaintiff s motion for good faith settlement stated:
Indeed, the proposed settlement is favorable to any remaining defendants. Plaintiffs remaining claims will be reduced by the settlement amounts contributed by Michelangelo and Hubbard. NRS 17.245(1)(a). As set forth above, the remaining defendants will receive a contribution toward any future judgment entered against them.
When considering a claim of judicial estoppel, Nevada's courts look for the following five elements: (1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake. Matter of Frei Irrevocable Tr. Dated Oct. 29, 1996, 133 Nev. 8, 390 P.3d 646, 652 (2017). All five elements are necessary to sustain a finding of judicial estoppel. Id.
Here, element three is not be met. The plaintiff did not successfully assert their prior position because the Court granted the motion for good faith settlement based on Plaintiff s assertion that the nonsettling defendants will receive an offset. When conducting the analysis of Plaintiff s good faith settlement, the Court considered the relative liability of the defendants and determined that the settlement amount was proper. The Court did not adopt the plaintiff s argument that the non-settling defendant would be entitled to an offset. Further, the jury verdict was based on failure to warn, which has absolutely no bearing on the plaintiffs claim against the other defendants. The settling defendants. Now, considering the jury verdict, it appears that the settling defendants might have paid even more than their fair share of the liability. Collectively, the defendants settled for $\$ 5,110,000.00$ which constitutes almost $30 \%$ of the total award in this matter. When looking at the potential liability of all defendants, the Court finds that MCI was responsible for a large majority of the damages. Thus, judicial estoppel does not apply here.
Counsel for Plaintiff is directed to prepare a proposed order including detailed findings of fact and conclusions of law, which is to be approved by opposing counsel as to form and content prior to submitting the order to chambers in Microsoft word format, by email to dept141c@clarkcountycourts.us and PowellD@clarkcountycourts.us.

CLERK'S NOTE: Minute order modified on $2 / 21 / 19$. sdh

PRINT DATE: $04 / 14 / 2023 \quad$ Page 89 of 97 Minutes Date: June 06, 2017

## THE SEALED PORTION OF THESE MINUTES <br> WILL FOLLOW VIA U.S. MAIL.

# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

| A-17-755977-C | Keon Khiabani, Plaintiff(s) <br> vs. <br> Motor Coach Industries Inc, Defendant(s) |
| :--- | :--- |

February 24, 2022 3:00 AM Minute Order
HEARD BY: Escobar, Adriana
COURTROOM: Chambers
COURT CLERK: Brittany Ates

## RECORDER:

## REPORTER:

PARTIES
PRESENT:

## JOURNAL ENTRIES

- The Court, having reviewed the motion which was set for hearing calendar February 24, 2022, no opposition thereto; and without the need for oral argument from the parties; Defendants' Motion to Seal and Redact Brief Regarding Offset and Seal Exhibit A thereto is GRANTED for the reasons and arguments stated in Defendants' moving papers. Counsel for Defendants shall prepare the written Order for the Court's review in accordance with the local rules. The order must be detailed, and include the substance of the moving papers.

The hearing for this motion is hereby VACATED.
All parties must submit orders electronically, in both PDF version and Word version, until further notice. You may do so by emailing DC14Inbox@clarkcountycourts.us. All orders must have either original signatures from all parties or an email appended as the last page of the proposed order confirming that all parties approved use of their electronic signatures. The subject line of the e-mail should identify the full case number, filing code and case caption.

CLERK'S NOTE: The above minute order has been distributed to all parties by the Court Clerk via electronic service and/or mail. ba/ / 02-24-22

# DISTRICT COURT CLARK COUNTY, NEVADA 

COURT CLERK: Brittany Ates
RECORDER: Stacey Ray

## REPORTER:

PARTIES
PRESENT:

## JOURNAL ENTRIES

- In the absence of the Court, matter taken OFF CALENDAR; as motion will be heard on the pleadings.


# DISTRICT COURT <br> CLARK COUNTY, NEVADA 

June 28, $2022 \quad$ 10:00 AM Hearing

HEARD BY: Escobar, Adriana
COURTROOM: RJC Courtroom 14C
COURT CLERK: Reina Villatoro
Louis Johnson
RECORDER: Stacey Ray
REPORTER:
PARTIES
PRESENT: Christiansen, Peter S
Kemp, William Simon
Pepperman, Eric
Polsenberg, Daniel F.

Attorney<br>Attorney<br>Attorney<br>Attorney

## JOURNAL ENTRIES

- Court advised, the decision of punitive damages is not what the case pertains to and in this matter, the Jury found no punitive damages and does not believe the Defendant should be charged with punitive damages, as there is no evidence of Plaintiff settlement or any of the parties discussing punitive damages. COURT FINDS, the defendant's argument is correct and ORDERED, prejudgment interest must be calculated in brief from the beginning; and a proposed order is to be submitted. Mr. Polsenberg advised, he will submit the proposed order.

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|  | any effect on the bus frame structure." Signed by Ronnie O'Byrne. P02282 |  |  |  |
| 121 | 11/21/06 - Letter from Holter of Rochester City Lines regarding S-1 Gard performance in snow and ice. PO2283 |  |  |  |
| 122 | Article "Prevention of Accidents Caused by Rotating Transit Bus Wheels by James M. Green, P.E., DEE. PO2284-P02292 |  |  |  |
| 123 | 2008 - TCRP Report 125 - Transit Cooperative Research ProgramGuidebook for Mitigating Fixed-Route Bus-and-Pedestrian Collisions. P02293-P02368 |  |  |  |
| 124 | S-1 Guard - Important Installation Instructions for Dangerzone Deflector and Maintenance of the $\$$ - 1 Gard Dangerzone Deflector. P02369-P02373 | $3 / 12 / 18$ | No | $3 / 12 / 18$ |
| 125 | Brochure "Setra presents new US coach in Florida." P02374-P02376 |  |  |  |
| 126 | 8/00/93 - MCI Engineering Test Report - Wind Tunnel (produced by Defendant MCI). MCI 039853-MCl 039950 | $2 / 23 / 18$ | Stip. | $\begin{aligned} & \text { Aimiffed } \\ & 2 \mid 23 / 18 \end{aligned}$ |
| 127 | 4/00/13 - Bendix Blindspotter Installation Guide (produced by Defendant MCI). MCl 002964-MCl 002992 |  |  |  |
| 128 | 9/20/07 - Certificate of Origin for a Vehicle - MCl 145002008 and Agreement to Purchase between MCl and Ryan's Holdings, Inc. (produced by Defendant MCI). MCI 000001-MCI 000042 |  |  |  |
| 129 | File Folder of Claude Sonny Hildreth (produced by Defendant MCI). Hildreth-000001-Hildreth-000201 |  |  |  |
| 130 | Witness statement of Michael Plantz (produced by Defendant MCI). |  |  |  |


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| Exhibit \# | Description of Documents | Date Offered | Objected | Date Admitted |
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| 141 | 5/3/17 Letter from Dr. John Fildes, M.D./University Medical Center to Katy Barin. P02423 |  |  |  |
| 142 | Demonstrative Slide of MCI Bus and Tesla Semi-Truck (Joshua Cohen and Robert Breidenthal). P02424-P02427 |  |  |  |
| 143 | Article "Anheuser-Busch Orders 40 of Tesla's All Electric Trucks. P02428 |  |  |  |
| 144 | Photo of Tesla Rating. P02429 |  |  |  |
| 145 | 8/00/17 - Consumer Reports - Blind-Spot Warning. P02430-P02432 |  |  |  |
| 146 | Cars: Collision Avoidance Safety Features Chart (from Tom Flanagan Expert file). P02433-P02436 |  |  |  |
| 147 | Traffic Collision Report involving Jose Parada. P02437-P02441 |  |  |  |
| 148 | US Department of Transportation - Quick Facts 2016. P02442-P02447 |  |  |  |
| 149 | US Department of Transportation "Traffic Safety Facts 2015 Data Bicyclists and Other Cyclists." P02448-P02456 |  |  |  |
| 150 | 2017 - Autocar - First for Car News and Reviews - 2017 Volvo buses to gain pedestrian and cyclist detection tech. P02457-P02459 |  |  |  |
| 151 | Fatality Analysis Report System (FARS) Encyclopedia. P02460-P02461 |  |  |  |
| 152 | 2015 - Pedestrian \& Bicycle Information Center "Pedestrian and Bicyclist Crash Statistics." P02462-P02467 |  |  |  |
| 153 | List of Cyclist deaths in U.S. by year. P02468-P02469 |  |  |  |


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| Exhibit \# | Description of Documents | Date Offered | Objected | Date Admitted |
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|  | and Safeguard Order in re Katayoun (Katy) Barin and Babak Barin and Marie-Claude Rigaud, Case No. 2:17-cv-02674-RFB-CWH. PO2598P02599 |  |  |  |
| 174 | 11/1/17 - Letter from Steven Kalas, M.Th. of Character Way Counseling, Coaching \& Consulting. P02600-P02600 |  |  |  |
| 175 | 9/20/17 - Letter from Steven Day, PhD to D. Lee Roberts, Esq. re Survival in Stage IV Colon Cancer (Katayoun Barin) |  |  |  |
| 176 | Video of Alexander LaRiviere riding a Penny Farthing bike. P02601. |  |  |  |
| 177 | Article "A bus to Meet all Needs -The New Setra S531 DT of the TopClass 500 - Daimler ad. P02602-P02605 |  |  |  |
| 178 | Brochure - Setra - The Upgraded Top Class S 417TC. P02606-P02625 |  |  |  |
| 179 | 1/15/18-2018 MCI J4500-Bus \& Motorcoach News. P02626 |  |  |  |
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| 182 | 1/17/18 - Trucks.Com - New Flyer Partners with L.A. Transit to Test Crash Avoidance Technology. P02642-P02647 |  |  |  |
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## EXHIBIT 3

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## DISTRICT COURT

## CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI, minors, by and through their Guardian, MARIE-CLAUDE RIGAUD; SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani, M.D. (Decedent), the Estate of Kayvan Khiabani, M.D. (Decedent);
SIAMAK BARIN, as Executor of the Estate of Katayoun Barin, DDS (Decedent); and the Estate of Katayoun Barin, DDS (Decedent);

Plaintiffs,
vs.
MOTOR COACH INDUSTRIES, INC., a Delaware corporation; MICHELANGELO LEASING INC. d/b/a RYAN'S EXPRESS, an Arizona corporation; EDWARD
HUBBARD, a Nevada resident; BELL SPORTS, INC. d/b/a GIRO SPORT DESIGN, a Delaware corporation; SEVENPLUS BICYCLES, INC. d/b/a PRO CYCLERY, a Nevada corporation, DOES 1 through 20; and ROE CORPORATIONS 1 through 20.

Defendants.

Case No.: A-17-755977-C
Dept. No.: XIV

STIPULATION AND ORDER DISMISSING PLAINTIFFS' CLAIMS AGAINST DEFENDANTS MICHELANGELO LEASING, INC. AND EDWARD HUBBARD ONLY

## STIPULATION

IT IS HEREBY STIPULATED AND AGREED between Plaintiffs, by and through their counsel of record, Kemp, Jones \& Coulthard, LLP and Christiansen Law Offices, and Defendants Michelangelo Leasing, Inc. d/b/a Ryan's Express ("Michelangelo") and Edward Hubbard, by and through their counsel of record, Selman Breitman LLP, that Plaintiffs' claims against Defendants Michelangelo and Hubbard be dismissed with prejudice and that Defendants Michelangelo and Hubbard be dismissed with prejudice from the above-entitled action, with each party to bear its own attorneys' fees and costs. This stipulation applies to Defendants Michelangelo and Hubbard only, and it does not dismiss Plaintiffs' claims against any other Defendant.

Dated this 13 day of Avgust , 2018. KEMP, JONES \& COULTHARD, LLP

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Attorneys for Plaintiffs

Dated this ib day of Aviqus), 2018.
SELMAN BREITMAN LLP


ERIC O. FREEMAN, ESQ. (\#6648)
3993 Howard Hughes Parkway, Suite 200
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Attorneys for Defendants Michelangelo Leasing, Inc. d/b/a Ryan's Express and Edward Hubbard

II

## ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, pursuant to the forgoing stipulation, Plaintiffs' claims against Defendants Michelangelo Leasing, Inc. d/b/a Ryan's Express and Edward Hubbard are dismissed with prejudice and Defendants Michelangelo Leasing, Inc. and Edward Hubbard are dismissed with prejudice from the aboveentitled action, with each party to bear its own attorneys' fees and costs. This order applies to Defendants Michelangelo Leasing, Inc. and Hubbard only, and it does not dismiss Plaintiffs' claims against any other Defendant.


Submitted by:
KEMP, JONES \& COULTHARD, LLP


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Attorneys for Plaintiffs

## EXHIBIT 4



## STIPULATION

IT IS HEREBY STIPULATED AND AGREED between Plaintiffs, by and through their counsel of record, Kemp, Jones \& Coulthard, LLP and Christiansen Law Offices, and Defendant Bell Sports, Inc. by and through its counsel of record, Olson, Cannon, Gormley, Angulo \& Stoberski, that Plaintiffs' claims against Defendant Bell Sports, Inc. be dismissed with prejudice and that Defendant Bell Sports, Inc. be dismissed with prejudice from the aboveentitled action, with each party to bear its own attorneys' fees and costs. This stipulation applies to Defendant Bell Sports, Inc. only, and it does not dismiss Plaintiffs' claims against any other Defendant.

Dated this $\angle$ day of $0 \subset O O K, 2018$.
KEMP, JONES \& COULTHARD, LLP


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Dated this I day of OCTEECR, 2018.
OLSON, CANNON, GORMLEY, ANGULO \& STOBERSKI


MICHAEL E. STOBERSKI, ESQ. (\#4762) 9950 West Cheyenne Avenue Las Vegas, Nevada 89129 Attorneys for Defendant Bell Sports, Inc.

## II

## ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, pursuant to the forgoing stipulation, Plaintiffs' claims against Defendant Bell Sports, Inc. are dismissed with prejudice and Defendant Bell Sports, Inc. is dismissed with prejudice from the above-entitled action, with each party to bear its own attorneys' fees and costs. This order applies to Defendant Bell Sports, Inc. only, and it does not dismiss Plaintiffs' claims against any other Defendant.

Dated this 15 of 10 chaber $\approx 2018$.


Submitted by:
KEMP, JONES \& COULTHARD, LLP

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Attorneys for Plaintiffs

## DISTRICT COURT

## CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI, minors, by and through their Guardian, MARIE-CLAUDE RIGAUD; SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani, M.D. (Decedent), the Estate of Kayvan Khiabani, M.D. (Decedent);
SIAMAK BARIN, as Executor of the Estate of Katayoun Barin, DDS (Decedent); and the Estate of Katayoun Barin, DDS (Decedent);

Plaintiffs,
vs.
MOTOR COACH INDUSTRIES, INC., a Delaware corporation; MICHELANGELO LEASING INC. d/b/a RYAN'S EXPRESS, an Arizona corporation; EDWARD
HUBBARD, a Nevada resident; BELL SPORTS, INC. d/b/a GIRO SPORT DESIGN, a Delaware corporation; SEVENPLUS BICYCLES, INC. d/b/a PRO CYCLERY, a Nevada corporation, DOES 1 through 20; and ROE CORPORATIONS 1 through 20 .

Defendants.

Case No.: A-17-755977-C
Dept. No.: XIV

## STIPULATION AND ORDER DISMISSING PLAINTIFFS' CLAIMS AGAINST DEFENDANT SEVENPLUS BICYCLES, INC. ONLY

## STIPULATION

IT IS HEREBY STIPULATED AND AGREED between Plaintiffs, by and through their counsel of record, Kemp, Jones \& Coulthard, LLP and Christiansen Law Offices, and Defendant SevenPlus Bicycles, Inc. d/b/a Pro Cyclery. by and through its counsel of record, Murchison \& Cumming, LLP, that Plaintiffs' claims against Defendant SevenPlus Bicycles, Inc. be dismissed with prejudice and that Defendant SevenPlus Bicycles, Inc. be dismissed with prejudice from the above-entitled action, with each party to bear its own attorneys' fees and costs. This stipulation applies to Defendant SevenPlus Bicycles, Inc. only, and it does not dismiss Plaintiffs' claims against any other Defendant.

Dated this 1 day of October, 2018.
KEMP, JONES \& COULTHARD, LLP


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Attorneys for Plaintiffs

Dated this 1 day of October, 2018.
MURCHISON \& CUMMING, LLP


MICHAEL J. NUNEZ, ESQ. (\#10703)
350 S. Rampart, Suite 320
Las Vegas, Nevada 89145
Attorneys for Defendant SevenPlus
Bicycles, Inc. d/b/a Pro Cyclery

## II

## ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, pursuant to the forgoing stipulation, Plaintiffs' claims against Defendant SevenPlus Bicycles, Inc. d/b/a Pro Cyclery are dismissed with prejudice and Defendant SevenPlus Bicycles, Inc. is dismissed with prejudice from the above-entitled action, with each party to bear its own attorneys' fees and costs. This order applies to Defendant SevenPlus Bicycles, Inc. only, and it does not dismiss Plaintiffs' claims against any other Defendant.

Dated this $\qquad$ , 2018.


Submitted by:
KEMP, JONES \& COULTHARD, LLP

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## EXHIBIT 6

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Attorneys for Plaintiffs

## DISTRICT COURT

KEON KHIABANI and ARIA KHIABANI, minors, by and through their Guardian, MARIE-CLAUDE RIGAUD; SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani, M.D. (Decedent), the Estate of Kayvan Khiabani, M.D. (Decedent); SIAMAK BARIN, as Executor of the Estate of Katayoun Barin, DDS (Decedent); and the Estate of Katayoun Barin, DDS (Decedent);

Plaintiffs,
vS.
MOTOR COACH INDUSTRIES, INC., a Delaware corporation; MICHELANGELO LEASING INC. d/b/a RYAN'S EXPRESS, an Arizona corporation; EDWARD
HUBBARD, a Nevada resident; BELL
SPORTS, INC. d/b/a GIRO SPORT
DESIGN, a Delaware corporation;
SEVENPLUS BICYCLES, INC. d/b/a PRO CYCLERY, a Nevada corporation, DOES 1 through 20; and ROE CORPORATIONS 1 through 20 .

Defendants.

Case No.: A-17-755977-C
Dept. No.: XIV

## SECOND AMENDED COMPLAINT

 AND DEMAND FOR JURY TRIALCOME NOW Plaintiffs, KEON KHIABANI and ARIA KHIABANI, minors, by and through their Guardian, MARIE-CLAUDE RIGAUD; SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani, M.D. (Decedent), the Estate of Kayvan Khiabani, M.D. (Decedent); SIAMAK BARIN, as Executor of the Estate of Katayoun Barin, DDS (Decedent); and the Estate of Katayoun Barin, DDS (Decedent); by and through their attorneys, Will Kemp, Esq. and Eric Pepperman, Esq. of the law firm KEMP, JONES \& COULTHARD, LLP and Peter S. Christiansen, Esq. and Kendelee L. Works, Esq. of CHRISTIANSEN LAW OFFICES, and for their claims against the Defendants, and each of them, complain and allege as follows:

## THE PARTIES

1. Plaintiff minors, KEON KHIABANI and ARIA KHIABANI, are the natural children of Dr. Kayvan Khiabani (Decedent) and Katayoun "Katy" Barin (Decedent).
2. Plaintiff minor KEON KHIABANI is a citizen of the United States. Keon lives and attends school in Montreal, Canada with his duly appointed Guardians.
3. Plaintiff minor ARIA KHIABANI is a citizen of the United States. Aria lives and attends school in Montreal, Canada with his duly appointed Guardians.
4. Plaintiff MARIE-CLAUDE RIGAUD is the duly authorized Guardian of Keon Khiabani and Aria Khiabani. She is a citizen and resident of Montreal, Canada. As Guardian, MARIECLAUDE RIGAUD is authorized to bring this action on behalf of the Plaintiff Minors.
5. Plaintiff SIAMAK BARIN is a duly authorized Executor of the Estate of Kayvan Khiabani, M.D. (Decedent). As Executor, Siamak Barin is authorized to bring this action on behalf of Plaintiff the Estate of Kayvan Khiabani, M.D. (Decedent).
6. Plaintiff SIAMAK BARIN is a duly authorized Executor of the Estate of Katayoun Barin, DDS (Decedent). As Executor, Siamak Barin is authorized to bring this action on behalf of Plaintiff the Estate of Katayoun Barin, DDS (Decedent).
7. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times, Defendant MOTOR COACH INDUSTRIES, INC. ("MCl") was and is a corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of Nevada, including Clark County. MCI designs, manufacturers, markets, and sells
commercial tour buses (aka Motor Coaches). Defendant MCI designed, manufactured, and sold the 2008, full-size Motor Coach involved in the incident described herein.
8. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times, Defendant MICHELANGELO LEASING INC. d/b/a RYAN'S EXPRESS ("Ryan's Express") was and is a corporation organized and existing under the laws of the State of Arizona and authorized to do business in the State of Nevada. Ryan's Express is a ground transportation company that provides charter bus services for group transportation. Defendant Ryan's Express owned and operated the MCI bus involved in the incident described herein.
9. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times, Defendant EDWARD HUBBARD was and is a resident of Clark County, Nevada. Edward Hubbard is employed by Ryan's Express as a bus driver. As part of his duties and responsibilities, Hubbard operates full-size Motor Coaches and was operating the MCI bus at the time of the incident described herein.
10. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times, Defendant BELL SPORTS, INC. d/b/a GIRO SPORT DESIGN ("Giro") was and is a corporation organized and existing under the laws of the State of California and authorized to do business in the State of Nevada, including Clark County. GIRO designs, manufactures, markets, and sells protective gear and accessories for sport activities, including cycling helmets. Defendant Giro designed, manufactured, and sold the helmet that Dr. Kayvan Khiabani was wearing at the time of the incident described herein.
11. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times, Defendant SEVENPLUS BICYCLES, INC. d/b/a PRO CYCLERY ("Pro Cyclery") was and is a corporation organized and existing under the laws of the State of Nevada and authorized to do business in the State of Nevada, including Clark County. Pro Cyclery is engaged in the retail sale of bicycles and cycling accessories, including cycling helmets. Upon information and belief, Defendant Pro Cyclery sold to Dr. Kayvan Khiabani the helmet that Dr. Khiabani was wearing at the time of the incident described herein.
12. The true names and capacities, whether individual, corporate, association or otherwise of the Defendants, DOES 1 through 20 and/or ROE CORPORATIONS 1 through 20, inclusive, are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe, and thereupon allege, that each of the Defendants designated herein as DOES and/or ROE CORPORATIONS is responsible in some manner for the events and happenings herein referred to, and in some manner caused the injuries and damages to Plaintiffs alleged herein. Plaintiffs will ask leave of the court to amend this Complaint to insert the true names and capacities of said Defendants, DOES 1 through 20 and/or ROE CORPORATIONS 1 through 20, inclusive when the same have been ascertained by Plaintiffs, together with the appropriate charging allegations, and to join such Defendants in this action.
13. Whenever it is alleged in this Complaint that a Defendant did any act or thing, it is meant that such Defendant's officers, agents, servants, employees, or representatives did such act or thing and at the time such act or thing was done, it was done with full authorization or ratification of such Defendant or was done in the normal and routine course and scope of business, or with the actual, apparent and/or implied authority of such Defendant's officers, agents, servants, employees, or representatives. Specifically, Defendants are liable for the actions of its officers, agents, servants, employees, and representatives.
14. All of the Defendants as named herein are jointly and severally liable to Plaintiffs for Plaintiffs' damages.
15. Plaintiffs are informed and believe, and thereupon allege, that Defendants, and each of them, jointly and in concert undertook to perform the acts as alleged herein, that Defendants and each of them had full knowledge of the acts of each co-Defendant as alleged herein, and that each Defendant authorized or subsequently ratified the acts of each co-Defendant as alleged herein, making each co-Defendant an agent of the other Defendants and making each Defendant jointly responsible and liable for the acts and omissions of each co-Defendant as alleged herein.

## JURISDICTION AND VENUE

16. This is an action for damages in excess of Fifteen Thousand Dollars $(\$ 15,000.00)$, exclusive of costs, interest, and attorneys' fees.
17. Venue is proper in this Court because the incident giving rise to this lawsuit occurred in Clark County, Nevada.

## GENERAL ALLEGATIONS

18. On or about April 18, 2017, Dr. Kayvan Khiabani was riding his Scott Solace 10 Disc road bicycle southbound in a designated bicycle lane on S. Pavilion Center Drive near the Red Rock Resort and Casino in Las Vegas, Nevada. At the time, Dr. Khiabani was wearing a bicycle helmet designed, manufactured, and sold by Giro. Upon information and belief, Dr. Khiabani purchased the Giro helmet at the retail level from Defendant Pro Cyclery.
19. Upon information and belief, at approximately 10:34 AM, as he approached the intersection of S. Pavilion Center Drive and Griffith Peak Drive, Dr. Khiabani was overtaken by a large tour bus on his left side.
20. The bus was a 2008, full-size Motor Coach that was designed, manufactured, and sold by Defendant MCI and further identified by Vehicle Identification No. 2M93JMHA28W064555 and Utah License Plate No. Z044712. Upon information and belief, the subject bus was designed and manufactured without proximity sensors to alert the driver of adjacent pedestrians and/or bicyclists that may be difficult to see or to alert such pedestrians and/or bicyclists.
21. At the time, the bus was owned and operated by Defendant Ryan's Express and being driven by Defendant Edward Hubbard, an employee of Ryan's Express.
22. Upon information and belief, at the time that it overtook Dr. Khiabani, the bus was traversing out of the right-hand turn lane and crossing over the designated bicycle lane from the right side of Dr. Khiabani to the left side of Dr. Khiabani.
23. As it crossed over the designated bicycle lane to overtake Dr. Khiabani on the left, the bus and Decedent's bicycle collided.
24. As a direct and proximate result of this collision, Dr. Khiabani suffered catastrophic internal and external injuries, including to his head, severe shock to his nervous system, and
great pain and suffering. Dr. Khiabani was transported from the scene of the accident and ultimately died from his injuries.

## FIRST CLAIM FOR RELIEF

(STRICT LIABILITY: DEFECTIVE CONDITION OR

## FAILURE TO WARN AGAINST DEFENDANT MCI)

25. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.
26. Defendant MCI , or its predecessors and/or affiliates, were responsible for the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the subject bus.
27. At the time of the above-described incident, the subject bus was being used in a manner foreseeable by Defendant MCl .
28. As so used, and from the time the bus left the hands of Defendant MCI, the subject bus was defective, unfit, and unreasonably dangerous for its foreseeable use.
29. The subject bus was further defective and unreasonably dangerous in that Defendant MCI failed to provide adequate warnings about dangers that were known or should have been known by MCI and/or failed to provide adequate instructions for the bus' safe and proper use.
30. The aforementioned incident was a direct and proximate result of a defect or defects in the bus and/or the failure of Defendant MCI to warn of defects that were either known or should have been known or to instruct in the safe and proper use of the bus. As a result, Defendant MCI should be held strictly liable in tort to Plaintiffs.
31. As a direct and proximate result of the defective nature of the subject bus, Decedent Dr. Kayvan Khiabani suffered catastrophic personal injuries and died.
32. As a direct and proximate result of the acts and omissions of Defendant MCI, Decedent sustained past, present, and future lost wages, which would otherwise have been gained in his employment if not for his death proximately caused by this accident, far in excess of Fifteen Thousand Dollars ( $\$ 15,000.00$ ).
33. As a direct and proximate result of the acts and omissions of Defendant MCI, the Plaintiff minors each have been deprived of their father's comfort, support, companionship, society, and consortium, and further, each has suffered great grief, sorrow, and extreme emotional distress as a result of the death of their father, to each for general damages far in excess of Fifteen Thousand Dollars $(\$ 15,000.00)$ and economic damages far in excess of Fifteen Thousand Dollars $(\$ 15,000.00)$. The minor children also seek to recover for the pain, suffering, and disfigurement of their father.
34. As a direct and proximate result of the acts and omissions of Defendant MCI, prior to her death, Katy Barin was deprived of her husband's comfort, support, companionship, society, and consortium, and further, had suffered great grief, sorrow, and extreme emotional distress as a result of the death of her husband, for general damages far in excess of Fifteen Thousand Dollars $(\$ 15,000.00)$ and economic damages far in excess of Fifteen Thousand Dollars (\$15,000.00).
35. As a direct and proximate result of the acts and omissions of Defendant MCI, Decedent Kayvan Khiabani, MD's Estate and/or Executor Siamak Barin has incurred medical, funeral and burial expenses, and other expenses relating thereto, far in excess of Fifteen Thousand Dollars (\$15,000.00).
36. As a direct and proximate result of the acts and omissions of Defendant MCI, Decedent Katy Barin, DDS's Estate and/or Executor Siamak Barin has incurred medical, funeral and burial expenses, and other expenses relating thereto, far in excess of Fifteen Thousand Dollars (\$15,000.00).
37. As a direct and proximate result of the acts and omissions of Defendant MCI, Plaintiffs have suffered general and special damages in an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).
38. In carrying out its responsibilities for the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the subject bus, Defendant MCI acted with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others. As a direct and proximate result of the conduct of Defendant MCI, Plaintiffs are entitled to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).
39. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

## SECOND CLAIM FOR RELIEF

## (NEGLIGENCE AGAINST DEFENDANTS RYAN'S EXPRESS <br> AND EDWARD HUBBARD)

40. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.
41. Defendant Ryan's Express is vicariously liable for the wrongful acts or omissions of its employee, Defendant Hubbard, in connection with the subject accident because: (i) at the time of the subject accident, Defendant Hubbard was under the control of Defendant Ryan's Express, and (ii) at the time of the subject accident, Defendant Hubbard was acting within the scope of his employment with Ryan's Express.
42. Defendants Ryan's Express and Edward Hubbard owed a duty of care to Dr. Khiabani and Plaintiffs to exercise due care in the operation of the 2008, full-size commercial tour bus.
43. Defendants were negligent and breached this duty of care, inter alia: (i) by overtaking Dr. Khiabani at an unsafe speed, which, upon information and belief, also exceeded the posted speed limit; (ii) by failing to give an audible warning with the horn before overtaking Dr. Khiabani; (iii) by failing to overtake Dr. Khiabani in a reasonably safe manner; (iv) by failing to ensure that Dr. Khiabani's bicycle was safely clear before overtaking the bicycle; (v) by failing to leave at least 3 feet between any portion of the bus and Dr. Khiabani and/or his bicycle at the time that the bus overtook Dr. Khiabani; (vi) by failing to yield the right-of-way to Dr.

Khiabani; and (vii) by entering, crossing over, and/or driving within the designated bicycle lane while Dr. Khiabani was traveling therein.
44. As a direct and proximate result of these negligent acts and omissions, Decedent Dr. Kayvan Khiabani suffered catastrophic personal injuries and died.
45. As a direct and proximate result of the negligent acts and omissions of Defendants Ryan's Express and Edward Hubbard, Decedent sustained past, present, and future lost wages, which would otherwise have been gained in his employment if not for his death proximately caused by this accident, far in excess of Fifteen Thousand Dollars $(\$ 15,000.00)$.
46. As a direct and proximate result of the negligent acts and omissions of Defendants Ryan's Express and Edward Hubbard, the Plaintiff minors each have been deprived of their father's comfort, support, companionship, society, and consortium, and further, each has suffered great grief, sorrow, and extreme emotional distress as a result of the death of their father, to each for general damages far in excess of Fifteen Thousand Dollars $(\$ 15,000.00)$ and economic damages far in excess of Fifteen Thousand Dollars $(\$ 15,000.00)$. The minor children also seek to recover for the pain, suffering, and disfigurement of their father.
47. As a direct and proximate result of the negligent acts and omissions of Defendants Ryan's Express and Edward Hubbard, prior to her death, Katy Barin was deprived of her husband's comfort, support, companionship, society, and consortium, and further, had suffered great grief, sorrow, and extreme emotional distress as a result of the death of her husband, for general damages far in excess of Fifteen Thousand Dollars $(\$ 15,000.00)$ and economic damages far in excess of Fifteen Thousand Dollars $(\$ 15,000.00)$.
48. As a direct and proximate result of the negligent acts and omissions of Defendants Ryan's Express and Edward Hubbard, Decedent's Estate and/or Executor Siamak Barin has incurred medical, funeral and burial expenses, and other expenses relating thereto, far in excess of Fifteen Thousand Dollars $(\$ 15,000.00)$.
49. As a direct and proximate result of the negligent acts and omissions of Defendants Ryan's Express and Edward Hubbard, Plaintiffs have suffered general and special damages in an amount far in excess of Fifteen Thousand Dollars $(\$ 15,000.00)$.
50. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

## THIRD CLAIM FOR RELIEF

## (NEGLIGENCE PER SE AGAINST DEFENDANTS RYAN'S EXPRESS AND EDWARD HUBBARD)

51. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.
52. When the subject bus overtook Dr. Khiabani at the time of the incident, Defendants Ryan's Express and Edward Hubbard violated Nev. Rev. Stat. § 484B.270, inter alia: (i) by overtaking Dr. Khiabani at an unsafe speed, which, upon information and belief, also exceeded the posted speed limit; (ii) by failing to give an audible warning with the horn before overtaking Dr. Khiabani; (iii) by failing to overtake Dr. Khiabani in a reasonably safe manner; (iv) by failing to ensure that Dr. Khiabani's bicycle was safely clear before overtaking the bicycle; (v) by failing to leave at least 3 feet between any portion of the bus and Dr. Khiabani and/or his bicycle at the time that the bus overtook Dr. Khiabani; (vi) by failing to yield the right-of-way to Dr. Khiabani; and (vii) by entering, crossing over, and/or driving within the designated bicycle lane while Dr. Khiabani was traveling therein.
53. These violations, and each of them, were a legal cause of the incident and Plaintiffs' resulting injuries.
54. Plaintiffs belong to the class of persons that the safety requirements in NRS 484B. 270 are intended to protect.
55. As a direct and proximate cause of Defendants violations of NRS 484B.270, and each of them, Plaintiffs have suffered general and special damages far in excess of Fifteen Thousand Dollars ( $\$ 15,000.00$ ), as outlined above.
56. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

## FOURTH CLAIM FOR RELIEF

## (NEGLIGENT TRAINING AGAINST DEFENDANT RYAN'S EXPRESS)

57. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.
58. Defendant Ryan's Express owed a duty of care to Dr. Khiabani and Plaintiffs to adequately train its drivers, including Defendant Edward Hubbard, to safely operate its commercial tour busses, including the bus involved in the subject incident.
59. Defendant Ryan's Express was negligent and breached this duty of care by failing to adequately train its drivers, including Edward Hubbard, to safely operate its commercial tour busses, including the bus involved in the subject incident. Defendant Ryan's Express further breached this duty of care by entrusting the subject tour bus to an inadequately trained person (i.e., Defendant Hubbard).
60. These negligent acts and omissions, and each of them, were a legal cause of the incident and Plaintiffs' resulting injuries.
61. As a direct and proximate result of these negligent acts and omissions, Plaintiffs have suffered general and special damages far in excess of Fifteen Thousand Dollars ( $\$ 15,000.00$ ), as outlined above.
62. In carrying out its responsibility to adequately train its drivers, Defendant Ryan's Express acted with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others. As a direct and proximate result of the conduct of Defendant Ryan's

Express, Plaintiffs are entitled to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).
63. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

## FIFTH CLAIM FOR RELIEF

## (STRICT LIABILITY: DEFECTIVE CONDITION OR FAILURE

## TO WARN AGAINST DEFENDANTS GIRO AND PRO CYCLERY)

64. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.
65. Defendant Giro, or its predecessors and/or affiliates, were responsible for the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the helmet that Dr. Khiabani was wearing at the time of the above-described accident.
66. Upon information and belief, Defendant Pro Cyclery, or its predecessors and/or affiliates, were part of the subject helmet's chain of distribution and sold to Dr. Khiabani at the retail level the helmet that Dr. Khiabani was wearing at the time of the above-described accident.
67. At the time of the subject accident, and at all other times material hereto, the helmet was being used in a manner foreseeable by Defendants Giro and Pro Cyclery.
68. As so used, the subject helmet was defective, unfit, and unreasonably dangerous for its foreseeable use in that there was inadequate protection of the head by the helmet, which caused or contributed to the death of Dr. Khiabani.
69. The subject helmet was further defective and unreasonably dangerous in that Defendants Giro and Pro Cyclery failed to provide adequate warnings about dangers that were either known or should have been known by Giro and Pro Cyclery and/or failed to provide adequate instructions regarding the helmet's safe and proper use.
70. The aforementioned death of Dr. Khiabani was a direct and proximate result of a defect or defects in the helmet and/or the failure of Defendants Giro and Pro Cyclery to warn of defects that were either known or should have been known or to instruct in the safe and proper use of the helmet. As a result, Defendants Giro and Pro Cyclery should be held strictly liable in tort to Plaintiffs.
71. As a direct and proximate result of the defective nature of the helmet and said deficiencies in warnings and/or instructions, Decedent Dr. Kayvan Khiabani suffered a catastrophic head injury and ultimately died.
72. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro Cyclery, Decedent sustained past, present, and future lost wages, which would otherwise have been gained in his employment if not for his death, far in excess of Fifteen Thousand Dollars (\$15,000.00).
73. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro Cyclery, the Plaintiff minors each have been deprived of their father's comfort, support, companionship, society, and consortium, and further, each has suffered great grief, sorrow, and extreme emotional distress as a result of the death of their father, to each for general damages far in excess of Fifteen Thousand Dollars $(\$ 15,000.00)$ and economic damages far in excess of Fifteen Thousand Dollars $(\$ 15,000.00)$. The minor children also seek to recover for the pain, suffering, and disfigurement of their father.
74. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro Cyclery, prior to her death, Katy Barin was deprived of her husband's comfort, support, companionship, society, and consortium, and further, had suffered great grief, sorrow, and extreme emotional distress as a result of the death of her husband, for general damages far in excess of Fifteen Thousand Dollars $(\$ 15,000.00)$ and economic damages far in excess of Fifteen Thousand Dollars (\$15,000.00).
75. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro Cyclery, Decedent's Estate and/or Executor Siamak Barin has incurred medical, funeral, and burial expenses, and other expenses relating thereto, far in excess of Fifteen Thousand Dollars (\$15,000.00).
76. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro Cyclery, Plaintiffs have suffered general and special damages in an amount far in excess of Fifteen Thousand Dollars ( $\$ 15,000.00$ ).
77. In carrying out its responsibilities for the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the subject helmet, Defendant Giro acted with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others. As a direct and proximate result of the conduct of Defendant Giro, Plaintiffs are entitled to punitive damages in excess of Fifteen Thousand Dollars $(\$ 15,000.00)$.
78. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

## SIXTH CLAIM FOR RELIEF

## (BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR

 PURPOSE AGAINST DEFENDANTS GIRO AND PRO CYCLERY)79. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.
80. Giro/Pro Cyclery and Decedent, Dr. Khiabani, entered into a contract for the sale of goods (i.e., the Giro helmet).
81. Defendants Giro/Pro Cyclery had reason to know of the particular purpose for which the helmet was required by Dr. Khiabani (i.e., to wear while riding his road bicycle).
82. Dr. Khiabani relied on the skill or judgment of Defendants Giro/Pro Cyclery to furnish suitable goods for this purpose.
83. The helmet sold by Defendants Giro/Pro Cyclery to Dr. Khiabani was not fit for said purpose and, as a direct and proximate result, Plaintiffs have suffered general and special damages far in excess of Fifteen Thousand Dollars $(\$ 15,000.00)$, as outlined above.
84. In carrying out its responsibilities for the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the subject helmet, Defendant Giro acted with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others. As a direct and proximate result of the conduct of Defendant Giro, Plaintiffs are entitled to punitive damages in excess of Fifteen Thousand Dollars $(\$ 15,000.00)$.
85. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

## SEVENTH CLAIM FOR RELIEF

## (WRONGFUL DEATH OF KAYVAN KHIABANI, MD

## AGAINST ALL DEFENDANTS)

86. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.
87. Plaintiff minors are the heirs of Decedent and are entitled to maintain an action for damages against the Defendants for the wrongful death of Dr. Kayvan Khiabani.
88. Pursuant to NRS 41.085, Siamak Barin is the Executor of the Estate of the Decedent and may also maintain an action for damages against the Defendants for special damages and penalties, including but not limited to exemplary or punitive damages as set forth in NRS 41.085(5).
89. As a result of the injuries to and death of Dr. Khiabani, Plaintiffs are entitled to damages, including, but not limited to: pecuniary damages for their grief and sorrow, loss of
probable support, companionship, society, comfort and consortium, and damages for pain, suffering and disfigurement of the Decedent.
90. As a direct and proximate result of the wrongful death of Dr. Khiabani, Plaintiffs have been damaged in an amount far in excess of Fifteen Thousand Dollars $(\$ 15,000.00)$.
91. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

## EIGHTH CLAIM FOR RELIEF

(WRONGFUL DEATH OF KATY BARIN, DDS

## AGAINST ALL DEFENDANTS)

92. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.
93. As a direct and proximate result of the stress caused by the wrongful death of her husband, Dr. Kayvan Khiabani, Katy Barin lost her battle against cancer.
94. Plaintiff minors are the heirs of Decedent Katy Barin and are entitled to maintain an action for damages against the Defendants for the wrongful death of their mother, Dr. Katy Barin.
95. Pursuant to NRS 41.085, Siamak Barin is the Executor of the Estate of Katy Barin (Decedent) and may also maintain an action for damages against the Defendants for special damages and penalties, including but not limited to exemplary or punitive damages as set forth in NRS 41.085(5).
96. As a result of the death of Dr. Barin, Plaintiffs are entitled to damages, including, but not limited to: pecuniary damages for their grief and sorrow, loss of probable support, companionship, society, comfort and consortium, and damages for pain, suffering and disfigurement of the Decedent.
97. As a direct and proximate result of the wrongful death of Dr. Barin, Plaintiffs have been damaged in an amount far in excess of Fifteen Thousand Dollars $(\$ 15,000.00)$.
98. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment of this Court as follows:

1. Past and future general damages in an amount in excess of fifteen thousand dollars (\$15,000.00);
2. Past and future special damages in an amount in excess of fifteen thousand dollars (\$15,000.00);
3. Past and future damages for the wrongful death of Dr. Kayvan Khiabani, as set forth in NRS 41.085, in an amount in excess of fifteen thousand dollars ( $\$ 15,000.00$ );
4. Past and future damages for the wrongful death of Dr. Katy Barin, as set forth in NRS 41.085, in an amount in excess of fifteen thousand dollars ( $\$ 15,000.00$ );
5. Punitive damages in an amount in excess of fifteen thousand dollars $(\$ 15,000.00)$;
6. Prejudgment and post-judgment interest, as allowed by law;
7. Costs of suit and reasonable attorneys' fees, as allowed by law, in an amount to be determined; and
8. For such other and further relief that the Court may deem just and proper.


DATED this day of November, 2017.
WILL KEMP, ESQ.(\#1205)
ERIC PEPPERMAN, ESQ. (\#11679)
KEMP, JONES \& COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
-and-
PETER S. CHRISTIANSEN, ESQ. (\#5254)
KENDELEE L. WORKS, ESQ. (\#9611)
CHRISTIANSEN LAW OFFICES
810 South Casino Center Blvd.
Las Vegas, Nevada 89101
Attornevs for Plaintiffs

## DEMAND FOR JURY TRIAL

Plaintiffs by and through their attorneys of record, KEMP, JONES \& COULTHARD, LLP and CHRISTIANSEN LAW OFFICES, hereby demand a jury trial of all of the issues in the above matter.

DATED this day of November, 2017.
KEMP, JONES \& COULTHARD, LLP

WILL KEMP, ESQ. (\#1205)
ERIC PEPPERMAN, ESQ. (\#11679)
3800 Howard Hughes Parkway, 17th Floor Las Vegas, Nevada 89169
-and-
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CHRISTIANSEN LAW OFFICES 810 South Casino Center Blvd. Las Vegas, Nevada 89101

Attorneys for Plaintiffs

## CERTIFICATE OF SERVICE

I hereby certify that on the $17^{\text {th }}$ day of November, 2017, the foregoing SECOND
AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL was served on all parties currently on the electronic service list via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2.


## EXHIBIT 7

OGM
D. LEE ROBERTS, JR. (SBN 8877)

HOWARD J. RUSSELL (SBN 8879)
DAVID A. DIAL (admitted pro hac vice)
MARISA RODRIGUEZ (SBN 13,234)
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DPolsenberg@LRRC.com
JHenriod@LRRC.com
Attorneys for Motor Coach Industries, Inc,

## DISTRICT COURT Clark County, NEvada

Keon Khiabani and Aria Khiabani, minors by and through their Guardian, Marie-Claude Rigaud; Siamak Barin, as Executor of the Estate of Kayvan Khiabani, M.D. (Decedent); the Estate OF KAYVAN KHIABANI, M.D. (Decedent); SIAMAK BARIN, as Executor of the Estate of Katayoun Barin, DDS (Decedent); and the ESTATE OF KATAYOUN BARIN, DDS (Decedent),

Plaintiffs,
vs.
Motor Coach Industries, Inc., a Delaware corporation; MICHELANGELO LEASING INC. d/b/a RYAN'S EXPRESS, an Arizona corporation; EDWARD Hubbard, a Nevada resident; Bell Sports Inc. d/b/a GIRo Sport Design, a Delaware corporation; SEVENPLUS CYCLES, INC. d/b/a PRO CYCLERY, a Nevada corporation; DOES 1 through 20; and ROE CORPORATIONS 1 through 20,

## Defendants.

Case No. A-17-755977-C
Dept. No. 14

## Order Granting <br> Motion to Dismiss Wrongful Death Claim

Hearing Date: January 23, 2018
Hearing Time: 9:30 a.m.

Defendant Motor Coach Industries, Inc.'s ("MCI") "Motion to Dismiss Wrongful Death Claim for Death of Katayoun Barin, DDS" (the "motion to dismiss") came on for hearing on January 23, 2018 at 9:30 a.m. Having reviewed the parties' briefing, argument of counsel, being duly advised on the premises, and good cause appearing therefor:

It is hereby ORDERED that MCI's motion to dismiss is GRANTED.
Dated this zod day of January, 2019.


Apphoved as to form and content by:
KEMP, JONES \& COULTHARD, LLP

By:
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
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Attorneys for Defendant
Motor Coach Industries. Inc.

## EXHIBIT 8

WILL KEMP, ESQ. (\#1205)
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Telephone: (702) 240-7979
Attorneys for Plaintiffs

## DISTRICT COURT

## COUNTY OF CLARK, NEVADA

KEON KHIABANI and ARIA KHIABANI, minors by and through their natural mother, KATAYOUN BARIN; KATAYOUN BARIN, individually; KATAYOUN BARIN as Executrix of the Estate of Kayvan Khiabani, M.D. (Decedent), and the Estate of Kayvan Khiabani, M.D. (Decedent),

Plaintiffs,
vs.
MOTOR COACH INDUSTRIES, INC., a Delaware corporation; et al.

Defendants.

Case No. A-17-755977-C
Dept. No. XIV
NOTICE OF ENTRY OF JUDGMENT

TO: All parties herein; and
TO: Their respective counsel;
YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that a Judgment was entered in the above entitled matter on April 17, 2018.


WILL KEMP, ESQ. (\#1205) ERIC PEPPERMAN, ESQ. (\#11679)
e.pepperman@kempjones.com

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810 South Casino Center Blvd.
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

## DISTRICT COURT

## CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI, minors, by and through their Guardian, MARIE-CLAUDE RIGAUD; SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani, M.D. (Decedent), the Estate of Kayvan Khiabani, M.D. (Decedent);
SIAMAK BARIN, as Executor of the Estate of Katayoun Barin, DDS (Decedent); and the

Estate of Katayoun Barin, DDS (Decedent);

Plaintiffs,
vs.
MOTOR COACH INDUSTRIES, INC., a Delaware corporation; et al.

Defendants.
$\square$

Dept. No.: XIV

## JUDGMENT

Case No.: A-17-755977-C

The above-captioned action having come before the Court for a jury trial commencing on February 12, 2018, the Honorable Adriana Escobar, District Judge, presiding, and the issues having been duly tried, and the jury having duly rendered its special verdict,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that, pursuant to the jury's verdict, judgment is entered in favor of Plaintiffs, KEON KHIABANI and ARIA KHIABANI, minors, by and through their Guardian MARIE-CLAUDE RIGAUD, and SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani, M.D. (Decedent) and as Executor of the Estate of Katayoun ("Katy") Barin, DDS (Decedent), and against Defendant MOTOR COACH INDUSTRIES, INC. ("MCI"), as follows:

## KEON KHIABANI DAMAGES

Past Grief and Sorrow, Loss of Companionship, Society, and Comfort:
$\$ 1,000,000.00$

Future Grief and Sorrow, Loss of Companionship, Society, and Comfort:
$\$ 7,000,000.00$

Loss of Probable Support:
$\$ 1,200,000.00$

Pain and Suffering of Decedent, Dr. Kayvan Khiabani:
$\$ 333,333.34$

TOTAL $\$ 9,533,333,34$

## ARIA KHIABANI DAMAGES

Past Grief and Sorrow, Loss of Companionship, Society, and Comfort:
$\$ 1,000,000.00$

Future Grief and Sorrow, Loss of Companionship, Society, and Comfort:
$\$ 5,000,000.00$

Loss of Probable Support:
$\$ 1,000,000.00$

Pain and Suffering of Decedent, Dr, Kayvan Khiabani:$\$ 333,333.33$


IT IS FURTHER ORDERED, ADJUDGED, and DECREED that, pursuant to Nev. Rev. Stat. § 17.130, Plaintiffs shall receive prejudgment interest, accruing from June 1, 2017, at the rate provided by law, on $\$ 4,546,003.62$ of the combined total damages award, as this amount represents past damages for: (i) the grief and sorrow and loss of companionship, society, and comfort suffered by Keon Khiabani ( $\$ 1,000,000.00$ ); (ii) the grief and sorrow and loss of companionship, society, and comfort suffered by Aria Khiabani $(\$ 1,000,000.00)$; (iii) the grief and sorrow and loss of companionship, society, comfort, consortium, and probable support suffered by Katy Barin before her October 12, 2017 death ( $\$ 1,500,000.00$ ); (iv) the pain and suffering of Decedent Dr. Kayvan Khiabani ( $\$ 1,000,000.00$ ); and (v) the medical and funeral expenses incurred by Decedent Dr. Kayvan Khiabani ( $\$ 46,003.62$ ). As of April 11, 2018, the total amount of accrued prejudgment interest is $\$ 246,480.55 .^{\text {. }}$

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiffs' total judgment shall bear post-judgment interest at the rate provided by law, which is currently $6.5 \% / y e a r$, until satisfied.

IN SUM, judgment upon the verdict in favor of Plaintiffs is hereby given for Eighteen Million Seven Hundred Forty-Six Thousand Three and 62/100 Dollars $(\$ 18,746,003.62)$ against Defendant MCI , with prejudgment interest, as described above, and with post-judgment interest continuing to accrue on the total judgment amount from the date this Judgment is entered until it is fully satisfied.

Dated this 1 Thday of April, 2018.


DISTRICT COURT JUDGE
${ }^{1}$ 06/01/2017-06/30/2017 \$21.484.53(30 days @ \$716.15/daily @ 5.750\%/year); 07/01/2017-12/31/2017 \$143,230.23(184 days@\$778.43/daily @ 6.250\%/year); 1/01/2018-04/11/2018\$81,765.78(101 days @ \$809.56/daily @ 6.500\%/year)


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[^1]:    PRINT DATE: 04/14/2023
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    Minutes Date: June 06, 2017

[^2]:    PRINT DATE: 04/14/2023
    Page 79 of $97 \quad$ Minutes Date: June 06, 2017

[^3]:    PRINT DATE: 04/14/2023
    Page 81 of $97 \quad$ Minutes Date: June 06, 2017

[^4]:    PRINT DATE: $\quad 04 / 14 / 2023$
    Page 88 of $97 \quad$ Minutes Date: June 06, 2017

