Defense simply didn't have any witnesses to so testify. That's why the motion in limine was granted.

(RTP March 28, 2011, p. 104).

Given that the Defendant had no admissible, credible evidence to offer to support this "minor impact" defense, an irrebuttable presumption instruction was appropriate to communicate to the jury what the Defendant failed to comprehend throughout the trial: namely, that there is no evidence to suggest that the impact in this accident was too minor to cause the injuries the Plaintiff claims to have suffered. An alternative adverse inference instruction or a rebuttable presumption instruction would have given the Defendant exactly what was precluded in the Order on the pretrial motions: namely, an opportunity to rebut the contention that the accident was of sufficient character to have caused injury. Again, the Defendant had no evidence with which to rebut that contention.

e) The policy favoring adjudication on the merits

Mindful of this policy, the Court declined at this point to grant the Plaintiffs' request to strike the Defendant's Answer and instead issued the irrebuttable presumption instruction.

Given the Defendant's concession of responsibility for the accident, the "merits" of this case for the trier of fact to adjudicate were limited to the amount of damages suffered as a result of the accident. Since the Defendant had no evidence to support a contention that the nature of the impact in the accident was relevant to the amount of damages, the issues for the trier of fact were not materially affected by the irrebuttable presumption instruction.

f) Whether sanctions unfairly penalize a party for the misconduct of her attorney

In this Court's view, the key to this factor from *Young* is whether the Defendant is **unfairly** penalized for her attorney's misconduct. However, the irrebuttable presumption instruction imposed as a sanction by the Court did not unfairly penalize the Defendant. It simply

Docket 59208 Document 2011-28412

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allowed the jury to irrebuttably presume the very fact that Defendant had no admissible evidence to rebut – that the motor vehicle accident was sufficient in character and quality to have caused the injuries suffered by the Plaintiff.

Additionally, as set forth below, it must be noted that the special instruction to the jury still allowed them to consider whether the accident in question actually and proximately caused Plaintiff's injuries. The only presumption was that the accident was sufficient in character and quality to have potentially done so. The only issue eliminated or restricted by the irrebuttable presumption instruction was the "minor impact" defense for which Defendant had no evidence to support.

g) The need to deter parties and future litigants

As set forth in great detail above, the sanctions employed by the Court to deter this conduct had proven unsuccessful. Although this particular factor was not the overriding factor in determining that the special instruction to the jury was warranted, this Court hoped that this progressive sanction would at least deter the Defendant from continuing to violate the Orders of this Court.

3. The Irrebuttable Presumption Instruction

This Court took a recess to allow the Plaintiffs' counsel to draft a proposed instruction and then heard argument from both sides regarding the exact language of the instruction. After considering the proposed language and making some amendments thereto, as well as considering the necessity of instructing the jury immediately as a curative measure, the Court read the following instruction to the jury:

> [Court] Furthermore, ladies and gentlemen of the jury, the Defendant has, on numerous occasions, attempted to introduce evidence that the accident of April 15, 2005, was too minor to cause the injuries complained of. This type of evidence has previously

been precluded by this Court.

In view of that, this Court instructs the members of the jury that there is an irrebuttable presumption that the motor vehicle accident of April 15, 2005, was sufficient to cause the type of injuries sustained by the Plaintiff. Whether it proximately caused those injuries remains a question for the jury to determine.

(RTP March 28, 2011, p. 113, 149-50).

Before making the discretionary ruling to issue that curative instruction to the jury, this Court examined the relevant facts, applied a proper standard of law and used a demonstratively rational process to reach a reasonable conclusion. *See, Bass-Davis v. Davis*, 122 Nev. 442, 447-48 (2006).

E. Plaintiffs' Request to Strike Defendant's Answer Based on Repeated Violations of This Court's Pretrial Orders

During the hearing on March 28, 2011, wherein this Court considered the above-quoted special instruction in lieu of the Plaintiffs' request to strike Defendant's Answer, counsel for the Plaintiffs made clear that a further violation of this Court's Orders would be met with the Plaintiffs' renewed request of the Court to strike the Defendant's Answer (RTP March 28, 2011, p. 97).

1. Cross-Examination of Plaintiff, William Simao

During the Defendant's cross-examination of Plaintiff WILLIAM SIMAO, counsel asked about circumstances surrounding the accident, including questions regarding the stop-and-go nature of traffic on the freeway before the accident took place. The Plaintiffs objected, and a bench conference ensued.

At the bench conference, the Plaintiffs asked for an offer of proof of what potential relevance the speed of the vehicles would have, **other** than to suggest an inference that the

impact of the collision was insufficient to cause the Plaintiff's injuries (RTP March 28, 2011, pp. 92-95). Counsel for the Defendant failed to offer during the bench conference a sufficient explanation of how the speed of the vehicles prior to the collision has a tendency to make the existence of any fact of consequence more or less probable, *see,* NRS 48.015, other than to suggest a minor impact (RTP March 28, 2011, p. 94-96).

The Plaintiffs' objection was sustained.

What then followed can only be described by this Court as an intentional attempt to further violate this Court's clear and unambiguous Order.

Regarding the post-accident response by law enforcement and medical personnel, counsel for the Defendant asked the following questions of Mr. Simao:

[Defense Counsel] Now, we've heard several times through this trial that an ambulance came to the scene.

[Mr. Simao] Yes.

[Defense Counsel] And that you declined treatment.

[Mr. Simao] I did.

[Defense Counsel] *And the paramedics didn't transport anyone from Mrs. Rish's car?*

(RTP March 28, 2011, p. 98) (Emphasis supplied).

An immediate objection was interposed by Plaintiffs' counsel and a brief bench conference was convened before this Court excused the jury and addressed the matter on the record outside their presence.

2. Plaintiff's Request to Strike Defendant's Answer

During the hearing outside the jury's presence, counsel for the Plaintiffs again made an exhaustive record of all of the occasions this Court had to direct and admonish Defendant not to

address "minor impact" issues as a result of this Court's previous Orders. A significant record was made of the notice provided to the Defendants that not only was the conduct violative of this Court's Order, but further that the Plaintiffs would be asking the Court to strike the Defendant's Answer as a sanction therefore (RTP March 28, 2011, pp. 101-05).

The response from the Defendant was essentially that she should not be precluded from any discussion of the accident in question. Such an argument, this Court noted, misses the point and unfairly and incorrectly broadens the scope of the pretrial Order. An incorrect summary of the Court's Order that any and all discussion of the accident in question is precluded is vastly different from questioning four separate witnesses as to whether anyone from the Defendant's vehicle was injured in the crash. On this issue, the Court's prior pronouncements could not have been clearer.

While inclined to grant the Plaintiffs' motion to strike the Defendant's Answer at the conclusion of the hearing outside the presence of the jury, this Court instead took the opportunity to recess to again review the appropriate law, including the Nevada Supreme Court's opinion in *Young v. Ribeiro Building, Inc.*, on the issue of case concluding sanctions for abusive litigation practices and continuous violations of Orders of the Court.

3. <u>This Court's Consideration of the Law as Applied to the Facts of This Case</u>

As set forth above, the Nevada Supreme Court in *Young* reiterated that trial courts have inherent equitable powers to issue sanctions for abusive litigation practices, including case concluding sanctions such as dismissal or the striking of pleadings. *Young, supra* at 92. Case concluding sanctions are subject to a "somewhat heightened standard of review," *Id.; Foster v. Dingwall*, 227 P.3d 1042, 1048 (Nev. 2010), to determine if the sanctions are just and relate to the claims at issue.

Before issuing such sanctions, a trial court should carefully consider the factors

announced in *Young*, although no single factor is necessarily dispositive and each of the non-exhaustive factors should be examined in the light of the case before the trial court. *Young, supra* at 92. Additionally, case concluding sanctions shall be supported by an express, careful and preferably written explanation of the trial court's analysis of the *Young* factors. *Id.* at 93; *Bahena v. Goodyear Tire & Rubber Co.*, 235 P.3d 592, 598 (Nev. 2010), *rehearing denied*, 245 P.3d 1182 (2010).

This Court carefully considered the plethora of violations of Court Orders before granting the Plaintiffs' request to strike the Defendant's Answer. The hearing outside the presence of the jury encompasses fifteen pages (15), which does not include the independent research and analysis conducted by this Court during a lengthy recess in the proceedings. The Court's consideration of the *Young* factors, although similar in many respects to the consideration of the same factors three days earlier at the time of the irrebuttable presumption sanction, includes the following:

a) Degree of willfulness of the violations

A violation of an Order on a motion in limine may serve as a basis for some type of sanction if the Order is specific in its prohibition and the violation is clear. *BMW v. Roth*, 127 Nev.Ad.Op. 11, p.12, citing to *Black v. Schultz*, 530 F.3d 702, 706 (8th Cir. 2008). As set forth previously, the violations of this Court's clear and unambiguous Orders were continuous, systematic and pervasive. Such violations include, but are not limited to, the following:

i. Violation of Order precluding evidence of "medical build-up" during Opening Statement;

ii. Violation of Order precluding evidence of "medical build-up" during the testimony of Dr. Patrick McNulty;

iii. Violation of Order precluding evidence of unrelated accidents during Opening

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Statement;

iv. Violation of Order precluding evidence or argument in support of "minor impact" defense during Opening Statement;

v. Violation of Order precluding evidence or argument in support of "minor impact" defense during testimony of Dr. Jorg Rosler (question regarding injuries to the Defendant or her passengers);

vi. Violation of Order precluding evidence or argument in support of "minor impact" defense during testimony of Dr. Patrick McNulty (question regarding injuries to Defendant or her passengers);

vii. Violation of Order precluding evidence or argument in support of "minor impact" defense during testimony of Dr. Jaswinder Grover (question regarding injuries to Defendant or her passengers);

viii. Defendant's abject failure to apprise defense expert Dr. David Fish of court's rulings on all motions in limine;

ix. Violation of Order precluding evidence or argument in support of "minor impact" defense during testimony of Dr. David Fish (question and answer regarding the nature of the accident);

x. Violation of Order precluding evidence or argument in support of "minor impact" defense during testimony of Plaintiff William Simao (question regarding injuries to the Defendant or her passengers);

These violations of the Court's Order precluding the "minor impact" defense are considered by this Court to be even more egregious given the numerous hearings outside the presence of the jury wherein this Court repeatedly and unequivocally prohibited the areas of inquiry subsequently broached by counsel for Defendant. Those hearings include:

i. Hearing on the Plaintiffs' Motion in Limine, March 1, 2011;

ii. Hearing outside the presence of jury to discuss "minor impact," March 18, 2011;

iii. Hearing outside the presence of jury to discuss whether the Plaintiffs opened the door to "minor impact" defense during Opening Statement, March 21, 2011;

iv. Objection sustained to counsel for the Defendant's question of Dr. Rosler regarding injuries to occupants of the Defendant's vehicle, March 22, 2011;

v. Objection sustained to counsel for the Defendant's question of Dr. McNulty regarding injuries to occupants of the Defendant's vehicle, March 25, 2011;

vi. Objection sustained to counsel for the Defendant's question of Dr. Grover regarding injuries to occupants of the Defendant's vehicle, March 25, 2011;

vii. Hearing outside the presence of the jury to discuss "minor impact" defense and the Plaintiffs' notice of seeking progressive sanctions, March 25, 2011;

viii. Objection sustained to counsel for the Defendant's question of Dr. Fish which resulted in response citing to the nature of the impact, March 28, 2011;

ix. Hearing outside the presence of the jury to discuss "minor impact" defense and the Plaintiffs' request for irrebuttable presumption instruction for the Defendant's continued violations of Court's Order, March 28, 2011;

x. Objection sustained to counsel for the Defendant's question of Plaintiff William Simao regarding injuries to occupants of the Defendant's vehicle, March 31, 2011;

At the hearing on the Plaintiffs' oral motion to strike the Defendant's Answer, this Court characterized the continuing violations as having been "willfull, deliberate, [and] abusive," (RTP March 31, 2011, pp. 111-12), based on the fact that counsel for Defendant "refuses to comply

with this Court's rulings" (RTP March 31, 2011, p. 112). Particularly disturbing was counsel for Defendant's systematic insistence upon asking the Plaintiff and three separate treating doctors whether they were aware of any injuries to passengers in the Defendant's vehicle, despite this Court's clear preclusion of that inquiry after each instance of misconduct.

b) The extent to which the non-offending party would be prejudiced by a lesser sanction

As set forth previously, the imposition of lesser sanctions did not act to curb the Defendant's violations of this Court's pretrial Orders. An attorney's violation of an Order on a motion in limine is misconduct which justifies evidentiary sanctions or even a new trial. *See, BMW v. Roth*, 127 Nev.Ad.Op. 11, p.12; *Lioce v. Cohen,* 124 Nev. 1 (2008). Although Nevada precedent does not follow the federal model of requiring progressive sanctions before imposing a case concluding sanction, *see, Bahena v. Goodyear Tire & Rubber, supra,* 245 P.3d at 1184-85, this Court nevertheless imposed progressive sanctions against the Defendant including the irrebuttable presumption instruction to no avail. Nothing this Court could fashion, short of a case concluding sanction, was successful to halt violations of this Court's pretrial Orders.

Given the frequency of the Defendant's violations of this Court's Order precluding a "minor impact" defense, all of which occurred in front of the jury, the Plaintiffs were prejudiced by having this issue repeatedly brought to the jury's attention. In the eyes of the jury, the Plaintiffs were repeatedly preventing the jury from hearing about the significance of the impact, when in fact this Court had determined that a "minor impact" defense was unavailable to the Defendants given the lack of evidence (and expert testimony) to support such a defense. In reliance upon this Court's Order granting the Plaintiffs' Motion in Limine, the Plaintiffs had released their biomechanical expert and had neither mentioned his name nor offered his opinions in Opening Statement. The Plaintiffs had relied on this Court's Order that no "minor impact" defense would be presented to the jury. The Plaintiffs had further relied on the fact that such a

ruling would be upheld by this Court during the course of trial. The unfair prejudice to the Plaintiffs was clearly shown. *See, Roth, supra.*

This Court also recognizes the prejudice to the Plaintiffs in making objection after objection to the Defendant's inappropriate questions. "[W]hen…an attorney must continuously object to repeated or persistent misconduct, the non-offending attorney is placed in the difficult position of having to make repeated objections before the trier of fact, which might cast a negative impression on the attorney and the party the attorney represents, emphasizing the improper point." *Lioce v. Cohen,* 174 P3d 970, 981 (Nev. 2008).

As such, it is the finding of this Court that the Plaintiffs would be unfairly prejudiced by the continuous introduction of questions, evidence and argument designed to create an inference that the subject motor vehicle accident was too minor to cause the Plaintiff's injuries.

c) The severity of a sanction of striking Defendant's Answer relative to the severity of the abuse

Again, the pervasive and continuous nature of these violations warrants the sanction ultimately imposed. Every litigant has the right to disagree with any ruling made or Order entered by a trial court. His remedy is with an appellate court, based upon reasonable grounds as the law requires. His remedy is never to just continue violating the Orders unchecked.

d) The feasibility and fairness of an alternative, lesser sanction

As set forth above, alternative lesser sanctions were apparently rejected by the Defendant in favor of continuing to violate the Orders of the Court. When the Plaintiffs first asked this Court to strike the Defendant's Answer on March 28, 2011, the Court considered this factor from the *Young* decision to impose an alternative sanction of an irrebuttable presumption instruction.

As this Court indicated at the hearing on the Plaintiffs' second oral request to the strike Defendant's Answer:

[Court] Regarding the feasibility and fairness of an alternative, lesser sanction, you know, the only thing I can say is less severe sanctions were imposed to no avail.

(RPT March 31, 2011, p. 113).

This analysis is bolstered by the fact that the Plaintiffs requested that the Court strike the Defendant's Answer three days earlier and put the Defendant on notice that they would seek to strike the Defendant's Answer should any future violations occur.

e) The policy favoring adjudication on the merits

As set forth above, this Court opted for less severe sanctions for all of the violations prior to March 31, 2011, in large measure because of the policy favoring adjudication on the merits. Even the irrebuttable presumption instruction given as a lesser, alternative sanction did not prevent the Defendant from presenting any defense that they actually had evidence to present. It is also worth noting that the Defendant had already agreed on the record not to challenge liability for the accident.

Further, this Court recognizes that the Nevada Supreme Court has upheld the striking of pleadings for a party's failure to attend his deposition, *Foster v. Dingwall, supra*; for repetitive, abusive and recalcitrant conduct during discovery, *Young, supra; Hamlett v. Reynolds*, 114 Nev. 863 (1998) (upholding the trial court's strike order where the defaulting party's constant failure to follow the court's orders was unexplained and unwarranted); for a party's continued failure to appear at scheduled court proceedings, *Durango Fire Protection, Inc. v. Troncoso*, 120 Nev. 658, 662 (2004); and for the failure to abide by rulings of the Discovery Commissioner, *Bahena v. Goodyear Tire & Rubber, supra.* Additionally, the Nevada Supreme Court has approved consideration of the *Young* factors as a guide to trial courts for sanctions grounded in violations of court orders at trial. *See, Romo v. Keplinger*, 115 Nev. 94, 97 (1999).

The willful and deliberate violations of this Court's Orders are equally as egregious as

any discovery violation, especially given the fact that the repeated violations in the instant case occurred in front of the jury.

f) The need to deter parties and future litigants

Given its inherent powers derived from the Nevada Constitution and strong case precedent, this Court simply cannot allow litigants to openly and deliberately abuse the litigation process by disregarding Orders of the Court when convenient or tactically advantageous to do so, especially when unfair prejudice to the non-offending party results. Such an allowance would render courts of justice meaningless in the State of Nevada.

In the final analysis, after review and consideration of all of the various factors announced in Young, it is the determination of this Court that the intentional, deliberate, abusive and unfairly prejudicial conduct of the Defendant in repeatedly violating clear Orders of this Court warrants the ultimate sanction of striking the Defendant's Answer.

It is immaterial whether, as the Plaintiffs suggested several times during the trial, it was the true intention of the Defendant to force or goad the Plaintiffs to seek a mistrial. What is material is that the deliberate conduct of counsel for the Defendant in disregarding and violating Court Orders could not be halted by this Court with any other sanction.

Neither sustained objections, a multitude of hearings outside the presence of the jury, nor progressive sanctions deterred the Defendant's ignorance of Orders of this Court.

Having carefully and thoughtfully considered the available remedies, it is the decision of this Court, for all of the reasons set forth above, that striking the Defendant's Answer is appropriate under the particular circumstances presented herein.

II. Plaintiffs' Request for a Prove-Up Hearing to Establish Damages

By the time of the last violation of this Court's Orders by the Defendant, most of the Plaintiffs' evidence had been presented to the Court over the first ten (10) days of testimony.

Counsel for the Plaintiffs requested a hearing the following day for essentially a prove-up hearing similar to the entry of a default judgment under NRCP 55b.

Counsel for the Defendant then requested the ability to be heard at the argument on damages, pursuant to *Hamlett v. Reynolds*, 114 Nev. 863 (1998). In *Hamlett*, the Nevada Supreme Court struck Hamlett's Answer as a sanction for his continued failure to comply with discovery orders pursuant to *Young v. Ribeiro Building, supra*. Hamlett claimed the trial court erred in restricting his participation in the prove-up hearing to cross-examining Reynolds' witnesses. In analyzing this issue under NRCP 55(b)(2), the Court stated:

> The language of NRCP 55(b)(2) that the "court may conduct such hearings or order such references as it deems necessary and proper" suggests to us an intent to give trial courts broad discretion in determining how prove-up hearings should be conducted. Thus, we conclude that the extent to which a defaulting party will participate in prove-up is a decision properly delegated to the trial courts. The trial courts should make this determination on a case-by-case basis and not according to static rules implemented by this court.
>
> In deciding the extent to which a defaulted party will be permitted to participate in prove-up, if at all, trial courts should remember that the purpose of conducting a hearing after default, according to NRCP 55(b)(2), is to determine the amount of damages and establish the truth of any averment. To that end, trial courts should determine the extent to which full participation by the defaulted party will facilitate the truth-seeking process.

Hamlett, supra at 866-67.

In *Foster v. Dingwall, supra,* the Nevada Supreme Court clearly stated the standard for proving up damages after a default is entered as a sanction. During the prove-up hearing, this Court shall consider the allegations deemed admitted by the fact of the default to determine if the Plaintiff has established a *prima facie* case for liability. *Foster, supra,* 227 P.3d at 1049-50. A *prima facie* case is defined as sufficiency of evidence in order to send the question to the jury. *Id.* at 1050. In the instant case, Defendant Rish admitted responsibility for the accident and stipulated to liability. What was left was a determination of the Plaintiffs' damages, and the Plaintiffs requested that this Court take notice of the evidence that had been presented in the

preceding ten (10) days of testimony. Even though allegations in the pleadings are deemed admitted as a result of the entry of default, the admission does not relieve the non-offending party's obligation to present substantial evidence of the amount of damages suffered by both of the Plaintiffs. *Id.* Having reviewed the evidence and concluding that a *prima facie* case had been established by both Plaintiffs, this Court determined that the Plaintiffs are entitled to damages for the harms proximately caused by the motor vehicle accident.

In determining the level of participation of the Defendant in the prove-up hearing, this Court was mindful of the Nevada Supreme Court's pronouncement in *Foster* and *Young* that because the default was entered as a result of the Defendant's abusive litigation practices, the Defendant "forfeited his right to object to all but the most patent and fundamental defects" in the prove-up. *Foster, supra* at 1050; *Young, supra* at 95.

Nevertheless, in an exercise of discretion authorized by *Hamlett*, this Court determined that the Defendant would be allowed to address the Plaintiffs' brief final argument on damages in an argument of her own, to be followed by a brief rebuttal argument on behalf of the Plaintiffs.

Based on all of the foregoing, **THIS COURT HEREBY ORDERS** that Plaintiffs' oral Motion to Strike Defendant's Answer is **GRANTED**.

This matter stands submitted following the arguments of counsel and the prove-up hearing of April 1, 2011, pending further Order of this Court.

DATED this 21st day of April, 2011.

DISTRICT COURT JUDGE

Submitted by:

DAVID T. WALL, ESQ.
Nevada Bar No. 2805
MAINOR EGLET
400 South Fourth Street, Suite 600
Las Vegas, Nevada 89101

MAINOR EGLET

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO; and CHERYL ANN SIMAO, Plaintiffs, v. JENNY RISH, Defendant.	CASE NO.: A539455 DEPT. NO.: X **JUDGMENT**

WHEREAS, a hearing for Default Judgment having come before the Court on April 1, 2011. IT IS ORDERED, ADJUDGED AND DECREED, that Judgment is hereby entered in favor of Plaintiffs and against Defendant, Jenny Rish as follows:

William Simao's past medical and related expenses	$194,390.96
William Simao's pain and suffering:	
- Past pain and suffering	$473,640.
- Future pain and suffering	$1,140,552.
- Loss of Enjoyment of Life	$ 905,169.
Cheryl Simao's loss of consortium (Society and Relationship)	$ 681,286.
Attorneys' fees	$ TBD
Litigation costs	$ 99,555.49
TOTAL	$3,493,983.45

. . .

. . .

IT IS FURTHER ORDERED that Judgment against Defendant, Jenny Rish, shall bear interest in accordance with N.R.S. 17.130 and Lee v. Ball, 116 P.3d 64 (2005).

Dated this 27th day of April, 2011.

Jessie Walsh
DISTRICT COURT JUDGE

NJUD
ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
DAVID T. WALL, ESQ.
Nevada Bar No. 2805
ROBERT M. ADAMS, ESQ.
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Attorneys for Plaintiffs

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO, individually and CHERYL ANN SIMAO, individually, and as husband and wife, Plaintiffs, v. JENNY RISH; JAMES RISH; LINDA RISH; DOES I through V; and ROE CORPORATIONS I through V, inclusive, Defendants.	CASE NO.: A539455 DEPT. NO.: X

NOTICE OF ENTRY OF JUDGMENT

PLEASE TAKE NOTICE that the Judgment, was entered with the above entitled

. . .

Court on the 28th day of April, 2011, a copy of which is attached hereto.

DATED this 2nd day of May, 2011.

MAINOR EGLET

By: _____
ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
DAVID T. WALL, ESQ.
Nevada Bar No. 2805
ROBERT M. ADAMS, ESQ.
Nevada Bar No. 6551
400 South Fourth Street, Suite 600
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

RECEIPT OF COPY

RECEIPT OF COPY of the foregoing file stamped **NOTICE OF ENTRY OF JUDGMENT** in the matter of **SIMAO v. RISH, et al** is hereby acknowledged:

Date: 5/2/11 Time: 2:19

Stephen H. Rogers, Esq.
ROGERS, MASTRANGELO, CARVALHO & MITCHELL, LTD.
300 S. Fourth Street, #710
Las Vegas, NV 89101
Attorneys for Defendants

Date: 5/2/11 Time: 3:24 p.m.

Daniel F. Polsenberg, Esq.
Jowl D. Henriod, Esq.
LEWIS AND ROCA, LLP.
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, Nevada 89129
Attorneys for Defendants

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO; and CHERYL ANN SIMAO, Plaintiffs, v. JENNY RISH, Defendant.	CASE NO.: A539455 DEPT. NO.: X **JUDGMENT**

WHEREAS, a hearing for Default Judgment having come before the Court on April 1, 2011. IT IS ORDERED, ADJUDGED AND DECREED, that Judgment is hereby entered in favor of Plaintiffs and against Defendant, Jenny Rish as follows:

William Simao's past medical and related expenses	$194,390.96
William Simao's pain and suffering:	
- Past pain and suffering	$473,640.
- Future pain and suffering	$1,140,552.
- Loss of Enjoyment of Life	$ 905,169.
Cheryl Simao's loss of consortium (Society and Relationship)	$ 681,296.
Attorneys' fees	$ TBD
Litigation costs	$ 99,555.49
TOTAL	$3,493,983.45

...

...

IT IS FURTHER ORDERED that Judgment against Defendant, Jenny Rish, shall bear interest in accordance with N.R.S. 17.130 and Lee v. Ball, 116 P.3d 64 (2005).

Dated this 27th day of April, 2011.

Jessie Walsh
DISTRICT COURT JUDGE

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CLERK OF THE COURT

JUDG
ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
DAVID T. WALL, ESQ.
Nevada Bar No. 2805
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO, individually and CHERYL ANN SIMAO, individually, and as husband and wife, Plaintiffs, v. JENNY RISH; JAMES RISH; LINDA RISH; DOES I through V; and ROE CORPORATIONS I through V, inclusive, Defendants.	CASE NO.: A539455 DEPT. NO.: X

JUDGMENT

WHEREAS, a hearing for Default Judgment having come before the Court on April 1, 2011.

MAINOR EGLET

IT IS ORDERED, ADJUDGED AND DECREED, that Judgment was hereby entered in favor of Plaintiffs and against Defendant, Jenny Rish as follows:[1]

IT IS ORDERED AND ADJUDGED that Plaintiff, WILLIAM SIMAO, have and recover of the Defendant, JENNY RISH, the following sums:

PAST DAMAGES:	
Past Medical and Related Expenses	$ 194,390.96
Past Pain, Suffering, Disability and Loss of Enjoyment of Life	$ 1,378,209.00
Total Past Damages:	**$ 1,572,599.96**
FUTURE DAMAGES:	
Future Pain, Suffering, Disability and Loss of Enjoyment of Life	$ 1,140,552.00
Total Future Damages:	**$ 1,140,552.00**
TOTAL DAMAGES:	**$ 2,713,151.96**

IT IS ORDERED AND ADJUDGED that Plaintiff, CHERYL SIMAO. have and recover of the Defendant, JENNY RISH, the following sums:

PAST DAMAGES:	
Loss of Consortium:	$ 681,286.00
Total Past Damages:	**$ 681,286.00**
TOTAL DAMAGES:	**$ 681,286.00**

IT WAS FURTHER ORDERED that Plaintiffs be awarded and entitled to costs in the amount of $99,555.49.

---

[1] Exhibit 1 - Judgment

MAINOR EGLET

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiffs' past damages in the amount of Two Million Two Hundred Fifty Three Thousand Eight Hundred Eighty-Five and 96/100 Dollars ($2,253,885.96), shall bear pre-judgment interest in accordance with *Lee v. Ball*, 116 P.3d 64, (2005) at the rate of 5.25% per annum[2] from the date of service of the Summons and Complaint, on July 23, 2007 through May 18, 2011 as follows:[3]

PRE-JUDGMENT INTEREST:

07/23/07 THROUGH 05/18/11 = $ 452,231.10

(1395 days x $324.18 per day)

NOW, THEREFORE, Judgment in favor of Plaintiffs, WILLIAM SIMAO and CHERYL SIMAO, is hereby given for Three Million Nine Hundred Forty Six Thousand Two Hundred Twenty-Four and 55/100 Dollars ($3,946,224.55) against Defendant which shall bear post-judgment interest at the current rate of 5.25% or $567.60 per day, until satisfied.

DATED this 31st day of May, 2011.

DISTRICT COURT JUDGE

Prepared & Submitted by:
MAINOR EGLET

By: _____
ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
DAVID T. WALL, ESQ.
Nevada Bar No. 2805
ROBERT M. ADAMS, ESQ.
Nevada Bar No. 6551
400 South Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

[2] Exhibit *Lee v. Ball*
[3] Exhibit Affidavit of Service

MAINOR EGLET

EXHIBIT “1”

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO; and CHERYL ANN SIMAO, Plaintiffs, v. JENNY RISH, Defendant.	CASE NO.: A539455 DEPT. NO.: X **JUDGMENT**

WHEREAS, a hearing for Default Judgment having come before the Court on April 1, 2011. IT IS ORDERED, ADJUDGED AND DECREED, that Judgment is hereby entered in favor of Plaintiffs and against Defendant, Jenny Rish as follows:

William Simao's past medical and related expenses	$194,390.96
William Simao's pain and suffering:	
- Past pain and suffering	$473,640.
- Future pain and suffering	$1,140,552.
- Loss of Enjoyment of Life	$ 905,169.
Cheryl Simao's loss of consortium (Society and Relationship)	$ 681,296.
Attorneys' fees	$ TBD
Litigation costs	$ 99,555.49
TOTAL	$3,493,983.45

. . .

. . .

IT IS FURTHER ORDERED that Judgment against Defendant, Jenny Rish, shall bear interest in accordance with N.R.S. 17.130 and Lee v. Ball, 116 P.3d 64 (2005).

Dated this 27th day of April, 2011.

Jessie Walsh
DISTRICT COURT JUDGE

EXHIBIT “2”

LexisNexis

BARRY J. LEE, Appellant, vs. CHRISTOPHER G. BALL, Respondent.

No. 41686

SUPREME COURT OF NEVADA

121 Nev. 391; 116 P.3d 64; 2005 Nev. LEXIS 43; 121 Nev. Adv. Rep. 38

July 28, 2005, Decided

PRIOR HISTORY: [***1] Appeal from a district court judgment granting additur and denying attorney fees and costs. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

DISPOSITION: Reversed and remanded.

COUNSEL: Ronald M. Pehr, Las Vegas, for Appellant.

Piazza & Associates and Carl F. Piazza and David H. Putney, Las Vegas, for Respondent.

JUDGES: BEFORE MAUPIN, DOUGLAS and PARRAGUIRRE, JJ. DOUGLAS and PARRAGUIRRE, JJ., concur.

OPINION BY: MAUPIN

OPINION

[*393] [**65] *OPINION*

By the Court, MAUPIN, J.:

In this appeal, we clarify that a district court's grant of additur is only appropriate when presented to the defendant as an alternative to a new trial on damages.

FACTS AND PROCEDURAL HISTORY

The litigation below arose from a car accident in which the passenger in a vehicle, respondent Christopher Ball, sustained injuries after the driver, appellant Barry Lee, negligently turned into oncoming traffic. Ball sued Lee, alleging general and special damages. Unhappy with the results of court-annexed arbitration, Lee requested a trial de novo. Before trial, Lee served Ball with an offer of judgment for $ 8,011.46. After [**66] a two-day trial, the jury awarded Ball $ 1,300. Lee subsequently moved for costs and attorney fees because [***2] Ball failed to recover an amount in excess of the offer of judgment. Ball opposed this motion, requesting a new trial or, in the alternative, additur. After an untranscribed hearing, the district court granted an $ 8,200 additur and awarded Ball prejudgment interest but did not offer Lee the option of a new trial. The district court further calculated prejudgment interest using a pro-rata formula based on the differing statutory rates of interest in effect before the entry of final judgment. Lee appeals, arguing that the district court erred by granting an additur, failing to offer a new trial, and erroneously calculating prejudgment interest. As a result, Lee argues he is entitled to attorney fees and costs.

DISCUSSION

Additur

Under *Drummond v. Mid-West Growers*, [1] Nevada courts have the power to condition an order for a new trial on acceptance of an additur. [2] In line with *Drummond*, our subsequent decisions have confirmed [*394] a "two-prong test for additur: (1) whether the damages are clearly inadequate, and (2) whether the case would be a proper one for granting a motion for a new trial limited to damages." [3] If both prongs are met, then the district court has [***3] discretion to grant a new trial, unless the defendant consents to the court's additur. [4] The district court has broad discretion in determining motions for additur, and we will not disturb the court's determination unless that discretion has been abused. [5] However, granting additur in the absence of a demonstrable ground for a new trial is an abuse of discretion.

1 91 Nev. 698, 708-13, 542 P.2d 198, 205-08 (1975).

2 *Id.* at 708, 542 P.2d at 205.

3 *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 616, 5 P.3d 1043, 1054 (2000) (citing *Drummond*, 91 Nev. at 705, 542 P.2d at 203).

4 *Drummond*, 91 Nev. at 712, 542 P.2d at 208.

5 *Donaldson v. Anderson*, 109 Nev. 1039, 1041, 862 P.2d 1204, 1206 (1993).

We conclude that Lee has failed to demonstrate that the district court abused its discretion in determining that additur was warranted. First, the hearing during which the district court [***4] orally granted additur was not reported, the parties have not provided a trial transcript in the record on appeal, and the parties have not otherwise favored us with the district court's oral explanation for granting Ball such relief. * Second, because the award was substantially less than the conceded proofs of special damages, there is at least some indication that the jury award was "clearly inadequate" in violation of the district court's instructions. Although the jury, acting reasonably, could have disbelieved Ball's evidence concerning alleged pain and suffering and reasonably inferred that he was not injured as severely as claimed, ' and although the jury was not bound to assign any particular probative value to any evidence presented, " it is incumbent upon Lee to demonstrate that the additur, in and of itself, constitutes an abuse of discretion. * He has failed to do so.

6 *See Stover v. Las Vegas Int'l Country Club*, 95 Nev. 66, 68, 589 P.2d 671, 672 (1979) (stating "when evidence on which a district court's judgment rests is not properly included in the record on appeal, it is assumed that the record supports the lower court's findings"). We further note that the district court's written order granting additur is silent as to the reasons for this award.

[***5]

7 *See Quintero v. McDonald*, 116 Nev. 1181, 1184, 14 P.3d 522, 524 (2000).

8 *Id.*

9 *See Wallace v. Haddock*, 77 Conn. App. 634, 825 A.2d 148, 151-52 (Conn. App. Ct. 2003) (declining to upset an award of additur when the appellant failed to provide transcripts and "failed to seek any further articulation of the court's reasoning for granting the motion for an additur").

We conclude, however, that the district court abused its discretion in failing to offer Lee the option of a new trial or acceptance of the additur. We clarify that, under *Drummond*, additur may not [*395] stand alone as a discrete remedy; rather, it is only appropriate [**67] when presented to the defendant as an alternative to a new trial on damages. "

10 *See Drummond*, 91 Nev. at 712, 542 P.2d at 208; *see also Donaldson*, 109 Nev. at 1043, 862 P.2d at 1207 (reversing a district court order and remanding with instructions to grant a new trial limited to damages, unless the defendant agreed to additur); *ITT Hartford Ins. Co. of the S.E. v. Owens*, 816 So. 2d 572, 575-76 (Fla. 2002) (holding the relevant Florida statute requires a trial court to give the defendant the option of a new trial when additur is granted); *Wallace*, 825 A.2d at 153 (finding the relevant Connecticut statute requires parties have the option of accepting additur or receive a new trial on the issue of damages); *Runia v. Marguth Agency, Inc.*, 437 N.W.2d 45, 50 (Minn. 1989) ("[A] new trial may be granted for excessive or inadequate damages and made conditional upon the party against whom the motion is directed consenting to a reduction or an increase of the verdict. Consent of the non-moving party continues to be required."); *Tucci v. Moore*, 875 S.W.2d 115, 116 (Mo. 1994) ("Additur requires that the party against whom the new trial would be granted have, instead, the option of agreeing to additur."); *Belanger by Belanger v. Teague*, 126 N.H. 110, 490 A.2d 772, 772 (N.H. 1985) (mem.) (holding "a jury verdict supplemented with an additur may go to judgment only if the defendant waives a new trial").

[***6] *Prejudgment interest*

Lee argues that the district court erred in calculating both the rate and period of prejudgment interest. We agree and conclude that the district court's calculation was plainly erroneous. "

11 *See Bradley v. Romeo*, 102 Nev. 103, 105, 716 P.2d 227, 228 (1986) ("The ability of this court to consider relevant issues *sua sponte* in order to prevent plain error is well established. Such is the case where a statute which is clearly controlling was not applied by the trial court." (citation omitted)).

Under NRS 17.130(2), " a judgment accrues interest from the date of the service of the summons and complaint until the date the judgment is satisfied. Unless provided for by contract or otherwise by law, the applicable rate for prejudgment interest is statutorily determined. " In determining what rate applies, NRS 17.130(2) [*396] instructs courts to use the base prime rate percentage "as ascertained by the Commissioner [***7] of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 2 percent."

12 NRS 17.130(2) provides:

> When no rate of interest is provided by contract or otherwise by law, or specified in the judgment, the judgment draws interest from the time of service of the summons and complaint until satisfied, except for any amount representing future damages, which draws interest only from the time of the entry of the judgment until satisfied, at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 2 percent. The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

13 NRS 17.130(2); *see also Gibellini v. Klindt*, 110 Nev. 1201, 1208, 885 P.2d 540, 544-45 (1994) (holding that the "or specified in the judgment" language does not permit a judge to vary an interest rate outside of the statutory rate).

[***8] The district court calculated the rate of prejudgment interest using periodic biannual legal rates of interest in effect between May 27, 1999, and March 24, 2003. This was error. Under the plain language of NRS 17.130(2), the district court should have calculated prejudgment interest at the single rate in effect on the date of judgment.

The district court further determined that prejudgment interest accrued from May 27, 1999, to March 24, 2003. NRS 17.130(2) explicitly provides that "the judgment draws interest from the time of service of the summons and complaint until satisfied." Ball completed service of process on June 9, 1999, and the district court entered final judgment on March 29, 2003. Therefore, prejudgment interest accrued beginning June 9, 1999, not May 27, 1999. Accordingly, the district court also erred in calculating the period prejudgment interest accrued.

CONCLUSION

We hold that the district court erred in granting an additur without providing Lee the option of accepting the additur or a new trial on damages and in calculating prejudgment interest. Accordingly, we reverse the district court's judgment and [***9] remand this [**68] matter for proceedings consistent with this opinion.

DOUGLAS and PARRAGUIRRE, JJ., concur.

EXHIBIT “3”

SUM

District Court

CLARK COUNTY, NEVADA

CLERK OF THE COURT

AUG 10 12 07 PM '07

FILED

WILLIAM JAY SIMAO, individually, and CHERYL ANN SIMAO, individually, and as husband and wife,	)	
Plaintiffs,	)	SUMMONS
vs.	)	CASE NO.
JENNY RISH; JAMES RISH; LINDA RISH; DOES I through V; and ROE CORPORATIONS I through V, inclusive,	)	Dept. NO. A539455 X
Defendants.	)	

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT. A Civil Complaint has been filed by the plaintiff against you for the relief set forth in the Complaint.

JENNY RISH
223 NORTH COTTONWOOD DRIVE
GILBERT, ARIZONA 85234

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:

   a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.
   b. Serve a copy of your response upon the attorney whose name and address is shown below

2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

Issued at the direction of:

AARON & PATERNOSTER, LTD.

By: _____
Matthew E. Aaron, Esq.
Nevada Bar No. 4900
AARON & PATERNOSTER
2300 West Sahara, Suite 650
Attorneys for Plaintiffs

CHARLES J. SHORT, CLERK OF COURT

By: _____ APR 13 2007
Deputy Clerk
PATRICIA BOGGESS
County Courthouse
200 South Third Street
Las Vegas, NV 89155

CLARK COUNTY DISTRICT COURT
In And For The County Of Maricopa, State Of Arizona

WILLIAM JAY SIMAO AND CHERYL ANN SIMAO

Plaintiff(s), Represented By THE PLAINTIFF

vs.

JENN RISH, JAMES RISH, LINDA RISH

Defendant(s), In Propria Persona

A 539455

Declaration Of Service

AAA Landlord Services
P.O. Box 30804 Mesa, AZ 85275
480.668.5953, 480.668.7425 Fax

I, TYLER TREECE, being qualified under ARCP, 4(d) and 4(e), to serve legal process within the State of Arizona and having been so appointed by Maricopa County Superior Court, did receive on July 12, 2007 from THE PLAINTIFF, Attorney For The Plaintiff, the following Court issued documents:

SUMMONS AND COMPLAINT

On Monday, July 23, 2007 at 7:10 PM, I personally served true copies of these documents as follows:

JENNY RISH BY LEAVIN COPIES WITH HER DAUGHTER, ARLENE VILLA AN OCCUPANT OF SUITABLE AGE AND DISCRETION WHO RESIDES THEREIN.

Description of Person Served:	H	F	30-40	5'6	160	BRN	
	Race	Sex	DOB or Approx Age	Height	Weight	Hair	Eyes

Documents Were Served At The Place Of at the place of abode Located at: **223 N COTTONWOOD DR GILBERT, AZ 85234**

SECURED

AAA Landlord Services, Inc.

www.aaalandlord.com

I declare under penalty of perjury th the foregoing is true and correct an was executed on this date.

July 24, 2007

TYLER TREECE, Declarant
An Officer Of Maricopa County Superior Court

Electronically Filed
06/02/2011 12:48:42 PM

CLERK OF THE COURT

NJUD
ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
DAVID T. WALL, ESQ.
Nevada Bar No. 2805
ROBERT M. ADAMS, ESQ.
Nevada Bar No. 6551
MAINOR EGLET
400 South Fourth Street, Suite 600
Las Vegas, Nevada 89101
Ph.: (702) 450-5400
Fx.: (702) 450-5451
badams@mainorlawyers.com
Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO, individually and CHERYL ANN SIMAO, individually, and as husband and wife, Plaintiffs, v. JENNY RISH; JAMES RISH; LINDA RISH; DOES I through V; and ROE CORPORATIONS I through V, inclusive, Defendants.	CASE NO.: A539455 DEPT. NO.: X

NOTICE OF ENTRY OF JUDGMENT

PLEASE TAKE NOTICE that the Judgment, was entered with the above entitled Court on the 1st day of June, 2011, a copy of which is attached hereto.

DATED this 1st day of June, 2011.

MAINOR EGLET

By: _____
DAVID T. WALL, ESQ.

MAINOR EGLET

RECEIPT OF COPY

RECEIPT OF COPY of the foregoing file stamped **NOTICE OF ENTRY OF JUDGMENT** in the matter of **SIMAO v. RISH, et al** is hereby acknowledged:

Date: 6/1/11 Time: 4:40pm

Stephen H. Rogers, Esq.
ROGERS, MASTRANGELO, CARVALHO & MITCHELL, LTD.
300 S. Fourth Street, #710
Las Vegas, NV 89101
Attorneys for Defendants

Date: 6/2/11 Time: 11:07a.m.

Daniel F. Polsenberg, Esq.
Jowl D. Henriod, Esq.
LEWIS AND ROCA, LLP.
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, Nevada 89129
Attorneys for Defendants

MAINOR EGLET

EXHIBIT "1"

ORIGINAL

Electronically Filed
06/01/2011 09:26:39 AM

CLERK OF THE COURT

JUDG
ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
DAVID T. WALL, ESQ.
Nevada Bar No. 2805
ROBERT M. ADAMS, ESQ.
Nevada Bar No. 6551
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400 South Fourth Street, Suite 600
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Ph.: (702) 450-5400
Fx.: (702) 450-5451
reglet@mainorlawyers.com
dwall@mainorlawyers.com
badams@mainorlawyers.com
Attorneys for Plaintiffs

MAINOR EGLET

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO, individually and CHERYL ANN SIMAO, individually, and as husband and wife, Plaintiffs. v. JENNY RISH; JAMES RISH; LINDA RISH; DOES I through V; and ROE CORPORATIONS I through V, inclusive, Defendants.	CASE NO.: A539455 DEPT. NO.: X

JUDGMENT

WHEREAS, a hearing for Default Judgment having come before the Court on April 1, 2011.

IT IS ORDERED, ADJUDGED AND DECREED, that Judgment was hereby entered in favor of Plaintiffs and against Defendant, Jenny Rish as follows:[1]

IT IS ORDERED AND ADJUDGED that Plaintiff, WILLIAM SIMAO, have and recover of the Defendant, JENNY RISH, the following sums:

PAST DAMAGES:	
Past Medical and Related Expenses	$ 194,390.96
Past Pain, Suffering, Disability and Loss of Enjoyment of Life	$ 1,378,209.00
Total Past Damages:	**$ 1,572,599.96**
FUTURE DAMAGES:	
Future Pain, Suffering, Disability and Loss of Enjoyment of Life	$ 1,140,552.00
Total Future Damages:	**$ 1,140,552.00**
TOTAL DAMAGES:	**$ 2,713,151.96**

IT IS ORDERED AND ADJUDGED that Plaintiff, CHERYL SIMAO. have and recover of the Defendant, JENNY RISH, the following sums:

PAST DAMAGES:	
Loss of Consortium:	$ 681,286.00
Total Past Damages:	**$ 681,286.00**
TOTAL DAMAGES:	**$ 681,286.00**

IT WAS FURTHER ORDERED that Plaintiffs be awarded and entitled to costs in the amount of $99,555.49.

---

[1] Exhibit 1 - Judgment

MAINOR EGLET

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiffs' past damages in the amount of Two Million Two Hundred Fifty Three Thousand Eight Hundred Eighty-Five and 96/100 Dollars ($2,253,885.96), shall bear pre-judgment interest in accordance with *Lee v. Ball*, 116 P.3d 64, (2005) at the rate of 5.25% per annum[2] from the date of service of the Summons and Complaint, on July 23. 2007 through May 18, 2011 as follows:[3]

PRE-JUDGMENT INTEREST:

07/23/07 THROUGH 05/18/11 = $ 452,231.10

(1395 days x $324.18 per day)

NOW, THEREFORE, Judgment in favor of Plaintiffs, WILLIAM SIMAO and CHERYL SIMAO, is hereby given for Three Million Nine Hundred Forty Six Thousand Two Hundred Twenty-Four and 55/100 Dollars ($3,946,224.55) against Defendant which shall bear post-judgment interest at the current rate of 5.25% or $567.60 per day, until satisfied.

DATED this 31st day of May, 2011.

DISTRICT COURT JUDGE

Prepared & Submitted by:
MAINOR EGLET

By: _____
ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
DAVID T. WALL, ESQ.
Nevada Bar No. 2805
ROBERT M. ADAMS, ESQ.
Nevada Bar No. 6551
400 South Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

[2] Exhibit *Lee v. Ball*
[3] Exhibit Affidavit of Service

MAINOR EGLET

EXHIBIT “1”

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO; and CHERYL ANN SIMAO, Plaintiffs, v. JENNY RISH, Defendant.	CASE NO.: A539455 DEPT. NO.: X **JUDGMENT**

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Attorneys' fees	$ TBD
Litigation costs	$ 99,555.49
TOTAL	$3,493,983.45

...

...

IT IS FURTHER ORDERED that Judgment against Defendant, Jenny Rish, shall bear interest in accordance with N.R.S. 17.130 and Lee v. Ball, 116 P.3d 64 (2005).

Dated this 21st day of April, 2011.

Jessie Walsh
DISTRICT COURT JUDGE

EXHIBIT "2"

LexisNexis

8 of 8 DOCUMENTS

BARRY J. LEE, Appellant, vs. CHRISTOPHER G. BALL, Respondent.

No. 41686

SUPREME COURT OF NEVADA

121 Nev. 391; 116 P.3d 64; 2005 Nev. LEXIS 43; 121 Nev. Adv. Rep. 38

July 28, 2005, Decided

PRIOR HISTORY: [***1] Appeal from a district court judgment granting additur and denying attorney fees and costs. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

DISPOSITION: Reversed and remanded.

COUNSEL: Ronald M. Pehr, Las Vegas, for Appellant.

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JUDGES: BEFORE MAUPIN, DOUGLAS and PARRAGUIRRE, JJ. DOUGLAS and PARRAGUIRRE, JJ., concur.

OPINION BY: MAUPIN

OPINION

[*393] [**65] *OPINION*

By the Court, MAUPIN, J.:

In this appeal, we clarify that a district court's grant of additur is only appropriate when presented to the defendant as an alternative to a new trial on damages.

FACTS AND PROCEDURAL HISTORY

The litigation below arose from a car accident in which the passenger in a vehicle, respondent Christopher Ball, sustained injuries after the driver, appellant Barry Lee, negligently turned into oncoming traffic. Ball sued Lee, alleging general and special damages. Unhappy with the results of court-annexed arbitration, Lee requested a trial de novo. Before trial, Lee served Ball with an offer of judgment for $ 8,011.46. After [**66] a two-day trial, the jury awarded Ball $ 1,300. Lee subsequently moved for costs and attorney fees because [***2] Ball failed to recover an amount in excess of the offer of judgment. Ball opposed this motion, requesting a new trial or, in the alternative, additur. After an untranscribed hearing, the district court granted an $ 8,200 additur and awarded Ball prejudgment interest but did not offer Lee the option of a new trial. The district court further calculated prejudgment interest using a pro-rata formula based on the differing statutory rates of interest in effect before the entry of final judgment. Lee appeals, arguing that the district court erred by granting an additur, failing to offer a new trial, and erroneously calculating prejudgment interest. As a result, Lee argues he is entitled to attorney fees and costs.

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We conclude that Lee has failed to demonstrate that the district court abused its discretion in determining that additur was warranted. First, the hearing during which the district court [***4] orally granted additur was not reported, the parties have not provided a trial transcript in the record on appeal, and the parties have not otherwise favored us with the district court's oral explanation for granting Ball such relief. [6] Second, because the award was substantially less than the conceded proofs of special damages, there is at least some indication that the jury award was "clearly inadequate" in violation of the district court's instructions. Although the jury, acting reasonably, could have disbelieved Ball's evidence concerning alleged pain and suffering and reasonably inferred that he was not injured as severely as claimed, [7] and although the jury was not bound to assign any particular probative value to any evidence presented, [8] it is incumbent upon Lee to demonstrate that the additur, in and of itself, constitutes an abuse of discretion. [9] He has failed to do so.

6 *See Stover v. Las Vegas Int'l Country Club*, 95 Nev. 66, 68, 589 P.2d 671, 672 (1979) (stating "when evidence on which a district court's judgment rests is not properly included in the record on appeal, it is assumed that the record supports the lower court's findings"). We further note that the district court's written order granting additur is silent as to the reasons for this award.

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10 *See Drummond*, 91 Nev. at 712, 542 P.2d at 208; *see also Donaldson*, 109 Nev. at 1043, 862 P.2d at 1207 (reversing a district court order and remanding with instructions to grant a new trial limited to damages, unless the defendant agreed to additur); *ITT Hartford Ins. Co. of the S.E. v. Owens*, 816 So. 2d 572, 575-76 (Fla. 2002) (holding the relevant Florida statute requires a trial court to give the defendant the option of a new trial when additur is granted); *Wallace*, 825 A.2d at 153 (finding the relevant Connecticut statute requires parties have the option of accepting additur or receive a new trial on the issue of damages); *Runia v. Marguth Agency, Inc.*, 437 N.W.2d 45, 50 (Minn. 1989) ("[A] new trial may be granted for excessive or inadequate damages and made conditional upon the party against whom the motion is directed consenting to a reduction or an increase of the verdict. Consent of the non-moving party continues to be required."); *Tucci v. Moore*, 875 S.W.2d 115, 116 (Mo. 1994) ("Additur requires that the party against whom the new trial would be granted have, instead, the option of agreeing to additur."); *Belanger by Belanger v. Teague*, 126 N.H. 110, 490 A.2d 772, 772 (N.H. 1985) (mem.) (holding "a jury verdict supplemented with an additur may go to judgment only if the defendant waives a new trial").

[***6] *Prejudgment interest*

Lee argues that the district court erred in calculating both the rate and period of prejudgment interest. We agree and conclude that the district court's calculation was plainly erroneous. [11]

11 *See Bradley v. Romeo*, 102 Nev. 103, 105, 716 P.2d 227, 228 (1986) ("The ability of this court to consider relevant issues *sua sponte* in order to prevent plain error is well established. Such is the case where a statute which is clearly controlling was not applied by the trial court." (citation omitted)).

Under NRS 17.130(2), [12] a judgment accrues interest from the date of the service of the summons and complaint until the date the judgment is satisfied. Unless provided for by contract or otherwise by law, the applicable rate for prejudgment interest is statutorily determined. [13] In determining what rate applies, NRS 17.130(2) [*396] instructs courts to use the base prime rate percentage "as ascertained by the Commissioner [***7] of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 2 percent."

12 NRS 17.130(2) provides:

> When no rate of interest is provided by contract or otherwise by law, or specified in the judgment, the judgment draws interest from the time of service of the summons and complaint until satisfied, except for any amount representing future damages, which draws interest only from the time of the entry of the judgment until satisfied, at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 2 percent. The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

13 NRS 17.130(2); *see also Gibellini v. Klindt*, 110 Nev. 1201, 1208, 885 P.2d 540, 544-45 (1994) (holding that the "or specified in the judgment" language does not permit a judge to vary an interest rate outside of the statutory rate).

[***8] The district court calculated the rate of prejudgment interest using periodic biannual legal rates of interest in effect between May 27, 1999, and March 24, 2003. This was error. Under the plain language of NRS 17.130(2), the district court should have calculated prejudgment interest at the single rate in effect on the date of judgment.

The district court further determined that prejudgment interest accrued from May 27, 1999, to March 24, 2003. NRS 17.130(2) explicitly provides that "the judgment draws interest from the time of service of the summons and complaint until satisfied." Ball completed service of process on June 9, 1999, and the district court entered final judgment on March 29, 2003. Therefore, prejudgment interest accrued beginning June 9, 1999, not May 27, 1999. Accordingly, the district court also erred in calculating the period prejudgment interest accrued.

CONCLUSION

We hold that the district court erred in granting an additur without providing Lee the option of accepting the additur or a new trial on damages and in calculating prejudgment interest. Accordingly, we reverse the district court's judgment and [***9] remand this [**68] matter for proceedings consistent with this opinion.

DOUGLAS and PARRAGUIRRE, JJ., concur.

EXHIBIT “3”

SUM

District Court

CLARK COUNTY, NEVADA

CLERK OF THE COURT

AUG 10 12 07 PM '07

FILED

WILLIAM JAY SIMAO, individually, and CHERYL ANN SIMAO, individually, and as husband and wife,	
Plaintiffs,	
vs.	
JENNY RISH; JAMES RISH; LINDA RISH; DOES I through V; and ROE CORPORATIONS I through V, inclusive,	
Defendants.	

SUMMONS

CASE NO.

Dept. NO. A 5 3 9 4 5 5

X

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT. A Civil Complaint has been filed by the plaintiff against you for the relief set forth in the Complaint.

JENNY RISH
223 NORTH COTTONWOOD DRIVE
GILBERT, ARIZONA 85234

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:

   a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.
   b. Serve a copy of your response upon the attorney whose name and address is shown below

2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

Issued at the direction of:

AARON & PATERNOSTER, LTD.

By: _____
Matthew E. Aaron, Esq.
Nevada Bar No. 4900
AARON & PATERNOSTER
2300 West Sahara, Suite 650
Attorneys for Plaintiffs

CHARLES J. SHORT, CLERK OF COURT

By: _____ APR 13 2007
Deputy Clerk
PATRICIA BOGGESS
County Courthouse
200 South Third Street
Las Vegas, NV 89155

CLARK COUNTY DISTRICT COURT

In And For The County Of Maricopa, State Of Arizona

WILLIAM JAY SIMAO AND CHERYL ANN SIMAO

Plaintiff(s), Represented By THE PLAINTIFF

vs.

JENN RISH, JAMES RISH, LINDA RISH

Defendant(s), In Propria Persona

A 539455

Declaration Of Service

I, TYLER TREECE, being qualified under ARCP, 4(d) and 4(e), to serve legal process within the State of Arizona and having been so appointed by Maricopa County Superior Court, did receive on July 12, 2007 from THE PLAINTIFF, Attorney For The Plaintiff, the following Court issued documents:

SUMMONS AND COMPLAINT

On Monday, July 23, 2007 at 7:10 PM, I personally served true copies of these documents as follows:

JENNY RISH BY LEAVIN COPIES WITH HER DAUGHTER, ARLENE VILLA AN OCCUPANT OF SUITABLE AGE AND DISCRETION WHO RESIDES THEREIN.

Description of Person Served:	H	F	30-40	5'6	160	BRN	
	Race	Sex	DOB or Approx Age	Height	Weight	Hair	Eyes

Documents Were Served At The Place Of at the place of abode Located at: **223 N COTTONWOOD DR GILBERT, AZ 85234**

SECURED

I declare under penalty of perjury th the foregoing is true and correct an was executed on this date.

July 24, 2007

TYLER TREECE, Declarant
An Officer Of Maricopa County Superior Court

AAA Landlord Services
P.O. Box 30804 Mesa, AZ 85275
480.668.5953, 480.668.7425 Fax

AAA Landlord Services, Inc.

www.aaalandlord.com

4

FILED
AUG 24 10 34 AM '11
CLERK OF THE COURT

ORDR

ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
DAVID T. WALL, ESQ.
Nevada Bar No. 2805
ROBERT M. ADAMS, ESQ.
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2300 West Sahara Avenue, Suite 650
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Ph.: (702) 384-4111
Fx.: (702) 384-8222
Attorneys for Plaintiffs

07A539455
ORDD
Order Denying
1581988

MAINOR EGLET
TRIAL ATTORNEYS

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO, individually and CHERYL ANN SIMAO, individually, and as husband and wife,

Plaintiffs,

v.

JENNY RISH; JAMES RISH; LINDA RISH; DOES I through V; and ROE CORPORATIONS I through V, inclusive,

Defendants.

CASE NO.: A539455
DEPT. NO.: X

ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL

This Honorable Court, having read the pleadings and papers on file herein regarding the

2

Defendant's Motion for New Trial, the matter being heard in Chambers on July 21, 2011 for hearing, and good cause appearing therefore, hereby rules that Defendant's Motion for New Trial is **DENIED.**

IT IS SO ORDERED.

DATED this 23rd day of August, 2011.

DISTRICT COURT JUDGE

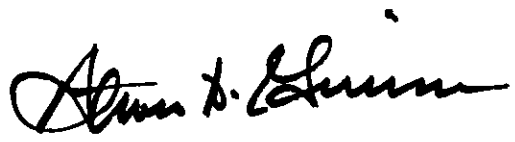
Respectfully submitted by:

MAINOR EGLET

ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
DAVID T. WALL, ESQ.
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ROBERT M. ADAMS, ESQ.
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Las Vegas, Nevada 89101
Attorneys for Plaintiffs

MAINOR EGLET
TRIAL ATTORNEYS

Electronically Filed
08/25/2011 02:46:57 PM



CLERK OF THE COURT

NEO
ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
DAVID T. WALL, ESQ.
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Attorney for Plaintiffs

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Attorneys for Plaintiffs

MAINOR EGLET

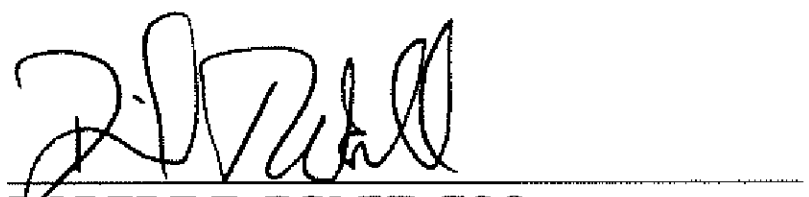
DISTRICT COURT
CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO, individually and CHERYL ANN SIMAO, individually, and as husband and wife, Plaintiffs, v. JENNY RISH; JAMES RISH; LINDA RISH; DOES I through V; and ROE CORPORATIONS I through V, inclusive, Defendants.	CASE NO.: A539455 DEPT. NO.: X **NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order Denying Defendant's Motion for New Trial was entered in the above-entitled matter on August 24, 2011 and is attached hereto as Exhibit "24."

DATED this 25 day of August, 2011.

MAINOR EGLET



ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
DAVID T. WALL, ESQ.
Nevada Bar No. 2805
ROBERT M. ADAMS, ESQ.
Nevada Bar No. 6551
400 South Fourth Street, Ste. 600
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

MAINOR EGLET

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 25th day of August, 2011, a copy of the above and foregoing NOTICE OF ENTRY OF ORDER was served by enclosing same in an envelope with postage prepaid thereon, address and mailed as follows:

Stephen H. Rogers, Esq.
ROGERS, MASTRANGELO, CARVALHO & MITCHELL
300 South Fourth Street, Suite 710
Las Vegas, Nevada 89101
Attorneys for Defendants

An employee of MAINOR EGLET

MAINOR EGLET

EXHIBIT “1”

ORDR
ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
DAVID T. WALL, ESQ.
Nevada Bar No. 2805
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Ph.: (702) 384-4111
Fx.: (702) 384-8222
Attorneys for Plaintiffs

FILED
AUG 24 10 35 AM '11
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO, individually and CHERYL ANN SIMAO, individually, and as husband and wife,

Plaintiffs,

v.

JENNY RISH; JAMES RISH; LINDA RISH; DOES I through V; and ROE CORPORATIONS I through V, inclusive,

Defendants.

CASE NO.: A539455
DEPT. NO.: X

ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL

This Honorable Court, having read the pleadings and papers on file herein regarding the

MAINOR EGLET

Defendant's Motion for New Trial, the matter being heard in Chambers on July 21, 2011 for hearing, and good cause appearing therefore, hereby rules that Defendant's Motion for New Trial is **DENIED.**

IT IS SO ORDERED.

DATED this 23 day of August, 2011.

JESSIE WALSH

DISTRICT COURT JUDGE

Respectfully submitted by:

MAINOR EGLET

ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
DAVID T. WALL, ESQ.
Nevada Bar No. 2805
ROBERT M. ADAMS, ESQ.
Nevada Bar No. 6551
400 South Fourth Street, Suite 600
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

MAINOR EGLET

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	December 11, 2009

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

December 11, 2009 **9:00 AM** **Pre Trial Conference**

HEARD BY: Walsh, Jessie **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Braegelmann

RECORDER:

REPORTER:

PARTIES PRESENT: Palermo, John E. Attorney

JOURNAL ENTRIES

- COURT ORDERED trial date VACATED and RESET.

05/03/10 9:00 AM CALENDAR CALL

05/10/10 9:00 AM JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	January 20, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

January 20, 2011 **9:30 AM** **Motion**

HEARD BY: Walsh, Jessie **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Braegelmann

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Rogers, Stephen H	Attorney
Wall, David T	Attorney

JOURNAL ENTRIES

- Court notes there was a limited opposition to the motion. Argument by Mr. Wall in support of his motion to the opposed questions. Argument by Mr. Rogers in opposition to plaintiff's motion. Following arguments, Court Stated its Findings and ORDERED, Plaintiffs' Motion to Allow Plaintiffs to Present a Jury Questionnaire Prior to Voir Dire motion GRANTED as to those Questions unopposed. FURTHER COURT ORDERED, GRANTED as to Questions 42 and 43. FURTHER COURT ORDERED motion DENIED as to Questions 33, 34, and 49. Counsel to REMOVE 33, 34, and 49. FURTHER COURT ORDERED, Defendant's motion for leave to propose question Re: Million dollar Verdict. COURT ORDERED motion GRANTED.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	February 15, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

February 15, 2011 **9:00 AM** **All Pending Motions**

HEARD BY: Walsh, Jessie COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Braegelmann

RECORDER: Victoria Boyd

REPORTER:

PARTIES
PRESENT:

Lewis, Bryan W.	Attorney
Rogers, Stephen H	Attorney
Wall, David T	Attorney

JOURNAL ENTRIES

- Plaintiff's Omnibus Motion in Limine...Defendant Jenny Rish's Motion in Limine to Exclude the Traffic Accident Report and the Investigating Officer's Conclusions...Defendant Jenny Rish's Motion in Limine to Preclude Questions Regarding Verdict Amounts During Voir Dire...Defendant Jenny Rish's Motion in Limine to Prevent Plaintiff from Arguing Responsibility Avoidance...Defendant Jenny Rish's Motion in Limine Enforcing the Abolition of the Treating Physician Rule...Defendant Jenny Rish's Motion in Limine to Limit the Testimony of Plaintiff's Treating Physicians...Defendant Jenny Rish's Motion in Limine to Exclude Graphic and Lurid Video or Animated Depictions of Surgical Procedures...Defendant's Motion in Limine to Preclude Plaintiffs' Medical Providers and Experts from Testifying Regarding New or Undisclosed Medical Treatment and Opinions...Defendant's Motion in Limine to Exclude Evidence of Senate Investigation...Defendant Jenny Rish's Motion in Limine to Preclude Witnesses from Offering Testimony Regarding the Credibility or Veracity of Other Witnesses...Defendant Jenny Rish's Motion to Preclude Argument of the Case During Voir Dire...Defendant Jenny Rish's Motion to Exclude the Report and Opinions Plaintiff's Accident Reconstruction Expert, David Ingebretsen...Defendant Jenny Rish's Motion to Exclude the Report and Opinions Plaintiff s Economist Stan V. Smith...Defendant Jenny Rish's Motion in Limine to Exclude Plaintiffs' Life Care Expert, Kathleen Hartmann, R.N...Defendant Jenny Rish's Motion in Limine to Exclude Duplicative and Cumulative Testimony

Following arguments by Mr. Wall, Mr. Lewis and Mr. Rogers, Court Stated Its Findings and ORDERED,

As to Plaintiff's Omnibus Motion in Limine: 1. Prior and Subsequent Unrelated Accidents, Injuries and Medical Conditions and Prior and Subsequent Claims or Lawsuits, GRANTED. 2. Reference to William Being a Malingerer, Magnifying Symptoms or Manifesting Secondary Gain Motives Should tie Excluded, GRANTED. 3. Treating Physicians Do Not Need to Prepare Expert Reports Separate From and
in Addition to Their Medical Records and Dictated Reports, GRANTED. 4. References to Defense Medical Examiners as Independent. . There being no opposition, motion GRANTED. 6. References to Collateral Sources of Payment of Medical Bills and All Other
Expenses, Including Health Insurance, Liens and/or Medicare, GRANTED. 7. Evidence of When Plaintiff Retained Counsel, GRANTED. 8. Closing Argument, There being no opposition, motion GRANTED.

As to Defendant Jenny Rish's Motion in Limine to Exclude the Traffic Accident Report and the Investigating Officer's Conclusions, motion GRANTED.

As to Defendant Jenny Rish's Motion to Preclude Argument of the Case During Voir Dire, motion, GRANTED IN PART base on counsel's statements and representations. Court will play by ear.

As to Defendant Jenny Rish's Motion in Limine to Preclude Witnesses from Offering Testimony Regarding the Credibility or Veracity of Other Witnesses, GRANTED. Court notes non-opposition filed.

As to Defendant Jenny Rish's Motion in Limine to Exclude Duplicative and Cumulative Testimony, DENIED.

As to Defendant Jenny Rish's Motion to Exclude the Report and Opinions Plaintiff s Economist Stan V. Smith, GRANTED as it relates to loss of business earnings; DENIED with respect to loss of housekeeping, household services; and DENIED as to reduction in value of life; and DENIED as to society and relationship.

As to Defendant Jenny Rish's Motion in Limine to Exclude Graphic and Lurid Video or Animated Depictions of Surgical Procedures, GRANTED IN PART; GRANTED as to bloody lurid depictions of spinal surgery and DENIED as to actual photos that aren t bloody or lurid or in the alternative animated videos.

FURTHER COURT ORDERED, remaining motions CONTINUED.

02/22/11 9:00 AM Defendant Jenny Rish's Motion in Limine to Prevent Plaintiff from Arguing Responsibility Avoidance...Defendant Jenny Rish's Motion in Limine Enforcing the Abolition of the

Treating Physician Rule...Defendant Jenny Rish's Motion in Limine to Limit the Testimony of Plaintiff's Treating Physicians...Defendant's Motion in Limine to Preclude Plaintiffs' Medical Providers and Experts from Testifying Regarding New or Undisclosed Medical Treatment and Opinions...Defendant's Motion in Limine to Exclude Evidence of Senate Investigation...Defendant Jenny Rish's Motion to Preclude Argument of the Case During Voir Dire...Defendant Jenny Rish's Motion to Exclude the Report and Opinions Plaintiff's Accident Reconstruction Expert, David Ingebretsen... Defendant Jenny Rish's Motion in Limine to Exclude Plaintiffs' Life Care Expert, Kathleen Hartmann, R.N

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	February 22, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

February 22, 2011 **9:30 AM** **All Pending Motions**

HEARD BY: Walsh, Jessie COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Braegelmann

RECORDER: Victoria Boyd

REPORTER:

PARTIES
PRESENT:

Eglet, Robert T.	Attorney
Rogers, Stephen H	Attorney
Wall, David T	Attorney

JOURNAL ENTRIES

- Defendant Jenny Rish's Motion in Limine to Exclude Plaintiffs' Life Care Expert, Kathleen Hartmann, R.N....Defendant Jenny Rish's Motion to Exclude the Report and Opinions Plaintiff's Accident Reconstruction Expert, David Ingebretsen...Defendant's Motion in Limine to Exclude Evidence of Senate Investigation...Defendant's Motion in Limine to Preclude Plaintiffs' Medical Providers and Experts from Testifying Regarding New or Undisclosed Medical Treatment and Opinions...Defendant Jenny Rish's Motion in Limine Enforcing the Abolition of the Treating Physician Rule...Defendant Jenny Rish's Motion in Limine to Prevent Plaintiff from Arguing Responsibility Avoidance...Plaintiff's Motion to Exclude Sub Rosa Video

Argument by Mr. Rogers in support of Defendant Jenny Rish's Motion in Limine to Exclude Plaintiffs' Life Care Expert, Kathleen Hartmann, R.N, stating Ms. Hartmann is a nurse and is not qualified to give an opinion as to future medical care. Further Ms. Hartman prepared a report for future treatment that is not supported any medical doctors. Further counsel requested her report and testimony should be excluded. Argument in opposition by Mr. Wall, defendant s disagreements with Ms. Harmann is subject to cross examination. Further, plaintiff is still treating and whatever is established is correlated to a cost. Additionally, Mr. Wall requested the motion be denied without prejudice until time of testimony. Following further arguments by counsel, COURT ORDERED,

Defendant Jenny Rish's Motion in Limine to Exclude Plaintiffs' Life Care Expert, Kathleen Hartmann, R.N, DENIED WITHOUT PREJUDICE.

Argument by Mr. Rogers in support of Deft. Jenny Rish's Motion to Exclude the Report and Opinions Plaintiff's Accident Reconstruction Expert, David Ingebretsen, stating Mr. Ingebretsen's opinions offered in the report, establishes that he is offering up himself as an expert. Further argument stating Mr. Ingebretsen doesn't comply with Hallmark. Argument in opposition by Mr. Wall requesting to deny outright or in the alternative to let counsel lay the foundation for his testimony outside the presence. Following further arguments by counsel, COURT ORDERED motion DENIED. Deft. Jenny Rish's Motion to Exclude the Report and Opinions Plaintiff's Accident Reconstruction Expert, David Ingebretsen, Court notes Mr. Ingebretsen can't testify as to medical causation, but assuming he stays within his scope of expertise and assuming that a proper foundation can be laid, Court is not inclined to Strike him as a witness all together. Counsel can object if needed.

Argument by Mr. Rogers in support of Defendant Jenny Rish's Motion in Limine to Prevent Plaintiff from Arguing Responsibility Avoidance. Upon Court's inquiry, Mr. Eglet stated this issue always comes up. Colloquy regarding Jury questionnaire. Following arguments by counsel, COURT ORDERED Defendant Jenny Rish's Motion in Limine to Prevent Plaintiff from Arguing Responsibility Avoidance, GRANTED IN PART AND DENIED IN PART. Counsel can't argue to the jury this issue. Counsel can follow up to a question.

Argument by Mr. Rogers in support of Defendant's Motion in Limine to Exclude Evidence of Senate Investigation, stating investigation evidence is not admissible. Further counsel stated plaintiff's submitted a stipulation seeking preclusion as to doctors and local attorneys and defense will stipulate if the preclusion is applied evenly. Court noted it sounds like court ruled on this previously. Mr. Wall stated he wasn't aware of Mr. Roger's request until just now. Following further arguments by counsel, Court noted it would like to see a supplemental opposition. Mr. Wall to submit the supplemental by Thursday 02/24/11, and Mr. Rogers will reply by Friday 02/25/11. COURT ORDERED, matter CONTINUED.

As to Defendant Jenny Rish's Motion in Limine Enforcing the Abolition of the Treating Physician Rule, COURT PREVIOUSLY RULED ON THIS MATTER.

As to Defendant's Motion in Limine to Preclude Plaintiffs' Medical Providers and Experts from Testifying Regarding New or Undisclosed Medical Treatment and Opinions, motion DENIED.

As to Defendant Jenny Rish's Motion to Preclude Argument of the case during Voir Dire, COURT PREVIOUSLY RULED ON THIS.

Mr. Wall advised there is a 247 stipulation as to 12-15 motion that hasn't been signed yet. Mr. Rogers advised he will get to that today. Mr. Rogers advised one of the defense expert will be out of the country and will only be here on the March 18th. Court noted it shares the courtroom with Judge Wiese and it will have to be an afternoon witness.

FURTHER COURT ORDERED, Plaintiff's Motion to Exclude Sub Rosa Video, CONTINUED.

03/01/11 9:00 AM Plaintiff's Motion to Exclude Sub Rosa Video...
Defendant's Motion in Limine to Exclude Evidence of Senate Investigation

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	March 01, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

March 01, 2011 **9:00 AM** **All Pending Motions**

HEARD BY: Walsh, Jessie **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Sandra Harrell

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Adams, Robert M	Attorney
Rogers, Stephen H	Attorney
Wall, David T	Attorney

JOURNAL ENTRIES

- PLAINTIFF'S MOTION IN LIMINE TO (1) PRECLUDE DEFENDANT FROM RAISING A "MINOR" OR "LOW IMPACT" DEFENSE; (2) LIMIT THE TRIAL TESTIMONY OF DEFENDANT'S EXPERT DAVID FISH M.D. AND; (3) EXCLUDE EVIDENCE OF PROPERTY DAMAGE...DEFENDANT JENNY RISH'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF SENATE INVESTIGATION...PLAINTIFF'S MOTION TO EXCLUDE SUB ROSA VIDEO

PLAINTIFF'S MOTION IN LIMINE TO (1) PRECLUDE DEFENDANT FROM RAISING A "MINOR" OR "LOW IMPACT" DEFENSE; (2) LIMIT THE TRIAL TESTIMONY OF DEFENDANT'S EXPERT DAVID FISH M.D. AND; (3) EXCLUDE EVIDENCE OF PROPERTY DAMAGE:

Mr. Wall argued Dr. Fish cannot testify as to bio-mechanics. Further, Defense has no expert to testify about bio-mechanics, therefore, photos and damage estimates are irrelevant - jury can't speculate. Mr. Rogers argued Plaintiff signed admission that photos are authentic, also signed amount of property damage as accurate. Further, statement by Plaintiff of 55 mile per hour impact not true - all are relevant and do not require expert testimony. COURT FINDS if Defense had a witness, accident reconstructionist or bio-mechanical engineer then photos and damage estimates come in, but Dr. Fish or any medical doctor may not testify because there appears to be minimal property damage.

COURT ORDERED, Motion GRANTED in its entirety.

PLAINTIFF'S MOTION TO EXCLUDE SUB ROSA VIDEO:

COURT NOTED it has not viewed the surveillance video. Mr. Wall argued video admitted only for impeachment purposes and report is hearsay. As an alternative, Mr. Wall requested Court defer ruling until after direct examination, then make determination. Mr. Rogers argued Plaintiff testified to disabling pain preventing him from working, however, surveillance is at workplace and shows Plaintiff lifting heavy machine and changing tire - clearly probative. COURT NOTED if video impeaches witness testimony then admissible or portions are admissible, however, since Court has not seen video or heard witness testimony, Court not in position to rule and will DEFER until after Plaintiff testifies, then Court should have opportunity to review video. Mr. Wall requested not be used during opening. Mr. Rogers argued doctor reports Plaintiff disabled. Mr. Rogers advised he will provide video to Court today.

DEFENDANT JENNY RISH'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF SENATE INVESTIGATION:

Mr. Rogers argued Senate investigation of Dr. Wong was withdrawn and not admissible - no evidence of bias - evidence more prejudicial that probative and disclosed after discovery deadline. Mr. Wall advised may be two separate issues or investigations. Further, there are factual ties - Dr. Wong works for UCLA and failed to disclose financial relationships and is conflict of interest. Mr. Roger argued only submitted incomplete form. COURT ORDERED, Motion GRANTED.

Mr. Wall and Mr. Rogers to prepare their respective Orders.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	March 04, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

March 04, 2011 **9:00 AM** **Calendar Call**

HEARD BY: Walsh, Jessie COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Braegelmann

RECORDER: Victoria Boyd

REPORTER:

PARTIES
PRESENT:

Adams, Robert M	Attorney
Rogers, Stephen H	Attorney
Wall, David T	Attorney

JOURNAL ENTRIES

- Counsel announced ready for trial. Further they will need 10-15 days for trial with jury questionnaire. Counsel advised they will need the following equipment: Elmo and screen.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	March 08, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

March 08, 2011 **9:00 AM** **Omnibus Motion in Limine**

HEARD BY: Walsh, Jessie **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Braegelmann

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:
Myers, Bradley J. Attorney
Rogers, Stephen H Attorney

JOURNAL ENTRIES

- Following argument by Mr. Myers in support of Plaintiff's Omnibus motion in Limine and Opposition by Mr. Rogers, Court Stated its Findings and ORDERED; As to 1. Prior and Subsequent Unrelated Accidents, Injuries and Medical Conditions and Prior and Subsequent Claims or Lawsuits, GRANTED IN PART; GRANTED as to Class Action and DENIED as to Cancerous Tumor. As to 2. Hypothetical Medical Condition, GRANTED as Pled. As to 3. Evidence of the Absence of Medical Records for Any Period of Time Prior to the Accident, GRANTED as Drafted. As to 4. Any Reference to an Alleged Federal Grand Jury Investigation into Doctors and Lawyers in Las Vegas, Court previously GRANTED. As to 5. Reference to Attorney Advertising, GRANTED. Mr. Myers to prepare the order and submit to opposing counsel for review before final submission to the court.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	March 14, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

March 14, 2011 **1:00 PM** **Jury Trial**

HEARD BY: Walsh, Jessie COURTROOM: RJC Courtroom 14B

COURT CLERK: Alan Castle

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Adams, Robert M	Attorney
Eglet, Robert T.	Attorney
Eglet, Tracy A.	Attorney
Rish, Jenny	Defendant
Rogers, Stephen H	Attorney
	Attorney
Simao, Cheryl A	Plaintiff
Simao, William J	Plaintiff
Wall, David T	Attorney

JOURNAL ENTRIES

- Jury Selection begins. Evening recess.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	March 15, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

March 15, 2011 **1:00 PM** **Jury Trial**

HEARD BY: Walsh, Jessie COURTROOM: RJC Courtroom 14B

COURT CLERK: Phyllis Irby

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Adams, Robert M	Attorney
Eglet, Robert T.	Attorney
Eglet, Tracy A.	Attorney
Rish, James	Defendant
Rish, Jenny	Defendant
Rogers, Stephen H	Attorney
	Attorney
Simao, Cheryl A	Plaintiff
Simao, William J	Plaintiff
Wall, David T	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY. Counsel has some scheduling issues. Prospective Jurors present. Jurors excused for the evening. COURT ORDERED, MATTER CONTINUED.

3-16-11 1:00 PM JURY TRIAL (DEPT. X)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	March 16, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

March 16, 2011 **1:00 PM** **Jury Trial**

HEARD BY: Walsh, Jessie **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Phyllis Irby

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Adams, Robert M	Attorney
Eglet, Robert T.	Attorney
Eglet, Tracy A.	Attorney
Rish, James	Defendant
Rish, Jenny	Defendant
Rogers, Stephen H	Attorney
	Attorney
Simao, Cheryl A	Plaintiff
Simao, William J	Plaintiff
Wall, David T	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY. Mr. Eglet informed the Court one of his witnesses is having family issues and there may not be a witness for Monday. Colloquy regarding prospective jurors proving hardships. JURY PRESENT. OUTSIDE THE PRESENCE OF THE JURY. Pltf requested to dismiss 3 jurors. MOTION GRANTED. JURY PRESENT. Perspective jurors excused for the evening. COURT ORDERED, MATTER CONTINUED.

3-17-11 1:00 PM JURY TRIAL (DEPT. X)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	March 17, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

March 17, 2011 **1:00 PM** **Jury Trial**

HEARD BY: Walsh, Jessie **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Phyllis Irby

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Adams, Robert M	Attorney
Eglet, Robert T.	Attorney
Eglet, Tracy A.	Attorney
Rish, James	Defendant
Rish, Jenny	Defendant
Rogers, Stephen H	Attorney
	Attorney
Simao, Cheryl A	Plaintiff
Simao, William J	Plaintiff
Wall, David T	Attorney

JOURNAL ENTRIES

- PROSPECTIVE JURORS PRESENT. OUTSIDE THE PRESENCE OF THE JURY. Parties agree to make juror appearing late the last juror. COURT CONCURRED. Jury recessed for the evening. COURT ORDERED, MATTER CONTINUED.

3-17-11 1:00 PM JURY TRIAL (DEPT. X)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	March 18, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

March 18, 2011 **1:00 PM** **Jury Trial**

HEARD BY: Walsh, Jessie **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Phyllis Irby

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Adams, Robert M	Attorney
Eglet, Robert T.	Attorney
Eglet, Tracy A.	Attorney
Rish, James	Defendant
Rish, Jenny	Defendant
Rish, Linda	Defendant
Rogers, Stephen H	Attorney
	Attorney
Simao, Cheryl A	Plaintiff
Simao, William J	Plaintiff
Wall, David T	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY. Arguments of counsel. Mr. Rogers argued for a mistrial stated Mr. Eglet has tainted the jury for 4 days, COURT ORDERED, MOTION DENIED. JURY PRESENT. OUTSIDE THE PRESENCE OF THE JURY. Mr. Rogers requested a mistrial and to start over with a new jury. MOTION DENIED. JURY PRESENT. Jury selected and sworn. OUTSIDE THE PRESENCE OF THE JURY. Mr. Rogers argued regarding Deft. being allowed to testify about the impact of the accident. MOTION DENIED. COURT ORDERED, MATTER CONTINUED.

3-21-11 1:00 PM JURY TRIAL (DEPT. X)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	March 21, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

March 21, 2011 **1:00 PM** **Jury Trial**

HEARD BY: Walsh, Jessie **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Phyllis Irby

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Adams, Robert M	Attorney
Eglet, Robert T.	Attorney
Eglet, Tracy A.	Attorney
Rish, James	Defendant
Rish, Jenny	Defendant
Rish, Linda	Defendant
Rogers, Stephen H	Attorney
	Attorney
Simao, Cheryl A	Plaintiff
Wall, David T	Attorney

JOURNAL ENTRIES

- JURY PRESENT. Court instructed the jury. Opening statements. OUTSIDE THE PRESENCE OF THE JURY. Arguments of counsel regarding using the word "CRASH" during testimony. MOTION DENIED. JURY PRESENT. OUTSIDE THE PRESENCE OF THE JURY. Mr. Eglet stated Mr. Rogers has tainted the jury by not following the Court's pre-trial Orders. JURY PRESENT. COURT ORDERED, MATTER CONTINUED.

3-22-11 1:00 PM JURY TRIAL (DEPT. X)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	March 22, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

March 22, 2011 **1:00 PM** **Jury Trial**

HEARD BY: Walsh, Jessie **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Phyllis Irby

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Adams, Robert M	Attorney
Eglet, Robert T.	Attorney
Eglet, Tracy A.	Attorney
Rish, James	Defendant
Rish, Jenny	Defendant
Rish, Linda	Defendant
Rogers, Stephen H	Attorney
	Attorney
Simao, Cheryl A	Plaintiff
Wall, David T	Attorney

JOURNAL ENTRIES

- JURY PRESENT. OUTSIDE THE PRESENCE OF THE JURY. Colloquy between counsel regarding Dr. Lacks testimony about medical cause. MOTION DENIED. JURY PRESENT. Testimony and exhibits presented (see worksheets.) COURT ORDERED, MATTER CONTINUED.

3-23-11 1:00 PM JURY TRIAL (DEPT. X)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	March 23, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

March 23, 2011 **1:00 PM** **Jury Trial**

HEARD BY: Walsh, Jessie **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Phyllis Irby

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Adams, Robert M	Attorney
Eglet, Robert T.	Attorney
Eglet, Tracy A.	Attorney
Rish, James	Defendant
Rish, Jenny	Defendant
Rish, Linda	Defendant
Rogers, Stephen H	Attorney
	Attorney
Simao, Cheryl A	Plaintiff
Wall, David T	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY. Mr. Michaelek objected to yesterday's witness; stated he wasn't an expert requested he not be allowed to testify as an expert. MOTION DENIED. JURY PRESENT. COURT ORDERED, MATTER CONTINUED.

3-24-11 1:00 PM JURY TRIAL (DEPT. X)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	March 24, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

March 24, 2011 **1:00 PM** **Jury Trial**

HEARD BY: Walsh, Jessie COURTROOM: RJC Courtroom 14B

COURT CLERK: Phyllis Irby

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Adams, Robert M	Attorney
Eglet, Robert T.	Attorney
Eglet, Tracy A.	Attorney
Rish, James	Defendant
Rish, Jenny	Defendant
Rish, Linda	Defendant
Rogers, Stephen H	Attorney
	Attorney
Simao, Cheryl A	Plaintiff
Wall, David T	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY. Mr. Eglet stated Dr. Fish isn't qualified in expertise of spinal management or spinal surgery and shouldn't be allowed to testify in these areas. MOTION GRANTED. JURY PRESENT. Testimony and exhibits presented (see worksheets.) COURT ORDERED, MATTER CONTINUED.

3-25-11 1:00 PM JURY TRIAL (DEPT. X)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	March 25, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

March 25, 2011 **1:00 PM** **Jury Trial**

HEARD BY: Walsh, Jessie COURTROOM: RJC Courtroom 14B

COURT CLERK: Phyllis Irby

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Adams, Robert M	Attorney
Eglet, Robert T.	Attorney
Eglet, Tracy A.	Attorney
Rish, James	Defendant
Rish, Jenny	Defendant
Rish, Linda	Defendant
Rogers, Stephen H	Attorney
	Attorney
Simao, Cheryl A	Plaintiff
Simao, William J	Plaintiff
Wall, David T	Attorney

JOURNAL ENTRIES

- JURY PRESENT. OUTSIDE THE PRESENCE OF THE JURY. Argument of counsel. Testimony and exhibits presented (see worksheet.) COURT ORDERED. MATTER CONTINUED.

3-38-11 1:00 PM JURY TRIAL (DEPT. X)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	March 28, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

March 28, 2011 **1:00 PM** **Jury Trial**

HEARD BY: Walsh, Jessie COURTROOM: RJC Courtroom 14B

COURT CLERK: Phyllis Irby

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Adams, Robert M	Attorney
Eglet, Robert T.	Attorney
Eglet, Tracy A.	Attorney
Rish, James	Defendant
Rish, Jenny	Defendant
Rogers, Stephen H	Attorney
	Attorney
Simao, Cheryl A	Plaintiff
Simao, William J	Plaintiff
Wall, David T	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY, argument of counsel. JURY PRESENT. Testimony and exhibits presented (see worksheet.). COURT ORDERED, MATTER CONTINUED.

3-29-11 1:00 PM JURY TRIAL (DEPT. X)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	March 29, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

March 29, 2011 **1:00 PM** **Jury Trial**

HEARD BY: Walsh, Jessie **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Phyllis Irby

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Adams, Robert M	Attorney
Eglet, Robert T.	Attorney
Eglet, Tracy A.	Attorney
Rish, James	Defendant
Rish, Jenny	Defendant
Rish, Linda	Defendant
Rogers, Stephen H	Attorney
	Attorney
Simao, Cheryl A	Plaintiff
Wall, David T	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY, argument by counsel regarding Mr. Rogers wants to show slide show of anatomy of spinal cord. Mr. Eglet opposed. MOTION DENIED. JURY PRESENT. Testimony and exhibits presented (see worksheet.). COURT ORDERED, MATTER CONTINUED.

3-30-11 1:00 PM JURY TRIAL (DEPT. X)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	March 30, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

March 30, 2011 **1:00 PM** **Jury Trial**

HEARD BY: Walsh, Jessie **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Phyllis Irby

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Adams, Robert M	Attorney
Eglet, Robert T.	Attorney
Eglet, Tracy A.	Attorney
Rish, James	Defendant
Rish, Jenny	Defendant
Rish, Linda	Defendant
Rogers, Stephen H	Attorney
	Attorney
Simao, Cheryl A	Plaintiff
Wall, David T	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY, argument of counsel regarding scheduling of witnesses. JURY PRESENT. Testimony and exhibits presented (see worksheet.) COURT ORDERED,. MATTER CONTINUED.

3-31-11 1:00 PM JURY TRIAL (DEPT. X)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	March 31, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

March 31, 2011 **1:00 PM** **Jury Trial**

HEARD BY: Walsh, Jessie **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Braegelmann

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Adams, Robert M	Attorney
Eglet, Robert T.	Attorney
Polsenberg, Daniel F.	Attorney
Rish, James	Defendant
Rish, Jenny	Defendant
Rogers, Stephen H	Attorney
	Attorney
Simao, Cheryl A	Plaintiff
Simao, William J	Plaintiff
Wall, David T	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Mr. Adams advised there are some housekeeping issues that need to be resolved and submitted stipulation and order dismissing defendants James Rish and Linda Rish with prejudice. Stipulation SIGNED and FILED IN OPEN COURT. Arguments by counsel regarding Dr. Wang's testimony out of order. Mr. Wall advised deft. may be trying to force a mistrial. Colloquy regarding Court's schedule and order of witnesses. Mr. Eglet moved to exclude Deft's daughter, Linda Rish from testifying. Argument by Mr. Rogers in opposition. Following arguments by counsel, COURT ORDERED motion GRANTED.

INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits presented. (See worksheets).

OUTSIDE THE PRESENCE OF THE JURY: Argument by Mr. Wall as to Deft's continued violations and requested sanctions. Argument by Mr. Rogers on opposition. Mr. Wall requested to have the answer stricken dismiss the jury and proceed to prove up damages. Argument by Mr. Eglet as to the violations and court's curative instruction to the jury and order on rebuttable presumption. Following further arguments by counsel. Mr. Wall advised he would put the statutes as to the Young factors on the record. Following brief recess, Court Stated Its Findings and ORDERED ANSWER STRICKEN.

Court Stated Its Findings and ORDERED, ANSWER STRICKEN.

INSIDE THE PRESENCE OF THE JURY: Court thanked and excused the jury.

OUTSIDE THE PRESENCE OF THE JURY: Argument by Mr. Wall in support of rule 55 motion and prove up hearing. Argument by Mr. Polsenburg in opposition requesting to brief the matter and have a jury for the damages hearing. Further argument by Mr. Wall stating most of the witnesses have been examined and evidence presented. Mr. Polsenberg requested a mistrial and prove-up on liability. Argument by Mr. Adams as to the Life care plan. Following further arguments by counsel, COURT ORDERED, matter SET for Prove-up Hearing. Counsel stipulated to exhibits 1-58. COURT SO ORDERED.

04/01/11 1:00 PM HEARING: PROVE-UP (DAMAGES)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	April 01, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

April 01, 2011 **1:00 PM** **Hearing**

HEARD BY: Walsh, Jessie **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Billie Jo Craig

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT:

Adams, Robert M	Attorney
Polsenberg, Daniel F.	Attorney
Rish, James	Defendant
Rish, Jenny	Defendant
Rogers, Stephen H	Attorney
	Attorney
Simao, Cheryl A	Plaintiff
Simao, William J	Plaintiff
Wall, David T	Attorney

JOURNAL ENTRIES

- Damages presented by counsel. Arguments by counsel. At request of counsel, COURT ORDERED, counsel to submit additional briefing on fees and costs simultaneously on 4/15/11. Matter SET for Status Check: Fees and Costs on the Chambers Calendar. Court will order additional briefing if necessary. There will be no further hearings.

4/28/11 STATUS CHECK: FEES AND COSTS - CHAMBERS

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	April 28, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

April 28, 2011 **3:00 AM** **Status Check**

HEARD BY: Walsh, Jessie COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Braegelmann

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- Following review of the papers and pleadings on file herein, COURT ORDERED motion DENIED WITHOUT PREJUDICE, for plaintiff to provide further briefing that fees should be awarded pursuant to plaintiff's offer of judgment.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	June 02, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

June 02, 2011 **3:00 AM** **Motion to Retax**

HEARD BY: Walsh, Jessie COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Braegelmann

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- Following review of the papers and pleadings on file herein, COURT ORDERED motion DENIED. Defendant's provide absolutely no analysis. They do not argue that plaintiff's expert fees were not reasonable, necessary or actually incurred. Defendant s simply argue that the fees must be retaxed because they exceed the 1500 threshold. Given the plain language of NRS 18.005 (5), which authorizes an award beyond the 1500 for good cause shown, Defendant s argument is unavailing. Defendant's correctly point out that it is plaintiff's burden to establish the reasonableness and necessity of these costs, however, plaintiff's pleadings do just that.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	June 07, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

June 07, 2011 **9:00 AM** **Motion to Quash**

HEARD BY: Walsh, Jessie COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Braegelmann

RECORDER: Victoria Boyd

REPORTER:

PARTIES
PRESENT: Rogers, Stephen H Attorney
Attorney
Wall, David T Attorney

JOURNAL ENTRIES

- Argument by Mr. Wall in support of Plaintiffs' Motion to Quash Defendant's Subpoena Duces Tecum to Jans-Jorg Rosler, M.D. at Nevada Spine Institute, stating discovery is closed, and the trial has been completed. Further, counsel stated they provided a copy on 04/15/11, and there are no grounds for deft. to get the original. Argument by Mr. Roger's stating the duplicate copy produced is indiscernible. Further argument by Mr. Wall, stating there is no more discovery and the case is done. Court Stated Its Findings and ORDERED, motion GRANTED. Mr. Rogers requested to couch this issue, as a continuance of the previous order for a legible copy. Court noted it has made its ruling. Mr. Wall to prepare the order and submit to opposing counsel for review before final submission to the court.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	July 21, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

July 21, 2011 **3:00 AM** **Motion for Attorney Fees**

HEARD BY: Walsh, Jessie COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Braegelmann

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- Following review of the papers and pleadings on file herein, COURT ORDERED motion GRANTED pursuant to NRS 17.115 and NRCP 68, Bettie v. Thomas, 99 Nev. 579, John W. Muije Ltd.v. Cummings, 106 Nev, 664, University of Nevada v. Tarkanian, 110 Nev. 581. This case involved a rear end collision that caused serious injury where liability was not disputed. When plaintiffs served the offer, Mr. Simao was still treating for his neck pain and a cervical spine fusion had been recommended. The claim was brought in good faith and the offer of judgment was reasonable and in good faith in both its timing and amount. Defendant admits that the medical damages were over $170,000, sometime after the cervical spinal fusion, yet their best offer was a measly $42,500 in October, 2009. Defendant s decision to reject plaintiffs offer was unreasonable, given the fact that liability was uncontested, and given the lack of evidence that this was a "minor impact".

The court awards attorneys fees pursuant to NRS 17.115 and NRCP 68, calculated from the date the offer was rejected, using the lodestar method with a multiplier of 2.5, which reflects the exceptional quality of the legal work, the contingent risk and the extraordinary results. Brunzell. The fees sought are reasonable and justified, especially given the number of hours worked, the qualities of the advocates, the thorough preparation and the results. The plaintiffs are entitled to prejudgment interest pursuant to NRCP 68(f)(2) and NRS 17.115. There is nothing punitive about applying interest to a judgment. It is equitable to note the time value of money which serves to safeguard defendants from being able to lessen their liability simply by drawing out cases for as long as possible.

Prevailing party to draft an order for the court's signature.

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	July 21, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

July 21, 2011 **3:00 AM** **All Pending Motions**

HEARD BY: Walsh, Jessie COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Braegelmann

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- Plaintiff's Motion for Attorney Fees...Deft's Motion for new trial

Following review of the papers and pleadings on file herein, COURT ORDERED, NEW TRIAL DENIED.

CLERK'S NOTE: Minutes corrected to reflect new order./pi (8-5-11)

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto	COURT MINUTES	August 11, 2011

07A539455 William Simao, Cheryl Simao
vs
Jenny Rish

August 11, 2011 **3:00 AM** **Motion to Compel**

HEARD BY: Walsh, Jessie COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Braegelmann

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- Following review of the papers and pleadings on file herein, COURT ORDERED motion DENIED. Deft. cites no legal authority to support her position that she must have the original, rather that a copy of the fluoroscopy images (which she had previously been provided). Further, Court notes that Mr. Simao is still treating with Dr. Rusler, who maintains the original images.

PLAINTIFFS' EXHIBIT LIST

TRIAL DATE: MARCH 14, 2011

Case No. **A539455**	Clerk: T. Braegelmann
Dept. **X** Judge: **Jessie Walsh**	Recorder: Victoria Boyd
Pltf(s):	Pltfs' Counsel:
WILLIAM J. SIMAO and CHERYL ANN SIMAO	ROBERT T. EGLET, ESQ.
	DAVID T. WALL, ESQ.
	ROBERT M. ADAMS, ESQ.
Deft(s):	Deft's Counsel:
JENNY RISH; JAMES RISH; LINDA RISH; individually	STEPHEN H. ROGERS, ESQ.
and DOES I though V; and ROE CORPORATIONS I through V,	

Exhibit No.	Description	Date Offered	Obj.	Adm.	Date Admitted
1.	Medical Specials Summary	3-31-11	Stip		3-31-11
2.	Medical Billing of Southwest Medical Associates				
3.	Medical Billing of Steinberg Diagnostic Medical Imaging				
4.	Medical Billing of Desert Valley Therapy				
5.	Medical Billing of Apria Healthcare				
6.	Medical Billing of Nevada Orthopedic & Spine Center				
7.	Medical Billing of Las Vegas Surgery Center				
8.	Medical Billing of Medical District Surgery Center				
9.	Medical Billing of University Medical Center				
10.	Medical Billing of Nevada Spine Clinic				
11.	Medical Billing of Newport MRI				
12.	Medical Billing of Center for Spine and Special Surgery				
13.	Medical Billing of Nevada Anesthesia Consultants				
14.	Medical Billing of Las Vegas Radiology				
15.	Medical Billing of PBS Anesthesia				
16.	Medical Billing of Hans Jorg Rosler, M.D.				
17.	Medical Billing of CVS Pharmacy				
18.	Medical Records of Southwest Medical Associates				
19.	Medical Records of Steinberg Diagnostic Medical Imaging	↓	↓		↓

20.	Medical Records of Desert Valley Therapy	3-31-11	Stip	3-31-11
21.	Medical Records of Apria Healthcare			
22.	Medical Records of Nevada Orthopedic & Spine Center			
23.	Medical Records of Las Vegas Surgery Center			
24.	Medical Records of Medical District Surgery Center			
25.	Medical Records of University Medical Center			
26.	Medical Records of Nevada Spine Clinic			
27.	Medical Records of Newport MRI			
28.	Medical Records of Center for Spine and Special Surgery			
29.	Medical Records of Nevada Anesthesia Consultants			
30.	Medical Records of Las Vegas Radiology			
31.	Medical Records of PBS Anesthesia			
32.	Medical Records of Hans Jorg Rosler, M.D.			
33.	X-Rays of the Cervical Spine Taken at Southwest Medical Associates on 04/15/05			
34.	X-Rays of the Left Elbow and Left Forearm Taken at Southwest Medical Associates on 04/15/05			
35.	CT Scans of the Brain Taken at Southwest Medical Associates on 05/11/05			
36.	MRI Scans of the Brain Taken at Steinberg Diagnostic Medical Imaging Center on 05/23/05			
37.	X-Rays of the Left Shoulder Taken at Southwest Medical Associates on 10/18/05			
38.	X-Rays of the Cervical Spine Taken at Southwest Medical Associates on 10/18/05			
39.	MRI Scans of the Cervical Spine Taken at Steinberg Diagnostic Medical Imaging Center on 03/22/06			
40.	MRI Scans of the Cervical Spine Taken at Steinberg Diagnostic Medical Imaging Center on 09/24/07			
41.	X-Rays of the Chest Taken at Southwest Medical Associates on 10/05/07			
42.	CT Scans of the Mandible Taken at Southwest Medical Associates on 04/15/08			
43.	MRI Scans of the Cervical Spine Taken at Nevada Spine Clinic on 04/30/08			
44.	X-Rays of the Cervical Spine Taken at Nevada Spine Clinic on 06/17/08			
45.	CT Scans of the Cervical Spine Taken at Nevada Spine Clinic on 08/08/08			

		Offer	Stip		Admit
46.	MRI Scans of the Cervical Spine Taken at Steinberg Diagnostic Medical Imaging Center on 11/06/08	3-31-11			3-31-11
47.	X-Rays of C3-C4 and C4-C5 Bilateral Transforaminal Epidural Injections Taken at University Medical Center on 02/13/09				
48.	X-Rays of the Chest Taken at Southwest Medical Associates on 03/19/09				
49.	X-Rays of the Cervical Spine Taken at University Medical Center 03/25/09				
50.	CT Scans of the Brain Taken at Southwest Medical Associates on 04/13/09				
51.	X-Rays of the Cervical Spine Taken at Nevada Orthopedic and Spine Center on 04/14/09				
52.	X-Rays of the Cervical Spine Taken at Nevada Orthopedic and Spine Center on 05/26/09				
53.	X-Rays of the Cervical Spine Taken at Nevada Orthopedic and Spine Center on 07/14/09				
54.	CT Scans of the Cervical Spine Taken at Steinberg Diagnostic Medical Imaging Center on 08/11/09				
55.	MRI Scans of the Cervical Spine Taken at Steinberg Diagnostic Medical Imaging Center on 08/11/09				
56.	X-Rays of the Cervical Spine Taken at Southwest Medical Associates on 01/11/10				
57.	X-Rays of the Cervical Spine Taken at Nevada Orthopedic and Spine Center on 03/23/10				
58.	CD Containing MRI Scans of the Cervical Spine taken at Steinberg Diagnostic Medical Imaging Center on 02/03/11				
59.	Life Expectancy Table	3/29/11	Y	Y	3/29/11
60.	Defendant's Responses to Plaintiffs' First Set of Interrogatories, Dated October 17, 2008				
61.	Defendant's Responses to Plaintiffs' First Set of Requests for Admissions, dated October 17, 2008				
62.	Plaintiffs' Complaint				
63.	Defendants' Answer to Plaintiff's Complaint				
64.	LARGE POSTER PAPER DIAGRAM	3/23/11	N	N	3/23/11
65.	" " " "	3/23/11	N	N	3/23/11
66.					
67.	LARGE POSTER PAPER DIAGRAM	3/29/11	Y	Y	3/29/11
68.	LARGE POSTER PAPER DIAGRAM	3/30/11	N	N	3/29/11
69.					
70.					

	DEMONSTRATIVE EXHIBITS				
71.	Actual cervical plates, screws surgical tools, and surgical equipment as used in Plaintiff's medical treatment and anticipated to be used in future treatment;				
72.	Demonstrative and actual photographs, animations and videos of surgical procedures and other diagnostic tests Plaintiff has undergone and will undergo in the future;				
73.	Actual diagnostic studies and computer digitized diagnostic studies				
74.	Samples of tools used in surgical procedures				
75.	Diagrams, drawings, pictures, photos, film, video, DVD and CD ROM of various parts of the human body, diagnostic tests and surgical procedures;				
76.	Computer simulation, finite element analysis, mabymo and similar forms of computer visualization				
77.	Power point images/drawings/diagrams/animations/story boards, of the related vehicles involved, the parties involved, the location of the motor vehicle accident and what occurred in the motor vehicle accident.				
78.	Google Earth				
79.	Google Earth Images of Scene and Routes by Parties Prior to MVA				
80.	Pictures of Plaintiff prior and subsequent to the subject accident				
81.	Surgical Timeline				
82.	Medical treatment timeline				
83.	Future Medical Timeline				
84.	Charts depicting Plaintiff's Life Care Plans				
85.	Charts depicting Plaintiff's Loss of Household Services				
86.	Photographs of Plaintiff's Witnesses				
87.	Charts depicting Plaintiff's Life Expectancy				
88.	Story boards and computer digitized power point images;				
89.	Blow-ups/transparancies/digitized images of medical records, medical bills, photographs and other exhibits				
90.	Diagrams/story boards/computer re-enactment of motor vehicle accident				
91.	Diagrams of various parts of the human body related to Plaintiff's injuries				
92.	Photographs of various parts of the human body related to Plaintiff's injuries				

93.	Models of the human body related to Plaintiff's injuries				
94.	Samples of the needles and surgical tools used in Plaintiff's various diagnostic and therapeutic pain management procedures				
95.	Aerial views of the accident scene				

COURT'S EXHIBITS

CASE NO: A530455

	OFFERED DATE	OBJ	ADMITTED	DATE
1) PROSPECTIVE JURY LIST	3/18/11	✓	N	3/18/11
2) PROSPECTIVE JURORS CHART		✓	N	
3) PEREMPTORY CHALLENGES LIST		✓	N	
4) AMENDED JURY LIST		✓	N	3/21/11
5) JUROR QUESTION ASKED/ANSWERED	3/22/11	✓	N	3/22/11
6) " " " "		-		
7) " " " "		✓		
8) JUROR QUESTION ASKED/ANSWERED	3/22/11	✓	N	✓ 3/22/11
9) JUROR QUESTION ASKED/ANSWERED	3/23/11	✓	N	✓ 3/23/11
10) " " " "				
11) JUROR QUESTION ASKED/ANSWERED	3/24/11	✓	N	✓ 3/24/11
12) JUROR QUESTION ASKED/ANSWERED	3/25/11	✓	N	✓ 3/25/11
13) " " " "		-		-
14) " " " "		✓		✓
15) JUROR QUESTION ASKED/ANSWERED	3/28/11	✓	N	✓ 3/28/11
16) " " "	3/28/11	-	N	3/28/11
17) " " "	3/29/11	✓	N	3/29/11
18) JUROR QUESTION ASKED/ANSWERED	3/30/11	✓	N	3/30/11
19) " " " "	3/30/11	✓	N	3/30/11
20) " " " "	3/30/11	✓	N	3/30/11
21) " " " "	3/30/11	✓	N	3/30/11
22) INDEPENDENT RECORD REVIEW ADDENDUM	3/30/11	✓	N	3/30/11

Exhibit Sheet 5-01/jh

23) Juror Question 3/31/11 → 3/31/11

Certification of Copy

State of Nevada
County of Clark } **SS:**

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

SECOND AMENDED NOTICE OF APPEAL; SECOND AMENDED CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; DECISION AND ORDER REGARDING PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S ANSWER; NOTICE OF ENTRY OF ORDER; JUDGMENT; NOTICE OF ENTRY OF JUDGMENT; JUDGMENT; NOTICE OF ENTRY OF JUDGMENT; ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST

WILLIAM J. SIMAO; CHERYL ANN SIMAO,

Plaintiff(s),

vs.

JENNY RISH; JAMES RISH; LINDA RISH,

Defendant(s),

Case No: A539455
Dept No: X

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 15 day of September 2011.

Steven D. Grierson, Clerk of the Court

Heather Ungermann, Deputy Clerk

Electronically Filed
09/14/2011 02:18:17 PM

Electronically Filed
CLERK OF THE COURT
Sep 16 2011 02:54 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

AMEN
DANIEL F. POLSENBERG
State Bar No. 2376
JOEL D. HENRIOD
State Bar No. 8492
LEWIS AND ROCA LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 474-2616

STEPHEN H. ROGERS (SBN 5755)
ROGERS MASTRANGELO CARVALHO & MITCHELL
300 South Fourth Street, Suite 170
Las Vegas, Nevada 89101
(702) 383-3400

Attorneys for Defendant Jenny Rish

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO, individually and CHERYL ANN SIMAO, individually and as husband and wife, Plaintiffs, *vs.* JENNY RISH; JAMES RISH; LINDA RISH; DOES I through V; and ROE Corporations I through V, inclusive, Defendants.	Case No. A539455 Dept. No. XX

SECOND AMENDED NOTICE OF APPEAL

Please take notice that defendant JENNY RISH hereby appeals to the Supreme Court of Nevada from:

1. All judgments and orders in this case;
2. "Decision and Order Regarding Plaintiffs' Motion to Strike Defendant's Answer, filed April 22, 2011";
3. Judgment, filed April 28, 2011;
4. Judgment filed June 1, 2011, notice of entry of which was served via hand delivery on June 2, 2011;

Docket 59208 Document 2011-28412

5. Order Denying Defendant's Motion for New Trial, filed August 24, 2011, notice of entry of which was served by mail on August 25, 2011; and

6. All rulings and interlocutory orders made appealable by any of the foregoing.

DATED this 14th day of September 2011.

LEWIS AND ROCA LLP

By: s/ Joel D. Henriod
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
LEWIS AND ROCA LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 474-2616

Attorneys for Defendant Jenny Rish

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I HEREBY CERTIFY that on the 14th day of September, 2011, I served the foregoing SECOND AMENDED NOTICE OF APPEAL by depositing a copy for mailing, first-class mail, postage prepaid, at Las Vegas, Nevada, to the following:

ROBERT T. EGLET
DAVID T. WALL
ROBERT M. ADAMS
MAINOR EGLET
400 South Fourth Street, Suite 600
Las Vegas, NV 89101

s/ Mary Kay Carlton
An Employee of Lewis and Roca LLP

EXHIBIT A

EXHIBIT A

EXHIBIT A

Electronically Filed
08/25/2011 02:46:57 PM

CLERK OF THE COURT

NEO
ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
DAVID T. WALL, ESQ.
Nevada Bar No. 2805
ROBERT M. ADAMS, ESQ.
Nevada Bar No. 6551
MAINOR EGLET
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Ph: (702) 450-5400
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reglet@mainorlawyers.com
dwall@mainorlawyers.com
badams@mainorlawyers.com
Attorney for Plaintiffs

MATTHEW E. AARON, ESQ.
Nevada Bar No. 4900
AARON & PATERNOSTER, LTD.
2300 West Sahara Avenue, Ste.650
Las Vegas, Nevada 89102
Ph.: (702) 384-4111
Fx.: (702) 384-8222
Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO, individually and CHERYL ANN SIMAO, individually, and as husband and wife, Plaintiffs, v. JENNY RISH; JAMES RISH; LINDA RISH; DOES I through V; and ROE CORPORATIONS I through V, inclusive, Defendants.	CASE NO.: A539455 DEPT. NO.: X **NOTICE OF ENTRY OF ORDER**

MAINOR EGLET

PLEASE TAKE NOTICE that an Order Denying Defendant's Motion for New Trial was entered in the above-entitled matter on August 24, 2011 and is attached hereto as Exhibit "24."

DATED this 25 day of August, 2011.

MAINOR EGLET



ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
DAVID T. WALL, ESQ.
Nevada Bar No. 2805
ROBERT M. ADAMS, ESQ.
Nevada Bar No. 6551
400 South Fourth Street, Ste. 600
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

MAINOR EGLET

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 25th day of August, 2011, a copy of the above and foregoing NOTICE OF ENTRY OF ORDER was served by enclosing same in an envelope with postage prepaid thereon, address and mailed as follows:

Stephen H. Rogers, Esq.
ROGERS, MASTRANGELO, CARVALHO & MITCHELL
300 South Fourth Street, Suite 710
Las Vegas, Nevada 89101
Attorneys for Defendants

An employee of MAINOR EGLET

MAINOR EGLET

EXHIBIT "1"

ORDR
ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
DAVID T. WALL, ESQ.
Nevada Bar No. 2805
ROBERT M. ADAMS, ESQ.
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2300 West Sahara Avenue, Suite 650
Las Vegas, Nevada 89102
Ph.: (702) 384-4111
Fx.: (702) 384-8222
Attorneys for Plaintiffs

FILED
AUG 24 10 35 AM '11
CLERK OF THE COURT

MAINOR EGLET

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO, individually and CHERYL ANN SIMAO, individually, and as husband and wife,

Plaintiffs,

v.

JENNY RISH; JAMES RISH; LINDA RISH; DOES I through V; and ROE CORPORATIONS I through V, inclusive.

Defendants.

CASE NO.: A539455
DEPT. NO.: X

ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL

This Honorable Court, having read the pleadings and papers on file herein regarding the

Defendant's Motion for New Trial, the matter being heard in Chambers on July 21, 2011 for hearing, and good cause appearing therefore, hereby rules that Defendant's Motion for New Trial is **DENIED.**

IT IS SO ORDERED.

DATED this 23 day of August, 2011.

JESSIE WALSH

DISTRICT COURT JUDGE

Respectfully submitted by:

MAINOR EGLET

ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
DAVID T. WALL, ESQ.
Nevada Bar No. 2805
ROBERT M. ADAMS, ESQ.
Nevada Bar No. 6551
400 South Fourth Street, Suite 600
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

MAINOR EGLET

Electronically Filed
09/14/2011 02:19:45 PM

CLERK OF THE COURT

ASTA
DANIEL F. POLSENBERG
State Bar No. 2376
JOEL D. HENRIOD
State Bar No. 8492
LEWIS AND ROCA LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 474-2616

STEPHEN H. ROGERS (SBN 5755)
ROGERS MASTRANGELO CARVALHO & MITCHELL
300 South Fourth Street, Suite 170
Las Vegas, Nevada 89101
(702) 383-3400

Attorneys for Defendant Jenny Rish

DISTRICT COURT

CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO, individually and CHERYL ANN SIMAO, individually and as husband and wife, Plaintiffs, *vs.* JENNY RISH; JAMES RISH; LINDA RISH; DOES I through V; and ROE Corporations I through V, inclusive, Defendants.	Case No. A539455 Dept. No. XX

SECOND AMENDED CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Defendant JENNY RISH

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

THE HONORABLE JESSIE WALSH

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

DANIEL F. POLSENBERG
Nevada Bar No. 2376
LEWIS AND ROCA LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 474-2616

STEPHEN H. ROGERS
ROGERS MASTRANGELO CARVALHO & MITCHELL
300 South Fourth Street, Suite 170
Las Vegas, Nevada 89101
(702) 383-3400

Attorneys for Appellant

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):

ROBERT T. EGLET
DAVID T. WALL
ROBERT M. ADAMS
MAINOR EGLET
400 South Fourth Street
Sixth Floor
Las Vegas, NV 89101
(702) 450-5400

Attorney for Respondents
William Jay Simao and *Cheryl Ann Simao,*

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):

N/A

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

Retained counsel

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

Retained counsel

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

N/A

9. Indicate the date the proceedings commenced in the district court, e.g., date complaint, indictment, information, or petition was filed:

Complaint filed April 13, 2007.

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 is a motor vehicle accident occurring on April 15, 2005. Plaintiff's complaint alleged negligence and loss of consortium. The case presented for a jury trial on March 14, 2011. On March 31, 2011, plaintiff made an oral motion to strike defendant's answer which was granted. After a prove-up hearing on April 1, 2011, judgment was entered on April 28, 2011, in favor of plaintiff in the amount of $3,493,983.45.

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.

N/A

12. Indicate whether this appeal involves child custody or visitation:

N/A

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

No.

DATED this 14th day of September 2011.

LEWIS AND ROCA LLP

By: s/ Joel D. Henriod
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
LEWIS AND ROCA LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 474-2616

Attorneys for Defendant Jenny Rish

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I HEREBY CERTIFY that on the 14th day of September, 2011, I served the foregoing SECOND AMENDED CASE APPEAL STATEMENT by depositing a copy for mailing, first-class mail, postage prepaid, at Las Vegas, Nevada, to the following:

ROBERT T. EGLET
DAVID T. WALL
ROBERT M. ADAMS
MAINOR EGLET
400 South Fourth Street, Suite 600
Las Vegas, NV 89101

s/ Mary Kay Carlton
An Employee of Lewis and Roca LLP

DEPARTMENT 10

CASE SUMMARY

CASE NO. 07A539455

William Simao, Cheryl Simao	§	Location:	**Department 10**
vs	§	Judicial Officer:	**Walsh, Jessie**
Jenny Rish	§	Filed on:	**04/13/2007**
	§	Conversion Case Number:	**A539455**
	§	Supreme Court No.:	**58504**
	§		

CASE INFORMATION

Case Type: **Negligence - Auto**

Case Flags: **Appealed to Supreme Court**
Jury Demand Filed

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	07A539455
Court	Department 10
Date Assigned	04/13/2007
Judicial Officer	Walsh, Jessie

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**Simao, Cheryl A**	**Wall, David T** *Retained* 702-450-5400(W)
	Simao, William J	**Wall, David T** *Retained* 702-450-5400(W)
Defendant	**Rish, James** Removed: 03/31/2011 Dismissed	**Lewis, Bryan W.** *Retained* 702-870-5571(W)
	Rish, Jenny	**Rogers, Stephen H** *Retained* 702-383-3400(W)
	Rish, Linda Removed: 03/31/2011 Dismissed	**Lewis, Bryan W.** *Retained* 702-870-5571(W)
Conversion Extended Connection Type	**No Convert Value @ 07A539455** Removed: 04/24/2009 Converted From Blackstone	

DATE — EVENTS & ORDERS OF THE COURT — INDEX

DATE	EVENTS & ORDERS OF THE COURT	INDEX
04/13/2007	Complaint *COMPLAINT FILED Fee $178.00*	*07A5394550001.tif pages*
04/13/2007	Initial Appearance Fee Disclosure Filed By: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A *INITIAL APPEARANCE FEE DISCLOSURE*	*07A5394550003.tif pages*
08/10/2007	Summons Filed by: Plaintiff Simao, William J *SUMMONS*	*07A5394550004.tif pages*

CASE SUMMARY

CASE NO. 07A539455

08/28/2007	Summons Filed by: Plaintiff Simao, William J *SUMMONS*	*07A5394550005.tif pages*
08/28/2007	Summons Filed by: Plaintiff Simao, William J *SUMMONS*	*07A5394550006.tif pages*
09/27/2007	Association of Counsel Filed By: Defendant Rish, Jenny *NOTICE OF ASSOCIATION OF COUNSEL*	*07A5394550007.tif pages*
03/21/2008	Answer Filed By: Defendant Rish, Jenny *DEFENDANT JENNY RISH'S ANSWER TO PLAINTIFFS' COMPLAINT*	*07A5394550008.tif pages*
03/21/2008	Demand for Jury Trial Filed By: Defendant Rish, Jenny *DEMAND FOR JURY TRIAL*	*07A5394550009.tif pages*
03/21/2008	Initial Appearance Fee Disclosure Filed By: Defendant Rish, Jenny *INITIAL APPEARANCE FEE DISCLOSURE*	*07A5394550010.tif pages*
05/02/2008	Commissioner's Decision On Request For Exemption *COMMISSIONERS DECISION ON REQUEST FOR EXEMPTION*	*07A5394550011.tif pages*
05/08/2008	Notice of Early Case Conference Filed By: Plaintiff Simao, William J *NOTICE OF EARLY CASE CONFERENCE REQUEST FOR PRODUCTION OF DOCUMENTS PURSUANT TO NRCP 16.1*	*07A5394550012.tif pages*
05/22/2008	List of Witnesses Filed By: Plaintiff Simao, William J *PLAINTIFFS LIST OF WITNESSES AND DOCUMENTS PRODUCED PURSUANT TO NRCP 16.1*	*07A5394550013.tif pages*
06/02/2008	Joint Case Conference Report Filed By: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A *JOINT CASE CONFERENCE REPORT*	*07A5394550014.tif pages*
06/04/2008	Certificate of Mailing Filed By: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A *CERTIFICATE OF MAILING JOINT CASE CONFERENCE REPORT*	*07A5394550015.tif pages*
06/04/2008	List of Witnesses Filed By: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A *PLTFS FIRST SUPPLEMENT TO LIST OF WITNESSES AND DOCUMENTS PRODUCED PURSUANT TO NRCP 16.1*	*07A5394550016.tif pages*
06/11/2008	Discovery Scheduling Order *SCHEDULING ORDER*	*07A5394550017.tif pages*
		07A5394550018.tif pages

06/12/2008	Notice Filed By: Defendant Rish, Jenny *NOTICE OF TAKING DEPOSITION OF PLTFS*	
07/11/2008	Amended Notice Filed By: Defendant Rish, Jenny *AMENDED NOTICE OF TAKING DEPOSITION OF PLAINTIFFS*	*07A5394550019.tif pages*
08/18/2008	Conversion Case Event Type *PRETRIAL CONFERENCE*	*07A5394550021.tif pages*
08/18/2008	Order Setting Jury Trial *ORDER SETTING CIVIL JURY TRIAL*	*07A5394550023.tif pages*
08/19/2008	Amended Notice Filed By: Defendant Rish, Jenny *SECOND AMENDED NOTICE OF TAKING PLAINTIFFS DEPOSITION*	*07A5394550024.tif pages*
09/03/2008	Notice Filed By: Defendant Rish, Jenny *NOTICE OF TAKING DEPOSITION OF PATRICK MCNULTY MD*	*07A5394550025.tif pages*
09/03/2008	Notice Filed By: Defendant Rish, Jenny *NOTICE OF TAKING DEPOSITION OF ADAM ARITA MD*	*07A5394550026.tif pages*
09/15/2008	Amended Notice Filed By: Defendant Rish, Jenny *AMENDED NOTICE OF TAKING DEPOSITION OF PATRICK MCNULTY MD*	*07A5394550027.tif pages*
09/15/2008	Notice Filed By: Defendant Rish, Jenny *NOTICE OF TAKING DEPOSITION OF BRITT HILL PA C*	*07A5394550028.tif pages*
10/17/2008	Subpoena Filed by: Defendant Rish, Jenny *SUBPOENA FOR DEPOSITION - BRITT HILL PA C SOUTHWEST MEDICAL ASSOCIATES*	*07A5394550029.tif pages*
10/22/2008	Supplemental Filed by: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A *PLAINTIFFS SECOND SUPPLEMENT TO LIST OF WITNESSESAND DOCUMENTS PRODUCED PURSUANT TO NRCP 16.1*	*07A5394550030.tif pages*
02/26/2009	Notice Filed By: Defendant Rish, Jenny *NOTICE OF TAKING DEPOSITION OF JASWINDER SINGH GROVER MD*	*07A5394550032.tif pages*
03/02/2009	Notice Filed By: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A *NOTICE OF TAKING VIDEO DEPOSITION OF DEFT JENNY RISH MARCH 26 2009*	*07A5394550031.tif pages*
03/20/2009	Notice Filed By: Defendant Rish, Jenny	*07A5394550033.tif pages*

	NOTICE OF TAKING DEPOSITION OF HANS-JORGE ROSLER MD	
03/24/2009	Amended Notice Filed By: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A *FIRST AMENDED NOTICE OF TAKING VIDEO DEPO OF DEFT JENNY RISH*	*07A5394550034.tif pages*
03/25/2009	Subpoena Duces Tecum Filed by: Defendant Rish, Jenny; Defendant Rish, James; Defendant Rish, Linda *SUBPOENA DUCES TECUM - COR OF SOUTHWEST MEDICAL ASSOCIATES*	*07A5394550035.tif pages*
03/25/2009	Subpoena Duces Tecum Filed by: Defendant Rish, Jenny; Defendant Rish, James; Defendant Rish, Linda *SUBPOENA DUCES TECUM - COR OF STEINBERG DIAGNOSTICS*	*07A5394550036.tif pages*
03/25/2009	Subpoena Duces Tecum Filed by: Defendant Rish, Jenny; Defendant Rish, James; Defendant Rish, Linda *SUBPOENA DUCES TECUM - COR OF NEWPORT MRI*	*07A5394550037.tif pages*
03/27/2009	Amended Notice Filed By: Defendant Rish, Jenny *AMENDED NOTICE OF TAKING DEPOSITION OF HANS-JORG ROSLER MD*	*07A5394550038.tif pages*
05/05/2009	Designation of Expert Witness *Plaintiffs' Designation of Expert Witnesses and Reports*	
05/06/2009	Stipulation and Order Filed by: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A *Stipulation and Order to Extend Discovery (First Request)*	
05/08/2009	Notice of Entry of Order *Notice of Entry of Order*	
05/13/2009	Notice of Taking Deposition Filed By: Defendant Rish, Jenny *Notice of Taking Custodian of Records Deposition (AmeriClean)*	
05/14/2009	Notice of Deposition Filed By: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A *Notice of Taking Deposition of Trooper Shawn Haggstrom*	
05/21/2009	Notice of Taking Deposition Filed By: Defendant Rish, Jenny *Notice of Taking Deposition*	
05/29/2009	Affidavit of Service *Affidavit of Service of Subpoena and Notice of Taking Deposition Upon Trooper Shawn Haggstrom*	
06/05/2009	List of Witnesses *Plaintiffs' Third Supplement to List of Witnesses and Documents Produced Pursuant to NRCP 16.1*	
06/05/2009	Expert Witness List *Plaintiffs' First Supplement to Designation of Expert Witnesses and Reports*	

06/10/2009	Amended Scheduling Order
08/07/2009	Notice of Taking Deposition Filed By: Defendant Rish, Jenny *Notice of Taking Custodian of Records Deposition*
08/20/2009	Notice of Taking Deposition Filed By: Defendant Rish, Jenny *Notice of Taking Deposition of Plaintiff William Jay Simao - Volume II*
08/28/2009	Order Setting Civil Jury Trial
09/18/2009	*CANCELED* **Pre Trial Conference** (9:00 AM) **(Judicial Officer: Walsh, Jessie)** *Vacated*
09/25/2009	Subpoena Duces Tecum Filed by: Defendant Rish, Jenny
09/28/2009	Notice of Taking Deposition Filed By: Defendant Rish, Jenny *Notice of Taking Video Deposition of Stan Smith*
09/28/2009	Notice of Taking Deposition Filed By: Defendant Rish, Jenny *Notice of Taking Video Deposition of Kathleen Hartman RN*
09/29/2009	*CANCELED* **Calendar Call** (3:00 PM) **(Judicial Officer: Walsh, Jessie)** *Vacated*
10/02/2009	Amended Notice of Taking Deposition Filed By: Defendant Rish, Jenny *Amended Notice of Taking Deposition of Plaintiff William Jay Simao - Volume II*
10/05/2009	*CANCELED* **Jury Trial** (9:00 AM) **(Judicial Officer: Walsh, Jessie)** *Vacated - per Stipulation and Order*
12/11/2009	**Pre Trial Conference** (9:00 AM) (Judicial Officer: Walsh, Jessie) Events: 08/28/2009 Order Setting Civil Jury Trial
12/23/2009	*CANCELED* **Calendar Call** (3:00 PM) **(Judicial Officer: Walsh, Jessie)** *Vacated*
01/04/2010	*CANCELED* **Jury Trial** (9:00 AM) **(Judicial Officer: Walsh, Jessie)** *Vacated*
03/15/2010	Motion to Continue *Motion to Continue Trial on Order Shortening Time*
03/24/2010	*CANCELED* **Motion to Continue Trial** (9:00 AM) **(Judicial Officer: Walsh, Jessie)** *Vacated*
03/31/2010	Stipulation and Order Filed by: Defendant Rish, Jenny *Stipulation and Order to Continue Trial Date*

04/02/2010	Notice of Entry of Order *Notice of Entry of Order*
04/02/2010	Notice of Association of Counsel Filed By: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A
04/22/2010	Supplement to Early Case Conference Report *Supplement to Early Case Conference Report*
04/26/2010	Supplement to Early Case Conference Report *Plaintiffs' Ninth Supplement To The List of Witnesses and Documents Produced Pursuant to NRCP 16.1*
04/28/2010	Supplement to Early Case Conference Report Party: Plaintiff Simao, William J *Plaintiffs' Tenth Supplement To The List of Witnesses and Documents Produced Pursuant to NRCP 16.1*
06/23/2010	Deposition Filed By: Defendant Rish, Jenny *Notice of Taking Deposition of Ross Seibel, M.D.*
07/01/2010	Deposition Filed By: Defendant Rish, Jenny *Notice of Taking Depostion of Ross Seibel, M.D.*
07/19/2010	Notice of Change of Firm Name Filed By: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A
11/24/2010	Application for Issuance of Commission to Take Deposition Party: Plaintiff Simao, William J *Application for Issuance of Commission to Take Deposition Out of State*
11/24/2010	Application for Issuance of Commission to Take Deposition Party: Plaintiff Simao, William J *Application for Issuance of Commission to Take Deposition Out of State*
11/24/2010	Application for Issuance of Commission to Take Deposition Party: Plaintiff Simao, William J *Application for Issuance of Commission to Take Deposition Out of State*
12/08/2010	Motion Filed By: Plaintiff Simao, William J *Plaintiffs' Motion to Allow Plaintiffs to Present a Jury Questionnaire Prior to Voir Dire*
12/15/2010	Order Setting Civil Jury Trial *Order Setting Civil Jury Trial*
12/22/2010	Stipulation Filed by: Defendant Rish, Jenny *Stipulation and Order to Continue Trial Date*

12/27/2010	Pre-Trial Disclosure Party: Defendant Rish, Jenny *Defendants' Pretrial Disclosures Pursaunt to NRCP 16.1(a)(3)*
12/27/2010	Opposition Filed By: Defendant Rish, Jenny *Opposition, in Part, to Plaintiff's Motion to Present a Jury Questionnaire Prior to Voir Dire*
01/04/2011	*CANCELED* **Pre Trial Conference** (9:00 AM) **(Judicial Officer: Walsh, Jessie)** *Vacated - per Stipulation and Order*
01/04/2011	Notice of Entry of Order Filed By: Defendant Rish, Jenny *Notice of Entry of Order*
01/06/2011	Motion in Limine Filed By: Defendant Rish, Jenny *Defendant Jenny Rish's Motion in Limine to Preclude Questions Regarding Verdict Amounts During Voir Dire*
01/06/2011	Motion in Limine Filed By: Defendant Rish, Jenny *Defendant Jenny Rish's Motion in Limine to Prevent Plaintiff from Arguing Responsibility Avoidance*
01/06/2011	Motion in Limine Filed By: Defendant Rish, Jenny *Defendant Jenny Rish's Motion in Limine to Exclude the Traffic Accident Report and the Investigating Officer's Conclusions*
01/06/2011	Motion in Limine Filed By: Defendant Rish, Jenny *Defendant Jenny Rish's Motion in Limine Enforcing the Abolition of the Treating Physician Rule*
01/06/2011	Motion in Limine Filed By: Defendant Rish, Jenny *Defendant Jenny Rish's Motion in Limine to Limit the Testimony of Plaintiff's Treating Physicians*
01/06/2011	Motion in Limine Filed By: Defendant Rish, Jenny *Defendant Jenny Rish's Motion in Limine to Exclude Duplicative and Cumulative Testimony*
01/06/2011	Motion in Limine Filed By: Defendant Rish, Jenny *Defendant Jenny Rish's Motion in Limine to Exclude Graphic and Lurid Video or Animated Depictions of Surgical Procedures*
01/06/2011	Motion in Limine Filed By: Defendant Rish, Jenny *Defendant's Motion in Limine to Preclude Plaintiffs' Medical Providers and Experts from Testifying Regarding New or Undisclosed Medical Treatment and Opinions*

01/06/2011	Motion in Limine Filed By: Defendant Rish, Jenny *Defendant's Motion in Limine to Exclude Evidene of Senate Investigation*
01/06/2011	Motion in Limine Filed By: Defendant Rish, Jenny *Defendant Jenny Rish's Motion in Limine to Preclude Witnesses from Offering Testimony Regarding the Credibility or Verasity of Other Witnesses*
01/06/2011	Motion in Limine Filed By: Defendant Rish, Jenny *Defendant Jenny Rish's Motion to Preclude Argument of the Case During Voir Dire*
01/06/2011	Motion in Limine Filed By: Defendant Rish, Jenny *Defendant Jenny Rish's Motion in Limine to Exclude Plaintiffs' Life Care Expert, Kathleen Hartmann, R.N.*
01/06/2011	Motion in Limine Filed By: Defendant Rish, Jenny *Defendant Jenny Rish's Motion to Exclude the Report and Opinions Plaintifff's Economist Stan V. Smith*
01/06/2011	Motion in Limine Filed By: Defendant Rish, Jenny *Defendant Jenny Rish's Motion to Exclude the Report and Opinions Plaintiff's Accident Reconstruction Expert, David Ingebretsen*
01/07/2011	Omnibus Motion In Limine Filed by: Plaintiff Simao, William J *Plaintiff's Omnibus Motion in Limine*
01/10/2011	Objection Filed By: Plaintiff Simao, William J *Plaintiff's Objections to Defendants' Pre-Trial Disclosure Pursuant to NRCP 16.1 (a)(3)(C)*
01/13/2011	Reply to Opposition Filed by: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A *Plaintiff's Reply to Defendants' Limited Opposition to Plaintiff's Motion to Allow Plaintiffs to Present a Jury Questionnaire Prior to Voir Dire*
01/18/2011	Certificate of Service Filed by: Defendant Rish, Jenny *Certificate of Service*
01/18/2011	*CANCELED* **Calendar Call** (9:00 AM) **(Judicial Officer: Walsh, Jessie)** *Vacated - per Stipulation and Order*
01/20/2011	**Motion** (9:30 AM) (Judicial Officer: Walsh, Jessie) Events: 12/08/2010 Motion *Plaintiffs' Motion to Allow Plaintiffs to Present a Jury Questionnaire Prior to Voir Dire*
01/24/2011	*CANCELED* **Jury Trial** (1:00 PM) **(Judicial Officer: Walsh, Jessie)** *Vacated - per Stipulation and Order*

01/27/2011	Questionnaire Filed By: Defendant Rish, Jenny *Defendant Jenny Rish's Proposed Additional Questions to the Jury Questionnaire (per the Court's Leave, Granted at the January 20, 2011 Hearing)*
01/28/2011	*CANCELED* **Calendar Call** (9:00 AM) **(Judicial Officer: Walsh, Jessie)** *Vacated - On in Error*
02/02/2011	Notice of Taking Deposition Filed By: Defendant Rish, Jenny *Notice of taking Deposition of Patrick McNulty, M.D.*
02/02/2011	Notice of Taking Deposition Filed By: Defendant Rish, Jenny *Notice of Taking Deposition of Daniel Lee, M.D.*
02/04/2011	Opposition Filed By: Defendant Rish, Jenny *Defendant Jenny Rish's Opposition to Plaintiffs' Omnibus Motion in Limine*
02/04/2011	Opposition to Motion in Limine Filed By: Plaintiff Simao, William J *Plaintiffs' Limited Opposition to Defendant Jenny Rish's Motion in Limine to Exclude the Traffic Accident Report and the Investigating Officer's Conclusions*
02/04/2011	Opposition to Motion in Limine Filed By: Plaintiff Simao, William J *Plaintiffs' Opposition to Defendant Jenny Rish's Motion in Limine to Exclude Kathleen Hartmann, R.N.*
02/04/2011	Opposition to Motion in Limine Filed By: Plaintiff Simao, William J *Plaintiffs' Opposition to Defendant Jenny Rish's Motion in Limine to Exclude Duplicative and Cumulative Testimony*
02/04/2011	Opposition to Motion Filed By: Plaintiff Simao, William J *Plaintiffs' Opposition to Defendant Jenny Rish's Motion to Exclude the Report and Opinions of Plaintiff's Accident Reconstruction Expert, David Ingrebretsen*
02/04/2011	Opposition to Motion in Limine Filed By: Plaintiff Simao, William J *Plaintiffs' Opposition to Defendant Jenny Rish's Motion in Limine Enforcing the Abolition of the Treating Physician Rule*
02/04/2011	Opposition to Motion Filed By: Plaintiff Simao, William J *Plaintiffs' Combined Opposition to Defendant Jenny Rish's Motion to Preclude Argument of the Case During Voir Dire and Motion to Exclude Questions Regarding Verdict Amounts During Voir Dire*
02/04/2011	Opposition to Motion in Limine Filed By: Plaintiff Simao, William J *Plaintiffs' Limited Opposition to Defendant Jenny Rish's Motion in Limine to Exclude Evidence of Senate Investigation*

02/04/2011 Opposition to Motion in Limine
Filed By: Plaintiff Simao, William J
Plaintiffs' Limited Opposition to Defendant Jenny Rish's Motion in Limine to Prevent Plaintiff From Arguing "Responsibility Avoidance"

02/04/2011 Opposition to Motion
Filed By: Plaintiff Simao, William J
Plaintiffs' Opposition to Defendant Jenny Rish's Motion Regarding Treating Physicians' Opinions

02/04/2011 Opposition to Motion in Limine
Filed By: Plaintiff Simao, William J
Plaintiffs' Opposition to Defendant Jenny Rish's Motion in Limine to Exclude Graphic and Lurid Video or Animated Depictions of Surgical Procedures

02/04/2011 Non Opposition
Filed By: Plaintiff Simao, William J
Plaintiffs' Non-Opposition to Defendant Jenny Rish's Motion to Preclude Witnesses from Offering Testimony Regarding the Credibility or Veracity of Other Witnesses

02/04/2011 Opposition to Motion in Limine
Filed By: Plaintiff Simao, William J
Plaintiffs' Opposition to Defendant's Motion in Limine to Preclude Plaintiffs' Medical Providers and Experts from Testifying Regarding New or Undisclosed Medical Treatment and Opinions

02/04/2011 Opposition to Motion
Filed By: Plaintiff Simao, William J
Plaintiffs' Opposition to Defendant Jenny Rish's Motion to Exclude the Report and Opinions of Plaintiff's Economist, Stan V. Smith

02/04/2011 Deposition
Filed By: Defendant Rish, Jenny
Notice of Taking Deposition of Patrick McNulty, M.D.

02/07/2011 *CANCELED* **Jury Trial** (1:00 PM) **(Judicial Officer: Walsh, Jessie)**
Vacated - On in Error

02/08/2011 Reply
Filed by: Defendant Rish, Jenny
Defendant Jenny Rish's Reply to Plaintiffs' Combined Opposition to Motions (1) to Preclude Argument of Case During Voir Dire, and (2) to Exclude Questions Regarding Verdict Amounts During Voir Dire

02/08/2011 Reply
Filed by: Defendant Rish, Jenny
Defendant Jenny Rish's Reply in Support of Motion in Limine to Prevent Plaintiff from Arguing "Responsibility Avoidance"

02/08/2011 Reply
Filed by: Defendant Rish, Jenny
Defendant's Reply to Opposition to Motion in Limine to Exclude Traffic Accident Report and the Investigating Officer's Conclusions

02/08/2011 Reply

Filed by: Defendant Rish, Jenny
Defendant Jenny Rish's Reply in Support of Motion in Limine to Limit the Testimony of Plaintiff's Treating Physicians

02/08/2011 Reply
Filed by: Defendant Rish, Jenny
Defendant Jenny Rish's Reply in Support of Motion in Limine to Preclude Plaintiffs' Medical Providers and Experts from Testifying Regarding New or Undisclosed Medical Treatment and Opinions

02/08/2011 Reply
Filed by: Defendant Rish, Jenny
Defendant Jenny Rish's Reply in Support of Motion in Limine to Exclude Graphic and Lurid Video or Animated Depictions of Surgical Procedures

02/08/2011 Reply
Filed by: Defendant Rish, Jenny
Defendant Jenny Rish's Reply in Support of Motion in Limine to Exclude Plaintiffs' Life Care Expert, Kathleen Hartmann, R.N.

02/08/2011 Reply
Filed by: Defendant Rish, Jenny
Defendant Jenny Rish's Reply in Support of Motion to Exclude the Report and Opinions of Plaintiff's Accident Reconstruction Expert David Ingrebretsen

02/08/2011 Reply
Filed by: Defendant Rish, Jenny
Defendant's Reply to Opposition to Motion to Exclude the Report and Opinions Plaintiffs' Economist, Stan V. Smith

02/09/2011 Receipt of Copy
Filed by: Defendant Rish, Jenny
Receipt of Copy

02/11/2011 Reply
Filed by: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A
Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Omnibus Motion in Limine

02/14/2011 Subpoena
Filed by: Defendant Rish, Jenny
Subpoena-Civil

02/14/2011 Subpoena
Filed by: Defendant Rish, Jenny
Subpoena

02/14/2011 Subpoena
Filed by: Defendant Rish, Jenny
Subpoena

02/14/2011 Subpoena
Filed by: Defendant Rish, Jenny
Subpoena-Civil

02/14/2011 Pre-Trial Disclosure

	Party: Plaintiff Simao, William J *Plaintiff's Pre-Trial Disclosures Pursuant to NRCP 16.1 (a)(3)(C)*
02/14/2011	Receipt of Copy Filed by: Plaintiff Simao, William J *Receipt of Copy*
02/14/2011	Motion to Exclude Filed By: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A *Plaintiff's Motion to Exclude Sub Rosa Video*
02/15/2011	**Motion in Limine** (9:00 AM) (Judicial Officer: Walsh, Jessie) Events: 01/06/2011 Motion in Limine *Defendant Jenny Rish's Motion in Limine to Exclude the Traffic Accident Report and the Investigating Officer's Conclusions*
02/15/2011	**Motion in Limine** (9:00 AM) (Judicial Officer: Walsh, Jessie) Events: 01/06/2011 Motion in Limine *Defendant Jenny Rish's Motion in Limine to Preclude Questions Regarding Verdict Amounts During Voir Dire*
02/15/2011	**Motion in Limine** (9:00 AM) (Judicial Officer: Walsh, Jessie) **02/15/2011, 02/22/2011** Events: 01/06/2011 Motion in Limine *Defendant Jenny Rish's Motion in Limine to Prevent Plaintiff from Arguing Responsibility Avoidance*
02/15/2011	**Motion in Limine** (9:00 AM) (Judicial Officer: Walsh, Jessie) **02/15/2011, 02/22/2011** Events: 01/06/2011 Motion in Limine *Defendant Jenny Rish's Motion in Limine Enforcing the Abolition of the Treating Physician Rule*
02/15/2011	**Motion in Limine** (9:00 AM) (Judicial Officer: Walsh, Jessie) Events: 01/06/2011 Motion in Limine *Defendant Jenny Rish's Motion in Limine to Limit the Testimony of Plaintiff's Treating Physicians*
02/15/2011	**Motion in Limine** (9:00 AM) (Judicial Officer: Walsh, Jessie) Events: 01/06/2011 Motion in Limine *Defendant Jenny Rish's Motion in Limine to Exclude Duplicative and Cumulative Testimony*
02/15/2011	**Motion in Limine** (9:00 AM) (Judicial Officer: Walsh, Jessie) Events: 01/06/2011 Motion in Limine *Defendant Jenny Rish's Motion in Limine to Exclude Graphic and Lurid Video or Animated Depictions of Surgical Procedures*
02/15/2011	**Motion in Limine** (9:00 AM) (Judicial Officer: Walsh, Jessie) **02/15/2011, 02/22/2011** Events: 01/06/2011 Motion in Limine *Defendant's Motion in Limine to Preclude Plaintiffs' Medical Providers and Experts from Testifying Regarding New or Undisclosed Medical Treatment and Opinions*
02/15/2011	**Motion in Limine** (9:00 AM) (Judicial Officer: Walsh, Jessie) **02/15/2011, 02/22/2011, 03/01/2011** Events: 01/06/2011 Motion in Limine *Defendant Jenny Rish's Motion in Limine to Exclude Evidene of Senate Investigation*
02/15/2011	**Motion in Limine** (9:00 AM) (Judicial Officer: Walsh, Jessie) Events: 01/06/2011 Motion in Limine

Defendant Jenny Rish's Motion in Limine to Preclude Witnesses from Offering Testimony Regarding the Credibility or Verasity of Other Witnesses

02/15/2011 **Motion in Limine** (9:00 AM) (Judicial Officer: Walsh, Jessie)
Events: 01/06/2011 Motion in Limine
Defendant Jenny Rish's Motion to Preclude Argument of the Case During Voir Dire

02/15/2011 **Motion in Limine** (9:00 AM) (Judicial Officer: Walsh, Jessie)
02/15/2011, 02/22/2011
Events: 01/06/2011 Motion in Limine
Defendant Jenny Rish's Motion in Limine to Exclude Plaintiffs' Life Care Expert, Kathleen Hartmann, R.N.

02/15/2011 **Motion in Limine** (9:00 AM) (Judicial Officer: Walsh, Jessie)
Events: 01/06/2011 Motion in Limine
Defendant Jenny Rish's Motion to Exclude the Report and Opinions Plaintifff's Economist Stan V. Smith

02/15/2011 **Motion in Limine** (9:00 AM) (Judicial Officer: Walsh, Jessie)
02/15/2011, 02/22/2011
Events: 01/06/2011 Motion in Limine
Defendant Jenny Rish's Motion to Exclude the Report and Opinions Plaintiff's Accident Reconstruction Expert, David Ingebretsen

02/15/2011 **Motion in Limine** (9:00 AM) (Judicial Officer: Walsh, Jessie)
Events: 01/07/2011 Omnibus Motion In Limine
Plaintiff's Omnibus Motion in Limine

02/15/2011 **All Pending Motions** (9:00 AM) (Judicial Officer: Walsh, Jessie)

02/16/2011 Subpoena
Filed by: Defendant Rish, Jenny
Subpoena

02/17/2011 Notice to Vacate Deposition
Filed by: Defendant Rish, Jenny
Notice to Vacate Deposition of Daniel Lee, M.D.

02/17/2011 Notice of Vacating Deposition
Filed By: Defendant Rish, James
Notice to Vacate Deposition of Patrick McNulty, M.D.

02/17/2011 Motion in Limine
Plaintiff's Motion in Limine to (1) Preclude Defendant from Raising a "Minor" or "Low Impact" Defense; (2) Limit the Trial Testimony of Defendant's Expert David Fish M.D. and ; (3) Exclude Evidecne of Property Damage

02/18/2011 Opposition
Filed By: Defendant Rish, Jenny
Defendant Jenny Rish's Opposition to Plaintiff's Motion to Exclude Sub Rosa Video

02/18/2011 Receipt of Copy
Filed by: Defendant Rish, Jenny
Receipt of Copy

02/22/2011 Receipt of Copy
Filed by: Plaintiff Simao, William J

Receipt of Copy

02/22/2011 **All Pending Motions** (9:30 AM) (Judicial Officer: Walsh, Jessie)

02/24/2011 Supplemental
Filed by: Plaintiff Simao, William J
Plaintiffs' Supplemental Opposition to Defendant Jenny Rish's Motion in Limine to Exclude Evidence of Senate Investigation

02/24/2011 Subpoena
Filed by: Defendant Rish, Jenny
Subpoena

02/24/2011 Subpoena
Filed by: Defendant Rish, Jenny
Subpoena

02/24/2011 Subpoena
Filed by: Defendant Rish, Jenny
Subpoena

02/25/2011 Receipt of Copy
Filed by: Plaintiff Simao, William J
Receipt of Copy

02/25/2011 Order
Filed By: Plaintiff Simao, William J
Order Regarding Plaintiffs' Motion to Allow the Plaintiffs to Present a Jury Questionnaire Prior to Voir Dire

02/25/2011 Reply
Filed by: Defendant Rish, Jenny
Defendant's Reply to Plaintiff's Supplemental Opposition to Motion to Exclude Evidence of Senate Investigation, and Opposition to Plaintiff's Counter-Motion to Introduce Evidence of a California Fair Political Practices Investigation

02/25/2011 Opposition
Filed By: Defendant Rish, Jenny
Defendant Jenny Rish's Opposition to Plaintiff's Motion to Preclude Defendant from Raising a "Minor" or "Low Impact" Defense, to Limit the Trial Testimony of Defendant's Expert, Dr. David E. Fish, M.D., and Exclude Evidence of Property Damage

02/27/2011 Reply to Opposition
Filed by: Plaintiff Simao, William J
Plaintiffs' Reply to Defendant's Opposition to Plaintiffs' Motion to Exclude Sub Rosa Video

02/28/2011 Receipt of Copy
Filed by: Defendant Rish, Jenny
Receipt of Copy

02/28/2011 Receipt of Copy
Filed by: Defendant Rish, Jenny
Receipt of Copy

02/28/2011	Objection Filed By: Defendant Rish, Jenny *Objections to Plaintiffs' Proposed Exhibits Pursuant to NRCP 16.1(a)(3)*
03/01/2011	**Calendar Call** (9:00 AM) (Judicial Officer: Walsh, Jessie)
03/01/2011	**Motion to Exclude** (9:00 AM) (Judicial Officer: Walsh, Jessie) Events: 02/14/2011 Motion to Exclude *Plaintiff's Motion to Exclude Sub Rosa Video*
03/01/2011	**Motion in Limine** (9:00 AM) (Judicial Officer: Walsh, Jessie) Events: 02/17/2011 Motion in Limine *Plaintiff's Motion in Limine to (1) Preclude Defendant from Raising a "Minor" or "Low Impact" Defense; (2) Limit the Trial Testimony of Defendant's Expert David Fish M.D. and ; (3) Exclude Evidecne of Property Damage*
03/01/2011	**All Pending Motions** (9:00 AM) (Judicial Officer: Walsh, Jessie)
03/01/2011	Receipt of Copy Filed by: Plaintiff Simao, William J *Receipt of Copy*
03/01/2011	Notice Filed By: Plaintiff Simao, William J *Notice of 2.67 Conference*
03/02/2011	Omnibus Motion In Limine Filed by: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A
03/03/2011	Receipt of Copy Filed by: Plaintiff Simao, William J *Receipt of Copy*
03/03/2011	Pre-trial Memorandum Filed by: Defendant Rish, Jenny *Defendant's Pre-Trial Memorandum*
03/03/2011	Pre-trial Memorandum Filed by: Plaintiff Simao, William J *Plaintiffs' Pre-Trial Memorandum*
03/04/2011	Opposition to Motion in Limine Filed By: Defendant Rish, Jenny *Defendant's Opposition to Plaintiffs' Second Omnibus Motion in Limine*
03/04/2011	Errata Filed By: Plaintiff Simao, William J *Errata to Plaintiffs' Pre-Trial Memorandum*
03/04/2011	Supplement Filed by: Plaintiff Simao, William J *Supplement to the Plaintiffs' Pre-Trial Disclosure Statement*
03/04/2011	**Calendar Call** (9:00 AM) (Judicial Officer: Walsh, Jessie)

03/04/2011	Receipt of Copy Filed by: Plaintiff Simao, William J *Receipt of Copy*
03/07/2011	Stipulation Filed by: Plaintiff Simao, William J *Stipulation Pursuant to EDCR 2.47*
03/07/2011	Receipt of Copy Filed by: Defendant Rish, Jenny *Receipt of Copy*
03/07/2011	Receipt of Copy Filed by: Defendant Rish, Jenny *Receipt of Copy*
03/08/2011	**Omnibus Motion in Limine** (9:00 AM) (Judicial Officer: Walsh, Jessie) Events: 03/02/2011 Omnibus Motion In Limine *Plaintiffs' Second Omnibus Motion in Limine*
03/09/2011	Errata Filed By: Plaintiff Simao, William J *Second Errata to Plaintiffs' Pre-Trial Memorandum*
03/10/2011	Notice of Entry of Order Filed By: Plaintiff Simao, William J *Notice of Entry of Order*
03/11/2011	Order Filed By: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A *Order Regarding Plaintiffs' Omnibus Motion in Limine*
03/14/2011	Notice of Association of Counsel Filed By: Defendant Rish, Jenny *Notice of Association of Counsel*
03/14/2011	**Jury Trial** (1:00 PM) (Judicial Officer: Walsh, Jessie) **03/14/2011-03/18/2011, 03/21/2011-03/25/2011, 03/28/2011-03/31/2011**
03/14/2011	Order Filed By: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A *Order Regarding Plaintiffs' Motion in Limine to (1) Preclude Defendant from Raising a "Minor" or "Low Impact" Defense; (2) Limit the Trial Testimony of Defendant's Expert, David Fish, M.D. and; (3) Exclude Evidence of Property Damages and Plaintiffs' Motion to Exclude Sub Rosa Video*
03/17/2011	*CANCELED* **Hearing** (10:30 AM) **(Judicial Officer: Walsh, Jessie)** *Vacated*
03/18/2011	Notice of Entry of Order Filed By: Plaintiff Simao, William J *Notice of Entry of Order*
03/18/2011	Brief

Filed By: Defendant Rish, Jenny
Trial Brief in Support of Oral Motion for Mistrial

03/18/2011 Brief
Filed By: Defendant Rish, Jenny
Trial Brief on Percipient Testimony Regarding the Accident

03/21/2011 Errata
Filed By: Defendant Rish, Jenny
First Errata to Defendant's Pre-Trial Memorandum

03/21/2011 Receipt of Copy
Filed by: Defendant Rish, Jenny
Receipt of Copy

03/21/2011 Amended Jury List

03/22/2011 Order
Filed By: Defendant Rish, Jenny
Order Granting Motion to Exclude Graphic and Lurid Video of Surgery

03/22/2011 Order
Filed By: Defendant Rish, Jenny
Order Granting Motion to Exclude Duplicative and Cumulative Testimony

03/22/2011 Order
Filed By: Defendant Rish, Jenny
Order Granting Motion to Exclude Argument of Case During Voir Dire

03/22/2011 Order
Filed By: Defendant Rish, Jenny
Order Granting Motion to Exclude Plaintiff's Economist, Stan Smith, for Lack of Foundation to Offer Expert Economist Opinion Testimony

03/22/2011 Opposition
Filed By: Plaintiff Simao, William J
Plaintiffs' Opposition to Defendant's Trial Brief in Support of Oral Motion for Mistrial

03/22/2011 Receipt of Copy
Filed by: Plaintiff Simao, William J
Receipt of Copy of Plaintiffs' Opposition to Defendant's Trial Brief in Support of Oral Motion for Mistrial

03/22/2011 Order
Filed By: Plaintiff Simao, William J
Order Regarding Plaintiffs' Second Omnibus Motion in Limine

03/22/2011 Order
Filed By: Defendant Rish, Jenny
Order Granting Motion to Exclude Traffic Accident Report and Investigating Officer's Conclusions

03/22/2011 Order
Filed By: Defendant Rish, Jenny

Order Granting Motion to Exclude Life Care Expert, Kathleen Hartmann, R.N.

03/22/2011 Order
Filed By: Defendant Rish, Jenny
Order Granting Motion to Exclude Plaintiff's Accident Reconstructionist/Biomechanical Expert David Ingebretsen

03/22/2011 Order
Filed By: Defendant Rish, Jenny
Order Granting Motion to Exclude Witnesses from Testifying Regarding the Credibility or Veracity of Other Witnesses

03/24/2011 Pre-trial Memorandum
Filed by: Plaintiff Simao, William J
Plaintiffs' Amended Pre-Trial Memorandum

03/24/2011 Designation of Expert Witness
Filed By: Plaintiff Simao, William J
Plaintiffs' De-Designation of Kathleen Hartman, R.N. as an Expert Witness

03/24/2011 Reporters Transcript
Reporter s Transcript Motions Hearing

03/24/2011 Reporters Transcript
Reporter s Transcript Trial to the Jury Day 2 - Volume 1

03/24/2011 Reporters Transcript
Reporter s Transcript Motions in Limine Hearing

03/24/2011 Reporters Transcript
Reporter s Transcript Motions Hearing

03/24/2011 Reporters Transcript
Reporter s Transcript Motion Hearing

03/24/2011 Reporters Transcript
Reporter s Transcript Trial by Jury Day 1 - Volume 1

03/24/2011 Reporters Transcript
Reporter s Transcript Motion Hearing

03/25/2011 Notice of Entry of Order
Filed By: Plaintiff Simao, William J
Notice of Entry of Order

03/29/2011 Receipt of Copy
Filed by: Defendant Rish, Jenny
Receipt of Copy

03/29/2011 Brief
Filed By: Defendant Rish, Jenny
Trial Brief Regarding Exclusion of Future Surgery for Failure to Disclose Computation of Future Damages Under NRCP 16.1(a)(1)C)

03/29/2011	Reporters Transcript *Reporter s Transcript Trial To The Jury Day 3 - Volume 1*
03/30/2011	Reporters Transcript Filed By: Plaintiff Simao, Cheryl A *Reporter s Transcript Trial To The Jury Day 4- Volume 1*
03/31/2011	Stipulation and Order for Dismissal With Prejudice Filed By: Defendant Rish, James; Defendant Rish, Linda
03/31/2011	**Order of Dismissal With Prejudice** (Judicial Officer: Walsh, Jessie) Debtors: William J Simao (Plaintiff), Cheryl A Simao (Plaintiff) Creditors: James Rish (Defendant), Linda Rish (Defendant) Judgment: 03/31/2011, Docketed: 04/08/2011
04/01/2011	Brief Filed By: Plaintiff Simao, William J *Plaintiffs' Confidential Trial Brief*
04/01/2011	Supplement Filed by: Plaintiff Simao, William J *Plaintiffs' First Supplement to Their Confidential Trial Brief to Exclude Unqualified Testimony of Defendant's Medical Expert, Dr. Fish*
04/01/2011	Supplemental Brief Filed By: Plaintiff Simao, William J *Plaintiffs' Second Supplement to Their Confidential Trial Brief to Permit Dr. Grover to Testify with Regard to all Issues Raised During his Deposition*
04/01/2011	Supplemental Brief Filed By: Plaintiff Simao, William J *Plaintiffs' Third Supplement to Their Confidential Trial Brief; There is no Surprise to the Defense Regarding Evidence of a Spinal Cord Stimulator*
04/01/2011	Supplemental Brief Filed By: Plaintiff Simao, William J *Plaintiffs' Fourth Supplement to Their Confidential Trial Brief Regarding Cross Examination of Dr. Wang*
04/01/2011	Supplemental Brief Filed By: Plaintiff Simao, William J *Plaintiffs' Fifth Supplement to Their Confidential Trial Brief to Permit Stan Smith, Ph.D., to Testify Regarding, Evidence Made Known to him During Trial*
04/01/2011	**Hearing** (1:00 PM) (Judicial Officer: Walsh, Jessie) *Hearing: Prove-up of damages*
04/01/2011	Reporters Transcript Filed By: Plaintiff Simao, William J *Reporter s Transcript Trial To the Jury Day 6 - Volume 1*
04/01/2011	Reporters Transcript Filed By: Plaintiff Simao, William J *Reporter s Transcript Trial To The Jury Day 5 - Volume 1*

04/04/2011	Receipt of Copy Filed by: Plaintiff Simao, William J *Receipt of Copy of Plaintiffs' Confidential Trial Brief; Supplements 1 Through 5 and Powerpoint Slide*
04/04/2011	Receipt of Copy Filed by: Plaintiff Simao, William J *Receipt of Copy of Plaintiffs' Confidential Trial Brief; Supplements 1 Through 5 and Powerpoint Slide*
04/04/2011	Reporters Transcript *Reporter s Transcript Trial To The Jury Day - 7 Volume 1*
04/05/2011	Reporters Transcript *Reporter's Transcript Trial To The Jury Jury Panel Voir Dire*
04/05/2011	Reporters Transcript *Reporter's Transcript Trial To The Jury Jury Panel Voir Dire*
04/05/2011	Reporters Transcript *Trial To The Jury Jury Panel Voir Dire 3/14/11*
04/05/2011	Reporters Transcript *Reporter's Trancript Trial To The Jury Day 9 - Volume 1*
04/05/2011	Reporters Transcript *Reporter's Transcript Trial To The Jury Day 8 - Volume 1*
04/07/2011	Reporters Transcript *Reporter s Transcript Jury Panel Voir Dire*
04/07/2011	Reporters Transcript *Reporter s Transcript Summation Hearing*
04/15/2011	Reporters Transcript *Reporter's Transcript Jury Panel Voir Dire*
04/16/2011	Reporters Transcript Filed By: Plaintiff Simao, William J *Reporter s Transcript Trial By Jury Day 1 - Volume I*
04/16/2011	Reporters Transcript Filed By: Plaintiff Simao, William J *Reporter s Transcript Trial to the Jury Jury Panel Voir Dire*
04/18/2011	Receipt of Copy Filed by: Plaintiff Simao, William J *Receipt of Copy*
04/21/2011	Stipulation and Order Filed by: Plaintiff Simao, William J *Stipulation and Order to Modify Briefing Schedule*

04/22/2011	Opposition Filed By: Defendant Rish, Jenny *Defendant's Amended Response in Opposition to Plaintiffs' Request for Attorney Fees*
04/22/2011	Brief Filed By: Plaintiff Simao, William J *Plaintiffs' Brief in Favor of an Award of Attorney's Fees Following Default Judgment*
04/22/2011	Order Filed By: Plaintiff Simao, William J *Decision and Order Regarding Plaintiffs' Motion to Strike Defendant's Answer*
04/22/2011	Stipulation and Order Filed by: Defendant Rish, Jenny *Stipulation and Order to Modify Briefing Schedule*
04/22/2011	Opposition Filed By: Defendant Rish, Jenny *Defendant's Response in Opposition to Plaintiff's Request for Attorney Fees*
04/25/2011	Receipt of Copy Filed by: Plaintiff Simao, William J *Receipt of Copy*
04/25/2011	Receipt of Copy Filed by: Plaintiff Simao, William J *Receipt of Copy*
04/25/2011	Notice of Entry of Order Filed By: Plaintiff Simao, William J *Notice of Entry of Order*
04/26/2011	Notice of Entry of Order Filed By: Plaintiff Simao, William J *Notice of Entry of Order*
04/26/2011	Memorandum of Costs and Disbursements Filed By: Plaintiff Simao, William J *Plaintiffs' Memorandum of Costs and Disbursements*
04/26/2011	Notice of Entry of Order Filed By: Defendant Rish, James *Notice of Entry of Order*
04/28/2011	**Status Check** (3:00 AM) (Judicial Officer: Walsh, Jessie) *Fees and Costs*
04/28/2011	Judgment Filed By: Plaintiff Simao, William J *Judgment*
04/28/2011	**Default Judgment Plus Legal Interest** (Judicial Officer: Walsh, Jessie) Debtors: Jenny Rish (Defendant) Creditors: William J Simao (Plaintiff)

Judgment: 04/28/2011, Docketed: 05/06/2011
Total Judgment: 2,713,151.96
Debtors: Jenny Rish (Defendant)
Creditors: Cheryl A Simao (Plaintiff)
Judgment: 04/28/2011, Docketed: 05/06/2011
Total Judgment: 3,394,437.96
Debtors: Jenny Rish (Defendant)
Creditors: William J Simao (Plaintiff), Cheryl A Simao (Plaintiff)
Judgment: 04/28/2011, Docketed: 05/06/2011
Total Judgment: 99,555.49

04/29/2011 Motion to Retax
Filed By: Defendant Rish, Jenny
Defendant's Motion to Retax Costs

05/03/2011 Notice of Entry of Judgment
Filed By: Plaintiff Simao, William J
Notice of Entry of Judgment

05/03/2011 Certificate of Service
Filed by: Defendant Rish, Jenny
Certificate of Service

05/06/2011 Stipulation and Order
Filed by: Defendant Rish, Jenny
Stipulation and Order

05/09/2011 Notice of Entry of Order
Filed By: Defendant Rish, Jenny
Notice of Entry of Order

05/16/2011 Opposition to Motion
Filed By: Plaintiff Simao, William J
Plaintiffs' Opposition to Defendant's Motion to Retax Costs

05/16/2011 Motion for New Trial
Filed By: Defendant Rish, Jenny
Defendant's Motion for New Trial

05/17/2011 Certificate of Service
Filed by: Defendant Rish, Jenny
Certificate of Service

05/18/2011 Subpoena Duces Tecum
Filed by: Defendant Rish, Jenny
Subpoena Duces Tecum

05/25/2011 Certificate of Service
Filed by: Plaintiff Simao, William J
Certificate of Service

05/25/2011 Motion for Attorney Fees
Filed By: Plaintiff Simao, William J
Plaintiffs' Motion for Attorneys' Fees

05/26/2011	Motion to Quash Filed By: Plaintiff Simao, William J *Plaintiffs' Motion to Quash Defendant's Subpoena Duces Tecum to Jans-Jorg Rosler, M.D. at Nevada Spine Institute on Order Shortening Time*
05/26/2011	Reply Filed by: Defendant Rish, Jenny *Defendant's Reply to Opposition to Motion to Retax Costs*
05/27/2011	Receipt of Copy Filed by: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A *Receipt of Copy*
05/31/2011	Notice of Appeal Filed By: Defendant Rish, Jenny *Notice of Appeal*
05/31/2011	Case Appeal Statement Filed By: Defendant Rish, Jenny *Case Appeal Statement*
06/01/2011	Opposition Filed By: Defendant Rish, Jenny *Defendant's Opposition to Motion to Quash*
06/01/2011	Judgment Filed By: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A *Judgment*
06/01/2011	**Judgment Plus Interest** (Judicial Officer: Walsh, Jessie) Debtors: Jenny Rish (Defendant) Creditors: William J Simao (Plaintiff) Judgment: 06/01/2011, Docketed: 06/09/2011 Total Judgment: 2,713,151.96 Debtors: Jenny Rish (Defendant) Creditors: Cheryl A Simao (Plaintiff) Judgment: 06/01/2011, Docketed: 06/09/2011 Total Judgment: 681,286.00 Debtors: Jenny Rish (Defendant) Creditors: William J Simao (Plaintiff), Cheryl A Simao (Plaintiff) Judgment: 06/01/2011, Docketed: 06/09/2011 Total Judgment: 551,786.59
06/02/2011	**Motion to Retax** (3:00 AM) (Judicial Officer: Walsh, Jessie) Events: 04/29/2011 Motion to Retax *Defendant Rish's Motion to Retax Costs*
06/02/2011	Notice of Entry of Judgment Filed By: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A *Notice of Entry of Judgment*
06/06/2011	Reply Filed by: Plaintiff Simao, William J *Plaintiffs' Reply to Defendant's Opposition to Motion to Quash Defendants' Subpoena Duces Tecum to Jans-Jorg Rosler, M.D. at Nevada Spine Institute on Order Shortening Time*

06/06/2011	Receipt of Copy Filed by: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A *Receipt of Copy*
06/07/2011	**Motion to Quash** (9:00 AM) (Judicial Officer: Walsh, Jessie) Events: 05/26/2011 Motion to Quash *Plaintiffs' Motion to Quash Defendant's Subpoena Duces Tecum to Jans-Jorg Rosler, M.D. at Nevada Spine Institute on Order Shortening Time*
06/13/2011	Opposition Filed By: Defendant Rish, Jenny *Defendant's Opposition to Motion for Attorney Fees*
06/16/2011	Notice of Entry of Order Filed By: Plaintiff Simao, William J *Notice of Entry of Order*
06/16/2011	Order Denying Motion Filed By: Plaintiff Simao, William J *Order Denying Defendant's Motion to Retax Costs*
06/24/2011	Opposition to Motion Filed By: Plaintiff Simao, William J *Plaintiffs' Opposition to Defendant's Motion for New Trial*
06/27/2011	Amended Filed By: Defendant Rish, Jenny *Amended Case Appeal Statement*
06/27/2011	Notice of Appeal Filed By: Defendant Rish, Jenny *Amended Notice of Appeal*
07/06/2011	Motion to Compel Filed By: Defendant Rish, Jenny *Defendant's Motion to Compel Production of Documents*
07/06/2011	Receipt *Appeal Bond*
07/07/2011	Certificate of Service Filed by: Defendant Rish, Jenny *Certificate of Service*
07/14/2011	Reply Filed by: Defendant Rish, Jenny *Defendant's Reply to Opposition to Motion for New Trial*
07/14/2011	Reply Filed by: Plaintiff Simao, William J *Plaintiffs' Reply to Defendant's Opposition to Motion for Attorneys' Fees*
07/21/2011	**Motion for New Trial** (3:00 AM) (Judicial Officer: Walsh, Jessie)

Events: 05/16/2011 Motion for New Trial
Defendant Jenny Rish's Motion for New Trial

07/21/2011 **Motion for Attorney Fees** (3:00 AM) (Judicial Officer: Walsh, Jessie)
Events: 05/25/2011 Motion for Attorney Fees
Plaintiff's Motion for Attorney Fees

07/21/2011 **All Pending Motions** (3:00 AM) (Judicial Officer: Walsh, Jessie)

07/25/2011 Order
Filed By: Plaintiff Simao, William J
Order Granting Plaintiffs' Motion to Quash Defendant's Subpoena Duces Tecum to Jans-Jorg Rosler, M.D. at Nevada Spine Institute on Order Shortening Time

07/25/2011 Notice of Entry
Filed By: Plaintiff Simao, William J
Notice of Entry of Order

07/26/2011 Opposition to Motion
Filed By: Plaintiff Simao, William J
Plaintiffs' Opposition to Defendant's Motion to Compel Production of Documents

07/27/2011 Receipt of Copy
Filed by: Plaintiff Simao, William J
Receipt of Copy

08/11/2011 **Motion to Compel** (3:00 AM) (Judicial Officer: Walsh, Jessie)
Events: 07/06/2011 Motion to Compel
Defendant Jenny Rish's Motion to Compel Production of Documents

08/24/2011 Order Denying
Filed By: Plaintiff Simao, William J; Plaintiff Simao, Cheryl A
Order Denying Defendant's Motion for New Trial

08/25/2011 Notice of Entry of Order
Filed By: Plaintiff Simao, William J
Notice of Entry of Order

09/01/2011 Order Denying
Filed By: Plaintiff Simao, William J
Order Denying Defendant's Motion to Compel Production of Documents

09/02/2011 Notice of Entry of Order
Filed By: Plaintiff Simao, William J
Notice of Entry of Order

09/14/2011 Order
Filed By: Plaintiff Simao, William J
Order Granting Plaintiffs' Motion for Attorney's Fees

09/14/2011 Amended
Filed By: Defendant Rish, Jenny
Second Amended Notice of Appeal

CASE SUMMARY

CASE NO. 07A539455

09/14/2011	Amended Filed By: Defendant Rish, Jenny *Second Amended Case Appeal Statement*

DATE	FINANCIAL INFORMATION	
	Conversion Extended Connection Type No Convert Value @ 07A539455	
	Total Charges	279.00
	Total Payments and Credits	279.00
	Balance Due as of 9/15/2011	**0.00**
	Defendant Rish, Jenny	
	Total Charges	31.00
	Total Payments and Credits	31.00
	Balance Due as of 9/15/2011	**0.00**
	Defendant Rish, Jenny	
	APPEAL BOND Balance as of 9/15/2011	**1,000.00**

CIVIL COVER SHEET

Clark County, Nevada

Case No. A589455

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
WILIAM SIMAO; CHERYL ANN SIMAO	JENNY RISH; JAMES RISH; LINDA RISH
Attorney (name/address/phone): Matthew E. Aaron, Esq. 2300 W. Sahara Ave., Suite 650, Las Vegas, NV 89102	Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ **Arbitration Requested**

Civil Cases

Real Property

- ☐ **Landlord/Tenant**
  - ☐ Unlawful Detainer
- ☐ **Title to Property**
  - ☐ Foreclosure
  - ☐ Liens
  - ☐ Quiet Title
  - ☐ Specific Performance
- ☐ **Condemnation/Eminent Domain**
- ☐ **Other Real Property**
  - ☐ Partition
  - ☐ Planning/Zoning

Torts

Negligence

- ☒ **Negligence – Auto**
- ☐ **Negligence – Medical/Dental**
- ☐ **Negligence – Premises Liability** (Slip/Fall)
- ☐ **Negligence – Other**

- ☐ **Product Liability**
  - ☐ Product Liability/Motor Vehicle
  - ☐ Other Torts/Product Liability
- ☐ **Intentional Misconduct**
  - ☐ Torts/Defamation (Libel/Slander)
  - ☐ Interfere with Contract Rights
- ☐ **Employment Torts** (Wrongful termination)
- ☐ **Other Torts**
  - ☐ Anti-trust
  - ☐ Fraud/Misrepresentation
  - ☐ Insurance
  - ☐ Legal Tort
  - ☐ Unfair Competition

Probate

- ☐ **Summary Administration**
- ☐ **General Administration**
- ☐ **Special Administration**
- ☐ **Set Aside Estates**
- ☐ **Trust/Conservatorships**
  - ☐ Individual Trustee
  - ☐ Corporate Trustee
- ☐ **Other Probate**

Other Civil Filing Types

- ☐ **Construction Defect**
  - ☐ Chapter 40
  - ☐ General
- ☐ **Breach of Contract**
  - ☐ Building & Construction
  - ☐ Insurance Carrier
  - ☐ Commercial Instrument
  - ☐ Other Contracts/Acct/Judgment
  - ☐ Collection of Actions
  - ☐ Employment Contract
  - ☐ Guarantee
  - ☐ Sale Contract
  - ☐ Uniform Commercial Code
- ☐ **Civil Petition for Judicial Review**
  - ☐ Other Administrative Law
  - ☐ Department of Motor Vehicles
  - ☐ Worker's Compensation Appeal

- ☐ **Appeal from Lower Court** *(also check applicable civil case box)*
  - ☐ Transfer from Justice Court
  - ☐ Justice Court Civil Appeal
- ☐ **Civil Writ**
  - ☐ Other Special Proceeding
- ☐ **Other Civil Filing**
  - ☐ Compromise of Minor's Claim
  - ☐ Conversion of Property
  - ☐ Damage to Property
  - ☐ Employment Security
  - ☐ Enforcement of Judgment
  - ☐ Foreign Judgment – Civil
  - ☐ Other Personal Property
  - ☐ Recovery of Property
  - ☐ Stockholder Suit
  - ☐ Other Civil Matters

III. Business Court Requested (Please check applicable category; *for Clark or Washoe Counties only.*)

- ☐ NRS Chapters 78-88
- ☐ Commodities (NRS 90)
- ☐ Securities (NRS 90)
- ☐ Investments (NRS 104 Art. 8)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Trademarks (NRS 600A)
- ☐ Enhanced Case Mgmt/Business
- ☐ Other Business Court Matters

4/13/07
Date

Signature of initiating party or representative

Electronically Filed
04/22/2011 03:40:20 PM

CLERK OF THE COURT

ORDR
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MAINOR EGLET

DISTRICT COURT
CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO, individually and CHERYL ANN SIMAO, individually, and as husband and wife, Plaintiffs, v. JENNY RISH, Defendant.	CASE NO.: A539455 DEPT. NO.: X

DECISION AND ORDER REGARDING PLAINTIFFS' MOTION TO STRIKE DEFENDANT'S ANSWER

This matter having come before the Court on March 31, 2011, on Plaintiffs' oral Motion to Strike Defendant's Answer, ROBERT T. EGLET, ESQ., DAVID T. WALL, ESQ. and ROBERT M. ADAMS, ESQ. present for Plaintiffs, WILLIAM SIMAO and CHERYL SIMAO,

STEPHEN H. ROGERS, ESQ. and DANIEL F. POLSENBERG, ESQ. present for Defendant, JENNY RISH, and following the Court's oral pronouncement from the bench GRANTING Plaintiffs' Motion, the Court hereby enters the following written Decision and Order:

I. Factual and Procedural Background

This case involves a motor vehicle accident occurring on April 15, 2005. The Plaintiff, WILLIAM SIMAO, was driving southbound on Interstate 15 when he was rear-ended by a vehicle driven by the Defendant, JENNY RISH. Defendant did not deny causing the accident. Plaintiff WILLIAM SIMAO was injured in the accident and brought the instant action, which included a claim for loss of consortium by WILLIAM SIMAO's wife, Plaintiff CHERYL SIMAO.

This matter was presented for jury trial beginning on March 14, 2011, and the trial had nearly been completed before the instant Motion was made. However, the facts supporting the Motion and the grounds upon which to analyze the Motion include rulings made by this Court before the trial commenced. The Plaintiffs' oral motion to strike the Defendant's Answer is rooted primarily in the Defendant's repeated violations of this Court's Order granting the Plaintiffs' Motion in Limine to Preclude Defendant From Raising a Minor Impact Defense. However, this Court recognizes that Defendant violated other Orders of this Court during the trial, and the cumulative effect of such violations is material to the Court's analysis. Before itemizing and analyzing the violations of this Court's Order on "minor impact," it is necessary to consider the violations of other Court orders by the Defendant.

A. Violation of Order Precluding Evidence of Unrelated Accidents, Injuries or Medical Conditions

1. Plaintiffs' Motion in Limine

On January 7, 2011, Plaintiffs brought an Omnibus Motion in Limine, which included a

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request to preclude the Defendant from introducing evidence of Prior and Subsequent Unrelated Accidents, Injuries and Medical Conditions and Prior and Subsequent Claims or Lawsuits. This portion of the Omnibus Motion in Limine specifically asked this Court to preclude evidence of an unrelated 2003 motorcycle accident involving the Plaintiff, since no medical provider had connected any of the minor injuries sustained by the Plaintiff in the 2003 motorcycle accident to any injuries suffered in the instant accident. In short, the evidence established that the motorcycle accident was irrelevant.

The Defendant filed an Opposition to Plaintiffs' Omnibus Motion in Limine, and the matter was heard by this Court on February 15, 2011, at which time this Court GRANTED Plaintiffs' request. On March 9, 2011, this Court entered a written Order which stated in pertinent part as follows:

> "**IT IS HEREBY ORDERED** that Plaintiffs' request to exclude prior and subsequent unrelated accidents, injuries and medical conditions, and prior and subsequent claims or lawsuits is GRANTED in all respects."

Following the entry of the foregoing Order, all parties were on notice that this Court had specifically precluded the Defendant from introducing evidence of unrelated accidents, including the 2003 motorcycle accident.

2. Defendant's Clear Violation in Opening Statement

In his Opening Statement, counsel for the Defendant presented to the jury a Power Point slide referencing William Simao's 2003 motorcycle accident. The Plaintiffs objected, asked that the slide be shielded from the jury, and approached for a sidebar conference.

The slide clearly and unambiguously violated the Order of this Court on the Plaintiffs' Omnibus Motion in Limine, which Motion specifically referenced the 2003 motorcycle accident as an accident *unrelated* to any issue in the instant case. The jury was directed to disregard the

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slide and was further admonished that a pretrial ruling of the Court excluded evidence of the 2003 motorcycle accident.

The Plaintiffs' objection was sustained.

Following this admonition, this Court held a hearing outside the presence of the jury to allow the Defendant's counsel and the Plaintiffs' counsel to review the remaining slides accompanying the defense Opening Statement to determine if any of them violated court orders. Several of them violated orders and were removed (RTP, March 21, 2011, p. 75). Notably, the Plaintiffs' counsel made the following statement outside the presence of the jury:

> There were multiple other slides that had the same type of problems in them. Most of them Mr. Rogers agreed with and took those statements out of the slides, but again, if we hadn't done that, there would have been three to four more clear violations of … this Court's pretrial orders.
>
> As Mr. Wall [Plaintiffs' co-counsel] said at the bench, I think it's clear – I think it's abundantly clear that Mr. Rogers is going to try to mistry this case. I think it is abundantly clear that that's what's going on.
>
> I told the Court at the last bench conference that that was two. If there were any additional ones, we were going to start asking for monetary sanctions *and other potential sanctions* in this case for this type of *systematic refusal to comply with pretrial court orders.*
>
> *I expect his experts are going to do it as well.* I can assure this Court that they are going to violate a number of the orders in their testimony, just like Mr. Rogers did up there….

(RTP, March 21, 2011, p. 75) (emphasis supplied).

B. Violations of Order Precluding Evidence That This is a "Medical Build-up" Case

1. Plaintiffs' Motion in Limine

Within the afore-mentioned Omnibus Motion in Limine, the Plaintiffs also sought to preclude any evidence or argument that the case was "attorney driven" or a "medical build-up" case. This section of the Plaintiffs' Omnibus Motion in Limine was also heard by this Court on February 15, 2011, at which time this Court GRANTED the Plaintiffs' request. During the hearing on this Motion, counsel for the Defendant conceded he had no evidence of any kind suggesting that this case was "attorney driven" or a "medical build-up" case. This Court's written Order of March 9, 2011, also stated as follows:

> **"IT IS FURTHER ORDERED** that Plaintiffs' request to preclude argument that this case is 'attorney driven' or a 'medical build-up' case is GRANTED."

Following the entry of the foregoing Order, all parties were on notice that this Court had specifically precluded the Defendant from arguing or presenting evidence that the instant case was a "medical build-up" case, in large measure as a result of the Defendant having no such evidence to present.

2. Defendant's Clear Violation During Opening Statement

In his Opening Statement, counsel for the Defendant made the following statement when discussing the testimony of the Plaintiff's treating physicians:

> "And we are going to hear from various different kinds of doctors in this case. One of them are doctors who appear down here regularly in court, as often, if not more than trial lawyers. Doctors McNulty, and Grover…"
>
> (RTP March 21, 2011, p. 72).

Defense counsel's statement was interrupted by an objection from the Plaintiffs, who additionally asked that the Power Point slide that accompanied the defense's Opening Statement

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be shielded from the jury. The slide referenced the Plaintiff's treating physicians as "Trial Doctors."

At the sidebar conference that followed, the Plaintiffs objected to the statements of counsel and the "Trial Doctors" slide as violating this Court's Order precluding any argument that the case was "attorney driven" or a "medical build-up" case. Since no other purpose for the statement or the slide was forthcoming from counsel for the Defendant at the sidebar, the jury was directed to disregard the slide.

The Plaintiffs' objection was sustained.

3. Defendant's Clear Violation During Cross-Examination of Dr. Patrick McNulty

Despite this Court's ruling during the Defendant's Opening Statement on the issue of medical build-up and "Trial Doctors," counsel for the Defendant asked the following question of Dr. McNulty, one of the Plaintiff's treating doctors:

> "Now, Doctor, yesterday there was a discussion about the testimony history of a doctor. I don't broach this topic with you to be insensitive, but I want to touch on it since that issue has been raised. You testified under oath, whether it be in trial or in deposition, somewhere around 100 times; is that right?"
>
> (RTP, March 25, 2011, pp. 21-22).

Counsel for the Plaintiffs immediately objected and approached the Court for a sidebar bench conference. There, the Court heard argument regarding the "discussion" "yesterday" which was the Plaintiffs' use of specific prior deposition testimony to impeach the Defendant's expert witness during cross-examination. Further, the Court heard argument that this line of questioning could only be presented to create an inference of "medical build-up." Counsel for the Defendant did not sufficiently explain to this Court how this line of questioning was not a violation of the pretrial order precluding evidence of "medical build-up," especially in light of

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the fact that the Defendant admittedly had no evidence to support a "medical build-up" defense.

The Plaintiffs' objection was sustained.

C. Violations of Pretrial Order Precluding "Minor Impact" Defense

As set forth above, the Plaintiffs' ultimate motion to strike the Defendant's Answer was based primarily on repeated violations of this Court's pretrial Order on the issue of a "minor impact" defense.

1. Plaintiff's Motion in Limine

On February 17, 2011, Plaintiffs brought a Motion in Limine to: 1) Preclude Defendant from Raising a "Minor" or "Low Impact" Defense; 2) Limit the Trial Testimony of Defendant's Expert, David Fish, M.D.; and 3) Exclude Evidence of Property Damage. The Motion set out the fact that the Nevada Highway Patrol Trooper who completed the Accident Report referred to the vehicle damage as "moderate." Specifically, the Motion asked the Court to preclude the Defendant from "arguing, suggesting or insinuating at trial that the crash was a 'minor impact' or 'low impact' collision, and not significant enough to cause Plaintiff's injuries." The Motion was primarily based on *Hallmark v. Eldridge*, 189 P.3d 646 (Nev. 2008), coupled with the fact that Defendant did not have any expert qualified to testify whether the impact in the instant collision was sufficient to cause the injuries complained of. Conversely, the Plaintiffs had disclosed a biomechanical expert who was prepared to testify that the accident was of the type to have proximately caused injury to the Plaintiff. The Motion further sought to limit Defendant's pain management expert, Dr. David Fish, from testifying to opinions rooted in biomechanical science, as he lacks the qualifications to testify to such opinions under the standard announced in *Hallmark.*

On February 25, 2011, Defendant filed an Opposition to the Motion and the matter was heard by this Court on March 1, 2011, at which time the Court GRANTED Plaintiffs' Motion in

its entirety. Defendants provided no evidence or information to correlate the amount of damage to a vehicle in a collision to the severity of the injury suffered by a passenger. Defendants had no expert witness on biomechanics to support an argument or inference that this accident was too minor to cause the injuries alleged to have been suffered by the Plaintiff. Based on the Nevada Supreme Court's rulings in *Hallmark, supra, Levine v. Remolif*, 80 Nev. 168 (1964) and *Choat v. McDorman*, 86 Nev. 332 (1970), this Court found that issues of accident reconstruction and biomechanics are not within the common knowledge of laypersons and require expert witness testimony. As such, this Court found no evidentiary or factual foundation upon which the Defendant could argue or infer that the accident was too minor to cause the Plaintiff's injuries.

On March 8, 2011, this Court entered a written Order which stated in pertinent part as follows:

> **"IT IS HEREBY ORDERED** that Plaintiffs' request to preclude Defendant from Raising a "Minor" or "Low Impact" Defense is **GRANTED**.
>
> **IT IS FURTHER ORDERED** that Plaintiffs' request to limit the trial testimony of Defendant's expert, David Fish, M.D., to those areas of expertise that he is qualified to testify in regards to is **GRANTED**. Neither Dr. Fish nor any other defense expert shall opine regarding biomechanics or the nature of the impact of the subject crash at trial.
>
> **IT IS FURTHER ORDERED** that Plaintiffs' request to exclude the property damage photos and repair invoice(s) is **GRANTED**."

Following the entry of the foregoing Order, all parties were on notice that this Court had specifically precluded a defense (or even an argument) that the accident was too minor to cause the injuries for which Plaintiff sought to recover damages.

Despite a clear and unambiguous Order precluding the Defendant from raising as a defense that the impact of the accident was too minor to cause the Plaintiff's injuries, counsel for

the Defendant persisted in violating this Court's order, ultimately leading to the sanction imposed herein. There can be no question or argument that the Defendant was on notice of this Court's Order, based on the following:

a) Hearing Outside the Presence of the Jury on March 18, 2011

After jury selection had been completed and before Opening Statements, this Court held a hearing outside the presence of the jury to discuss, among other things, the issue of a minor impact defense. The discussion on the record was extensive and comprises seventeen (17) pages of the transcript (See, RTP, March 18, 2011, pp. 112-129).

During this hearing, the Plaintiffs' counsel brought to this Court's attention the fact that counsel for the Defendant, in his Opening Statement, might broach the subject of minor impact by referring to the Defendant's deposition testimony that the impact of the accident was merely "a tap." Counsel for the Defendant conceded that it was his impression that this Court had not precluded such an argument:

> "What happened was, there was a motion to exclude a defense that a minor impact cannot cause injury. The Plaintiffs' argument in the motion was because the defense did not retain a biomechanical engineer they would not be able to argue the general proposition that minor impacts cannot cause injury.
>
> The defense appeared at the hearing and said, 'This is not a biomechanical case. The defense is not going to argue that no minor impact can cause injury. *The defense is that this minor impact did not cause injury.*"
>
> (RTP, March 18, 2011, p. 114)(emphasis supplied).

It became clear to this Court that the Defendant intended to present a minor impact defense, despite the Order of this Court to the contrary. Plaintiffs' counsel was allowed to once again state on the record their position on the original Motion in Limine, outlining that the

Defendant had no expert witness to opine that the accident was too minor to cause the claimed injuries, and further that the Order of this Court on the Motion in Limine precluded a "minor impact" defense at trial.

By the conclusion of the hearing outside the presence of the jury, this Court reiterated its ruling on the Motion in Limine precluding a "minor impact" defense (RTP March 18, 2011, p. 125-26). Likewise, this Court precluded counsel for the Defendant from referencing in his Opening Statement that it was a minor impact, or simply "a tap," for the purpose of raising an inference that the accident was too minor to cause the Plaintiff's injuries (RTP March 18, 2011, pp. 127-28). This Court further reminded counsel for the Defendant to review the Order entered on this issue to avoid violating it in the future (RTP March 18, 2011, p. 126, 127).

b) Hearing Outside the Presence of the Jury on March 21, 2011

On the first court day following the hearing set forth above, the issue of "minor impact" was again raised outside the presence of the jury immediately following the Plaintiffs' Opening Statement. At this hearing, the Defendant sought permission to claim a "minor impact" defense based on the door allegedly being opened by the Plaintiffs in their Opening Statement when counsel referred to the accident as a "motor vehicle crash." This Court noted that the Plaintiffs in their Opening Statement did not refer to the nature of the impact, the severity of the impact, the fact that the impact was significant enough to cause the Plaintiff's injuries nor any violence associated with the impact. In fact, this Court noted that Plaintiffs' counsel did not describe the impact of the vehicles in any way.

Based on that finding, the Court denied the Defendant's renewed request to be able to raise a "minor impact" defense. Again, the Defendant was clearly and unequivocally on notice that such a defense was precluded.

2. Reference to Minor Impact during Defendant's Opening Statement

Immediately following the foregoing discussion outside the presence of the jury, counsel for the Defendant delivered his Opening Statement. He described the stop and go traffic the Defendant encountered before the accident, and stated that the Defendant was nearly stopped before the impact (RTP, March 21, 2011, p. 63). Plaintiffs did not object to this statement, although it arguably raises an inference of a minor impact.

Thereafter, counsel for the Defendant proceeded to attempt to play selected portions of his client's videotaped deposition regarding the nature of the accident, which drew an objection from the Plaintiffs. After a bench conference, this Court determined that not only was the Defendant's deposition hearsay when offered on her own behalf, but also that testimony regarding the nature of the accident, if offered to show it was a minor impact, would be in violation of this Court's pretrial Order.

The Plaintiffs' objection was sustained.

3. Clear Violation of Order During Cross-Examination of Dr. Jorg Rosler

During the testimony of Dr. Rosler, one of the Plaintiff's treating pain management physicians, counsel for the Defendant asked the following question:

> "Do you know anything about what happened to [Defendant] Jenny Rish and her passengers in this accident?"
>
> (RPT, March 22, 2011, p. 84)

Before the witness could answer, the Plaintiffs objected, citing this Court's pretrial motion ruling.

The only potential relevance of such an inquiry would be to raise an inference that since the Defendant or her passengers were not injured (or that the Plaintiff's treating physician was unaware of any injury), the accident must not have been significant enough to injure the Plaintiff.

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There is no other potential purpose in obtaining an answer from this witness to that question. Such an inference would be directly contrary to this Court's Order precluding a "minor impact" defense.

The Plaintiffs' objection was sustained.

4. Clear Violation During Cross-Examination of Dr. Patrick McNulty

Despite the fact that the Court sustained the Plaintiffs' objection to the improper question of Dr. Rosler, counsel for Defendant asked an almost identical question of the next treating physician to testify for Plaintiff. Within the first two minutes of the Defendant's cross-examination of Dr. McNulty, the following questions were asked:

[Defense Counsel] And you don't know anything about the car accident other than what [Plaintiff] told you?

[Dr. McNulty] It was simply he said he had a car accident and that's when he – his problems started.

[Defense Counsel] Okay. But did you discuss with him whether he was able to drive from the scene of the accident?

[Dr. McNulty] No, I really didn't go into the other – into the other details. No, I did not discuss that.

[Defense Counsel] *Do you know anything about the folks in Jenny Rish's car?* (RTP 3/25/11, p. 4) (Emphasis supplied).

Counsel for the Plaintiffs immediately objected and a bench conference ensued. At the bench conference, counsel for the Defendant indicated his position on the relevance of the question:

[Defense Counsel] The relevance is that if one of them were injured or were not, that would be relevant or probative to whether the others were injured.

(RTP 3/25/11, p. 5).

In fact, based on this Court's prior rulings, such a position is untenable. As stated in the authority supporting the grant of the Plaintiffs' pretrial Motion in Limine, there is no correlation between the size of the impact and the potential for injury to the Plaintiff. There is no correlation between whether the Defendant or one of her passengers was injured and the potential for injury to the Plaintiff. The Defendant had no credible or admissible evidence suggesting such a correlation and no expert testimony to support such a proposition.

Further, since the question asked on cross-examination of Dr. McNulty was exactly the same question precluded during the cross-examination of Dr. Rosler, the Defendant was clearly on notice that this area of inquiry was improper.

The Plaintiffs' objection was sustained.

5. Clear Violation During Cross-Examination of Dr. Jaswinder Grover

On the very same afternoon as Dr. McNulty's cross-examination, the Defendant had the opportunity to cross-examine Dr. Grover, another of the Plaintiff's treating physicians. During that cross-examination, counsel for the Defendant *again* asked the very same type of question precluded during the cross-examination of Drs. Rosler and McNulty:

[Defense Counsel] You know the Plaintiff wasn't transported by ambulance.

[Dr. Grover] Yes, sir.

[Defense Counsel] *You know [whether] Jenny Rish –*

[Plaintiff's Counsel] Objection, Your Honor.

[Defense Counsel] – *was lifted from the scene?*

(RTP 3/25/11, p. 141).

After all of the previous hearings on the issue of a "minor impact" defense, and after the objections to the same type of question were sustained by this Court, such a question of Dr.

Grover is simply inexplicable. Again, there is no potential relevance to a question asked of one of the Plaintiff's treating doctors (who didn't treat the Plaintiff until almost three years after the accident) about any injuries to the Defendant, other than to attempt to infer that the accident was too minor to injure the Plaintiff if the Defendant was not injured. That inference is precluded, based on the fact that the Defendant had no expert witness or admissible evidence to support that inference.

The Plaintiffs' objection was sustained and the jury was directed to disregard the last question.

6. Hearing Outside the Presence of the Jury on March 25, 2011

Following the testimony of Dr. Grover, at a hearing outside the presence of the jury, counsel for the Plaintiffs made the following record regarding the pervasive and continuous violations of this Court's Orders on pretrial Motions by counsel for the Defendant:

> [Plaintiffs' Counsel] Despite the ruling of the Court, despite the arguments we've had outside the presence on the issue of minor impact, in Opening Statement and with each and every witness so far, there's been a question which leads to a conclusion or an argument about minor impact, whether the Defendant was injured in – whether the doctor knows whether the Defendant was injured in the accident, which could only potentially be relevant to some argument that the accident was too minor to have caused injury, because she wasn't injured.
>
> Each time we've objected. Each time the Court has sustained the objection. I would look for, frankly, some guidance from the Court on what we can do from here out, because it – I can only assume that it will continue to occur. And so, *I don't know whether a progressive sanction that we'd ask for,* that there should be a warning from the Court before this should happen again. But those are my concerns, and I don't know

what other potential relevance there could be to asking a treating physician whether he's aware of whether or not the Defendant was injured in the accident.

(RTP 3/25/11, pp. 164-65) (emphasis supplied).

Thereafter, a discussion ensued on the record regarding the Court's pretrial ruling and the fact that the Defendant had repeatedly violated it. At the conclusion of the hearing outside the presence of the jury, this Court attempted, once again, to make it clear that the violations were continuous and that the Court would take necessary measures if the violations occurred again. To the Plaintiffs' counsel's suggestion of a progressive sanction, the Court responded thusly:

[Court] I think you're right, and I think that *the defense is on notice. I think the Order is very clear. I think it clearly has been violated.* I was really surprised to hear a question posed of [Dr. Grover] regarding Ms. Rish when the Court sustained a previous question regarding Ms. Rish of another witness and ruled that that was not relevant. So I was really surprised to hear that very same question posed as to Ms. Rish.

...

So I don't know. *It does seem to be at this point to be deliberate, Mr. Rogers. And so, I'm inclined to agree that you're on notice. The Court will consider progressive sanctions.* I don't know what they will be. I hope there won't have to be any assessed. *But I don't know what else to do to try to get you to comply with the Court's previous Orders.*

(RTP 3/25/11, pp. 166-67) (emphasis supplied).

7. Testimony of Defendant's Expert Witness, Dr. David Fish

a) Voir Dire Examination Prior to Direct Examination

Defense expert Dr. Fish testified out of order during the Plaintiffs' case-in-chief as an accommodation by the Plaintiff to the Defendant and her expert. At request of the Plaintiffs'

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counsel immediately prior to Dr. Fish's testimony to the jury, this Court held a hearing outside the presence of the jury to allow the Plaintiffs' counsel to take Dr. Fish on *voir dire* to ensure he was aware of the Court's previous rulings (including an Order granting the Plaintiffs' Motion in Limine to Limit the Testimony of Dr. Fish). Dr. Fish's testimony outside the presence of the jury comprises eighteen pages of the record (See, RTP March 24, 2011, pp. 12-30).

This questioning of Dr. Fish revealed that he was unaware of virtually every pretrial Order entered by this Court, including the Order limiting his testimony. He was unaware of this Court's Order precluding:

1) Plaintiff's unrelated 2003 motorcycle accident;

2) Plaintiff's unrelated 2008 motor vehicle accident;

3) Plaintiff's unrelated medical conditions;

4) Any suggestion of secondary gain, symptom magnification or malingering;

5) Sub rosa video surveillance of Plaintiff (ruling deferred until the conclusion of Plaintiff's direct examination);

6) Dr. Fish's testimony regarding biomechanical opinions related to the accident.

Of obvious concern to this Court was the fact that despite the voluminous pretrial motions, the thorough and even repetitious hearings and arguments entertained by this Court on the issues and the consistency of the enforcement of those rulings by this Court, the Defendant had not properly prepared her expert witness. When Dr. Fish volunteered that he thought some of the impediments to his testimony were "strange," the Court responded:

> [Court] You know what seems strange to me? That this witness obviously doesn't have any idea what the Court has ruled prior to these motions in limine.
>
> (RTP March 24, 2011, p. 24).

The Court unambiguously placed Dr. Fish and the Defendant on notice that violations of

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the Court's pretrial Orders carried the possibility of sanctions, including striking the testimony of Dr. Fish in its entirety (RTP March 24, 2011, p. 15).

b) Violation During Cross-Examination

Nevertheless, during cross-examination, Dr. Fish persisted in failing to respond to pertinent questions from the Plaintiffs' counsel and on more than one occasion responded to questions by stating, inferring or insinuating that he was unfairly prohibited from answering the questions based on this Court's prior rulings (RTP March 24, 2011, p. 106, 133).

Despite the repeated and systematic violations of the pretrial Orders in this case and the Court's efforts to cure and prevent the same, Dr. Fish violated rulings on "minor impact" during cross-examination.

When presented with contrary testimony on issues of medicine in prior depositions from other cases, Dr. Fish responded by suggesting that the instant accident was not a "significant accident." The Plaintiffs' oral Motion to Strike was Granted by this Court (RTP March 28, 2011, p.71-72).

c) Violation During Redirect Examination

At the end of the Defendant's redirect examination of Dr. Fish, counsel for the Defendant in a conclusory fashion asked Dr. Fish to summarize his opinions on causation.

> [Defense Counsel] …Doctor, how is it that you can reach an opinion to a medical probability that this accident didn't cause the pain that [the Plaintiff] complained of following this accident?
>
> [Dr. Fish] Well, it's based on multiple factors. It's based on the actual – looking at the images of the MRI. It's looking at the discogram and the results of the discogram. It's looking at the pattern of pain. It's looking at the notes that were taken of the events that happened *and it 's knowing about the accident itself.*

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(RTP March 28, 2011, p.87) (Emphasis supplied).

Based on this Court's observation of Dr. Fish's testimony, there is no question that Dr. Fish's response, clearly in violation of this Court's Order, was deliberate. The Plaintiff's objection was sustained, and the jury was admonished to disregard the final statement in Dr. Fish's response.

D. Irrebuttable Presumption Instruction to the Jury

1. Plaintiffs' Request for a Special Instruction to the Jury

Following the testimony of Dr. Fish, the Court conducted a hearing outside the presence of the jury at the request of counsel for the Plaintiffs to consider a progressive sanction against the Defendant for the continuous and systematic violations of this Court's Orders on pretrial motions. The Plaintiff offered, as an alternative to striking Defendant's Answer, a special instruction to the jury directing them to presume that the accident in question was of a sufficient quality to have caused the injuries of which Plaintiff complained. The entire hearing on this issue outside the jury's presence comprises twenty-three (23) pages of transcript, which includes a recess by the Court to consider the appropriate language of an adverse inference instruction (See, RTP March 28, 2011, pp. 89-112).

During the hearing, the Plaintiffs' counsel correctly identified the factual and procedural history of the issue of a "minor impact" defense in this case (much of which is set forth above), including the rulings on pretrial motions, the numerous hearings outside the presence of the jury on this issue, the repeated violations of this Court's Order on "minor impact" and the records made establishing notice to the Defendant of possible progressive sanctions for any further violations (RTP March 28, 2011, pp. 89-93).

Counsel for the Plaintiffs then made a further record outlining the proper standard for consideration by this Court under *Young v. Ribeiro Building, Inc.*, 106 Nev. 88 (1990).

2. This Court's Consideration of the *Young* Factors

In *Young,* the Nevada Supreme Court reiterated that trial courts have inherent equitable powers to issue sanctions for abusive litigation practices. *Id.* at 92. Before issuing such sanctions, a trial court should carefully consider the factors announced in *Young*, although no single factor is necessarily dispositive and each of the non-exhaustive factors should be examined in the light of the case before the trial court. *Id.* As outlined during the hearing by counsel for the Plaintiffs, this Court considered the following factors set forth in *Young* before addressing the language of the special instruction to the jury.[1]

a) Degree of willfulness of the violations

The violations of this Court's pretrial Orders were continuous and systematic. As set forth above, the Defendant was clearly on notice of the Court's Order regarding this "minor impact" defense yet the Defendant violated this particular Order on numerous occasions. Based on the sheer number of violations of the same order in the same fashion, this Court can only conclude that such violations were willful in nature.

b) The extent to which the non-offending party would be prejudiced by a lesser sanction

To date, no lesser sanction had been successful in precluding future violations. This Court has consistently sustained the Plaintiffs' objections and stricken offending questions and answers. At some point, simply directing jurors to disregard continuous violations of pretrial Orders is insufficient.

Counsel for the Plaintiffs indicated that the violations to this point were sufficient to

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[1] In considering non-case concluding sanctions, a trial court shall hold such hearing as it reasonably deems necessary to consider matters that are pertinent to the imposition of appropriate sanctions *Bahena v. Goodyear Tire & Rubber Co.*, 245 P.3d 1182, 1185 (Nev. 2010) This court heard extensive arguments from the Plaintiffs and the Defendant before granting the Plaintiffs' request for a progressive sanction. While an "express, careful and preferably written" order is required by the Nevada Supreme Court for case concluding sanctions only, *Young, supra at 93; Foster v. Dingwall,* 227 P.3d 1042, 1048-49 (Nev. 2010), this Court outlines herein its analysis of the *Young* factors that supported the imposition of the non-case concluding sanction of an irrebuttable presumption instruction.

warrant a request that this Court impose a case concluding sanction of striking the Defendant's Answer, but that in harmonizing this particular factor from *Young* it might be necessary for this Court to consider a lesser sanction of a presumption instruction.

c) The severity of a sanction of dismissal relative to the severity of the abuse

This Court considered, at the time of imposing the sanction of an irrebuttable presumption instruction to the jury, whether the alternative request of striking Defendant's Answer would be an appropriate response to Defendant's continuous violations of this Court's pretrial Orders. While the abuse to this point was systematic and severe, this Court determined that a progressive sanction would be appropriate before consideration of a case concluding sanction.

d) The feasibility and fairness of an alternative, lesser sanction

Again, against the backdrop of the Plaintiffs' alternative request to strike Defendant's Answer, this Court considered the feasibility and fairness of a lesser sanction and determined that the irrebuttable presumption instruction requested by Plaintiff appropriately addressed the nature of the violations of the Court's Order precluding evidence to support a "minor impact" defense.

An irrebuttable presumption is a presumption that cannot be overcome by any additional evidence or argument. *Employers Insurance Co. of Nevada v. Daniels*, 122 Nev. 1009, 1015-16, fn. 15 (2006), quoting *Black's Law Dictionary* 1223 (8th ed. 2004). As this Court noted during the sanction hearing, the Order granting the Motion in Limine was based on the Defendant's complete lack of evidence bearing on a "minor impact" defense:

> [Court] But the point of the matter was that Defense had no witness who could testify that this was a minor impact and no witness who could testify that this was a minor impact that could not have caused the injuries to Plaintiff, that Plaintiff sustained.

Defense simply didn't have any witnesses to so testify. That's why the motion in limine was granted.

(RTP March 28, 2011, p. 104).

Given that the Defendant had no admissible, credible evidence to offer to support this "minor impact" defense, an irrebuttable presumption instruction was appropriate to communicate to the jury what the Defendant failed to comprehend throughout the trial: namely, that there is no evidence to suggest that the impact in this accident was too minor to cause the injuries the Plaintiff claims to have suffered. An alternative adverse inference instruction or a rebuttable presumption instruction would have given the Defendant exactly what was precluded in the Order on the pretrial motions: namely, an opportunity to rebut the contention that the accident was of sufficient character to have caused injury. Again, the Defendant had no evidence with which to rebut that contention.

e) The policy favoring adjudication on the merits

Mindful of this policy, the Court declined at this point to grant the Plaintiffs' request to strike the Defendant's Answer and instead issued the irrebuttable presumption instruction.

Given the Defendant's concession of responsibility for the accident, the "merits" of this case for the trier of fact to adjudicate were limited to the amount of damages suffered as a result of the accident. Since the Defendant had no evidence to support a contention that the nature of the impact in the accident was relevant to the amount of damages, the issues for the trier of fact were not materially affected by the irrebuttable presumption instruction.

f) Whether sanctions unfairly penalize a party for the misconduct of her attorney

In this Court's view, the key to this factor from *Young* is whether the Defendant is **unfairly** penalized for her attorney's misconduct. However, the irrebuttable presumption instruction imposed as a sanction by the Court did not unfairly penalize the Defendant. It simply

allowed the jury to irrebuttably presume the very fact that Defendant had no admissible evidence to rebut – that the motor vehicle accident was sufficient in character and quality to have caused the injuries suffered by the Plaintiff.

Additionally, as set forth below, it must be noted that the special instruction to the jury still allowed them to consider whether the accident in question actually and proximately caused Plaintiff's injuries. The only presumption was that the accident was sufficient in character and quality to have potentially done so. The only issue eliminated or restricted by the irrebuttable presumption instruction was the "minor impact" defense for which Defendant had no evidence to support.

g) The need to deter parties and future litigants

As set forth in great detail above, the sanctions employed by the Court to deter this conduct had proven unsuccessful. Although this particular factor was not the overriding factor in determining that the special instruction to the jury was warranted, this Court hoped that this progressive sanction would at least deter the Defendant from continuing to violate the Orders of this Court.

3. The Irrebuttable Presumption Instruction

This Court took a recess to allow the Plaintiffs' counsel to draft a proposed instruction and then heard argument from both sides regarding the exact language of the instruction. After considering the proposed language and making some amendments thereto, as well as considering the necessity of instructing the jury immediately as a curative measure, the Court read the following instruction to the jury:

> [Court] Furthermore, ladies and gentlemen of the jury, the Defendant has, on numerous occasions, attempted to introduce evidence that the accident of April 15, 2005, was too minor to cause the injuries complained of. This type of evidence has previously

been precluded by this Court.

In view of that, this Court instructs the members of the jury that there is an irrebuttable presumption that the motor vehicle accident of April 15, 2005, was sufficient to cause the type of injuries sustained by the Plaintiff. Whether it proximately caused those injuries remains a question for the jury to determine.

(RTP March 28, 2011, p. 113, 149-50).

Before making the discretionary ruling to issue that curative instruction to the jury, this Court examined the relevant facts, applied a proper standard of law and used a demonstratively rational process to reach a reasonable conclusion. *See, Bass-Davis v. Davis*, 122 Nev. 442, 447-48 (2006).

E. Plaintiffs' Request to Strike Defendant's Answer Based on Repeated Violations of This Court's Pretrial Orders

During the hearing on March 28, 2011, wherein this Court considered the above-quoted special instruction in lieu of the Plaintiffs' request to strike Defendant's Answer, counsel for the Plaintiffs made clear that a further violation of this Court's Orders would be met with the Plaintiffs' renewed request of the Court to strike the Defendant's Answer (RTP March 28, 2011, p. 97).

1. Cross-Examination of Plaintiff, William Simao

During the Defendant's cross-examination of Plaintiff WILLIAM SIMAO, counsel asked about circumstances surrounding the accident, including questions regarding the stop-and-go nature of traffic on the freeway before the accident took place. The Plaintiffs objected, and a bench conference ensued.

At the bench conference, the Plaintiffs asked for an offer of proof of what potential relevance the speed of the vehicles would have, **other** than to suggest an inference that the

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impact of the collision was insufficient to cause the Plaintiff's injuries (RTP March 28, 2011, pp. 92-95). Counsel for the Defendant failed to offer during the bench conference a sufficient explanation of how the speed of the vehicles prior to the collision has a tendency to make the existence of any fact of consequence more or less probable, *see,* NRS 48.015, other than to suggest a minor impact (RTP March 28, 2011, p. 94-96).

The Plaintiffs' objection was sustained.

What then followed can only be described by this Court as an intentional attempt to further violate this Court's clear and unambiguous Order.

Regarding the post-accident response by law enforcement and medical personnel, counsel for the Defendant asked the following questions of Mr. Simao:

> [Defense Counsel] Now, we've heard several times through this trial that an ambulance came to the scene.
>
> [Mr. Simao] Yes.
>
> [Defense Counsel] And that you declined treatment.
>
> [Mr. Simao] I did.
>
> [Defense Counsel] *And the paramedics didn't transport anyone from Mrs. Rish's car?*

(RTP March 28, 2011, p. 98) (Emphasis supplied).

An immediate objection was interposed by Plaintiffs' counsel and a brief bench conference was convened before this Court excused the jury and addressed the matter on the record outside their presence.

2. Plaintiff's Request to Strike Defendant's Answer

During the hearing outside the jury's presence, counsel for the Plaintiffs again made an exhaustive record of all of the occasions this Court had to direct and admonish Defendant not to

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address "minor impact" issues as a result of this Court's previous Orders. A significant record was made of the notice provided to the Defendants that not only was the conduct violative of this Court's Order, but further that the Plaintiffs would be asking the Court to strike the Defendant's Answer as a sanction therefore (RTP March 28, 2011, pp. 101-05).

The response from the Defendant was essentially that she should not be precluded from any discussion of the accident in question. Such an argument, this Court noted, misses the point and unfairly and incorrectly broadens the scope of the pretrial Order. An incorrect summary of the Court's Order that any and all discussion of the accident in question is precluded is vastly different from questioning four separate witnesses as to whether anyone from the Defendant's vehicle was injured in the crash. On this issue, the Court's prior pronouncements could not have been clearer.

While inclined to grant the Plaintiffs' motion to strike the Defendant's Answer at the conclusion of the hearing outside the presence of the jury, this Court instead took the opportunity to recess to again review the appropriate law, including the Nevada Supreme Court's opinion in *Young v. Ribeiro Building, Inc.*, on the issue of case concluding sanctions for abusive litigation practices and continuous violations of Orders of the Court.

3. <u>This Court's Consideration of the Law as Applied to the Facts of This Case</u>

As set forth above, the Nevada Supreme Court in *Young* reiterated that trial courts have inherent equitable powers to issue sanctions for abusive litigation practices, including case concluding sanctions such as dismissal or the striking of pleadings. *Young, supra* at 92. Case concluding sanctions are subject to a "somewhat heightened standard of review," *Id.; Foster v. Dingwall*, 227 P.3d 1042, 1048 (Nev. 2010), to determine if the sanctions are just and relate to the claims at issue.

Before issuing such sanctions, a trial court should carefully consider the factors

announced in *Young*, although no single factor is necessarily dispositive and each of the non-exhaustive factors should be examined in the light of the case before the trial court. *Young, supra* at 92. Additionally, case concluding sanctions shall be supported by an express, careful and preferably written explanation of the trial court's analysis of the *Young* factors. *Id.* at 93; *Bahena v. Goodyear Tire & Rubber Co.*, 235 P.3d 592, 598 (Nev. 2010), *rehearing denied*, 245 P.3d 1182 (2010).

This Court carefully considered the plethora of violations of Court Orders before granting the Plaintiffs' request to strike the Defendant's Answer. The hearing outside the presence of the jury encompasses fifteen pages (15), which does not include the independent research and analysis conducted by this Court during a lengthy recess in the proceedings. The Court's consideration of the *Young* factors, although similar in many respects to the consideration of the same factors three days earlier at the time of the irrebuttable presumption sanction, includes the following:

a) Degree of willfulness of the violations

A violation of an Order on a motion in limine may serve as a basis for some type of sanction if the Order is specific in its prohibition and the violation is clear. *BMW v. Roth*, 127 Nev.Ad.Op. 11, p.12, citing to *Black v. Schultz*, 530 F.3d 702, 706 (8th Cir. 2008). As set forth previously, the violations of this Court's clear and unambiguous Orders were continuous, systematic and pervasive. Such violations include, but are not limited to, the following:

i. Violation of Order precluding evidence of "medical build-up" during Opening Statement;

ii. Violation of Order precluding evidence of "medical build-up" during the testimony of Dr. Patrick McNulty;

iii. Violation of Order precluding evidence of unrelated accidents during Opening

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Statement;

iv. Violation of Order precluding evidence or argument in support of "minor impact" defense during Opening Statement;

v. Violation of Order precluding evidence or argument in support of "minor impact" defense during testimony of Dr. Jorg Rosler (question regarding injuries to the Defendant or her passengers);

vi. Violation of Order precluding evidence or argument in support of "minor impact" defense during testimony of Dr. Patrick McNulty (question regarding injuries to Defendant or her passengers);

vii. Violation of Order precluding evidence or argument in support of "minor impact" defense during testimony of Dr. Jaswinder Grover (question regarding injuries to Defendant or her passengers);

viii. Defendant's abject failure to apprise defense expert Dr. David Fish of court's rulings on all motions in limine;

ix. Violation of Order precluding evidence or argument in support of "minor impact" defense during testimony of Dr. David Fish (question and answer regarding the nature of the accident);

x. Violation of Order precluding evidence or argument in support of "minor impact" defense during testimony of Plaintiff William Simao (question regarding injuries to the Defendant or her passengers);

These violations of the Court's Order precluding the "minor impact" defense are considered by this Court to be even more egregious given the numerous hearings outside the presence of the jury wherein this Court repeatedly and unequivocally prohibited the areas of inquiry subsequently broached by counsel for Defendant. Those hearings include:

i. Hearing on the Plaintiffs' Motion in Limine, March 1, 2011;

ii. Hearing outside the presence of jury to discuss "minor impact," March 18, 2011;

iii. Hearing outside the presence of jury to discuss whether the Plaintiffs opened the door to "minor impact" defense during Opening Statement, March 21, 2011;

iv. Objection sustained to counsel for the Defendant's question of Dr. Rosler regarding injuries to occupants of the Defendant's vehicle, March 22, 2011;

v. Objection sustained to counsel for the Defendant's question of Dr. McNulty regarding injuries to occupants of the Defendant's vehicle, March 25, 2011;

vi. Objection sustained to counsel for the Defendant's question of Dr. Grover regarding injuries to occupants of the Defendant's vehicle, March 25, 2011;

vii. Hearing outside the presence of the jury to discuss "minor impact" defense and the Plaintiffs' notice of seeking progressive sanctions, March 25, 2011;

viii. Objection sustained to counsel for the Defendant's question of Dr. Fish which resulted in response citing to the nature of the impact, March 28, 2011;

ix. Hearing outside the presence of the jury to discuss "minor impact" defense and the Plaintiffs' request for irrebuttable presumption instruction for the Defendant's continued violations of Court's Order, March 28, 2011;

x. Objection sustained to counsel for the Defendant's question of Plaintiff William Simao regarding injuries to occupants of the Defendant's vehicle, March 31, 2011;

At the hearing on the Plaintiffs' oral motion to strike the Defendant's Answer, this Court characterized the continuing violations as having been "willfull, deliberate, [and] abusive," (RTP March 31, 2011, pp. 111-12), based on the fact that counsel for Defendant "refuses to comply

with this Court's rulings" (RTP March 31, 2011, p. 112). Particularly disturbing was counsel for Defendant's systematic insistence upon asking the Plaintiff and three separate treating doctors whether they were aware of any injuries to passengers in the Defendant's vehicle, despite this Court's clear preclusion of that inquiry after each instance of misconduct.

b) The extent to which the non-offending party would be prejudiced by a lesser sanction

As set forth previously, the imposition of lesser sanctions did not act to curb the Defendant's violations of this Court's pretrial Orders. An attorney's violation of an Order on a motion in limine is misconduct which justifies evidentiary sanctions or even a new trial. *See, BMW v. Roth*, 127 Nev.Ad.Op. 11, p.12; *Lioce v. Cohen*, 124 Nev. 1 (2008). Although Nevada precedent does not follow the federal model of requiring progressive sanctions before imposing a case concluding sanction, *see, Bahena v. Goodyear Tire & Rubber*, *supra*, 245 P.3d at 1184-85, this Court nevertheless imposed progressive sanctions against the Defendant including the irrebuttable presumption instruction to no avail. Nothing this Court could fashion, short of a case concluding sanction, was successful to halt violations of this Court's pretrial Orders.

Given the frequency of the Defendant's violations of this Court's Order precluding a "minor impact" defense, all of which occurred in front of the jury, the Plaintiffs were prejudiced by having this issue repeatedly brought to the jury's attention. In the eyes of the jury, the Plaintiffs were repeatedly preventing the jury from hearing about the significance of the impact, when in fact this Court had determined that a "minor impact" defense was unavailable to the Defendants given the lack of evidence (and expert testimony) to support such a defense. In reliance upon this Court's Order granting the Plaintiffs' Motion in Limine, the Plaintiffs had released their biomechanical expert and had neither mentioned his name nor offered his opinions in Opening Statement. The Plaintiffs had relied on this Court's Order that no "minor impact" defense would be presented to the jury. The Plaintiffs had further relied on the fact that such a

ruling would be upheld by this Court during the course of trial. The unfair prejudice to the Plaintiffs was clearly shown. *See, Roth, supra.*

This Court also recognizes the prejudice to the Plaintiffs in making objection after objection to the Defendant's inappropriate questions. "[W]hen…an attorney must continuously object to repeated or persistent misconduct, the non-offending attorney is placed in the difficult position of having to make repeated objections before the trier of fact, which might cast a negative impression on the attorney and the party the attorney represents, emphasizing the improper point." *Lioce v. Cohen,* 174 P3d 970, 981 (Nev. 2008).

As such, it is the finding of this Court that the Plaintiffs would be unfairly prejudiced by the continuous introduction of questions, evidence and argument designed to create an inference that the subject motor vehicle accident was too minor to cause the Plaintiff's injuries.

c) The severity of a sanction of striking Defendant's Answer relative to the severity of the abuse

Again, the pervasive and continuous nature of these violations warrants the sanction ultimately imposed. Every litigant has the right to disagree with any ruling made or Order entered by a trial court. His remedy is with an appellate court, based upon reasonable grounds as the law requires. His remedy is never to just continue violating the Orders unchecked.

d) The feasibility and fairness of an alternative, lesser sanction

As set forth above, alternative lesser sanctions were apparently rejected by the Defendant in favor of continuing to violate the Orders of the Court. When the Plaintiffs first asked this Court to strike the Defendant's Answer on March 28, 2011, the Court considered this factor from the *Young* decision to impose an alternative sanction of an irrebuttable presumption instruction.

As this Court indicated at the hearing on the Plaintiffs' second oral request to the strike Defendant's Answer:

[Court] Regarding the feasibility and fairness of an alternative, lesser sanction, you know, the only thing I can say is less severe sanctions were imposed to no avail.

(RPT March 31, 2011, p. 113).

This analysis is bolstered by the fact that the Plaintiffs requested that the Court strike the Defendant's Answer three days earlier and put the Defendant on notice that they would seek to strike the Defendant's Answer should any future violations occur.

e) The policy favoring adjudication on the merits

As set forth above, this Court opted for less severe sanctions for all of the violations prior to March 31, 2011, in large measure because of the policy favoring adjudication on the merits. Even the irrebuttable presumption instruction given as a lesser, alternative sanction did not prevent the Defendant from presenting any defense that they actually had evidence to present. It is also worth noting that the Defendant had already agreed on the record not to challenge liability for the accident.

Further, this Court recognizes that the Nevada Supreme Court has upheld the striking of pleadings for a party's failure to attend his deposition, *Foster v. Dingwall, supra*; for repetitive, abusive and recalcitrant conduct during discovery, *Young, supra; Hamlett v. Reynolds*, 114 Nev. 863 (1998) (upholding the trial court's strike order where the defaulting party's constant failure to follow the court's orders was unexplained and unwarranted); for a party's continued failure to appear at scheduled court proceedings, *Durango Fire Protection, Inc. v. Troncoso*, 120 Nev. 658, 662 (2004); and for the failure to abide by rulings of the Discovery Commissioner, *Bahena v. Goodyear Tire & Rubber, supra.* Additionally, the Nevada Supreme Court has approved consideration of the *Young* factors as a guide to trial courts for sanctions grounded in violations of court orders at trial. *See, Romo v. Keplinger*, 115 Nev. 94, 97 (1999).

The willful and deliberate violations of this Court's Orders are equally as egregious as

any discovery violation, especially given the fact that the repeated violations in the instant case occurred in front of the jury.

f) The need to deter parties and future litigants

Given its inherent powers derived from the Nevada Constitution and strong case precedent, this Court simply cannot allow litigants to openly and deliberately abuse the litigation process by disregarding Orders of the Court when convenient or tactically advantageous to do so, especially when unfair prejudice to the non-offending party results. Such an allowance would render courts of justice meaningless in the State of Nevada.

In the final analysis, after review and consideration of all of the various factors announced in Young, it is the determination of this Court that the intentional, deliberate, abusive and unfairly prejudicial conduct of the Defendant in repeatedly violating clear Orders of this Court warrants the ultimate sanction of striking the Defendant's Answer.

It is immaterial whether, as the Plaintiffs suggested several times during the trial, it was the true intention of the Defendant to force or goad the Plaintiffs to seek a mistrial. What is material is that the deliberate conduct of counsel for the Defendant in disregarding and violating Court Orders could not be halted by this Court with any other sanction.

Neither sustained objections, a multitude of hearings outside the presence of the jury, nor progressive sanctions deterred the Defendant's ignorance of Orders of this Court.

Having carefully and thoughtfully considered the available remedies, it is the decision of this Court, for all of the reasons set forth above, that striking the Defendant's Answer is appropriate under the particular circumstances presented herein.

II. Plaintiffs' Request for a Prove-Up Hearing to Establish Damages

By the time of the last violation of this Court's Orders by the Defendant, most of the Plaintiffs' evidence had been presented to the Court over the first ten (10) days of testimony.

Counsel for the Plaintiffs requested a hearing the following day for essentially a prove-up hearing similar to the entry of a default judgment under NRCP 55b.

Counsel for the Defendant then requested the ability to be heard at the argument on damages, pursuant to *Hamlett v. Reynolds*, 114 Nev. 863 (1998). In *Hamlett*, the Nevada Supreme Court struck Hamlett's Answer as a sanction for his continued failure to comply with discovery orders pursuant to *Young v. Ribeiro Building, supra.* Hamlett claimed the trial court erred in restricting his participation in the prove-up hearing to cross-examining Reynolds' witnesses. In analyzing this issue under NRCP 55(b)(2), the Court stated:

> The language of NRCP 55(b)(2) that the "court may conduct such hearings or order such references as it deems necessary and proper" suggests to us an intent to give trial courts broad discretion in determining how prove-up hearings should be conducted. Thus, we conclude that the extent to which a defaulting party will participate in prove-up is a decision properly delegated to the trial courts. The trial courts should make this determination on a case-by-case basis and not according to static rules implemented by this court.
>
> In deciding the extent to which a defaulted party will be permitted to participate in prove-up, if at all, trial courts should remember that the purpose of conducting a hearing after default, according to NRCP 55(b)(2), is to determine the amount of damages and establish the truth of any averment. To that end, trial courts should determine the extent to which full participation by the defaulted party will facilitate the truth-seeking process.

Hamlett, supra at 866-67.

In *Foster v. Dingwall, supra,* the Nevada Supreme Court clearly stated the standard for proving up damages after a default is entered as a sanction. During the prove-up hearing, this Court shall consider the allegations deemed admitted by the fact of the default to determine if the Plaintiff has established a *prima facie* case for liability. *Foster, supra,* 227 P.3d at 1049-50. A *prima facie* case is defined as sufficiency of evidence in order to send the question to the jury. *Id.* at 1050. In the instant case, Defendant Rish admitted responsibility for the accident and stipulated to liability. What was left was a determination of the Plaintiffs' damages, and the Plaintiffs requested that this Court take notice of the evidence that had been presented in the

preceding ten (10) days of testimony. Even though allegations in the pleadings are deemed admitted as a result of the entry of default, the admission does not relieve the non-offending party's obligation to present substantial evidence of the amount of damages suffered by both of the Plaintiffs. *Id.* Having reviewed the evidence and concluding that a *prima facie* case had been established by both Plaintiffs, this Court determined that the Plaintiffs are entitled to damages for the harms proximately caused by the motor vehicle accident.

In determining the level of participation of the Defendant in the prove-up hearing, this Court was mindful of the Nevada Supreme Court's pronouncement in *Foster* and *Young* that because the default was entered as a result of the Defendant's abusive litigation practices, the Defendant "forfeited his right to object to all but the most patent and fundamental defects" in the prove-up. *Foster, supra* at 1050; *Young, supra* at 95.

Nevertheless, in an exercise of discretion authorized by *Hamlett*, this Court determined that the Defendant would be allowed to address the Plaintiffs' brief final argument on damages in an argument of her own, to be followed by a brief rebuttal argument on behalf of the Plaintiffs.

Based on all of the foregoing, **THIS COURT HEREBY ORDERS** that Plaintiffs' oral Motion to Strike Defendant's Answer is **GRANTED**.

This matter stands submitted following the arguments of counsel and the prove-up hearing of April 1, 2011, pending further Order of this Court.

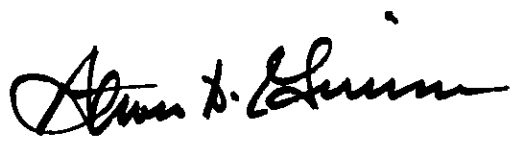
DATED this 21st day of April, 2011.

DISTRICT COURT JUDGE

Submitted by:

DAVID T. WALL, ESQ.
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400 South Fourth Street, Suite 600
Las Vegas, Nevada 89101

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DISTRICT COURT
CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO, individually and CHERYL ANN SIMAO, individually, and as husband and wife, Plaintiffs, v. JENNY RISH; JAMES RISH; LINDA RISH; DOES I through V; and ROE CORPORATIONS I through V, inclusive, Defendants.	CASE NO.: A539455 DEPT. NO.: X **NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that a Decision and Order Regarding Plaintiffs' Motion to Strike Defendant's Answer was entered in the above-entitled matter on April 22, 2011 and is attached hereto.

DATED this 26 day of April, 2011.

MAINOR EGLET



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CERTIFIATE OF MAILING

The undersigned hereby certifies that on the 26 day of April, 2011, a copy of the above and foregoing NOTICE OF ENTRY OF ORDER was served by enclosing same in an envelope with postage prepaid thereon, address and mailed as follows:

Stephen H. Rogers, Esq.
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EXHIBIT "1"

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DISTRICT COURT
CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO, individually and CHERYL ANN SIMAO, individually, and as husband and wife, Plaintiffs, v. JENNY RISH, Defendant.	CASE NO.: A539455 DEPT. NO.: X

DECISION AND ORDER REGARDING PLAINTIFFS' MOTION TO STRIKE DEFENDANT'S ANSWER

This matter having come before the Court on March 31, 2011, on Plaintiffs' oral Motion to Strike Defendant's Answer, ROBERT T. EGLET, ESQ., DAVID T. WALL, ESQ. and ROBERT M. ADAMS, ESQ. present for Plaintiffs, WILLIAM SIMAO and CHERYL SIMAO,

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DISTRICT COURT
CLARK COUNTY, NEVADA

WILLIAM JAY SIMAO, individually and CHERYL ANN SIMAO, individually, and as husband and wife, Plaintiffs, v. JENNY RISH, Defendant.	CASE NO.: A539455 DEPT. NO.: X

DECISION AND ORDER REGARDING PLAINTIFFS' MOTION TO STRIKE DEFENDANT'S ANSWER

This matter having come before the Court on March 31, 2011, on Plaintiffs' oral Motion to Strike Defendant's Answer, ROBERT T. EGLET, ESQ., DAVID T. WALL, ESQ. and ROBERT M. ADAMS, ESQ. present for Plaintiffs, WILLIAM SIMAO and CHERYL SIMAO,

STEPHEN H. ROGERS, ESQ. and DANIEL F. POLSENBERG, ESQ. present for Defendant, JENNY RISH, and following the Court's oral pronouncement from the bench GRANTING Plaintiffs' Motion, the Court hereby enters the following written Decision and Order:

I. Factual and Procedural Background

This case involves a motor vehicle accident occurring on April 15, 2005. The Plaintiff, WILLIAM SIMAO, was driving southbound on Interstate 15 when he was rear-ended by a vehicle driven by the Defendant, JENNY RISH. Defendant did not deny causing the accident. Plaintiff WILLIAM SIMAO was injured in the accident and brought the instant action, which included a claim for loss of consortium by WILLIAM SIMAO's wife, Plaintiff CHERYL SIMAO.

This matter was presented for jury trial beginning on March 14, 2011, and the trial had nearly been completed before the instant Motion was made. However, the facts supporting the Motion and the grounds upon which to analyze the Motion include rulings made by this Court before the trial commenced. The Plaintiffs' oral motion to strike the Defendant's Answer is rooted primarily in the Defendant's repeated violations of this Court's Order granting the Plaintiffs' Motion in Limine to Preclude Defendant From Raising a Minor Impact Defense. However, this Court recognizes that Defendant violated other Orders of this Court during the trial, and the cumulative effect of such violations is material to the Court's analysis. Before itemizing and analyzing the violations of this Court's Order on "minor impact," it is necessary to consider the violations of other Court orders by the Defendant.

A. Violation of Order Precluding Evidence of Unrelated Accidents, Injuries or Medical Conditions

1. Plaintiffs' Motion in Limine

On January 7, 2011, Plaintiffs brought an Omnibus Motion in Limine, which included a

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request to preclude the Defendant from introducing evidence of Prior and Subsequent Unrelated Accidents, Injuries and Medical Conditions and Prior and Subsequent Claims or Lawsuits. This portion of the Omnibus Motion in Limine specifically asked this Court to preclude evidence of an unrelated 2003 motorcycle accident involving the Plaintiff, since no medical provider had connected any of the minor injuries sustained by the Plaintiff in the 2003 motorcycle accident to any injuries suffered in the instant accident. In short, the evidence established that the motorcycle accident was irrelevant.

The Defendant filed an Opposition to Plaintiffs' Omnibus Motion in Limine, and the matter was heard by this Court on February 15, 2011, at which time this Court GRANTED Plaintiffs' request. On March 9, 2011, this Court entered a written Order which stated in pertinent part as follows:

> "**IT IS HEREBY ORDERED** that Plaintiffs' request to exclude prior and subsequent unrelated accidents, injuries and medical conditions, and prior and subsequent claims or lawsuits is GRANTED in all respects."

Following the entry of the foregoing Order, all parties were on notice that this Court had specifically precluded the Defendant from introducing evidence of unrelated accidents, including the 2003 motorcycle accident.

2. Defendant's Clear Violation in Opening Statement

In his Opening Statement, counsel for the Defendant presented to the jury a Power Point slide referencing William Simao's 2003 motorcycle accident. The Plaintiffs objected, asked that the slide be shielded from the jury, and approached for a sidebar conference.

The slide clearly and unambiguously violated the Order of this Court on the Plaintiffs' Omnibus Motion in Limine, which Motion specifically referenced the 2003 motorcycle accident as an accident *unrelated* to any issue in the instant case. The jury was directed to disregard the

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slide and was further admonished that a pretrial ruling of the Court excluded evidence of the 2003 motorcycle accident.

The Plaintiffs' objection was sustained.

Following this admonition, this Court held a hearing outside the presence of the jury to allow the Defendant's counsel and the Plaintiffs' counsel to review the remaining slides accompanying the defense Opening Statement to determine if any of them violated court orders. Several of them violated orders and were removed (RTP, March 21, 2011, p. 75). Notably, the Plaintiffs' counsel made the following statement outside the presence of the jury:

> There were multiple other slides that had the same type of problems in them. Most of them Mr. Rogers agreed with and took those statements out of the slides, but again, if we hadn't done that, there would have been three to four more clear violations of … this Court's pretrial orders.
>
> As Mr. Wall [Plaintiffs' co-counsel] said at the bench, I think it's clear – I think it's abundantly clear that Mr. Rogers is going to try to mistry this case. I think it is abundantly clear that that's what's going on.
>
> I told the Court at the last bench conference that that was two. If there were any additional ones, we were going to start asking for monetary sanctions *and other potential sanctions* in this case for this type of *systematic refusal to comply with pretrial court orders.*
>
> *I expect his experts are going to do it as well.* I can assure this Court that they are going to violate a number of the orders in their testimony, just like Mr. Rogers did up there….

(RTP, March 21, 2011, p. 75) (emphasis supplied).

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B. Violations of Order Precluding Evidence That This is a "Medical Build-up" Case

1. Plaintiffs' Motion in Limine

Within the afore-mentioned Omnibus Motion in Limine, the Plaintiffs also sought to preclude any evidence or argument that the case was "attorney driven" or a "medical build-up" case. This section of the Plaintiffs' Omnibus Motion in Limine was also heard by this Court on February 15, 2011, at which time this Court GRANTED the Plaintiffs' request. During the hearing on this Motion, counsel for the Defendant conceded he had no evidence of any kind suggesting that this case was "attorney driven" or a "medical build-up" case. This Court's written Order of March 9, 2011, also stated as follows:

> **"IT IS FURTHER ORDERED** that Plaintiffs' request to preclude argument that this case is 'attorney driven' or a 'medical build-up' case is GRANTED."

Following the entry of the foregoing Order, all parties were on notice that this Court had specifically precluded the Defendant from arguing or presenting evidence that the instant case was a "medical build-up" case, in large measure as a result of the Defendant having no such evidence to present.

2. Defendant's Clear Violation During Opening Statement

In his Opening Statement, counsel for the Defendant made the following statement when discussing the testimony of the Plaintiff's treating physicians:

> "And we are going to hear from various different kinds of doctors in this case. One of them are doctors who appear down here regularly in court, as often, if not more than trial lawyers. Doctors McNulty, and Grover…"
>
> (RTP March 21, 2011, p. 72).

Defense counsel's statement was interrupted by an objection from the Plaintiffs, who additionally asked that the Power Point slide that accompanied the defense's Opening Statement

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be shielded from the jury. The slide referenced the Plaintiff's treating physicians as "Trial Doctors."

At the sidebar conference that followed, the Plaintiffs objected to the statements of counsel and the "Trial Doctors" slide as violating this Court's Order precluding any argument that the case was "attorney driven" or a "medical build-up" case. Since no other purpose for the statement or the slide was forthcoming from counsel for the Defendant at the sidebar, the jury was directed to disregard the slide.

The Plaintiffs' objection was sustained.

3. Defendant's Clear Violation During Cross-Examination of Dr. Patrick McNulty

Despite this Court's ruling during the Defendant's Opening Statement on the issue of medical build-up and "Trial Doctors," counsel for the Defendant asked the following question of Dr. McNulty, one of the Plaintiff's treating doctors:

> "Now, Doctor, yesterday there was a discussion about the testimony history of a doctor. I don't broach this topic with you to be insensitive, but I want to touch on it since that issue has been raised. You testified under oath, whether it be in trial or in deposition, somewhere around 100 times; is that right?"
>
> (RTP, March 25, 2011, pp. 21-22).

Counsel for the Plaintiffs immediately objected and approached the Court for a sidebar bench conference. There, the Court heard argument regarding the "discussion" "yesterday" which was the Plaintiffs' use of specific prior deposition testimony to impeach the Defendant's expert witness during cross-examination. Further, the Court heard argument that this line of questioning could only be presented to create an inference of "medical build-up." Counsel for the Defendant did not sufficiently explain to this Court how this line of questioning was not a violation of the pretrial order precluding evidence of "medical build-up," especially in light of

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the fact that the Defendant admittedly had no evidence to support a "medical build-up" defense.

The Plaintiffs' objection was sustained.

C. Violations of Pretrial Order Precluding "Minor Impact" Defense

As set forth above, the Plaintiffs' ultimate motion to strike the Defendant's Answer was based primarily on repeated violations of this Court's pretrial Order on the issue of a "minor impact" defense.

1. Plaintiff's Motion in Limine

On February 17, 2011, Plaintiffs brought a Motion in Limine to: 1) Preclude Defendant from Raising a "Minor" or "Low Impact" Defense; 2) Limit the Trial Testimony of Defendant's Expert, David Fish, M.D.; and 3) Exclude Evidence of Property Damage. The Motion set out the fact that the Nevada Highway Patrol Trooper who completed the Accident Report referred to the vehicle damage as "moderate." Specifically, the Motion asked the Court to preclude the Defendant from "arguing, suggesting or insinuating at trial that the crash was a 'minor impact' or 'low impact' collision, and not significant enough to cause Plaintiff's injuries." The Motion was primarily based on *Hallmark v. Eldridge*, 189 P.3d 646 (Nev. 2008), coupled with the fact that Defendant did not have any expert qualified to testify whether the impact in the instant collision was sufficient to cause the injuries complained of. Conversely, the Plaintiffs had disclosed a biomechanical expert who was prepared to testify that the accident was of the type to have proximately caused injury to the Plaintiff. The Motion further sought to limit Defendant's pain management expert, Dr. David Fish, from testifying to opinions rooted in biomechanical science, as he lacks the qualifications to testify to such opinions under the standard announced in *Hallmark*.

On February 25, 2011, Defendant filed an Opposition to the Motion and the matter was heard by this Court on March 1, 2011, at which time the Court GRANTED Plaintiffs' Motion in

its entirety. Defendants provided no evidence or information to correlate the amount of damage to a vehicle in a collision to the severity of the injury suffered by a passenger. Defendants had no expert witness on biomechanics to support an argument or inference that this accident was too minor to cause the injuries alleged to have been suffered by the Plaintiff. Based on the Nevada Supreme Court's rulings in *Hallmark, supra, Levine v. Remolif*, 80 Nev. 168 (1964) and *Choat v. McDorman*, 86 Nev. 332 (1970), this Court found that issues of accident reconstruction and biomechanics are not within the common knowledge of laypersons and require expert witness testimony. As such, this Court found no evidentiary or factual foundation upon which the Defendant could argue or infer that the accident was too minor to cause the Plaintiff's injuries.

On March 8, 2011, this Court entered a written Order which stated in pertinent part as follows:

> **"IT IS HEREBY ORDERED** that Plaintiffs' request to preclude Defendant from Raising a "Minor" or "Low Impact" Defense is **GRANTED**.
>
> **IT IS FURTHER ORDERED** that Plaintiffs' request to limit the trial testimony of Defendant's expert, David Fish, M.D., to those areas of expertise that he is qualified to testify in regards to is **GRANTED**. Neither Dr. Fish nor any other defense expert shall opine regarding biomechanics or the nature of the impact of the subject crash at trial.
>
> **IT IS FURTHER ORDERED** that Plaintiffs' request to exclude the property damage photos and repair invoice(s) is **GRANTED**."

Following the entry of the foregoing Order, all parties were on notice that this Court had specifically precluded a defense (or even an argument) that the accident was too minor to cause the injuries for which Plaintiff sought to recover damages.

Despite a clear and unambiguous Order precluding the Defendant from raising as a defense that the impact of the accident was too minor to cause the Plaintiff's injuries, counsel for

the Defendant persisted in violating this Court's order, ultimately leading to the sanction imposed herein. There can be no question or argument that the Defendant was on notice of this Court's Order, based on the following:

a) Hearing Outside the Presence of the Jury on March 18, 2011

After jury selection had been completed and before Opening Statements, this Court held a hearing outside the presence of the jury to discuss, among other things, the issue of a minor impact defense. The discussion on the record was extensive and comprises seventeen (17) pages of the transcript (See, RTP, March 18, 2011, pp. 112-129).

During this hearing, the Plaintiffs' counsel brought to this Court's attention the fact that counsel for the Defendant, in his Opening Statement, might broach the subject of minor impact by referring to the Defendant's deposition testimony that the impact of the accident was merely "a tap." Counsel for the Defendant conceded that it was his impression that this Court had not precluded such an argument:

> "What happened was, there was a motion to exclude a defense that a minor impact cannot cause injury. The Plaintiffs' argument in the motion was because the defense did not retain a biomechanical engineer they would not be able to argue the general proposition that minor impacts cannot cause injury.
>
> The defense appeared at the hearing and said, 'This is not a biomechanical case. The defense is not going to argue that no minor impact can cause injury. *The defense is that this minor impact did not cause injury.*"
>
> (RTP, March 18, 2011, p. 114)(emphasis supplied).

It became clear to this Court that the Defendant intended to present a minor impact defense, despite the Order of this Court to the contrary. Plaintiffs' counsel was allowed to once again state on the record their position on the original Motion in Limine, outlining that the

Defendant had no expert witness to opine that the accident was too minor to cause the claimed injuries, and further that the Order of this Court on the Motion in Limine precluded a "minor impact" defense at trial.

By the conclusion of the hearing outside the presence of the jury, this Court reiterated its ruling on the Motion in Limine precluding a "minor impact" defense (RTP March 18, 2011, p. 125-26). Likewise, this Court precluded counsel for the Defendant from referencing in his Opening Statement that it was a minor impact, or simply "a tap," for the purpose of raising an inference that the accident was too minor to cause the Plaintiff's injuries (RTP March 18, 2011, pp. 127-28). This Court further reminded counsel for the Defendant to review the Order entered on this issue to avoid violating it in the future (RTP March 18, 2011, p. 126, 127).

b) Hearing Outside the Presence of the Jury on March 21, 2011

On the first court day following the hearing set forth above, the issue of "minor impact" was again raised outside the presence of the jury immediately following the Plaintiffs' Opening Statement. At this hearing, the Defendant sought permission to claim a "minor impact" defense based on the door allegedly being opened by the Plaintiffs in their Opening Statement when counsel referred to the accident as a "motor vehicle crash." This Court noted that the Plaintiffs in their Opening Statement did not refer to the nature of the impact, the severity of the impact, the fact that the impact was significant enough to cause the Plaintiff's injuries nor any violence associated with the impact. In fact, this Court noted that Plaintiffs' counsel did not describe the impact of the vehicles in any way.

Based on that finding, the Court denied the Defendant's renewed request to be able to raise a "minor impact" defense. Again, the Defendant was clearly and unequivocally on notice that such a defense was precluded.

2. Reference to Minor Impact during Defendant's Opening Statement

Immediately following the foregoing discussion outside the presence of the jury, counsel for the Defendant delivered his Opening Statement. He described the stop and go traffic the Defendant encountered before the accident, and stated that the Defendant was nearly stopped before the impact (RTP, March 21, 2011, p. 63). Plaintiffs did not object to this statement, although it arguably raises an inference of a minor impact.

Thereafter, counsel for the Defendant proceeded to attempt to play selected portions of his client's videotaped deposition regarding the nature of the accident, which drew an objection from the Plaintiffs. After a bench conference, this Court determined that not only was the Defendant's deposition hearsay when offered on her own behalf, but also that testimony regarding the nature of the accident, if offered to show it was a minor impact, would be in violation of this Court's pretrial Order.

The Plaintiffs' objection was sustained.

3. Clear Violation of Order During Cross-Examination of Dr. Jorg Rosler

During the testimony of Dr. Rosler, one of the Plaintiff's treating pain management physicians, counsel for the Defendant asked the following question:

> "Do you know anything about what happened to [Defendant] Jenny Rish and her passengers in this accident?"
>
> (RPT, March 22, 2011, p. 84)

Before the witness could answer, the Plaintiffs objected, citing this Court's pretrial motion ruling.

The only potential relevance of such an inquiry would be to raise an inference that since the Defendant or her passengers were not injured (or that the Plaintiff's treating physician was unaware of any injury), the accident must not have been significant enough to injure the Plaintiff.

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There is no other potential purpose in obtaining an answer from this witness to that question. Such an inference would be directly contrary to this Court's Order precluding a "minor impact" defense.

The Plaintiffs' objection was sustained.

4. Clear Violation During Cross-Examination of Dr. Patrick McNulty

Despite the fact that the Court sustained the Plaintiffs' objection to the improper question of Dr. Rosler, counsel for Defendant asked an almost identical question of the next treating physician to testify for Plaintiff. Within the first two minutes of the Defendant's cross-examination of Dr. McNulty, the following questions were asked:

[Defense Counsel] And you don't know anything about the car accident other than what [Plaintiff] told you?

[Dr. McNulty] It was simply he said he had a car accident and that's when he – his problems started.

[Defense Counsel] Okay. But did you discuss with him whether he was able to drive from the scene of the accident?

[Dr. McNulty] No, I really didn't go into the other – into the other details. No, I did not discuss that.

[Defense Counsel] *Do you know anything about the folks in Jenny Rish's car?*

(RTP 3/25/11, p. 4) (Emphasis supplied).

Counsel for the Plaintiffs immediately objected and a bench conference ensued. At the bench conference, counsel for the Defendant indicated his position on the relevance of the question:

[Defense Counsel] The relevance is that if one of them were injured or were not, that would be relevant or probative to whether the others were injured.

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(RTP 3/25/11, p. 5).

In fact, based on this Court's prior rulings, such a position is untenable. As stated in the authority supporting the grant of the Plaintiffs' pretrial Motion in Limine, there is no correlation between the size of the impact and the potential for injury to the Plaintiff. There is no correlation between whether the Defendant or one of her passengers was injured and the potential for injury to the Plaintiff. The Defendant had no credible or admissible evidence suggesting such a correlation and no expert testimony to support such a proposition.

Further, since the question asked on cross-examination of Dr. McNulty was exactly the same question precluded during the cross-examination of Dr. Rosler, the Defendant was clearly on notice that this area of inquiry was improper.

The Plaintiffs' objection was sustained.

5. Clear Violation During Cross-Examination of Dr. Jaswinder Grover

On the very same afternoon as Dr. McNulty's cross-examination, the Defendant had the opportunity to cross-examine Dr. Grover, another of the Plaintiff's treating physicians. During that cross-examination, counsel for the Defendant *again* asked the very same type of question precluded during the cross-examination of Drs. Rosler and McNulty:

> [Defense Counsel] You know the Plaintiff wasn't transported by ambulance.
>
> [Dr. Grover] Yes, sir.
>
> [Defense Counsel] *You know [whether] Jenny Rish –*
>
> [Plaintiff's Counsel] Objection, Your Honor.
>
> [Defense Counsel] – *was lifted from the scene?*

(RTP 3/25/11, p. 141).

After all of the previous hearings on the issue of a "minor impact" defense, and after the objections to the same type of question were sustained by this Court, such a question of Dr.

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Grover is simply inexplicable. Again, there is no potential relevance to a question asked of one of the Plaintiff's treating doctors (who didn't treat the Plaintiff until almost three years after the accident) about any injuries to the Defendant, other than to attempt to infer that the accident was too minor to injure the Plaintiff if the Defendant was not injured. That inference is precluded, based on the fact that the Defendant had no expert witness or admissible evidence to support that inference.

The Plaintiffs' objection was sustained and the jury was directed to disregard the last question.

6. Hearing Outside the Presence of the Jury on March 25, 2011

Following the testimony of Dr. Grover, at a hearing outside the presence of the jury, counsel for the Plaintiffs made the following record regarding the pervasive and continuous violations of this Court's Orders on pretrial Motions by counsel for the Defendant:

> [Plaintiffs' Counsel] Despite the ruling of the Court, despite the arguments we've had outside the presence on the issue of minor impact, in Opening Statement and with each and every witness so far, there's been a question which leads to a conclusion or an argument about minor impact, whether the Defendant was injured in – whether the doctor knows whether the Defendant was injured in the accident, which could only potentially be relevant to some argument that the accident was too minor to have caused injury, because she wasn't injured.
>
> Each time we've objected. Each time the Court has sustained the objection. I would look for, frankly, some guidance from the Court on what we can do from here out, because it – I can only assume that it will continue to occur. And so, *I don't know whether a progressive sanction that we'd ask for,* that there should be a warning from the Court before this should happen again. But those are my concerns, and I don't know

what other potential relevance there could be to asking a treating physician whether he's aware of whether or not the Defendant was injured in the accident.

(RTP 3/25/11, pp. 164-65) (emphasis supplied).

Thereafter, a discussion ensued on the record regarding the Court's pretrial ruling and the fact that the Defendant had repeatedly violated it. At the conclusion of the hearing outside the presence of the jury, this Court attempted, once again, to make it clear that the violations were continuous and that the Court would take necessary measures if the violations occurred again. To the Plaintiffs' counsel's suggestion of a progressive sanction, the Court responded thusly:

> [Court] I think you're right, and I think that *the defense is on notice. I think the Order is very clear. I think it clearly has been violated.* I was really surprised to hear a question posed of [Dr. Grover] regarding Ms. Rish when the Court sustained a previous question regarding Ms. Rish of another witness and ruled that that was not relevant. So I was really surprised to hear that very same question posed as to Ms. Rish.
>
> ...
>
> So I don't know. *It does seem to be at this point to be deliberate, Mr. Rogers. And so, I'm inclined to agree that you're on notice. The Court will consider progressive sanctions.* I don't know what they will be. I hope there won't have to be any assessed. *But I don't know what else to do to try to get you to comply with the Court's previous Orders.*
>
> (RTP 3/25/11, pp. 166-67) (emphasis supplied).

7. Testimony of Defendant's Expert Witness, Dr. David Fish

a) Voir Dire Examination Prior to Direct Examination

Defense expert Dr. Fish testified out of order during the Plaintiffs' case-in-chief as an accommodation by the Plaintiff to the Defendant and her expert. At request of the Plaintiffs'

counsel immediately prior to Dr. Fish's testimony to the jury, this Court held a hearing outside the presence of the jury to allow the Plaintiffs' counsel to take Dr. Fish on *voir dire* to ensure he was aware of the Court's previous rulings (including an Order granting the Plaintiffs' Motion in Limine to Limit the Testimony of Dr. Fish). Dr. Fish's testimony outside the presence of the jury comprises eighteen pages of the record (See, RTP March 24, 2011, pp. 12-30).

This questioning of Dr. Fish revealed that he was unaware of virtually every pretrial Order entered by this Court, including the Order limiting his testimony. He was unaware of this Court's Order precluding:

1) Plaintiff's unrelated 2003 motorcycle accident;

2) Plaintiff's unrelated 2008 motor vehicle accident;

3) Plaintiff's unrelated medical conditions;

4) Any suggestion of secondary gain, symptom magnification or malingering;

5) Sub rosa video surveillance of Plaintiff (ruling deferred until the conclusion of Plaintiff's direct examination);

6) Dr. Fish's testimony regarding biomechanical opinions related to the accident.

Of obvious concern to this Court was the fact that despite the voluminous pretrial motions, the thorough and even repetitious hearings and arguments entertained by this Court on the issues and the consistency of the enforcement of those rulings by this Court, the Defendant had not properly prepared her expert witness. When Dr. Fish volunteered that he thought some of the impediments to his testimony were "strange," the Court responded:

> [Court] You know what seems strange to me? That this witness obviously doesn't have any idea what the Court has ruled prior to these motions in limine.
>
> (RTP March 24, 2011, p. 24).

The Court unambiguously placed Dr. Fish and the Defendant on notice that violations of

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the Court's pretrial Orders carried the possibility of sanctions, including striking the testimony of Dr. Fish in its entirety (RTP March 24, 2011, p. 15).

b) Violation During Cross-Examination

Nevertheless, during cross-examination, Dr. Fish persisted in failing to respond to pertinent questions from the Plaintiffs' counsel and on more than one occasion responded to questions by stating, inferring or insinuating that he was unfairly prohibited from answering the questions based on this Court's prior rulings (RTP March 24, 2011, p. 106, 133).

Despite the repeated and systematic violations of the pretrial Orders in this case and the Court's efforts to cure and prevent the same, Dr. Fish violated rulings on "minor impact" during cross-examination.

When presented with contrary testimony on issues of medicine in prior depositions from other cases, Dr. Fish responded by suggesting that the instant accident was not a "significant accident." The Plaintiffs' oral Motion to Strike was Granted by this Court (RTP March 28, 2011, p.71-72).

c) Violation During Redirect Examination

At the end of the Defendant's redirect examination of Dr. Fish, counsel for the Defendant in a conclusory fashion asked Dr. Fish to summarize his opinions on causation.

> [Defense Counsel] …Doctor, how is it that you can reach an opinion to a medical probability that this accident didn't cause the pain that [the Plaintiff] complained of following this accident?
>
> [Dr. Fish] Well, it's based on multiple factors. It's based on the actual – looking at the images of the MRI. It's looking at the discogram and the results of the discogram. It's looking at the pattern of pain. It's looking at the notes that were taken of the events that happened *and it's knowing about the accident itself.*

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(RTP March 28, 2011, p.87) (Emphasis supplied).

Based on this Court's observation of Dr. Fish's testimony, there is no question that Dr. Fish's response, clearly in violation of this Court's Order, was deliberate. The Plaintiff's objection was sustained, and the jury was admonished to disregard the final statement in Dr. Fish's response.

D. Irrebuttable Presumption Instruction to the Jury

1. Plaintiffs' Request for a Special Instruction to the Jury

Following the testimony of Dr. Fish, the Court conducted a hearing outside the presence of the jury at the request of counsel for the Plaintiffs to consider a progressive sanction against the Defendant for the continuous and systematic violations of this Court's Orders on pretrial motions. The Plaintiff offered, as an alternative to striking Defendant's Answer, a special instruction to the jury directing them to presume that the accident in question was of a sufficient quality to have caused the injuries of which Plaintiff complained. The entire hearing on this issue outside the jury's presence comprises twenty-three (23) pages of transcript, which includes a recess by the Court to consider the appropriate language of an adverse inference instruction (See, RTP March 28, 2011, pp. 89-112).

During the hearing, the Plaintiffs' counsel correctly identified the factual and procedural history of the issue of a "minor impact" defense in this case (much of which is set forth above), including the rulings on pretrial motions, the numerous hearings outside the presence of the jury on this issue, the repeated violations of this Court's Order on "minor impact" and the records made establishing notice to the Defendant of possible progressive sanctions for any further violations (RTP March 28, 2011, pp. 89-93).

Counsel for the Plaintiffs then made a further record outlining the proper standard for consideration by this Court under *Young v. Ribeiro Building, Inc.*, 106 Nev. 88 (1990).

2. This Court's Consideration of the *Young* Factors

In *Young*, the Nevada Supreme Court reiterated that trial courts have inherent equitable powers to issue sanctions for abusive litigation practices. *Id.* at 92. Before issuing such sanctions, a trial court should carefully consider the factors announced in *Young*, although no single factor is necessarily dispositive and each of the non-exhaustive factors should be examined in the light of the case before the trial court. *Id.* As outlined during the hearing by counsel for the Plaintiffs, this Court considered the following factors set forth in *Young* before addressing the language of the special instruction to the jury.[1]

a) Degree of willfulness of the violations

The violations of this Court's pretrial Orders were continuous and systematic. As set forth above, the Defendant was clearly on notice of the Court's Order regarding this "minor impact" defense yet the Defendant violated this particular Order on numerous occasions. Based on the sheer number of violations of the same order in the same fashion, this Court can only conclude that such violations were willful in nature.

b) The extent to which the non-offending party would be prejudiced by a lesser sanction

To date, no lesser sanction had been successful in precluding future violations. This Court has consistently sustained the Plaintiffs' objections and stricken offending questions and answers. At some point, simply directing jurors to disregard continuous violations of pretrial Orders is insufficient.

Counsel for the Plaintiffs indicated that the violations to this point were sufficient to

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[1] In considering non-case concluding sanctions, a trial court shall hold such hearing as it reasonably deems necessary to consider matters that are pertinent to the imposition of appropriate sanctions *Bahena v. Goodyear Tire & Rubber Co.*, 245 P.3d 1182, 1185 (Nev. 2010) This court heard extensive arguments from the Plaintiffs and the Defendant before granting the Plaintiffs' request for a progressive sanction. While an "express, careful and preferably written" order is required by the Nevada Supreme Court for case concluding sanctions only, *Young, supra at 93; Foster v. Dingwall*, 227 P.3d 1042, 1048-49 (Nev. 2010), this Court outlines herein its analysis of the *Young* factors that supported the imposition of the non-case concluding sanction of an irrebuttable presumption instruction.

warrant a request that this Court impose a case concluding sanction of striking the Defendant's Answer, but that in harmonizing this particular factor from *Young* it might be necessary for this Court to consider a lesser sanction of a presumption instruction.

c) The severity of a sanction of dismissal relative to the severity of the abuse

This Court considered, at the time of imposing the sanction of an irrebuttable presumption instruction to the jury, whether the alternative request of striking Defendant's Answer would be an appropriate response to Defendant's continuous violations of this Court's pretrial Orders. While the abuse to this point was systematic and severe, this Court determined that a progressive sanction would be appropriate before consideration of a case concluding sanction.

d) The feasibility and fairness of an alternative, lesser sanction

Again, against the backdrop of the Plaintiffs' alternative request to strike Defendant's Answer, this Court considered the feasibility and fairness of a lesser sanction and determined that the irrebuttable presumption instruction requested by Plaintiff appropriately addressed the nature of the violations of the Court's Order precluding evidence to support a "minor impact" defense.

An irrebuttable presumption is a presumption that cannot be overcome by any additional evidence or argument. *Employers Insurance Co. of Nevada v. Daniels*, 122 Nev. 1009, 1015-16, fn. 15 (2006), quoting *Black's Law Dictionary* 1223 (8th ed. 2004). As this Court noted during the sanction hearing, the Order granting the Motion in Limine was based on the Defendant's complete lack of evidence bearing on a "minor impact" defense:

> [Court] But the point of the matter was that Defense had no witness who could testify that this was a minor impact and no witness who could testify that this was a minor impact that could not have caused the injuries to Plaintiff, that Plaintiff sustained.