SOUTHWEST.COM

Chicago (Midway), IL to Las Vegas, NV

Air

Modify **$931.40**

ITINERARY

DEPART MAR 30	Chicago, IL to Las Vegas, NV Wednesday, March 30, 2011 Travel Time 3 h 55 m (Nonstop)	#230	Depart Chicago (Midway), IL (MDW) Arrive in Las Vegas, NV (LAS)	9:00 AM 10:55 AM
RETURN MAR 30	Las Vegas, NV to Chicago, IL Wednesday, March 30, 2011 Travel Time 3 h 25 m (Nonstop)	#1220	Depart Las Vegas, NV (LAS) Arrive in Chicago (Midway), IL (MDW)	6:40 PM 12:05 AM

PRICE

Passenger Type	Trip	Routing	Fare Type	Base Fare	Govt. Taxes and Fees	Quantity	Total
Adult	Depart	MDW-LAS	Anytime	$423.76	$42.44	1	$466.20
Adult	Return	LAS-MDW	Anytime	$423.76	$42.44	1	$466.20
Please read the fare rules associated with this purchase.				$846.52	$84.88	1	$931.40

Total Due $931.40

You can't find this great fare on any other website. Southwest fares are only on southwest.com.

Bags Fly Free on Southwest* **Bag Charge** **$0.00**

*First and second checked bags. Weight and size limits apply.

Air Total: $931.40

Enroll in Rapid Rewards and earn at least 9,101 Points per person for this trip. Already a Member? Log in.

Purchase your shopping cart...
I accept the rules and want to continue with this purchase

Continue

Add a Hotel

We'll keep an eye on your cart for you while you shop. Products not confirmed until purchase.

Search for hotels in Las Vegas (03/30/2011 - 03/30/2011)

Close To (optional)
Center of destination · within 30 miles ·

Show Only (optional)
Hotel Chains · Shop All Hotel Chains

Find Hotels

003737

003737

EXHIBIT 2

003738

MAINOR EGLET, LLP / Cost Account

294

David E. Fish, M.D.

232353/William J. Simao/depo fee/amg 2/10/2011 2,000.00

Client Costs BNV 232353/William J. Simao/depo fee/amg 2,000.00

603395 [10/10]

003738

MAINOR EGLET, LLP / Cost Account

2971

Regents University of California Los Ange 2/15/2011

232353/William J. Simao/Jeffrey C. Wang, M.D. Dep 2,000.00

Client Costs BNV 232353/William J. Simao/Jeffrey C. Wang, M.D. 2,000.00

603395 (10/10)

003740

EXHIBIT 3

ATKINSON-BAKER, INC
500 NORTH BRAND BOULEVARD, THIRD FLOOR
GLENDALE, CA 91203-4725
800-288-3376, 800-525-5910 fax
www.depo.com

Jennifer Dabolt
Mainor Eglet, LLP
400 South Fourth Street
Suite 600
Las Vegas, NV 89101-

Please refer to the Invoice No. and your Firm No. in any correspondence.
Contact Loretta Easter
leaster@depo.com

ABI'S Federal ID No.: 95-4189037

Setting Firm:	Watson, Rounds
Taking Attorney:	Danielle C. Miller
Case Name:	Gilbert v Shainker
Case No.:	A507360

INVOICE NO.	A00AE69 AC
FIRM NO.	1204989
INVOICE DATE	03/24/2011
DUE UPON RECEIPT	

Reference #: SIMAO

ITEM	LINE TOTAL
Certified copy of the reporter's transcript of the deposition of David Eli Fish, M.D., taken 1/18/2007.	$ 127.00
PAYMENTS	- $ 0.00
BALANCE DUE	$ 127.00

A service fee of .75% per month will be added to any invoice over 30 days old.

003741

003741

Fold and tear at this perforation, then return stub with payment.

BALANCE DUE	$ 127.00
INVOICE NO.	A00AE69 AC
FIRM NO.	1204989

For: Certified copy of the reporter's transcript of the deposition of David Eli Fish, M.D., taken 1/18/2007.

From: Jennifer Dabolt
Mainor Eglet, LLP
400 South Fourth Street
Suite 600
Las Vegas, NV 89101-

Remit To: Atkinson-Baker,Inc.
500 NORTH BRAND BOULEVARD,
THIRD FLOOR
GLENDALE, CA 91203-4725

If you have already paid for this service by COD, then this invoice is for your records only.

Cameo Kayser & Associates
7500 West Lake Mead
Boulevard Suite 286
Las Vegas, NV 89128
Phone: 702 655-5092
Fax: 702 433-5726

Cameo Kayser & Associates

Brice J. Crafton, Esq.
Mainor Eglet
400 South Fourth Street
Sixth Floor
Las Vegas, NV 89101

Invoice #10992

Date	Terms
08/27/2010	Due on receipt

Job	Number	Staff	Order Shipped	Shipped Via
08/20/2010	6489	Oahlberg, Jean		Courier

Billing Reference	Case
	Risch vs. Simao

Description	Price	Qty	Amount
Copy Transcript Deposition of Dr. Ross Seibel			
Copy of Transcript (75 Pages)	$2.95	1.00	$221.25
Delivery	$13.00	1.00	$13.00
E-Trans	$35.00	1.00	$35.00
Exhibits Copied (358 Pages)	$0.50	1.00	$179.00
Mini-Transcript	$35.00	1.00	$35.00
			$483.25

Thank you for your business - Tax ID No. 54-2094435

Amount Due:	$483.25
Paid:	$0.00
Balance Due:	**$483.25**
Payment Due:	**Upon Receipt**
Interest at a rate of 1.5% after 30 days:	**$490.50**

003742
003742
003742

INVOICE

Litigation SERVICES
Discovery • Depositions • Decisions
3770 Howard Hughes Pkwy.
Suite 300
Las Vegas, NV 89169
Phone: 800-330-1112
Fax: 702-631-7351
www.litigationservices.com

Invoice No.	Invoice Date	Job No.
875576	3/15/2011	135828
Job Date	**Case No.**	
3/10/2011	A539455	
Case Name		
Simao vs. Rish		
Payment Terms		
Due upon receipt		

Robert Adams, Esq.
Mainor Eglet, LLP
400 South 4th Street
6th Floor
Las Vegas, NV 89101

EXPEDITED TRANSCRIPT OF THE FOLLOWING PROCEEDINGS:

2.67 Conference	705.15
TOTAL DUE >>>	**$705.15**
AFTER 4/14/2011 PAY	$775.67

Thank you for your business!

Billing issues must be received in writing within 30 days of invoice date.

A 3% service charge will be added for processing credit card payments.

003743

003743

Tax ID: 88-0428399 Phone: 702-450-5400 Fax:702-450-5451

Please detach bottom portion and return with payment.

Robert Adams, Esq.
Mainor Eglet, LLP
400 South 4th Street
6th Floor
Las Vegas, NV 89101

Job No. : 135828 BU ID :LV-CR
Case No. : A539455
Case Name : Simao vs. Rish

Invoice No. : 875576 Invoice Date :3/15/2011
Total Due : $ 705.15
AFTER 4/14/2011 PAY $775.67

PAYMENT WITH CREDIT CARD

Cardholder's Name:
Card Number:
Exp. Date: Phone#:
Billing Address:
Zip: Card Security Code:
Amount to Charge:
Cardholder's Signature:

Remit To: **Litigation Services**
3770 Howard Hughes Parkway
Suite 300
Las Vegas, NV 89169

INVOICE

Litigation SERVICES
Discovery • Depositions • Decisions
3770 Howard Hughes Pkwy.
Suite 300
Las Vegas, NV 89169
Phone: 800-330-1112
Fax: 702-631-7351
www.litigationservices.com

Invoice No.	Invoice Date	Job No.
872732	2/15/2011	131390
Job Date	**Case No.**	
12/7/2010		
Case Name		
Simao vs. Rish		
Payment Terms		
Due upon receipt		

Bradley J. Myers
Mainor Eglet, LLP
400 South 4th Street
6th Floor
Las Vegas, NV 89101

ORIGINAL AND 1 CERTIFIED COPY OF TRANSCRIPT OF:
Gary Skoog, Ph.D. 822.75

TOTAL DUE >>> $822.75
AFTER 3/17/2011 PAY $905.03

Thank you for your business!

Billing issues must be received in writing within 30 days of invoice date.

A 3% service charge will be added for processing credit card payments.

003744

003744

Tax ID: 88-0428399 Phone: 702-450-5400 Fax:702-450-5451

Please detach bottom portion and return with payment.

Bradley J. Myers
Mainor Eglet, LLP
400 South 4th Street
6th Floor
Las Vegas, NV 89101

Job No. : 131390 BU ID : LV-CRO
Case No. :
Case Name : Simao vs. Rish

Invoice No. : 872732 Invoice Date : 2/15/2011
Total Due : $ 822.75
AFTER 3/17/2011 PAY $905.03

PAYMENT WITH CREDIT CARD

Cardholder's Name:
Card Number:
Exp. Date: Phone#:
Billing Address:
Zip: Card Security Code:
Amount to Charge:
Cardholder's Signature:

Remit To: **Litigation Services**
3770 Howard Hughes Parkway
Suite 300
Las Vegas, NV 89169

INVOICE

Litigation SERVICES
Discovery • Depositions • Decisions
3770 Howard Hughes Pkwy.
Suite 300
Las Vegas, NV 89169
Phone: 800-330-1112
Fax: 702-631-7351
www.litigationservices.com

Invoice No.	Invoice Date	Job No.
874214	2/23/2011	133328
Job Date	**Case No.**	
2/10/2011		
Case Name		
Simao vs. Rish		
Payment Terms		
Due upon receipt		

David Wall, Esq.
Mainor Eglet, LLP
400 South 4th Street
6th Floor
Las Vegas, NV 89101

ORIGINAL & 1 COPY OF THE EXPEDITED TRANSCRIPT OF:
David E. Fish, M.D. 1,257.50
Parking 18.00 18.00

TOTAL DUE >>> **$1,275.50**
AFTER 3/25/2011 PAY $1,403.05

Thank you for your business!

Billing issues must be received in writing within 30 days of invoice date.

A 3% service charge will be added for processing credit card payments.

003745

003745

Tax ID: 88-0428399 Phone: 702-450-5400 Fax:702-450-5451

Please detach bottom portion and return with payment.

David Wall, Esq.
Mainor Eglet, LLP
400 South 4th Street
6th Floor
Las Vegas, NV 89101

Job No. : 133328 BU ID :LV-CRO
Case No. :
Case Name : Simao vs. Rish

Invoice No. : 874214 Invoice Date :2/23/2011
Total Due : $ 1,275.50
AFTER 3/25/2011 PAY $1,403.05

PAYMENT WITH CREDIT CARD

Cardholder's Name:
Card Number:
Exp. Date: Phone#:
Billing Address:
Zip: Card Security Code:
Amount to Charge:
Cardholder's Signature:

Remit To: **Litigation Services**
3770 Howard Hughes Parkway
Suite 300
Las Vegas, NV 89169

003745

INVOICE

Litigation SERVICES
Discovery • Depositions • Declions
3770 Howard Hughes Pkwy.
Suite 300
Las Vegas, NV 89169
Phone: 800-330-1112
Fax: 702-631-7351
www.litigationservices.com

Invoice No.	Invoice Date	Job No.
874365	2/28/2011	134323
Job Date	**Case No.**	
2/15/2011		
Case Name		
Simao vs. Rish		
Payment Terms		
Due upon receipt		

David Wall, Esq.
Mainor Eglet, LLP
400 South 4th Street
6th Floor
Las Vegas, NV 89101

ORIGINAL & 1 COPY OF THE EXPEDITED TRANSCRIPT OF:
Jeffrey Wang, M.D. 1,532.90

TOTAL DUE >>> **$1,532.90**
AFTER 3/30/2011 PAY $1,686.19

Deposition taken in Santa Monica, California.

Thank you for your business!

Billing issues must be received in writing within 30 days of invoice date.

A 3% service charge will be added for processing credit card payments.

003746

003746

Tax ID: 88-0428399 Phone: 702-450-5400 Fax:702-450-5451

Please detach bottom portion and return with payment.

David Wall, Esq.
Mainor Eglet, LLP
400 South 4th Street
6th Floor
Las Vegas, NV 89101

Job No. : 134323 BU ID :LV-CRO
Case No. :
Case Name : Simao vs. Rish

Invoice No. : 874365 Invoice Date :2/28/2011
Total Due : $ 1,532.90
AFTER 3/30/2011 PAY $1,686.19

PAYMENT WITH CREDIT CARD AMEX MasterCard VISA

Cardholder's Name:
Card Number:
Exp. Date: Phone#:
Billing Address:
Zip: Card Security Code:
Amount to Charge:
Cardholder's Signature:

Remit To: **Litigation Services**
3770 Howard Hughes Parkway
Suite 300
Las Vegas, NV 89169

003747

003747

EXHIBIT 4

TRANSCRIBER'S BILLING INFORMATION

CASE #	A 539455				
CASE NAME:	Cheryl Simao v. Linda Rish				
TRIAL DATES:	March 13, 2011 to April 1, 2011				
DEPARTMENT #	10				
ORDERED BY: FIRM: EMAIL:	Robert Eglet Mainor Eglet aganier@mainorlawyers.com psmythe@mainorlawyers.com				
PAYABLE TO COUNTY:	Make check payable to: Clark County Treasurer County Tax ID#: 88-6000028 Include case number on check				
BILL AMOUNT:	10	CDs @ $25 each =			$ 250.00
	30	hours @ $30 an hour recording fee =			$ 900.00
		pages @	$	per page of trans.	$
	Total				$1150.00
PAYABLE TO OUTSIDE TRANSCRIBER:	Make check payable to:				
BILL AMOUNT:		pages @	$	per page of trans	$
DATE PAID:					
	TRANSCRIPTS WILL NOT BE FILED OR RELEASED UNTIL PAYMENT IS RECEIVED				
NOTES:	Total trial hours were 60. Opposing counsel also billed 30 hours.				

003748

003748

AVTRANZ
THE COURT RECORD ONLINE

Estimate

Estimate # 12258
Estimate Date 3/14/2011

Case Name

Cheryl Simao v. Linda Rish

Case Number

A-539455

Hearing Dates

03/01/11

Bill To

Mainor Eglet
Wall, David T
400 South 4th Street
Suite 600
Las Vegas NV 89101

Ship To

Clark County District Court
Victoria W Boyd, 14th Fl., 14B
Regional Justice Center
200 Lewis Ave., Department 10
Las Vegas NV 89155

Qty/Pgs	Price Group	Description		
40	1-Day Turnaround	8th Judicial District, NV (Clark County)	7.50	300.00
40	Base Price	8th Judicial District, NV (Clark County) - Copy Pages	0.00	0.00

Total ~~$300.00~~ $250.00

003749

003749

A/V Tronics, Inc. DBA AVTranz
845 N. 3rd Ave. – Phoenix, Arizona 85003
tel 602.263.0885 | fax 866.954.9068 | toll free 1.800.257.0885
Tax ID # 86-0673295
Phoenix | Las Vegas | Denver | Tucson

Payment Terms	Deposit Required
Payment Method	TBD
Delivery Method	Legal Copy Cats
Sales Rep	EM0013 Erik Lige

AVTRANZ
THE COURT RECORD ONLINE
845 N. 3rd Ave. ~ Phoenix, AZ 85003

tel 602.263.0885 | fax 866.954.9068 | toll free 1.800.257.0885
Tax ID # 86-0673295
Phoenix | Las Vegas | Denver | Tucson

Invoice

Invoice #	16287
Invoice Date	3/23/2011
Payment Terms	Deposit Required
Due Date	3/23/2011

Bill To

Mainor Eglet
Wall, David T
400 South 4th Street
Suite 600
Las Vegas NV 89101

Amount Paid $ 127.50
Balance Due $ 0.00

Case Name

Cheryl Simao v. Linda Rish

Case Number
A-539455

Hearing Dates
03/08/11

003750

Qty/Pgs	Price Group	Description	Rate	Amount
17	1-Day Turnaround	8th Judicial District, NV (Clark County)	7.50	127.50
17	Base Price	8th Judicial District, NV (Clark County) - Copy Pages	0.00	0.00

003750

ATTENTION:

A/V Tronics, Inc. is now doing business as AVTranz. This change was effective March 1, 2009. Checks can be made payable to AVTranz or A/V Tronics, Inc. We also accept Visa, Mastercard, and American Express payments. Please call (602) 263-0885 for processing. If you need a copy of our W9, please send an email request to addie.weddington@avtranz.com. For more information on AVTranz policies, please visit our website.

www.avtranz.com/about_policies.php

AVTRANZ
THE COURT RECORD ONLINE
845 N. 3rd Ave. – Phoenix, AZ 85003

tel 602.263.0885 | fax 866.954.9068 | toll free 1.800.257.0885
Tax ID # 86-0673295
Phoenix | Las Vegas | Denver | Tucson

Invoice

Invoice #	16298
Invoice Date	3/23/2011
Payment Terms	Deposit Required
Due Date	3/23/2011

Bill To

Mainor Eglet
Wall, David T
400 South 4th Street
Suite 600
Las Vegas NV 89101

Amount Paid $ 1050.00
Balance Due $ 0.00

Case Name

Cheryl Simao v. Linda Rish

Case Number
A-539455

Hearing Dates
03/22/11

003751

Qty/Pgs	Price Group	Description	Rate	Amount
140	1-Day Turnaround	8th Judicial District, NV (Clark County)	7.50	1,050.00
140	Base Price	8th Judicial District, NV (Clark County) - Copy Pages	0.00	0.00

003751

ATTENTION:

A/V Tronics, Inc. is now doing business as AVTranz. This change was effective March 1, 2009. Checks can be made payable to AVTranz or A/V Tronics, Inc. We also accept Visa, Mastercard, and American Express payments. Please call (602) 263-0885 for processing. If you need a copy of our W9, please send an email request to addie.weddington@avtranz.com. For more information on AVTranz policies, please visit our website.

www.avtranz.com/about_policies.php

AVTRANZ
THE COURT RECORD ONLINE
845 N. 3rd Ave. ~ Phoenix, AZ 85003

tel 602.263.0885 | fax 866.954.9068 | toll free 1.800.257.0885
Tax ID # 86-0673295
Phoenix | Las Vegas | Denver | Tucson

Invoice

Invoice #	16337
Invoice Date	3/25/2011
Payment Terms	Deposit Required
Due Date	3/25/2011

Bill To

Mainor Eglet
Wall, David T
400 South 4th Street
Suite 600
Las Vegas NV 89101

Amount Paid $ 1237.50
Balance Due $ 0.00

Case Name

Cheryl Simao v. Linda Rish

Case Number
A-539455

Hearing Dates
03/24/11

003752

Qty/Pgs	Price Group	Description	Rate	Amount
165	1-Day Turnaround	8th Judicial District, NV (Clark County)	7.50	1,237.50
165	Base Price	8th Judicial District, NV (Clark County) - Copy Pages	0.00	0.00

003752

ATTENTION:

A/V Tronics, Inc. is now doing business as AVTranz. This change was effective March 1, 2009. Checks can be made payable to AVTranz or A/V Tronics, Inc. We also accept Visa, Mastercard, and American Express payments. Please call (602) 263-0885 for processing. If you need a copy of our W9, please send an email request to addie.weddington@avtranz.com. For more information on AVTranz policies, please visit our website.

www.avtranz.com/about_policies.php

AVTRANZ
THE COURT RECORD ONLINE
845 N. 3rd Ave. ~ Phoenix, AZ 85003

tel 602.263.0885 | fax 866.954.9068 | toll free 1.800.257.0885
Tax ID # 86-0673295
Phoenix | Las Vegas | Denver | Tucson

Invoice

Invoice #	16461
Invoice Date	3/31/2011
Payment Terms	Deposit Required
Due Date	3/31/2011

Bill To

Mainor Eglet
Wall, David T
400 South 4th Street
Suite 600
Las Vegas NV 89101

Amount Paid $ 1312.50
Balance Due $ 0.00

Case Name

Cheryl Simao v. Linda Rish

Case Number
A-539455

Hearing Dates
03/29/11

003753

Qty/Pgs	Price Group	Description	Rate	Amount
175	1-Day Turnaround	8th Judicial District, NV (Clark County)	7.50	1,312.50
175	Base Price	8th Judicial District, NV (Clark County) - Copy Pages	0.00	0.00

003753

ATTENTION:

A/V Tronics, Inc. is now doing business as AVTranz. This change was effective March 1, 2009. Checks can be made payable to AVTranz or A/V Tronics, Inc. We also accept Visa, Mastercard, and American Express payments. Please call (602) 263-0885 for processing. If you need a copy of our W9, please send an email request to addie.weddington@avtranz.com. For more information on AVTranz policies, please visit our website.

www.avtranz.com/about_policies.php

AVTRANZ
THE COURT RECORD ONLINE
845 N. 3rd Ave. ~ Phoenix, AZ 85003

tel 602.263.0885 | fax 866.954.9068 | toll free 1.800.257.0885
Tax ID # 86-0673295
Phoenix | Las Vegas | Denver | Tucson

Invoice

Invoice #	16465
Invoice Date	3/31/2011
Payment Terms	Deposit Required
Due Date	3/31/2011

Bill To

Mainor Eglet
Wall, David T
400 South 4th Street
Suite 600
Las Vegas NV 89101

Amount Paid $ 1507.50
Balance Due $ 0.00

Case Name

Cheryl Simao v. Linda Rish

Case Number
A-539455

Hearing Dates
03/30/11

003754

Qty/Pgs	Price Group	Description	Rate	Amount
201	1-Day Turnaround	8th Judicial District, NV (Clark County)	7.50	1,507.50
201	Base Price	8th Judicial District, NV (Clark County) - Copy Pages	0.00	0.00

003754

ATTENTION:

A/V Tronics, Inc. is now doing business as AVTranz. This change was effective March 1, 2009. Checks can be made payable to AVTranz or A/V Tronics, Inc. We also accept Visa, Mastercard, and American Express payments. Please call (602) 263-0885 for processing. If you need a copy of our W9, please send an email request to eddie.weddington@avtranz.com. For more information on AVTranz policies, please visit our website.

www.avtranz.com/about_policies.php

AVTRANZ
THE COURT RECORD ONLINE
845 N. 3rd Ave. – Phoenix, AZ 85003

tel 602.263.0885 | fax 866.954.9068 | toll free 1.800.257.0885
Tax ID # 86-0673295
Phoenix | Las Vegas | Denver | Tucson

Invoice

Invoice #	16481
Invoice Date	3/31/2011
Payment Terms	Deposit Required
Due Date	3/31/2011

Bill To

Mainor Eglet
Wall, David T
400 South 4th Street
Suite 600
Las Vegas NV 89101

Amount Paid $ 1050.00
Balance Due $ 0.00

Case Name

Cheryl Simao v. Linda Rish

Case Number
A-539455

Hearing Dates
03/31/11

Qty/Pgs	Price Group	Description	Rate	Amount
140	1-Day Turnaround	8th Judicial District, NV (Clark County)	7.50	1,050.00
140	Base Price	8th Judicial District, NV (Clark County) - Copy Pages	0.00	0.00

ATTENTION:

A/V Tronics, Inc. is now doing business as AVTranz. This change was effective March 1, 2009. Checks can be made payable to AVTranz or A/V Tronics, Inc. We also accept Visa, Mastercard, and American Express payments. Please call (602) 263-0885 for processing. If you need a copy of our W9, please send an email request to addie.weddington@avtranz.com. For more information on AVTranz policies, please visit our website.

www.avtranz.com/about_policies.php

AVTRANZ
THE COURT RECORD ONLINE
845 N. 3rd Ave. – Phoenix, AZ 85003

tel 602.263.0885 | fax 866.954.9068 | toll free 1.800.257.0885
Tax ID # 86-0673295
Phoenix | Las Vegas | Denver | Tucson

Invoice

Invoice #	16521
Invoice Date	4/4/2011
Payment Terms	Deposit Required
Due Date	4/4/2011

Bill To

Mainor Eglet
Wall, David T
400 South 4th Street
Suite 600
Las Vegas NV 89101

Amount Paid $ 225.00
Balance Due $ 0.00

Case Name

Cheryl Simao v. Linda Rish

Case Number
A-539455

Hearing Dates
04/01/11

003756

Qty/Pgs	Price Group	Description	Rate	Amount
30	1-Day Turnaround	8th Judicial District, NV (Clark County)	7.50	225.00
30	Base Price	8th Judicial District, NV (Clark County) - Copy Pages	0.00	0.00

003756

ATTENTION:

A/V Tronics, Inc. is now doing business as AVTranz. This change was effective March 1, 2009. Checks can be made payable to AVTranz or A/V Tronics, Inc. We also accept Visa, Mastercard, and American Express payments. Please call (602) 263-0885 for processing. If you need a copy of our W9, please send an email request to addie.weddington@avtranz.com. For more information on AVTranz policies, please visit our website.

www.avtranz.com/about_policies.php

003757

003757

EXHIBIT 5

Get R Done Services, Inc.

5575 Simmons St.
Suite 1-200
North Las Vegas, NV. 89031

Invoice

Date	Invoice #
4/29/2010	701

Bill To
Mainor Eglet Cottle 400 South 4TH Street 6th Floor Las Vegas, NV 89101

Client Name	Case #	Terms
Simano		Net 15

Item	Quantity	Rate	Description	Amount
C.O.R. SERVICE	14	65.00	SERVED CUSTODIAN OF RECORD @	910.00

Thank you for your business.

Total $910.00

Signature _____

003758

003758

003758

Get R Done Services, Inc.

5575 Simmons St.
Suite 1-200
North Las Vegas, NV. 89031

Invoice

Date	Invoice #
3/14/2011	800

Bill To
Maimon Eglet 400 S. 4th ST. #600 las vegas Nv 89101

Client Name	Case #	Terms
Simano		

Item	Quantity	Rate	Description	Amount
Photos	2	25.00	Took photos for trial	50.00
Process Service	2	65.00	Served Trial subpoenas	130.00

Thank you for your business.

Total $180.00

Signature _____

003759

003759

Law Offices
GREGORY T. HAFEN, CHTD.
A Professional Corporation
525 South Ninth Street
Las Vegas, Nevada 89101
Ph. (702) 384-5800 Fax (702) 384-6580
E-mail: ghafen@hafenlaw.com
Pahrump Ph. (775) 727-3770

January 31, 2011

VIA FACSIMILE ONLY:

Robert T. Eglet, Esq.
David T. Wall, Esq.
Robert M. Adams, Esq.
MAJNOR EGLET
400 South Fourth St., Ste. 600
Las Vegas, NV 89101
(702) 450-5451

Stephen H. Rogers, Esq.
ROGERS MASTRANGELO
CARVALHO & MITCHELL
300 South Fourth Street, Ste. 710
Las Vegas, NV 89101
(702) 384-1460
Attorney for Defendants

Matthew E. Aaron, Esq.
AARON & PATERNOSTER
2300 W. Sahara Ave., Ste. 650
Las Vegas, NV 89102
(702) 384-8222

Attorneys for Plaintiffs

003760

003760

RE: **William Jay Simao & Cheryl Ann Simao vs. Jenny Rish, James Rish, and Linda Rish**
Case No. A539455

MEDIATOR'S STATEMENT OF FEES AND COSTS

	Hours:	Fees:
Preparation Time:		
a. 1/27/11: Review Defendants' mediation brief and exhibits; Review Plaintiffs' mediation brief and exhibits	0.8	$240.00
b. 1/28/11: Review additional documents submitted by Plaintiffs' attorney; Telephone conference with Plaintiffs' attorney regarding same; Review subrosa video	1.4	$420.00
d. 1/31/11: Review mediation materials and discussions with Defendants' attorney regarding same	1.0	$300.00

Mediation:

Conduct Mediation on 01-31-11 (10:00 a.m. – 1:45 p.m.)	3.75	$1,125.00
Total Hours	**6.95**	

Administrative Time/Costs:

Telephone conference to schedule Mediation; conflict check; draft confirming letter to all parties and draft Agreement to Mediate.	$110.00
Grand Total Fees & Costs:	**$2,195.00**

Each party is responsible for half (1/2) of the mediation bill.

Plaintiffs owe:

$1,097.50 - $0.00(deposit) = **$1,097.50**
(Balance Due)

Defendants owe:

$1,097.50 - $0.00(deposit) = **$1,097.50**
(Balance Due)

003761

003761

****PLEASE REMIT PAYMENT OF OUTSTANDING BALANCE WITHIN 10 DAYS****

****PLEASE MAKE CHECKS PAYABLE TO "GREGORY T. HAFEN, CHTD."****

TAX ID. NO. 88-0213932

Gregory T. Hafen

Robert D. Lawson Investigations, LLC Process Serving
601 S. 10th St. Suite 101
Las Vegas, NV 89101

Invoice

Date	Invoice #
6/11/2010	1870

Bill To

MAINOR. EGLET. COTTLE. LLP
ATTEN: MIKE
400 SOUTH FOURTH ST. 6TH FLOOR
LAS VEGAS. NV 89101

Client

WILLIAM JAY SIMAO

Terms	Date Rc'vd	Server	Date Served
Due on receipt	6/9/2010	GR	6/9/2010

Item	Description	Rate	Amount
SERVE	SERVED SUBPOENA DUCES TECUM TO COR SOUTHWEST MEDICAL ASSOCIATES AT 8655 S EASTERN AVE LAS VEGAS, NV 89144	65.00	65.00

003762

003762

Thank you for your business.

Total $65.00

Phone #	Fax #
(702) 474-4102	(702) 474-4137

Robert D. Lawson Investigations, LLC Process Serving

601 S. 10th St. Suite 101
Las Vegas, NV 89101

Invoice

Date	Invoice #
4/22/2010	1675

Bill To	Client
MAJNOR, EGLET, COTTLE, LLP ATTEN: MIKE 400 SOUTH FOURTH ST. 6TH FLOOR LAS VEGAS, NV 89101	WILLIAM JAY SIMAO AND CHERYL ANN SIMAO

Terms	Date Rc'vd	Server	Date Served
Due on receipt	4/15/2010	RH	4/21/2010

Item	Description	Rate	Amount
SERVE	SERVED SUBPOENA DUCES TECUM TO COR FOR HANS JORG ROSLER, MD AT 7140 SMOKE RANCH RD #150 LAS VEGAS, NV 89128	65.00	65.00

Thank you for your business.

Total $65.00

Phone #	Fax #
(702) 474-4102	(702) 474-4137

003763

003763

Robert D. Lawson Investigations, LLC Process Serving

601 S. 10th St. Suite 101
Las Vegas, NV 89101

Invoice

Date	Invoice #
5/6/2010	1726

Bill To	Client
MAINOR, EGLET, COTTLE, LLP ATTEN: MIKE 400 SOUTH FOURTH ST. 6TH FLOOR LAS VEGAS, NV 89101	WILLIAM JAY SIMAO

Terms	Date Rc'vd	Server	Date Served
Due on receipt	5/5/2010	GR	5/6/2010

Item	Description	Rate	Amount
SERVE	SERVED SUBPOENA DUCES TECUM TO COR FOR MARK L. GLYMAN, MD. AT 2030 E. FLAMINGO AVE #288 LAS VEGAS,NV 89119	65.00	65.00

Thank you for your business.

Total $65.00

Phone #	Fax #
(702) 474-4102	(702) 474-4137

003764

003764

Robert D. Lawson Investigations, LLC

601 S. 10th St. Suite 101
Las Vegas, NV 89101

Invoice

Date	Invoice #
11/12/2010	5344

Bill To

MAINOR, EGLET
ATTEN: ASHLEY
400 South Fourth St. 6th Floor
Las Vegas, Nevada 89101

Client

WILLIAM JAY SIMAO AND CHERYL ANN SIMAO

Date Rc'vd	Terms	Date Served	Server
10/18/2010	Upon Receipt	10/20/2010	

Item	Description	Rate	Amount
Serve	SERVED SUBPOENA DUCES TECUM FOR DEPOSITION AND NOTICE OF TAKING THE VIDEO-CONFERENCED DEPOSITION TO DAVID FISH, M.D. AT 1250 16TH ST, SUITE 745 SANTA MONICA, CA 90404 (RUSH SERVICE) (DISCOUNTED FOR ADDITIONAL SERVE AT SAME ADDRESS)	150.00	150.00

Thank You for your business

Total $150.00

Phone # 702-474-4102
Fax # 702-474-4137

003765

003765

Robert D. Lawson Investigations, LLC

601 S. 10th St. Suite 101
Las Vegas, NV 89101

Invoice

Date	Invoice #
11/12/2010	5343

Bill To

MAINOR, EGLET
ATTEN: ASHLEY
400 South Fourth St. 6th Floor
Las Vegas, Nevada 89101

Client

WILLIAM JAY SIMAO AND CHERYL ANN SIMAO

Date Rc'vd	Terms	Date Served	Server
10/18/2010	Upon Receipt	10/20/2010	

Item	Description	Rate	Amount
Serve	SERVED SUBPOENA DUCES TECUM FOR DEPOSITION AND NOTICE OF TAKING THE VIDEO-CONFERENCED DEPOSITION TO JEFFREY WANG, MD AT 1250 16TH ST, SUITE 745 SANTA MONICA, CA 90404 (RUSH SERVICE)	175.00	175.00

003766

003766

Thank You for your business

Total $175.00

Phone #	Fax #
702-474-4102	702-474-4137

Robert D. Lawson Investigations ,C

601 S. 10th St. Suite 101
Las Vegas, NV 89101

Invoice

Date	Invoice #
1/27/2011	5616

Bill To	
MAINOR, EGLET ATTEN: ASHLEY 400 South Fourth St. 6th I Las Vegas, Nevada 89101	I JAY SIMAO

Terms	Date Served	Server
Upon Receipt	1/27/2011	

Item	Description	Rate	Amount
Attempt Service	ATTEMPT TO SERVE SUBPOENA DUCES TECUM AND NOTICE OF TAKING THE VIDEO-CONFERENCED DEPOSITION TO JEFFREY WANG, MD AT 1250 16TH ST SUITE 745 SANTA MONICA, CA 90404---PROCESS SERVER STATED WHEN ATTEMPTED TO DELIVER PAPERS HE WAS OUT OF TOWN FOR TWO WEEKS.--- SPOKE TO ASHLEY AT ME AND SHE STATED THE DEPO HAD BEEN CANCELLED AND WILL BE RESCHEDULED FOR A DIFFERENT DATE	135.00	135.00

Thank You for your business

Total $135.00

Phone #	Fax #
702-474-4102	702-474-4137

003767

003767

Robert D. Lawson Investigations, LLC

601 S. 10th St. Suite 101
Las Vegas, NV 89101

Invoice

Date	Invoice #
1/10/2011	5557

Bill To	Client
MAJNOR, EGLET ATTEN: ASHLEY 400 South Fourth St. 6th Floor Las Vegas, Nevada 89101	WILLIAM JAY SIMAO

Date Rc'vd	Terms	Date Served	Server
11/30/2010	Upon Receipt	12/16/2010	

Item	Description	Rate	Amount
Serve	SERVED SUBPOENA DUCES TECUM AND AMENDED NOTICE OF TAKING THE VIDEO-CONFERENCED DEPOSITION OF DEFENSE EXPERT DAVID FISH, M.D. AT 1250 16TH ST SUITE 745 SANTA MONICA, CA 90404	135.00	135.00

Thank You for your business

Total $135.00

Phone #	Fax #
702-474-4102	702-474-4137

003768

003768

Invoice

LEGAL COPYCATS & PRINTING

Office) 702.598.4455 • Fax) 702.598.1644
www.legalcopycats.com

Bill To
Mainor Eglet Cottle Attn: Kathy H. City Centre Place 400 S. Fourth Street, 6th Floor Las Vegas, NV 89101

Date	Invoice #
5/10/2010	64709

Client Name	Terms	Case or Matter No.
Nick	10 Days/EOM	Simao 232353

Quantity	Description	Amount
17	X-RAY DUPLICATIONS	306.00T
	Sales Tax	24.79

10th ANNIVERSARY
1999-2009
Celebrating 10 Years of Service in Southern Nevada

	Total	$330.79

QC'd By
LW

003769

003769

003769

Invoice

LEGAL COPYCATS & PRINTING

Office) 702.598.4455 • Fax) 702.598.1644
www.legalcopycats.com

Bill To
Mainor Eglet Attn: Kathy H. City Centre Place 400 S. Fourth Street, 6th Floor Las Vegas, NV 89101

Date	Invoice #
3/2/2011	69241

Client Name	Terms	Case or Matter No.
Patti	10 Days/EOM	Jury Questionnaire

Quantity	Description	Amount
1,120	B/W SCANS TO PDF FILES	201.60T
2	BINDERS	30.00T
80	SIDE TABS	24.00T
1	COPY FILES TO CD/DVD	15.00T
	Sales Tax	21.92

Total $292.52

QC'd By
JC

003770

003770

003770

Invoice

LEGAL CYC & PRINTING

Office) 702.598.4455 • Fax) 702.598.1644
www.legalcopycats.com

Bill To
Mainor Eglet Attn: Kathy H. City Centre Place 400 S. Fourth Street, 6th Floor Las Vegas, NV 89101

Date	Invoice #
3/3/2011	69269

Client Name	Terms	Case or Matter No.
Nick	10 Days/EOM	Simao 232353

Quantity	Description	Amount
153	X-RAY CONVERTED TO PDF	2,448.00T
1	COPY FILES TO CD/DVD	15.00T
	Sales Tax	199.50

Thank you for your business.

Total $2,662.50

QC'd By

TO

003771

003771

003771

Invoice

LEGAL COPYCATS & PRINTING
Office) 702.598.4455 • Fax) 702.598.1644
www.legalcopycats.com

Bill To
Mainor Eglet Attn: Kathy H. City Centre Place 400 S. Fourth Street, 6th Floor Las Vegas, NV 89101

Date	Invoice #
3/4/2011	69283

Client Name	Terms	Case or Matter No.
Pani	10 Days/EOM	Jury Questionnaire

Quantity	Description	Amount
2,240	B/W COPIES LEVEL 3	403.20T
160	SIDE TABS	48.00T
4	BINDERS	60.00T
	Sales Tax	41.41

Total $552.61

QC'd By
JC

003772
003772
003772

Invoice

LEGAL COPYCATS & PRINTING
Office) 702.598.4455 • Fax) 702.598.1644
www.legalcopycats.com

Bill To
Mainor Eglet Attn: Kathy H. City Centre Place 400 S. Fourth Street, 6th Floor Las Vegas, NV 89101

Date	Invoice #
3/7/2011	69299

Client Name	Terms	Case or Matter No.
Nick	10 Days/EOM	232353

Quantity	Description	Amount
4,150	B/W SCANS TO PDF FILES	747.00T
29	COLOR SCANS TO FILE	28.71T
1	COPY FILES TO CD/DVD	15.00T
	Sales Tax	64.05

Total $854.76

QC'd By
LW

003773
003773
003773

Invoice

LEGAL COPYCATS & PRINTING
Office) 702.598.4455 • Fax) 702.598.1644
www.legalcopycats.com

Bill To
Mainor Eglet Attn: Kathy H. City Centre Place 400 S. Fourth Street, 6th Floor Las Vegas, NV 89101

Date	Invoice #
3/8/2011	69333

Client Name	Terms	Case or Matter No.
Nick	10 Days/EOM	Simao 232353

Quantity	Description	Amount
640	B/W COPIES LEVEL 3	115.20T
8	COLOR LASER COPIES, LETTER OR LEGAL	7.92T
320	SIDE TABS	96.00T
4	BINDERS	60.00T
	Sales Tax	22.61

Total $301.73

QC'd By
JC

003774
003774
003774

Invoice

LEGAL CYC & PRINTING

Office) 702.598.4455 • Fax) 702.598.1644
www.legalcopycats.com

Bill To
Mainor Eglet Attn: Kathy H. City Centre Place 400 S. Fourth Street, 6th Floor Las Vegas, NV 89101

Date	Invoice #
3/9/2011	69366

Client Name	Terms	Case or Matter No.
Nick	10 Days/EOM	Simao 232353

Quantity	Description	Amount
5,025	B/W COPIES LEVEL 3	904.50T
350	SIDE TABS	105.00T
10	BINDERS	150.00T
965	ELECTRONIC BATES NUMBERING	48.25T
1,005	B/W SCANS TO PDF FILES	180.90T
1	COPY FILES TO CD/DVD	15.00T
	Sales Tax	113.70

Total $1,517.35

QC'd By
JC

003775

003775

003775

Invoice

LEGAL COPYCATS & PRINTING

Office) 702.598.4455 • Fax) 702.598.1644
www.legalcopycats.com

Bill To
Mainor Eglet Attn: Kathy H. City Centre Place 400 S. Fourth Street, 6th Floor Las Vegas, NV 89101

Date	Invoice #
3/15/2011	69467

Client Name	Terms	Case or Matter No.
Pani	10 Days/EOM	Simao

Quantity	Description	Amount
72	COLOR LASER COPIES, LETTER OR LEGAL	71.28T
	Sales Tax	5.77

Total $77.05

QC'd By
JC

Invoice

LEGAL COPYCATS & PRINTING

Office) 702.598.4455 • Fax) 702.598.1644
www.legalcopycats.com

Bill To
Mainor Eglet Attn: Kathy H. City Centre Place 400 S. Fourth Street, 6th Floor Las Vegas, NV 89101

Date	Invoice #
3/21/2011	69569

Client Name	Terms	Case or Matter No.
Robert Adams	10 Days/EOM	William Simao

Quantity	Description	Amount
38	B/W COPIES LEVEL 3	6.84T
12	SIDE TABS	3.60T
3	GBC COMB BIND	7.50T
	Sales Tax	1.45

Total $19.39

QC'd By
JC

003777

003777

003777

Invoice

LEGAL COPYCATS & PRINTING

Office) 702.598.4455 • Fax) 702.598.1644
www.legalcopycats.com

Bill To
Mainor Eglet Attn: Kathy H. City Centre Place 400 S. Fourth Street, 6th Floor Las Vegas, NV 89101

Date	Invoice #
3/29/2011	69689

Client Name	Terms	Case or Matter No.
Patti	10 Days/EOM	Simao

Quantity	Description	Amount
26	COLOR LASER COPIES, LETTER OR LEGAL	25.74T
69	B/W COPIES LEVEL 3	12.42T
	Sales Tax	3.09

Total $41.25

QC'd By
JC

003778

003778

003778

APRIA HEALTHCARE

1150 W. Washington St. Ste # 101
Tempe, AZ 85281
(480)459-4637 fax (602)273-3083

Invoice No. AQH152 S.W

INVOICE

Customer

Name	Minor Eglet Cottle
Address	400 S. Fourth Street, Ste 600
City	Las Vegas State NV ZIP 89101
Phone	

Date	7/8/2010
Order No.	
Rep	104
FOB	249

Qty	Description	Unit Price	TOTAL
13	AQH152 Simao, William Description of records request Contact name: Latchmi Naidu PH: 480-475-4770 FX: 602-275-4226	$0.60	$7.80

Please submit a copy of this Invoice with your Payment.

	Subtotal	$7.80
	Shipping & Handling	$0.95
Taxes	State	
	TOTAL	$8.75

Office Use Only

Payment Details

- O Cash
- O Check

Please Remit to:

Apria Healthcare
1150 W Washington ST STE # 101
Tempe, AZ 85281

THANK YOU!

003779
003779
003779

CVS
pharmacy

Privacy Office
One CVS Drive
Woonsocket, RI 02895

Private and Confidential
Intended for Addressee Only

1987852
MAINOR EGLET TRIAL ATTORNEYS
400 SOUTH 4TH STREET
6TH FLOOR
LAS VEGAS NV 89101

11/05/2010

Re : WILLIAM SIMAO

Enclosed, please find the patient prescription profile obtained using the information as specified per your request.

To cover the expense of processing these records, please remit a payment of $50.00 to CVS/pharmacy, One CVS Drive, Woonsocket, RI 02895, Attn: Privacy Office. The Federal Tax ID number is 05-03-40626.

If you have questions regarding this report you may contact the Privacy Office at 1-800-287-2414 or e-mail us at PrivacyOffice@cvs.com.

Sincerely,
CVS/pharmacy Privacy Office

INVOICE

MAINOR EGLET TRIAL ATTORNEYS

Request Nbr	Date	Amount Due:	Payment Amount:
1987852	11/05/2010	$50.00	$_____

Payment Due Upon Receipt

Mail payment to:
CVS/pharmacy
Privacy Office
One CVS Drive
Woonsocket, RI 02895

Make Checks Payable to: CVS/pharmacy
Include Request Number and customer name on check.

003780
003780
003780

CVS
pharmacy

Privacy Office
One CVS Drive
Woonsocket, RI 02895

Private and Confidential
Intended for Addressee Only

2075022
MAINOR EGLET
400 SOUTH FOURTH ST., SUITE 600

LAS VEGAS NV 89101

02/28/2011

Re: SIMAO, WILLIAM
A539455

Enclosed, please find the patient prescription profile obtained using the information as specified per your request.

To cover the expense of processing these records, please remit a payment of $50.00 to CVS/pharmacy, One CVS Drive, Woonsocket, RI 02895, Attn: Privacy Office. The Federal Tax ID number is 05-03-40626.

If you have questions regarding this report you may contact the Privacy Office at 1-800-287-2414 or e-mail us at PrivacyOffice@cvs.com.

Sincerely,
CVS/pharmacy Privacy Office

INVOICE

MAINOR EGLET

Request Nbr	Date	Amount Due:	Payment Amount:
2075022	02/28/2011	$50.00	$_____

Payment Due Upon Receipt

Mail payment to:
CVS/pharmacy
Privacy Office
One CVS Drive
Woonsocket, RI 02895

Make Checks Payable to: CVS/pharmacy
Include Request Number and customer name on check.

003781
003781
003781

DESERT VALLEY
THERAPY

Date: 4.23.10

To Whom It May Concern:

This is in response to your request for Medical Records on:

Patient William Simao

Location/Facility E Sahara

44pp pages @ $.60 per page. Total Due $26.40

Your prompt remittance is appreciated.
Please make check payable to:

Desert Valley Therapy
Billing Department
2055 E. Sahara Ave
Las Vegas, NV 89104

Thank you,

Desert Valley Therapy
Billing Department

003782
003782
003782

HealthPort
P.O. Box 409740
Atlanta, Georgia 30384-9740
Fed Tax ID 58 - 2659941
(770) 754 - 6000

HealthPort.
INVOICE

Invoice #: 0075806994
Date: 4/26/2010
Customer # : 1483005

Ship to:
ROBERT M ADAMS
MAINOR EGLET COTTLE
400 S 4TH STREET 6TH FLOOR
LAS VEGAS, NV 89101

Bill to:
ROBERT M ADAMS
MAINOR EGLET COTTLE
400 S 4TH STREET 6TH FLOOR
LAS VEGAS, NV 89101

Records from:
SOUTHWEST MEDICAL ASSOCIATES
2300 WEST CHARLESTON BLVD
LAS VEGAS, NV 89101

Requested By: MAINOR EGLET COTTLE
DOB: 050863
Patient Name: SIMAO WILLIAM J

Description	Quantity	Unit Price	Amount
Basic Fee			0.00
Retrieval Fee			0.00
Per Page Copy (Paper) 1	361	0.60	216.60
Shipping/Handling			10.35
Subtotal			226.95
Sales Tax			18.38
Invoice Total			245.33
Balance Due			245.33

Pay your invoice online at www.HealthPortPay.com

Terms: Net 30 days

Please remit this amount : $ 245.33 (USD)

HealthPort
P.O. Box 409740
Atlanta, Georgia 30384-9740
Fed Tax ID 58 - 2659941
(770) 754 - 6000

Invoice #: 0075806994

Check # _____

Payment Amount $_____

Please return stub with payment.
Please include invoice number on check.
To pay invoice online, please go to www.HealthPortPay.com or call (770) 754 6000.

003783
003783
003783

HealthPort
P.O. Box 409740
Atlanta, Georgia 30384-9740
Fed Tax ID 58 - 2659941
(770) 754 - 6000

HealthPort.
INVOICE

Invoice #: 0078249470
Date: 6/30/2010
Customer #: 1483005

Ship to:	Bill to.	Records from:
MAINOR EGLET COTTLE MAINOR EGLET COTTLE 400 S 4TH STREET 6TH FLOOR LAS VEGAS, NV 89101	MAINOR EGLET COTTLE MAINOR EGLET COTTLE 400 S 4TH STREET 6TH FLOOR LAS VEGAS, NV 89101	SOUTHWEST MEDICAL ASSOCIATES 2300 WEST CHARLESTON BLVD LAS VEGAS, NV 89101

Requested By: MAINOR EGLET COTTLE
Patient Name: SIMAO WILLIAM J

SSN: *****6076
DOB: 050863

Description	Quantity	Unit Price	Amount
Basic Fee			0.00
Retrieval Fee			0.00
Per Page Copy (Paper) 1	516	0.60	309.60
Shipping/Handling			0.00
Subtotal			309.60
Sales Tax			25.08
Invoice Total			334.68
Balance Due			334.68

Pay your invoice online at www.HealthPortPay.com

Terms: Net 30 days

Please remit this amount : $ 334.68 (USD)

003784
003784
003784

HealthPort
P.O. Box 409740
Atlanta, Georgia 30384-9740
Fed Tax ID 58 - 7659941
(770) 754 - 6000

HealthPort.

INVOICE

Electronic Delivery Service

Invoice #: 0080510410
Date: 8/31/2010
Customer # : 1483005

HealthPortConnect

Ship to

MICHAEL DOUBERLEY
MAINOR EGLET
CITY CENTRE PLACE 6TH Fl
400 S 4TH ST
LAS VEGAS, NV 89101-

Bill to.

MICHAEL DOUBERLEY
MAINOR EGLET
CITY CENTRE PLACE 6TH Fl
400 S 4TH ST
LAS VEGAS, NV 89101-

Records from:

SOUTHWEST MEDICAL ASSOCIATES
2300 WEST CHARLESTON BLVD
LAS VEGAS, NV 89101

Requested By: MAINOR EGLET
Patient Name: SIMAO WILLIAM

DOB: 050863
SSN: *****6076

Description	Quantity	Unit Price	Amount
Basic Fee			0.00
Retrieval Fee			0.00
Per Page Copy (Paper) 1	48	0.60	28.80
QuickView Delivery Fee			2.00
Subtotal			30.80
Sales Tax			0.00
Invoice Total			30.80
Balance Due			30.80

003785

003785

Please Note: Your medical record request has been delivered electronically to your HealthPortConnect account.

Pay your invoice online at www.HealthPortPay.com

Terms: Net 30 days

Please remit this amount : $ 30.80 (USD)

HealthPort
P.O. Box 409740
Atlanta, Georgia 30384-9740
Fed Tax ID 58 - 7659941
(770) 754 - 6000

Invoice #: 0080510410

Check # _____

Payment Amount $_____

Please return stub with payment.

Please include invoice number on check.
To pay invoice online, please go to http://www.HealthPortPay.com or call (770) 754 6000

HealthPort
P.O. Box 409740
Atlanta, Georgia 30384-9740
Fed Tax ID 58 - 2659941
(770) 754 - 6000

HealthPort. INVOICE

Invoice #: 0083480718
Date: 11/17/2010
Customer # : 1483005

Ship to:
NICK VAGLIO
MAINOR EGLET
CITY CENTRE PLACE 6TH FL
400 S 4TH ST
LAS VEGAS, NV 89101-

Bill to:
NICK VAGLIO
MAINOR EGLET
CITY CENTRE PLACE 6TH FL
400 S 4TH ST
LAS VEGAS, NV 89101-

Records from:
SOUTHWEST MEDICAL ASSOCIATES
2300 W CHARLESTON
LAS VEGAS, NV 89114

Requested By: MAINOR EGLET
Patient Name: SIMAO WILLIAM
DOB: 050863
SSN: *****6076

003786

Description	Quantity	Unit Price	Amount
Basic Fee			0.00
Retrieval Fee			0.00
Per Page Copy (Paper) 1	5	0.60	3.00
Shipping/Handling			0.00
Subtotal			3.00
Sales Tax			0.24
Invoice Total			3.24
Balance Due			3.24

003786

Pay your invoice online at www.HealthPortPay.com

Terms: Net 30 days

Please remit this amount : $ 3.24 (USD)

HealthPort
P.O. Box 409740
Atlanta, Georgia 30384-9740
Fed Tax ID 58 - 2659941
(770) 754 - 6000

HealthPort. INVOICE

Invoice #: 0084564241
Date: 12/16/2010
Customer #: 1483005

Ship to:	Bill to:	Records from:
ASHLEY GANIER MAINOR EGLET CITY CENTRE PLACE 6TH FL 400 S 4TH ST LAS VEGAS, NV 89101-	ASHLEY GANIER MAINOR EGLET CITY CENTRE PLACE 6TH FL 400 S 4TH ST LAS VEGAS, NV 89101-	SOUTHWEST MEDICAL ASSOCIATES 2300 W CHARLESTON LAS VEGAS, NV 89114

Requested By: MAINOR EGLET
Patient Name: SIMAO WILLIAM
DOB: 050863
SSN: *****6076

Description	Quantity	Unit Price	Amount
Basic Fee			0.00
Retrieval Fee			0.00
Per Page Copy (Paper) 1	10	0.60	6.00
Shipping/Handling			0.00
Subtotal			6.00
Sales Tax			0.49
Invoice Total			6.49
Balance Due			6.49

Pay your invoice online at www.HealthPortPay.com

Terms: Net 30 days

Please remit this amount : $ 6.49 (USD)

HealthPort
P.O. Box 409740
Atlanta, Georgia 30384-9740
Fed Tax ID 58 - 2659941
(770) 754 - 6000

Invoice #: 0084564241

Check # _____

Payment Amount $_____

Please return stub with payment.

Please include invoice number on check.
To pay invoice online, please go to www.HealthPortPay.com or call (770) 754 6000.
Email questions to Collections@healthport.com.

003787
003787
003787

HealthPort

SEND CORRESPONDENCE ON: O:
P.O. Box 1812
Alpharetta GA 30023-1812

Notice Date	02/04/11
Customer No.	1458210

591

Federal Tax ID: 58-2659941

MAINOR EGLET
400 S 4TH ST 6TH FL
LAS VEGAS NV 89101-6201

REMIT TO: HEALTHPORT
PO BOX 409740
ATLANTA, GA 30384

DELINQUENT NOTICE

AGED BALANCES				Total Due USD
31-60 Days	61-90 Days	91-120 Days	Over 120 Days	
.00		.00	3.45	

Despite our repeated attempts to collect your seriously past-due debt, you have not resolved your delinquency. This is your final opportunity to resolve this matter on a voluntary basis. If we do not receive payment for past du invoices within 15 days, we may forward your account to a collection agency or take legal action.

* after invoice indicates a prebill invoice. Records are being held until payment is received.

INVOICE NUMBER	DUE DATE	DAYS PAST DUE	DESC/PATIENT NAME AND ID, FACILITY	INVOICE AMOUNT	BALANCE DUE	PAID	AMOUNT PA (if different
0084144073	01/03/11	62	SIMAO WILLIAM SOUTHWEST MEDICAL ASSOCIATES DOB 050863; SSN *****6076	98.91	98.91	☐	

003788

003788

PLEASE RETURN ALL PAGES WITH YOUR PAYMENT.

TOTAL AMOUNT

TOTAL REMITTANCE USD

Fast. Secure. Free.

HealthPortPay is a free, online payment processing service that provides you a fast and convenient way to p your HealthPort invoice. You can now pay your HealthPort invoice by visiting www.HealthPortPay.com whi provides options to pay by ECheck or your major credit card.

For questions, please contact The Collection Group at 800-303-8049 or 770-360-1767

12480082011020330601 00591

HealthPort
P.O. Box 409740
Atlanta, Georgia 30384-9740
Fed Tax ID 58 - 2659941
(770) 754 - 6000

HealthPort. INVOICE

Invoice #: 0087401138
Date: 2/28/2011
Customer #: 1483005

Ship to:	Bill to:	Records from:
MICHAEL DOUBERLEY MAINOR EGLET CITY CENTRE PLACE 400 S 4TH ST STE 600 LAS VEGAS, NV 89101-	MICHAEL DOUBERLEY MAINOR EGLET CITY CENTRE PLACE 400 S 4TH ST STE 600 LAS VEGAS, NV 89101-	SOUTHWEST MEDICAL ASSOCIATES 2300 WEST CHARLESTON BLVD LAS VEGAS, NV 89101

Requested By: MAINOR EGLET
Patient Name: SIMAO WILLIAM

DOB: 050863
SSN: *****6076

Description	Quantity	Unit Price	Amount
Basic Fee			0.00
Retrieval Fee			0.00
Per Page Copy (Paper) 1	5	0.60	3.00
Shipping/Handling			0.00
Subtotal			3.00
Sales Tax			0.24
Invoice Total			3.24
Balance Due			3.24

Pay your invoice online at www.HealthPortPay.com

Terms: Net 30 days

Please remit this amount : $ 3.24 (USD)

003789
003789

HealthPort
P.O. Box 409740
Atlanta, Georgia 30384-9740
Fed Tax ID 58 - 2659941
(770) 754 - 6000

HealthPort.
INVOICE

Invoice #: 0087401262
Date: 2/28/2011
Customer #: 1483005

Ship to:
MICHAEL DOUBERLEY
MAINOR EGLET
CITY CENTRE PLACE
400 S 4TH ST STE 600
LAS VEGAS, NV 89101-

Bill to:
MICHAEL DOUBERLEY
MAINOR EGLET
CITY CENTRE PLACE
400 S 4TH ST STE 600
LAS VEGAS, NV 89101-

Records from:
SOUTHWEST MEDICAL ASSOCIATES
2300 W CHARLESTON
LAS VEGAS, NV 89114

Requested By: MAINOR EGLET
Patient Name: SIMAO WILLIAM
SSN: *****6076
DOB: 050863

Description	Quantity	Unit Price	Amount
Basic Fee			0.00
Retrieval Fee			0.00
Per Page Copy (Paper) 1	2	0.60	1.20
Shipping/Handling			0.00
Subtotal			1.20
Sales Tax			0.10
Invoice Total			1.30
Balance Due			1.30

Pay your invoice online at www.HealthPortPay.com

Terms: Net 30 days

Please remit this amount : $ 1.30 (USD)

003790
003790
003790

J & R Medical Records Service, Inc
4045 S. Buffalo Dr.
Suite A - 101-525
Las Vegas, NV 89147

Phone 702-383-2636 Business Office 702-648-2774

DATE 4-20-10 ORDERED BY Erica

REQUESTOR Mainor, Eglet, Cottle

FACILITY UMC MEDICAL RECORDS # 002062-562

PATIENT NAME William Simao

DATE OF REQUEST _____ BY WHOM Robert Adams

PREPAYMENT REQUIRED yes AMOUNT 136.21

COST PER PAGE .60 PAGES 210 POSTAGE n/a

SALES TAX 10.21

COPIES EXCEEDING 100 PAGES TO BE PICKED UP AT UMC HOSPITAL.
MAKE CHECK PAYABLE TO J&R MEDICAL RECORDS SERVICE

ADVANCED PREPAYMENT REQUIRED $136.21

RECORDS WILL BE COPIED UPON RECEIPT OF PAYMENT AND WE WILL CALL YOU WHEN THEY ARE READY FOR PICK – UP.

FAX 450-5451 ATTN Robert Adams

003791
003791
003791

LAS VEGAS SURGERY CENTER
MEDICAL RECORDS
870 S. RANCHO
LAS VEGAS NEVADA 89106
PHONE (702) 870-2090
FAX (702) 878-6816

Date 4-14-10

Dear Sir or Madam

Las Vegas Surgery Center has received your request for the

Medical records for: Name Sines, William

There is a charge of $.60 per page. Total # of pages 30

Total amount due including postage is $19.90

Upon receipt of your check: said records will be mailed with in 72 hours.

Please make check payable to the Las Vegas Surgery Center,

Sincerely,

Medical Records Department

Sign & date Jennie

Witness by _____

ATTN: Robert Adams

FAXED TO: _____ PAGE 1/1

003792

003792

SECURE DOCUMENTS
Secure Documents Inc. dba Med-R
320 S. 4th Street
Las Vegas, NV 89101
Phone # (702)380-4283 Fax # (702)380-4286

MED-R
MEDICAL RECORD RETRIEVAL SERVICE

Invoice

Date	Invoice #
4/19/2010	10-2088

Ordered By
Mainor,Eglet, Cottle 400 So. 4th St. Las Vegas, NV. 89101

Bill To
Mainor, Eglet, Cottle 400 So. 4th St. Las Vegas, NV 89101

Name of Patient	Medical Facility	Terms	Due Date	Rep	Ordered By
William Simao	NV Orthopedic	Due on receipt	4/19/2010	Sum	

Quantity	Description	Amount
248	Medical Records - NV Regulatory Fee	148.80T
	Administer Oaths or Affirmations - Nevada Regulated Fee	5.00
	Cost for charge of postage for medical records to be mailed.	5.70T
	Per Nevada Law you are responsible for paying the costs of making the copy:	0.00
	NRS 629.061: each person described in subsection 1 who requests it and pays the actual cost of postage, if any, the costs of making the copy, not to exceed 60 cents per page for photocopies and a reasonable cost for copies of X-ray photographs and other health care records produced by similar processes.	

All Invoices are Due of Receipt. Please make your prompt payment today! Thank you!

Subtotal	$159.50
Sales Tax (8.1%)	$12.51
Total	$172.01
Payments/Credits	$0.00
Balance Due	$172.01

Please Mail Checks To:
MED-R.
Secure Documents Inc. dba Med-R
320 S. 4th Street
Las Vegas, Nv 89101

Sign:_____

Print:_____

Date:___/___/____

TAX ID# 20-4088393

We accept all Major Credit Cards!

003793
003793

SECURE DOCUMENTS

Secure Documents Inc. dba Med-R
320 S. 4th Street
Las Vegas, NV 89101
Phone # (702)380-4283 Fax # (702)380-4286

MED-R
MEDICAL RECORD RETRIEVAL SERVICE

Invoice

Date	Invoice #
4/21/2010	10-2165

Ordered By
Mainor,Eglet, Cottle 400 So. 4th St Las Vegas, NV. 89101

Bill To
Mainor, Eglet, Cottle 400 So. 4th St. Las Vegas, NV 89101

Name of Patient	Medical Facility	Terms	Due Date	Rep	Ordered By
William Simao	Medical District	Due on receipt	4/21/2010	Sum	

Quantity	Description	Amount
45	Medical Records - NV Regulatory Fee	27.00T
1	Administer Oaths or Affirmations - Nevada Regulated Fee	5.00
1	Cost for charge of postage for medical records to be mailed.	2.07T
	Per Nevada Law you are responsible for paying the costs of making the copy:	0.00
	NRS 629.061: each person described in subsection 1 who requests it and pays the actual cost of postage, if any, the costs of making the copy, not to exceed 60 cents per page for photocopies and a reasonable cost for copies of X-ray photographs and other health care records produced by similar processes.	

All Invoices are Due of Receipt. Please make your prompt payment today! Thank you!

Subtotal	$34.07
Sales Tax (8.1%)	$2.35
Total	$36.42
Payments/Credits	$0.00
Balance Due	$36.42

Please Mail Checks To:
MED-R.
Secure Documents Inc. dba Med-R
320 S. 4th Street
Las Vegas, Nv 89101

Sign:_____

Print:_____

Date:__/__/____

TAX ID# 20-4088393

We accept all Major Credit Cards!

003794
003794
003794

SECURE DOCUMENTS

MED-R
MEDICAL RECORD RETRIEVAL SERVICE

Secure Documents Inc. dba Med-R
530 Las Vegas Blvd South, 4th Floor
Las Vegas, NV 89101
Phone # (702)380-4283 Fax # (702)380-4286

Invoice

Date	Invoice #
12/9/2010	10-7153

Ordered By
Mainor Eglet, LLP 400 So. 4th St. Las Vegas, NV. 89101

Bill To
Mainor Eglet, LLP 400 So. 4th St. Las Vegas, NV 89101

Name of Patient	Medical Facility	Terms	Due Date	Rep	Ordered By
William Simeo	Nevada Orthopaedic	Due on receipt	12/9/2010	NO&S	Ashley

Quantity	Description	Amount
11	Medical Records - NV Regulatory Fee	6.60T
	Administer Oaths or Affirmations - Nevada Regulated Fee	5.00

PLEASE NOTE WE HAVE MOVED:
530 LAS VEGAS BLVD S, 4TH FLOOR
LAS VEGAS, NV 89101

Per Nevada Law you are responsible for paying the costs of making the copy:

NRS 629.061: each person described in subsection 1 who requests it and pays the actual cost of postage, if any, the costs of making the copy, not to exceed 60 cents per page for photocopies and a reasonable cost for copies of X-ray photographs and other health care records produced by similar processes.

All Invoices are Due on Receipt! Please have a check ready when we deliver your Medical Records.

Subtotal	$11.60
Sales Tax (8.1%)	$0.53
Total	$12.13
Payments/Credits	$0.00
Balance Due	$12.13

Please Mail Checks To:
MED-R
Secure Documents Inc. dba Med-R
530 Las Vegas Blvd South, 4th Floor
Las Vegas, NV 89101

Sign:_____

Print:_____

Date:___/___/____

TAX ID# 20-4088393

We accept all Major Credit Cards!

003795
003795
003795

Nevada Spine Clinic
7140 Smoke Ranch Road
Las Vegas, NV 89128
Phone: (702) 320-8111 Ext ~~4806~~ 2261
Tax ID # 88-0366031

To: Marion Eglet
Cottle
450-5400

Per your request, we have copied Medical Records and or X-Rays for:

William Lemao 4/21/10

Please remit $ 61.35 for 94 pages of records, and
✓ postage.

NOTE: Please include a copy of this invoice with your payment.

Thank you,

D. Grover

Doris Tiedke
Medical Records

003796
003796

Nevada Spine Clinic
7140 Smoke Ranch Road
Las Vegas, NV 89128
Phone: (702) 320-8111 Ext 4806
Tax ID # 75-3095581

To: Marion Eglet
Coffed
450-5400

Per your request, we have copied Medical Records and or X-Rays for:

William Lemao 4/21/10

Please remit $ 21.36 for 33 pages of records, and ✓ postage.

NOTE: Please include a copy of this invoice with your payment.

Thank you,

Dr. Roeler

Doris Tiedke
Medical Records

003797
003797

NEVADA Orthopedic & Spine Center
2650 N. Tenaya Way, Suite 301
Las Vegas, NV 89128

Fax Cover Sheet:

Date: 5/4/10 Number of Pages: 1
(Including Cover Sheet)

Sent to: Name: Mick Vaglio

Co.: MINOR Eglet Cattle

Phone Number: _____

Fax Number: 450-5451

From: X-Ray Dept., 702-258-5596 (Office), 702-938-0137 (Fax)

Regarding Records Request:
William Simao

X-ray copy fee is $10.00 per film. X-ray copies will be printed and released upon receipt of copy fees. We have the following X-ray films on file:

4-14-09	Cervical	Spine	2 Films
5-26-09	"	"	2 "
7-14-09	"	"	2 "
3-23-10	"	"	2 "
			8 Films

= $80.00

003798
003798
003798

MAINOR EGLET COTTLE, LLP / Cost Account

3365

Nevada Spine Clinic 5/20/2010

232353/William J. Simao/films/nev 225.00

003799

003799

Client Costs BB 232353/William J. Simao/films/nev 225.00

MAINOR EGLET COTTLE, LLP / Cost Account

33041

Social Security Administrat

4/12/2010

232353/William J. Simao//nev

51.75

003800

Client Costs BB 232353/William J. Simao//nev 51.75

99553 (12/09)

SIERRA HEALTH SERVICES, INC.

All the benefits of good health.

P.O. Box 15645 ♦ Las Vegas, NV ♦ 89114-5645 ♦ (702) 242-7000

FACSIMILE COVER PAGE

Date: 6.9.10 Transmission Time: _____

To: Michael Telephone Number: 450-5400

Major Eglt Cottle Fax Number Called: 450-5451

From: Gail Southwest Md Telephone Number: _____

Dept: Radiology Fax Number: _____

Total Number of Pages (Including Cover Page): _____

Original to Follow: _____ Yes _____ No

Confirmation Requested: _____ Yes _____ No

Message/Comments for Recipient:

Forearm	9/12/03	(2)	film
Elbow	9/12/03	(4)	film
Humerus	9/12/03	2	film
Shoulder	9/12/03	3	film
Head CT	2/28/03	3	film

14 X 5 $70.00

Gail

Note: If you have any problems with this transmission or have not received all of the pages sent, please call the telephone number of the sender above.

MAINOR EGLET COTTLE, LLP / Cost Account

3360

Southwest Medical Associates 5/11/2010

232353/William J. Simao/films/nev 205.00

003802

003802

Client Costs BB 232353/William J. Simao/films/nev 205.00

593869 (3-10)

Steinberg Diagnostic
Medical Imaging Centers
"Where Imaging Revolves Around You"

P.O. Box 36900
Las Vegas, Nevada 89133-6900

TO WHOM IT MAY CONCERN:

ENCLOSED IS THE INFORMATION YOU REQUESTED ON

824360 Smaw, William

THE CHARGE FOR THIS INFORMATION IS

$ 6.60

Tax ID # 88-0232199

Please mail payment to : Steinberg Diagnostic Medical Imaging
P.O. Box 36900
Las Vegas, Nevada 89133-6900

Please return with payment

Bill for Information

003803

003803

003803

Steinberg Diagnostic
Medical Imaging Centers
"Where Imaging Revolves Around You"™

P.O. Box 36900
Las Vegas, Nevada 89133-6900

TO WHOM IT MAY CONCERN:

ENCLOSED IS THE INFORMATION YOU REQUESTED ON

Smao, William # 8244360.

THE CHARGE FOR THIS INFORMATION IS

28.20 for 47 pgs.

003804

003804

Tax ID # 88-0232199

Please mail payment to : Steinberg Diagnostic Medical Imaging
P.O. Box 36900
Las Vegas, Nevada 89133-6900

Please return with payment

Bill for Information

Steinberg Diagnostic
Medical Imaging Centers
"Where Imaging Revolves Around You"℠

2950 South Ma... and Parkway, Las Vegas, Nevada 89109
4 Sunset Way, Building D, Henderson, Nevada 89014
2767 N. Tenaya Way, Las Vegas, Nevada 89128
2850 Siena Heights, Henderson, Nevada 89052
9070 W. Post Road, Las Vegas, Nevada 89148

(702) 732-6000

updated.

Attorney (Approximate) Film Count for:

Name: Smao, William **X-Ray #:** 8244360

Please check off which films you would like copied and fax all pages to: 702-731-0341

	Available on CD $30.00 Per Procedure	Check box for films needed:
Date: 2/3/14 **Film** Mr. Cervical W/WO	**# of films** 8	☑
Date: ____ **Film** _____	**# of films** _____	☐
Date: ____ **Film** _____	**# of films** _____	☐
Date: ____ **Film** _____	**# of films** _____	☐
Date: ____ **Film** _____	**# of films** _____	☐
Date: ____ **Film** _____	**# of films** _____	☐

Total # of films _____ **x $25.00(cost per sheet)=$** _____

When CDs are available: $30.00(cost per exam)

Our Tax ID # is: 88-0232199

Please put on CD.
And call 450-5400 ext. 203 when ready to be exchanged for check.

You will be notified to confirm the amount owed for the films requested.

We need the check before we can release the films.

Thank you.

Fileroom-07

003805

003805

003805

Steinberg Diagnostic
Medical Imaging Centers
"Where Imaging Revolves Around You""

P.O. Box 36900
Las Vegas, Nevada 89133-6900

TO WHOM IT MAY CONCERN:

ENCLOSED IS THE INFORMATION YOU REQUESTED ON

Simao, William 824436.0

THE CHARGE FOR THIS INFORMATION IS

$1,200.00 for films.

003806

003806

Tax ID # 88-0232199

Please mail payment to : Steinberg Diagnostic Medical Imaging
P.O. Box 36900
Las Vegas, Nevada 89133-6900

Please return with payment

Bill for Information

MASTER JACKET LAB

RISH: 002-062-582 DOB: 05/08/1963

SIMAO,WILLIAM

UMC

Imaging Services Department

1800 W. Charleston Blvd. * Las Vegas, Nevada 89102
Phone (702) 383-2241 Fax (702) 383-2627

COST BREAKDOWN FORM

PATIENT NAME: Simao, William MEDICAL RECORD NUMBER: 002-062-582

Estimated number OF CD(S) 1 x $25.00 per CD _____ Total Cost: $ 25.00

Converted hard copies to digital studies Yes _____ No ✓ If yes $50.00 will apply

A flat fee $25.00 per CD / DVD will be charged.
If the original studies are hard copies then there will be a flat fee of $50.00 for converting the hard copy to a digital study and then copied to CD/DVD. The $25.00 fee per CD/DVD will still apply.

Out of state records will be sent out via Fed Ex
Payment for the disc duplication is needed prior to making CD(s). Please allow more time for old images to be implemented into the Pacs for the purpose of making CD(s)

Films older than five years from the date of the last procedure are no longer available.

Please specify the dates of service being requested, if no dates are specified you will receive reports for all dates of service.

Any other purposes, such as external case presentation, require IRB approval or patient authorization, whether the copies are de-identified or not.

MAKE CHECKS PAYABLE TO UMC

IMAGING SERVICES PERSONEL ONLY

FILM/CD COPIED BY _____
(*INITIAL*)

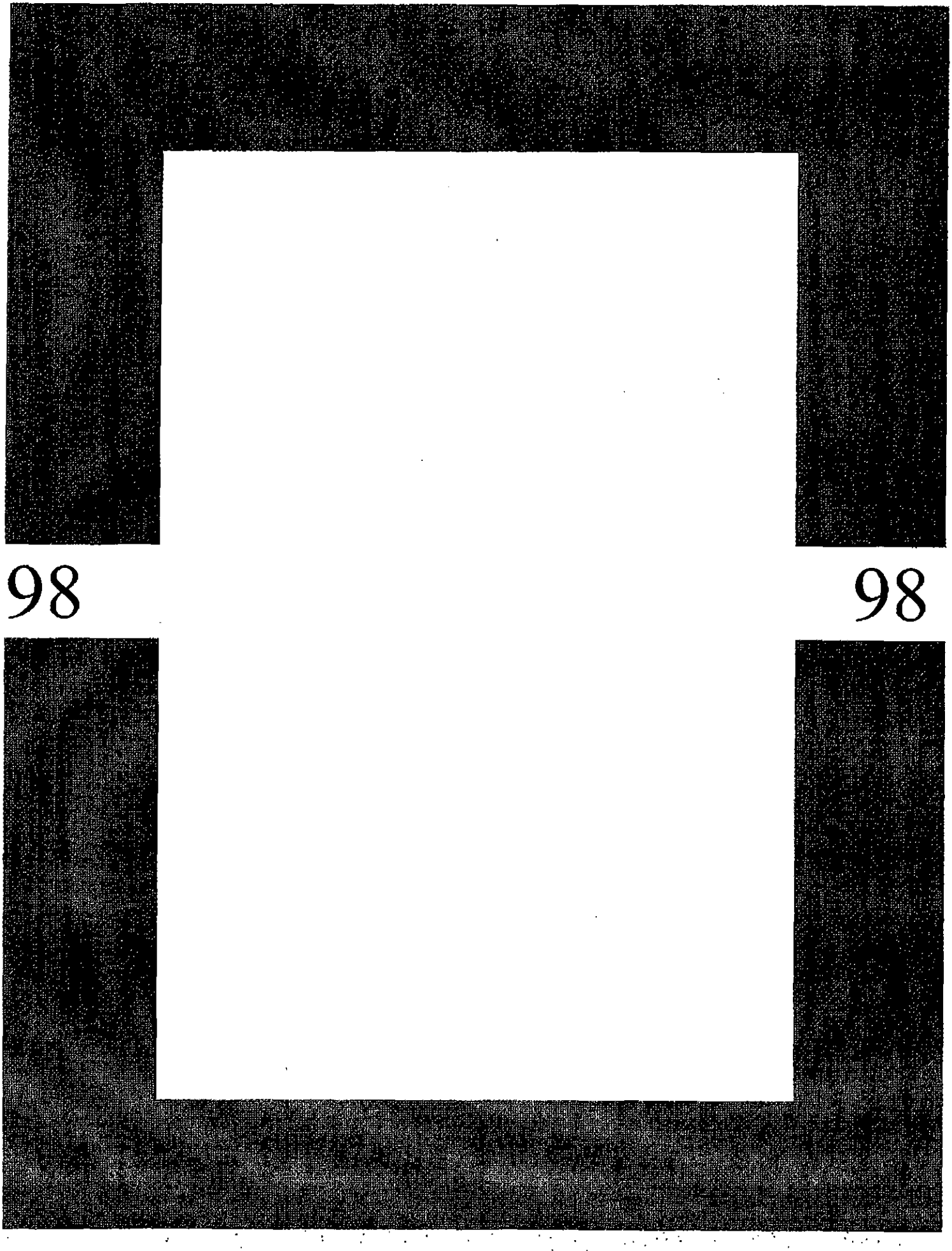
RECORDS READY FOR PICKUP

TIME _____ DATE _____

SPOKE TO _____ PLACED CALL _____
(*INITIAL*)

003807

003807



98

98

003808

003808

REGISTER OF ACTIONS
CASE NO. 07A539455

William Simao, Cheryl Simao vs Jenny Rish

Case Type:	Negligence - Auto
Date Filed:	04/13/2007
Location:	Department 10
Conversion Case Number:	A539455
Supreme Court No.:	58504
	59208
	59423

PARTY INFORMATION

		Lead Attorneys
Defendant	**Rish, Jenny**	**Stephen H Rogers** *Retained* 702-383-3400(W)
Plaintiff	**Simao, Cheryl A**	**David T Wall** *Retained* 702-450-5400(W)
Plaintiff	**Simao, William J**	**David T Wall** *Retained* 702-450-5400(W)

EVENTS & ORDERS OF THE COURT

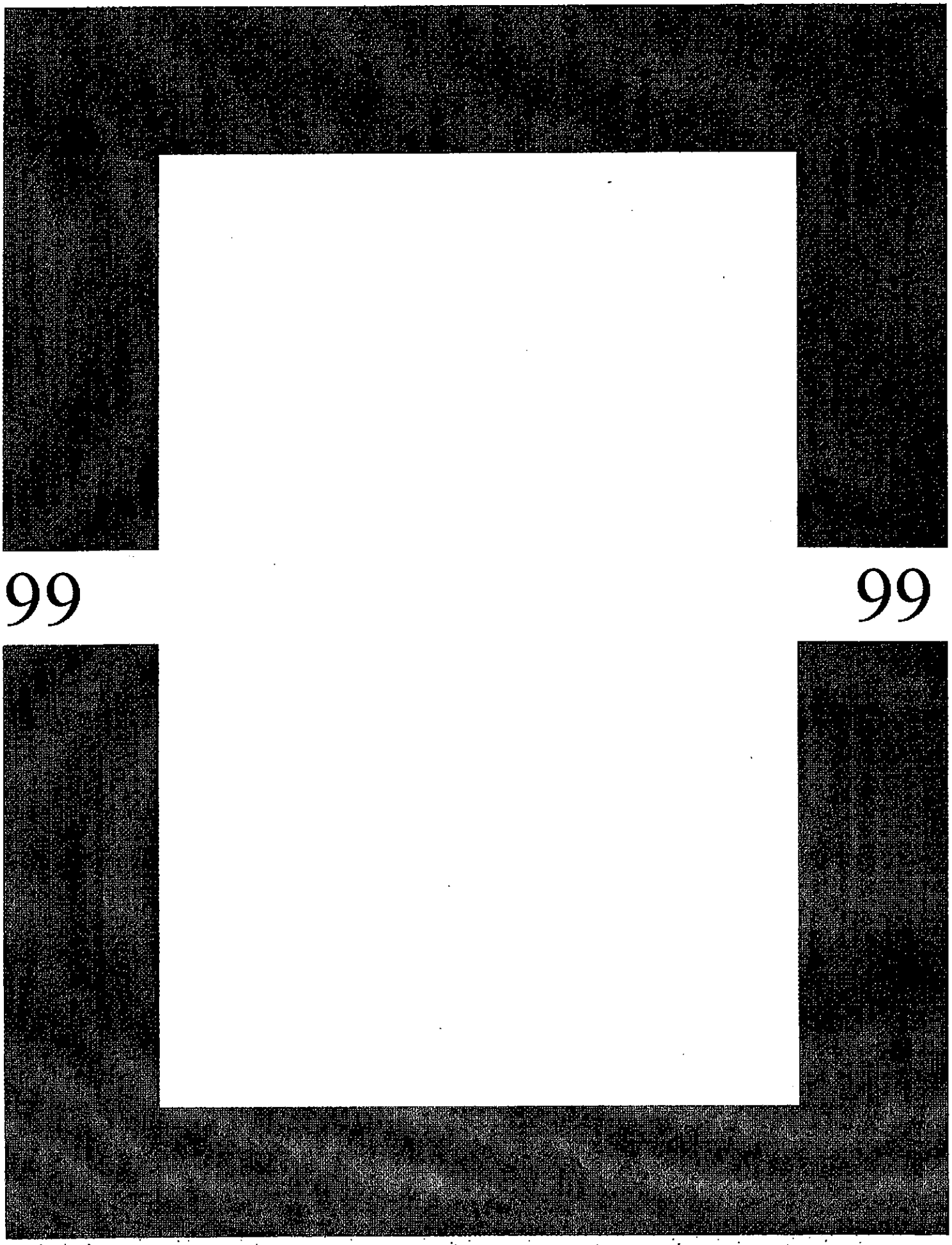
04/28/2011 **Status Check** (3:00 AM) (Judicial Officer Walsh, Jessie)
Fees and Costs

Minutes
04/28/2011 3:00 AM
- 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.

Return to Register of Actions

003809

003809



003810
003810
003810

Electronically Filed
04/28/2011 01:45:32 PM

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	$493,640.
- 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

...

...

003811

003811

003811

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).

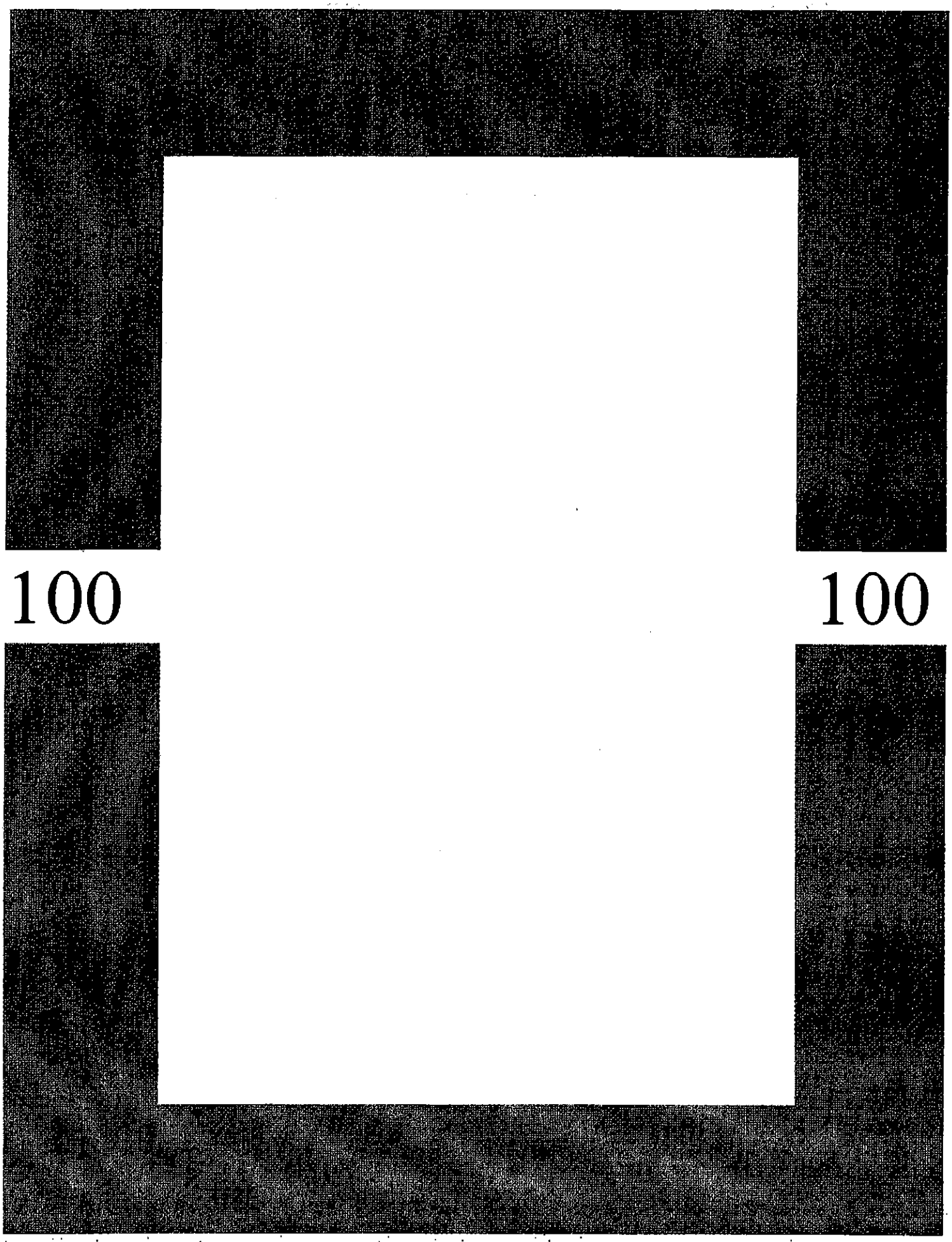
Dated this 27th day of April, 2011.

Jessie Walsh
DISTRICT COURT JUDGE

003812

003812

003812



003813

003813

Electronically Filed
04/29/2011 02:39:21 PM

CLERK OF THE COURT

MRTX
STEPHEN H. ROGERS, ESQ.
Nevada Bar No. 5755
ROGERS, MASTRANGELO, CARVALHO & MITCHELL
300 South Fourth Street, Suite 710
Las Vegas, Nevada 89101
Phone (702) 383-3400
Fax (702) 384-1460
Attorneys for Defendant Jenny Rish

DISTRICT COURT

CLARK COUNTY, NEVADA

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

DEFENDANT'S MOTION TO RETAX COSTS

COMES NOW Defendant JENNY RISH, by and through her attorney, STEPHEN H. ROGERS, ESQ., and hereby submits this Motion to Retax Plaintiffs' costs.

///

///

///

///

///

///

///

003814

003814

This Motion is based upon the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and any argument the Court is willing to entertain at the time of the hearing.

DATED this 28th day of April, 2011.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

STEPHEN H. ROGERS, ESQ.
Nevada Bar No. 5755
300 South Fourth Street, Suite 710
Las Vegas, Nevada 89101
Attorneys for Defendant Jenny Rish

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that the foregoing **DEFENDANT'S MOTION TO RETAX COSTS** will come on for hearing before the above-entitled court on the 2 day of June, 2011, at chambers a.m. in Department X.

DATED this 28th day of April, 2011.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

STEPHEN H. ROGERS, ESQ.
Nevada Bar No. 5755
300 South Fourth Street, Suite 710
Las Vegas, Nevada 89101
Attorneys for Defendant Jenny Rish

///

///

///

///

003815

003815

003815

MEMORANDUM OF POINTS AND AUTHORITIES

I. Argument

1. Plaintiff's costs are excessive and should be reduced

Plaintiffs have apparently sought, and already received, an award of costs in the amount of $99,555.49. Defendant was not given the opportunity to object to the costs as excessive before the award was given. Defendant submit this memorandum in support of a motion to retax those improper costs.

Plaintiffs seek $59,028.16 in expert witness fees, despite the limitations of NRS 18.005, which limits recovery for costs for expert witnesses to $1500 per expert, for no more than 5 experts. Plaintiff seeks fees for 7 experts, and for more than $1500 for most of them. Plaintiffs also seek fees not allowed by NRS 18.005, such as mediation fees. The various copying charges also seem duplicative and/or excessive. Defendant therefore objects to the award of these costs.

II. Conclusion

For the foregoing reasons, the Defendant asks that the Motion to Retax Costs be granted.

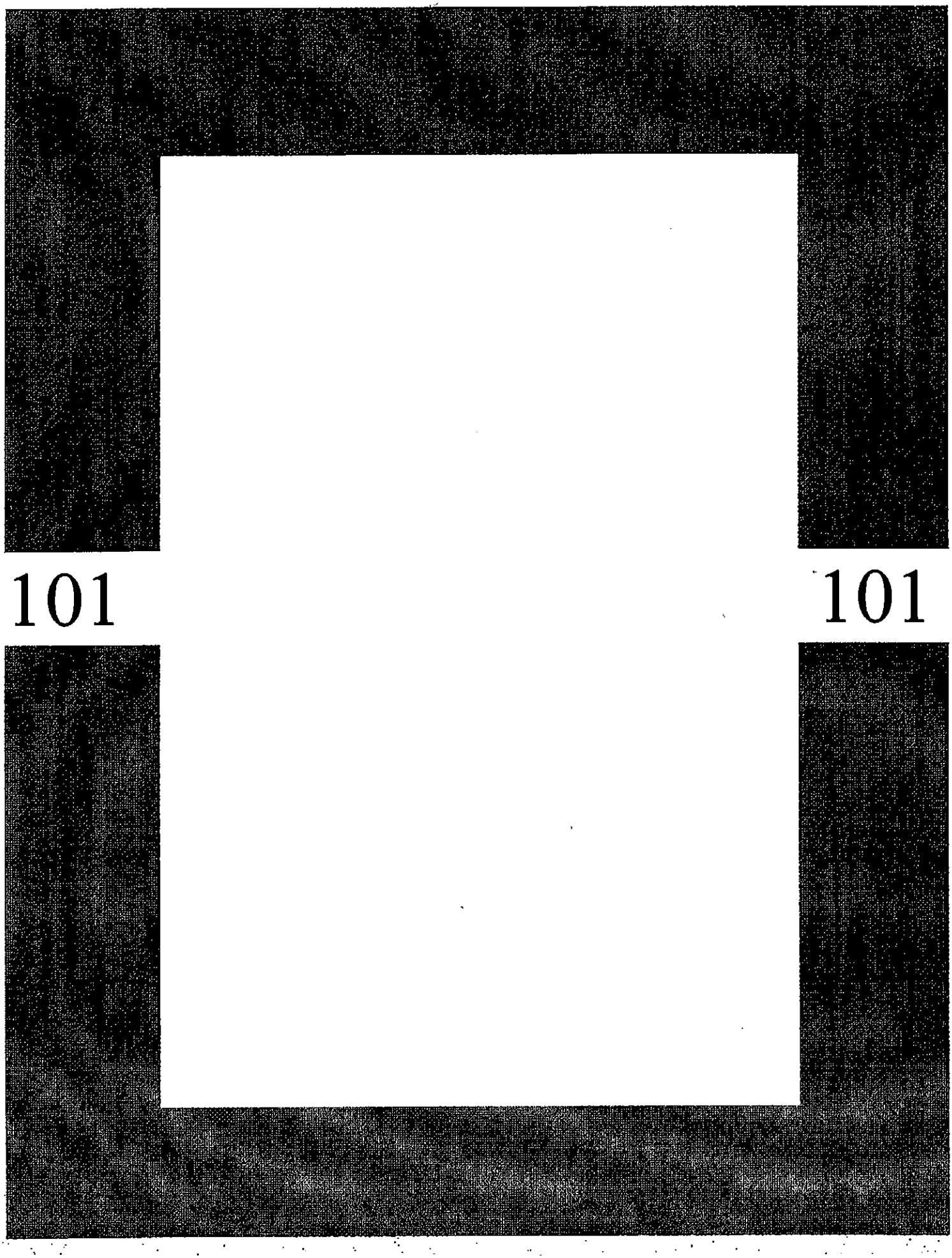
DATED this 29th day of April, 2011.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

STEPHEN H. ROGERS, ESQ.
Nevada Bar No. 5755
300 South Fourth Street, Suite 710
Las Vegas, Nevada 89101
Attorneys for Defendant Jenny Rish

M:\Rogers\Rish adv. Simao\Pleadings\motion to retax costs.wpd

003816
003816
003816



003817
003817
003817

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
reglet@mainorlawyers.com
dwall@mainorlawyers.com
badams@mainorlawyers.com
Attorneys for Plaintiffs

Electronically Filed
05/03/2011 07:43:26 AM

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 26th 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

003819

003819

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

003820

003820

003820

Electronically Filed
04/28/2011 01:45:32 PM

Steven D. Grierson
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

...

...

003821

003821

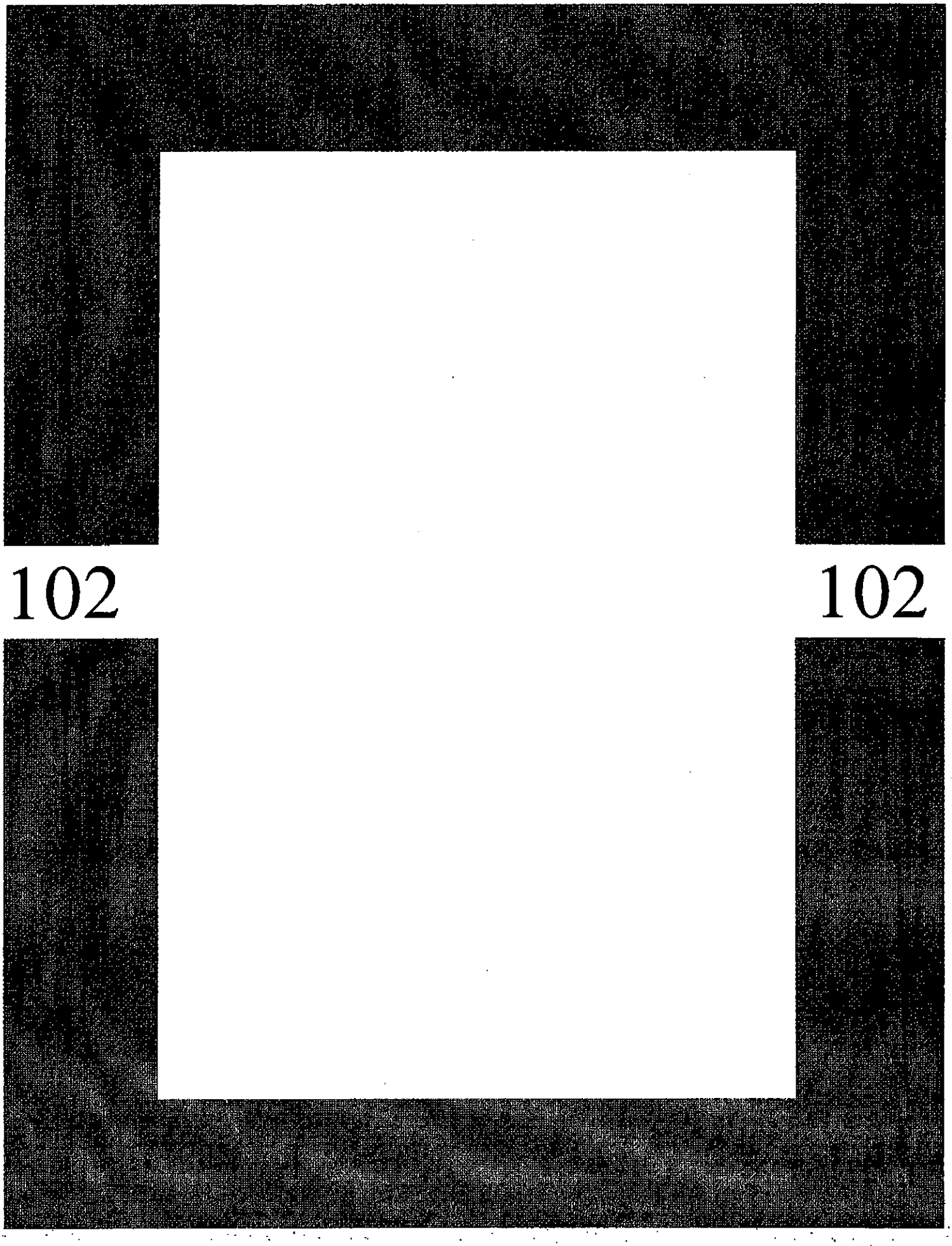
003821

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.

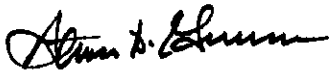
Jessie Walsh
DISTRICT COURT JUDGE

003822
003822
003822



003823
003823
003823

Electronically Filed
05/06/2011 01:24:03 PM



CLERK OF THE COURT

SAO
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

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. X

STIPULATION AND ORDER

The parties stipulate that execution on the judgment, entered April 28, 2011, and any subsequent amended judgment, shall be stayed until 10 business days after

003824

003824

003824

service of notice of entry of an order resolving defendants' post-judgment motions. *See* NRCP 62(b).

DATED this 2nd day of May, 2011.

MAINOR EGLET

By: _____
ROBERT T. EGLET (SBN 3402)
DAVID T. WALL (SBN 2805)
ROBERT M. ADAMS (SBN 6551)
400 South Fourth Street
Las Vegas, Nevada 89101
(702) 450-5400

Attorneys for Plaintiffs

DATED this 2nd day of May, 2011.

LEWIS AND ROCA LLP

By: _____
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169
(702) 474-2616

Attorneys for Defendant Jenny Rish

IT IS SO ORDERED:

By Jessie Walsh
DISTRICT JUDGE

Dated: May 3, 2011

Submitted by:

LEWIS AND ROCA LLP

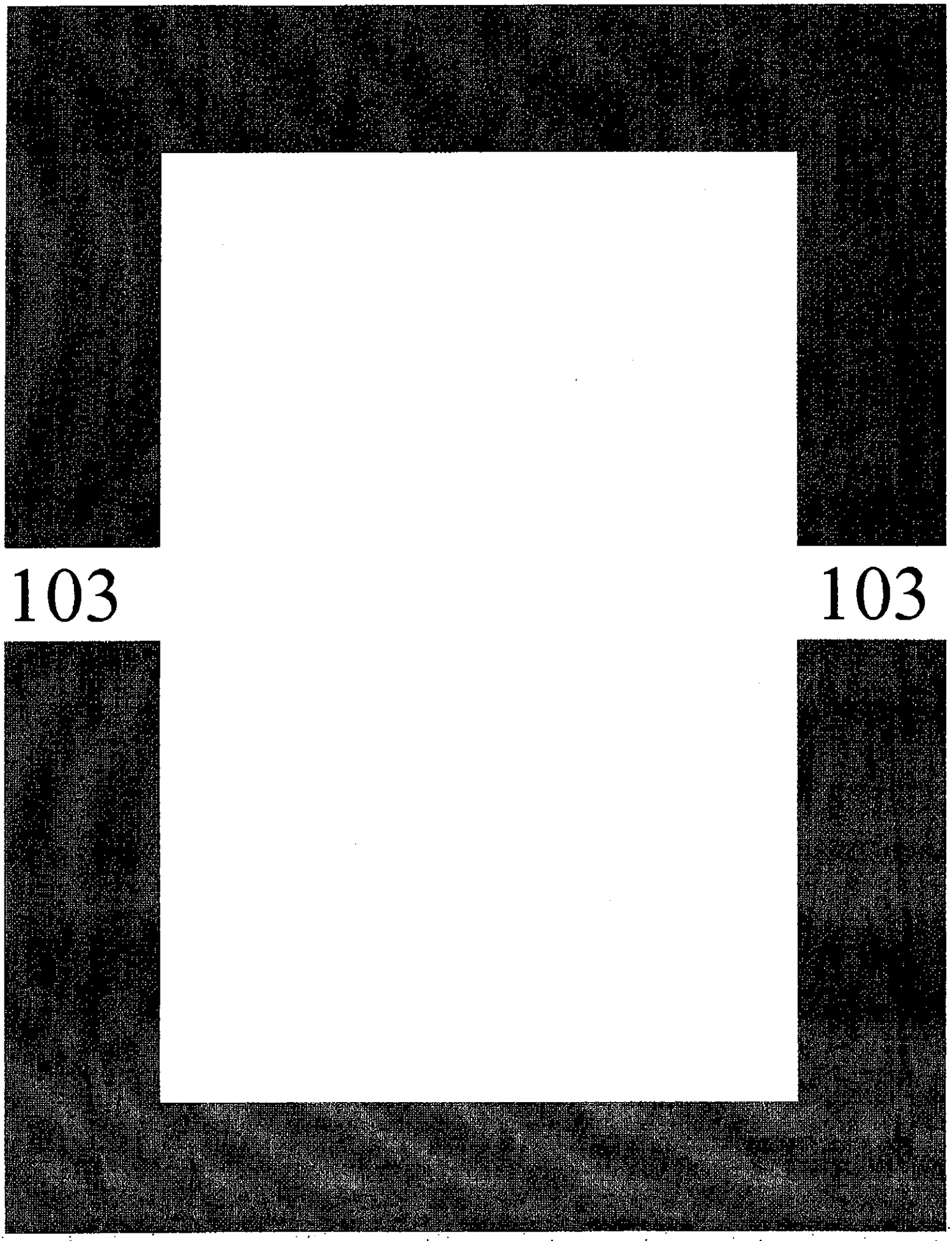
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
Nevada Bar No. 8492
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169

Attorneys for Defendant

003825

003825

003825



003826

003826

Electronically Filed
05/09/2011 11:58:32 AM

CLERK OF THE COURT

NEO
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

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the court entered an order in the above entitled matter on May 6, 2011, a copy of which is attached hereto.

DATED this 9th day of May 2011.

LEWIS AND ROCA LLP

By: s/ Daniel F. Polsenberg
DANIEL F. POLSENBERG (SBN 2376)
LEWIS AND ROCA LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 474-2616

Attorneys for Defendant Jenny Rish

003827

003827

003827

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I HEREBY CERTIFY that on the 9th day of May, 2011, I served the foregoing NOTICE OF ENTRY OF ORDER by depositing a copy for mailing, first-class mail, postage prepaid, at Las Vegas, Nevada, to the following:

ROBERT T. EGLET
DAVID T. WALL
MAINOR EGLET
400 South Fourth Street, Suite 600
Las Vegas, NV 89101
702-450-5451

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

003828

003828

003828

Electronically Filed
05/06/2011 01:24:03 PM

CLERK OF THE COURT

SAO
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

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. X

STIPULATION AND ORDER

The parties stipulate that execution on the judgment, entered April 28, 2011, and any subsequent amended judgment, shall be stayed until 10 business days after

003829

003829

003829

service of notice of entry of an order resolving defendants' post-judgment motions. *See* NRCP 62(b).

DATED this 2nd day of May, 2011.

MAINOR EGLET

By: _____
ROBERT T. EGLET (SBN 3402)
DAVID T. WALL (SBN 2805)
ROBERT M. ADAMS (SBN 6551)
400 South Fourth Street
Las Vegas, Nevada 89101
(702) 450-5400

Attorneys for Plaintiffs

DATED this 2nd day of May, 2011.

LEWIS AND ROCA LLP

By: _____
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169
(702) 474-2616

Attorneys for Defendant Jenny Rish

IT IS SO ORDERED:

By _____
DISTRICT JUDGE

Dated: May 3, 2011

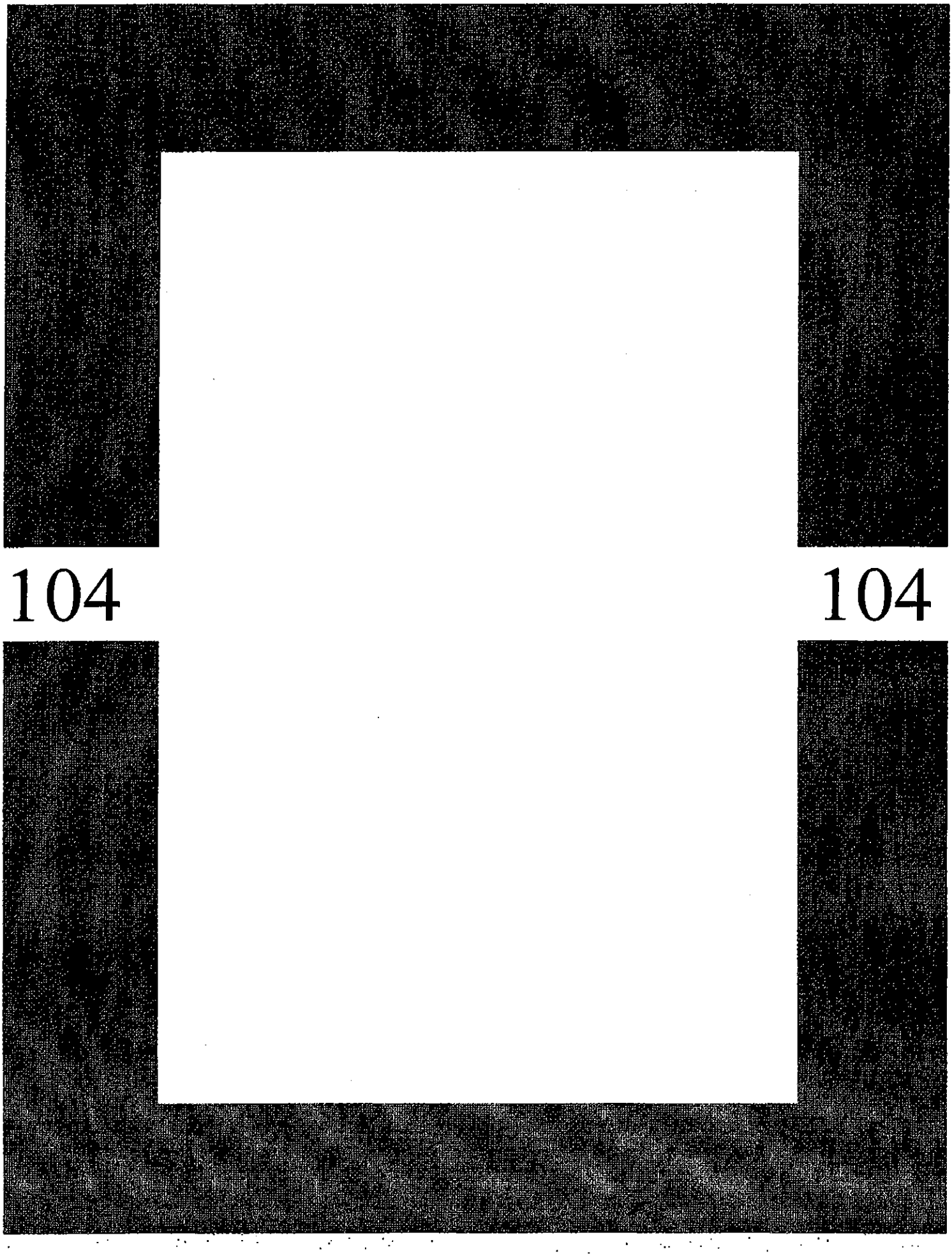
Submitted by:

LEWIS AND ROCA LLP

_____
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
Nevada Bar No. 8492
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169

Attorneys for Defendant

003830
003830
003830



003831
003831

Electronically Filed
05/16/2011 04:58:49 PM

CLERK OF THE COURT

OPPM
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
dwall@mainorlawyers.com

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

003832

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

PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO RETAX COSTS

COME NOW, Plaintiffs, WILLIAM and CHERYL SIMAO, by and through their attorneys of record, ROBERT T. EGLET, ESQ., DAVID T. WALL, ESQ. and ROBERT A.

ADAMS of the law firm of MAINOR EGLET, and hereby submit this Opposition to Defendant's Motion to Retax Costs.

This Opposition is made and based upon the pleadings and papers on file herein and the attached Points and Authorities.

DATED this 15 day of May, 2011.

MAINOR EGLET

#6551 for

DAVID T. WALL, ESQ.
Nevada Bar No. 2805
Attorney for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

I.

FACTUAL 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, on April 13, 2007, which included a claim for loss of consortium by WILLIAM SIMAO's wife, Plaintiff CHERYL SIMAO. In an effort to resolve the instant matter, on February 5, 2009, Plaintiffs served upon Defendant an Offer of Judgment in the amount of $799,999.00. (*See* **Exhibit "1"**). Said offer was rejected by Defendant and the matter proceeded forward with discovery in preparation for trial.

As the Court will recall, the jury trial began on March 14, 2011, and had nearly been completed before Plaintiffs were forced to move to strike Defendant's Answer after Defendant's counsel's repeated and willful violations of this Court's pre-trial orders. The Plaintiffs' oral

motion to strike the Defendant's Answer was rooted primarily in the Defendant's repeated violations of the Court's Order granting the Plaintiffs' Motion in Limine to Preclude Defendant From Raising a Minor Impact Defense. However, Defendant violated other Orders of this Court during the trial, and the cumulative effect of such violations was material to the Court's analysis. These other violations included violations of this Court's pre-trial orders excluding prior and subsequent accidents and injuries and medical build-up/attorney driven litigation arguments. Due to all of these violations, and only after progressive sanctions had been issued against the Defendant to no avail, this Court struck Defendant's Answer, converting this litigation into a default judgment under NRCP 55. The case proceeded to a prove-up hearing on damages only, which took place on Friday, April 1, 2011. During that hearing, Plaintiffs informed the Court that in addition to the damages being requested at that time, Plaintiffs would submit its costs to the Court at a later date. Therefore, on April 26, 2011, Plaintiffs submitted a Memorandum of Costs setting forth in an itemized fashion, complete with supporting exhibits, costs totaling $99,555.49.

On April, 28, 2011, a Judgment by the Court was filed, awarding Plaintiffs $3,493,983.45, inclusive of past medical expenses, past and future pain and suffering, loss of consortium on behalf of Plaintiff, Cheryl Simao, and litigation costs. (*See* Judgment at **Exhibit "2"**). Defendant then filed its instant Motion to Retax Costs on April 29, 2011. Judgment was subsequently entered on May 3, 2011 (*See* Entry of Judgment at **Exhibit "3"**).

By way of the instant Opposition, Plaintiff requests that Defendant's Motion to Retax Costs be summarily denied as she has completely failed to set forth any justification whatsoever to retax the Memorandum of Costs submitted by the defense. Moreover, as shall be set forth below, each of the items of costs Defendant specifies in its Motion, namely costs regarding Plaintiffs' expert witness fees and copying charges, are more than warranted and must not be

retaxed in the least.

II.

LEGAL ANALYSIS

A. NRS 18.005 Does Not Expressly Limit Expert Fees to $7,500.00.

Contrary to Defendant's Motion to Retax, Plaintiffs, as the prevailing parties, can recover expert fees in excess of $7,500.00 ($1,500 x 5). The award of fees is within the sound discretion of this Court. *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993). The plain language of NRS 18.005(5), a decades old statute, allows the Court to award beyond the statutory threshold of $1,500.00 per expert, "***if the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee.***" NRS 18.005(5) (emphasis added).

1. Plaintiff's experts were necessary, as were their fees.

Given the complex nature of this personal injury matter involving serious and permanent cervical spine injuries, in conjunction with the defenses asserted by Defendant throughout the course of litigation, it was necessary for Plaintiffs to retain and utilize several medical and damages experts to prove their case in chief. Nevada law **mandates** that "causation of injury or damages must be established by medical expert testimony to a reasonable degree of medical probability." *Fernandez v. Admirand*, 108 Nev. 963, 973, 843 P.2d 354 (1993); *Layton v. Yankee Caithness Joint Venture*, 774 F.Supp. 576 (1991); *Brown v. Capanna*, 105 Nev. 665, 671-72, 782 P.2d 1299 (1989). Moreover, a party must utilize medical experts whose "experience, education, and training establish the expertise necessary to perform the procedure[s] or render the treatment[s] at issue." *Staccato v. Valley Hospital*, 123 Nev. Adv. Rep. 49, 170 P.3d 503 (2007). Finally, each expert must pass the three (3) prong test identified in *Hallmark v. Eldridge*, 124 Nev. Adv. Rep. 48, 189 P.3d 646 (2008), before the Court can admit their testimony.

Since Nevada law **mandates** that Plaintiffs utilize qualified medical experts, they are undoubtedly necessary and a party can recover costs beyond the initial $1,500.00 threshold identified in NRS 18.005. Doctors lose money when they take time from their regular practice to participate in litigation. In order to compensate them for their loss, they charge an hourly rate equal to what they would earn had they spent the day meeting with and treating patients. Plaintiffs were required to retain, designate and utilize a host of medical professionals to address Mr. Simao's extensive, and complex physical injuries.

Specifically, this case required participation from Drs. Adam Arita, Jaswinder Grover, Patrick McNulty, and Hans Jorg Rosler to address Mr. Simao's past medical treatment and future medical needs. In addition, Dr. Ross Seibel, although he did not testify at trial due to the unexpected events that led up to the striking of Defendant's answer, was prepared to come to trial to testify and was paid for the time he spent in preparation for his anticipated trial testimony. In conjunction with his treating physicians, and based on the injuries he sustained at the hands of Defendant, Mr. Simao also utilized Stan Smith, Ph.D., an economist, to address the hedonic damages and loss of consortium damages Plaintiffs sustained as a result of Defendant's negligence.

Moreover, because of Defendant's "minor impact defense" which was ultimately excluded at trial, Plaintiffs were forced to retain a biomechanical engineer, Mr. David Ingebretsen, to offer opinions regarding the dynamics of the subject collision and the likelihood of injury.

The fact that some of the experts and/or medical providers did not actually take the stand and testify at trial is absolutely meaningless. Each provided professional services to Mr. Simao and participated, in no small degree, with his care and treatments. In turn, each expert called upon at trial utilized records, as well as deposition testimony, from each and everyone of these

003836

003836

003836

experts, making their involvement necessary and, as discussed above, their charges reasonable.

2. Mediation fees

Defendant also makes a passing reference to mediation fees as not being specifically authorized by NRS 18.005. However, the court may, in its discretion, include litigation costs not itemized in the statute. NRS 18.005(17) allows for "any other reasonable and necessary expense incurred in connection with the action," and the Nevada Supreme Court has upheld the award of costs not specifically otherwise listed in 18.005(1) through (16) as long as they are reasonable, necessary and actually incurred in the litigation. *Berosini v. PETA*, 114 Nev. 1348, 1352 (1998).

Mediation costs fit the scope and purpose of the catch-all provision of 18.005(17), and such costs are reasonable, necessary and actually incurred in this litigation. Plaintiffs paid the required fee for a respected mediator to attempt to resolve the case. Defendant agreed to the mediation and then made no offer to settle the case once the mediation commenced. Further, Defendant has not provided any authority suggesting that mediation fees incurred in the instant case were not reasonable, necessary or actually incurred in the case.

3. Copying Charges.

Defendant's only other item of contention specified in her Motion to Retax is that "various copying charges also seem duplicative and/or excessive." Despite Defendant's assertion, in looking at Plaintiffs' Memorandum of Costs, as well as Exhibit "5" to the Memorandum, each of the charges itemized under the heading "Copying, Exhibits, Photographs, Courier, Service of Process and Miscellaneous Charges, is accounted for. The charges associated with copying, $6,649.95, are supported by billing statements from Legal Copy Cats & Printing, a business whose services are routinely called upon by Plaintiffs' counsel's firm, to ease the enormous strain of copying literal tens of thousands of documents and other exhibits required in the preparation for and during trial. Each of the invoices associated with Legal Copy

required in the preparation for and during trial. Each of the invoices associated with Legal Copy Cats' services are also itemized for ease of interpreting the services that were rendered. Notwithstanding Defendant's dispute that these copying charges are excessive, it is not for Plaintiffs to prove up Legal Copy Cats' charges, rather it is for Plaintiffs to show that they actually incurred the expense and that the expense was reasonable and necessary. Defendant has failed to set forth how these charges are "duplicative and/or excessive," or for that matter unreasonable, and Plaintiffs are simply at a loss as to how these charges can be proven by any way other than submitting the itemized billing invoices that are provided at Exhibit "5" of Plaintiff's Memorandum of Costs.

III.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that Defendant's Motion to Retax Costs be denied in its entirety.

DATED this 15 day of May, 20011.

MAINOR EGLET

By: _____ #655/162
DAVID T. WALL, ESQ.
Nevada Bar No. 2805
400 South Fourth Street, Suite 600
Las Vegas, Nevada 89101
Attorneys for Plaintiff

CERTIFIATE OF MAILING

The undersigned hereby certifies that on the 10 day of May, 2011, a copy of the above and foregoing PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO RETAX COSTS 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

003839

003839

003840

003840

EXHIBIT "1"

GLENN A. PATERNOSTER, ESQ.
Nevada Bar No. 5452
JOHN E. PALERMO, ESQ.
Nevada Bar No. 9887
AARON & PATERNOSTER, LTD.
2300 West Sahara Avenue, Suite 650
Las Vegas, Nevada 89102
(702) 384-4111, telephone
(702) 387-9739, facsimile
Attorney for Plaintiffs

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.: X

PLAINTIFFS' OFFER OF JUDGMENT TO DEFENDANT, JENNY RISH

Plaintiffs, WILLIAM JAY SIMAO and CHERYL ANN SIMAO, by and through their attorneys, AARON & PATERNOSTER, LTD, hereby offer to allow judgment to be taken in their favor and against Defendant, JENNY RISH, in this action in the amount of $799,999.00, inclusive of attorneys' fees and costs, in accordance with N.R.C.P. 68 and N.R.S. 17.115. If not accepted within ten (10) days of receipt, this offer will be deemed rejected. Should the Judgment finally obtained by Plaintiffs be more favorable than the offer herein made, Defendant will be barred from recovering costs and

. . . .

. . . .

. . . .

003841

003841

003841

attorney's fees, and Plaintiffs will seek recovery of all allowable costs, attorney's fees and interest as allowed by law.

DATED this 5th day of February, 2009.

AARON & PATERNOSTER, LTD.

GLENN A. PATERNOSTER, ESQ.
Nevada Bar No. 5452
Attorney for Plaintiffs

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b) and the amendment to the EDCR 7.26, I hereby certify that service of the foregoing **PLAINTIFFS' OFFER OF JUDGMENT TO DEFENDANT, JENNY RISH** was made this date by depositing a true and correct copy of same for mailing, in a sealed envelope, postage fully prepaid, first class mail at Las Vegas, Nevada, addressed to the following:

Stephen H. Rogers, Esq.
ROGERS, MASTRANGELO, CARVALHO & MITCHELL
300 S. Fourth Street, Suite 710
Las Vegas, NV 89101
Facsimile: (702) 384-1460
Attorney for Defendant,
JENNY RISH

at his last known mailing address.

DATED this 5 day of February, 2009.

An employee of AARON & PATERNOSTER, LTD.

003842
003842
003842

003843

003843

EXHIBIT "2"

Electronically Filed
04/28/2011 01:45:32 PM

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

...

...

003844

003844

003844

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

003845
003845
003845

003846

003846

EXHIBIT "3"

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
reglet@mainorlawyers.com
dwall@mainorlawyers.com
badams@mainorlawyers.com
Attorneys for Plaintiffs

Electronically Filed
05/03/2011 07:43:26 AM

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

...

003847

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: 3:29pm

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

003849

003849

003849

Electronically Filed
04/28/2011 01:45:32 PM

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

...

...

003850

003850

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

003851
003851
003851

In the Supreme Court of Nevada

Case Nos. 58504, 59208 and 59423

JENNY RISH,

Appellant,

vs.

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

Respondents.

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable JESSIE WALSH, District Judge
District Court Case No. A539455

APPELLANT'S APPENDIX
VOLUME 16
PAGES 3628-3851

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

STEPHEN H. ROGERS
State Bar of Nevada No. 5755
ROGERS MASTRANGELO CARVALHO & MITCHELL
300 South Fourth Street, Suite 170
Las Vegas, Nevada 89101
(702) 383-3400
SRogers@RMCMLaw.com

Attorneys for Appellant

TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
01	Complaint	04/13/07	1	01-08
02	Summons (Jenny Rish)	08/10/07	1	09-11
03	Summons (James Rish)	08/28/07	1	12-15
04	Summons (Linda Rish)	08/28/07	1	16-19
05	Notice of Association of Counsel	09/27/07	1	20-22
06	Defendant Jenny Rish's Answer to Plaintiff's Complaint	03/21/08	1	23-26
07	Demand for Jury Trial	03/21/08	1	27-29
08	Scheduling Order	06/11/08	1	30-33
09	Order Setting Civil Jury Trial	08/18/08	1	34-38
10	Stipulation and Order to Extend Discovery	05/06/09	1	39-43
11	Notice of Entry of Order to Extend Discovery	05/08/09	1	44-50
12	Amended Scheduling Order	06/10/09	1	51-54
13	Order Setting Civil Jury Trial	08/28/09	1	55-59
14	Stipulation and Order to Continue Trial Date	03/31/10	1	60-62
15	Notice of Entry of Order to Continue Trial Date	04/02/10	1	63-67
16	Notice of Association of Counsel	04/02/10	1	68-71
17	Order Setting Civil Jury Trial	12/15/10	1	72-75
18	Stipulation and Order to Continue Trial Date	12/22/10	1	76-78
19	Notice of Entry of Order to Continue Trial Date	01/04/11	1	79-83
20	Defendant Jenny Rish's Motion in Limine to Limit the Testimony of Plaintiff's Treating Physicians	01/06/11	1	84-91
21	Defendants' Motion in Limine to Preclude Plaintiffs' Medical Providers and Experts from Testifying Regarding New or Undisclosed Medical Treatment and Opinions	01/06/11	1	92-101
22	Defendant Jenny Rish's Motion to Exclude the Report and Opinions Plaintiff's Accident Reconstruction Expert, David Ingebretsen	01/06/11	1	102-114

23	Plaintiff's Omnibus Motion in Limine	01/07/11	1	115-173
24	Defendant Jenny Rish's Opposition to Plaintiffs' Omnibus Motion in Limine	02/04/11	1	174-211
25	Plaintiffs' Opposition to Defendant Jenny Rish's Motion in Limine Enforcing the Abolition of the Treating Physician Rule	02/04/11	1	212-217
26	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	02/04/11	1	218-223
27	Plaintiffs' Opposition to Defendant Jenny Rish's Motion to Exclude the Report and Opinions of Plaintiff's Accident Reconstruction Expert, David Ingebretsen	02/04/11	1	224-244
28	Defendant Jenny Rish's Reply in Support of Motion to Exclude the Report and Opinions of Plaintiff's Accident Reconstruction Expert, David Ingebretsen	02/08/11	1	245-250
29	Defendant Jenny Rish's Reply in Support of Motion in Limine to Limit the Testimony of Plaintiff's Treating Physicians	02/08/11	2	251-256
30	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	02/08/11	2	257-262
31	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Omnibus Motion in Limine	02/11/11	2	263-306
32	Plaintiff's Motion to Exclude Sub Rosa Video	02/14/11	2	307-313
33	Transcript of Hearings on Motion	02/15/11	2	314-390
34	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	02/17/11	2	391-441
35	Defendant Jenny Rish's Opposition to Plaintiff's Motion to Exclude Sub Rosa Video	02/18/11	2	442-454
36	Transcript of Hearing	02/22/11	3	455-505
37	Order Regarding Plaintiff's Motion to Allow the Plaintiff's to Present a Jury Questionnaire Prior to Voir Dire	02/25/11	3	506-508

38	Defendant Jenny Rish's Opposition to Plaintiff's Motion in Limine to Preclude Defendant from Raising a "Minor" or "Low Impact" Defense; Limit the trial Testimony of Defendant's Expert David Fish M.D. and; Exclude Evidence or Property Damage	02/25/11	3	509-517
39	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Exclude Sub Rosa Video	02/27/11	3	518-522
40	Transcript of Hearing	03/01/11	3	523-550
41	Plaintiffs' Second Omnibus Motion in Limine	03/02/11	3	551-562
42	Defendant's Opposition to Plaintiffs' Second Omnibus Motion in Limine	03/04/11	3	563-567
43	Transcript of Hearing on Omnibus Motion in Limine	03/08/11	3	568-586
44	Notice of Entry of Order Re: EDCR 2.47	03/10/11	3	587-593
45	Order Regarding Plaintiffs' Omnibus Motion in Limine	03/11/11	3	594-597
46	Order Regarding 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	03/14/11	3	598-600
47	Notice of Association of Counsel	03/14/11	3	601-603
48	Trial Transcript	03/14/11	3	604-705
			4	706-753
49	Trial Transcript	03/15/11	4	754-935
50	Trial Transcript	03/16/11	5	936-1102
51	Trial Transcript	03/17/11	5	1103-1186
			6	1187-1256
52	Trial Transcript	03/18/11	6	1257-1408
53	Notice of Entry of Order Regarding Plaintiffs' Omnibus Motion in Limine	03/18/11	6	1409-1415
54	Trial Brief in Support of Oral Motion for Mistrial	03/18/11	6	1416-1419
55	Trial Brief on Percipient Testimony Regarding the Accident	03/18/11	6	1420-1427
56	Trial Transcript	03/21/11	7	1428-1520

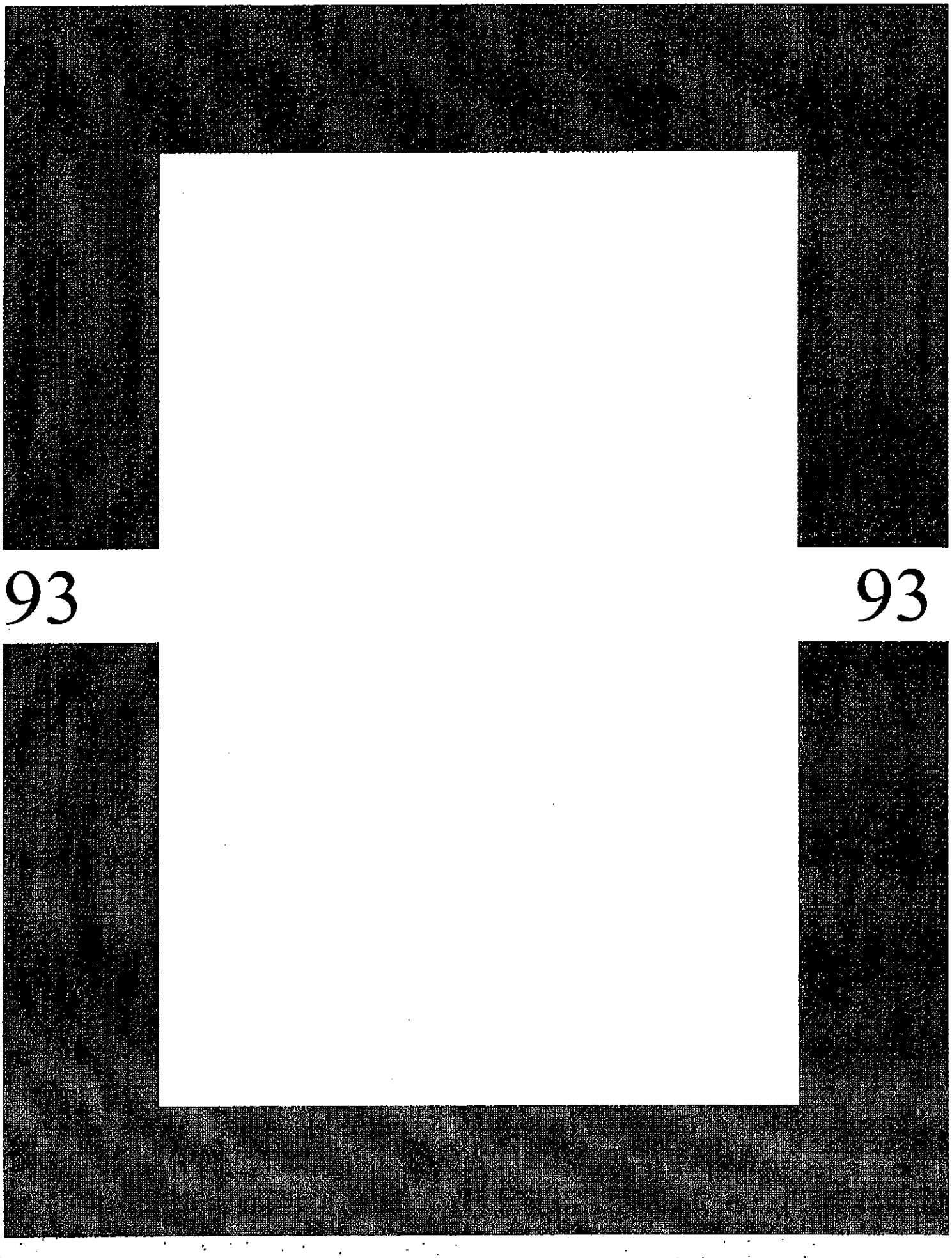
57	Trial Transcript	03/22/11	7	1521-1662
58	Plaintiffs' Opposition to Defendant's Trial Brief in Support of Oral Motion for Mistrial	03/22/11	7	1663-1677
59	Receipt of Copy of Plaintiffs' Opposition to Defendant's Trial Brief in Support of Oral Motion for Mistrial	03/22/11	8	1678-1680
60	Order Granting Motion to Exclude Traffic Accident Report and Investigating Officer's Conclusions	03/22/11	8	1681-1683
61	Order Regarding Plaintiffs' Second Omnibus Motion in Limine	03/22/11	8	1684-1687
62	Order Granting Motion to Exclude Life Care Expert, Kathleen Hartman, R.N.	03/22/11	8	1688-1690
63	Order Granting Motion to Exclude Witnesses from Testifying Regarding the Credibility or Veracity of Other Witnesses	03/22/11	8	1691-1693
64	Order Granting Motion to Exclude Graphic and Lurid Video of Surgery	03/22/11	8	1694-1696
65	Order Granting Motion to Exclude Duplicative and Cumulative Testimony	03/22/11	8	1697-1699
66	Order Granting Motion to Exclude Plaintiff's Accident Reconstructionist/Biomechanical Expert David Ingebretsen	03/22/11	8	1700-1702
67	Order Granting Motion to Exclude Argument of Case During Voir Dire	03/22/11	8	1703-1705
68	Order Granting Motion to Exclude Plaintiff's Economist, Stan Smith, for Lack of Foundation to Offer Expert Economist Opinion	03/22/11	8	1706-1708
69	Trial Transcript	03/23/11	8	1709-1856
70	Trial Transcript	03/24/11	8	1857-1928
			9	1929-2023
71	Plaintiffs' Amended Pre-Trial Memorandum	03/24/11	9	2024-2042
72	Trial Transcript	03/25/11	9	2043-2179
			10	2180-2212
73	Notice of Entry of Order Regarding Plaintiffs' Second Omnibus Motion in Limine	03/25/11	10	2213-2220
74	Trial Transcript	03/28/11	10	2221-2372

75	Trial Transcript	03/29/11	10	2373-2430
			11	2431-2549
76	Trial Brief Regarding Exclusion of Future Surgery for Failure to Disclose Computation of Future Damages Under NRCP 16.1(a)	03/29/11	11	2550-2555
77	Trial Transcript	03/30/11	11	2556-2681
			12	2682-2758
78	Trial Transcript	03/31/11	12	2759-2900
79	Stipulation and Order for Dismissal With Prejudice	03/31/11	12	2901-2904
80	Trial Transcript	04/01/11	13	2905-2936
81	Minutes of Hearing on Prove-up of Damages	04/01/11	13	2937-2938
82	Plaintiffs' Confidential Trial Brief	04/01/11	13	2939-3155
			14	3156-3223
83	Plaintiffs' First Supplement to Their Confidential Trial Brief to Exclude Unqualified Testimony of Defendant's Medical Expert, Dr. Fish	04/01/11	14	3224-3282
84	Plaintiffs' Second Supplement to Their Confidential Trial Brief to Permit Dr. Grover to testify with Regard to all Issues Raised During his Deposition	04/01/11	14	3283-3352
85	Plaintiffs' Third Supplement to Their Confidential Trial Brief; There is No Surprise to the Defense Regarding Evidence of a Spinal Stimulator	04/01/11	14	3353-3406
86	Plaintiffs' Fourth Supplement to Their Confidential Trial Brief Regarding Cross Examination of Dr. Wang	04/01/11	15	3407-3414
87	Plaintiffs' Fifth Supplement to Their Confidential Trial Brief to Permit Stan Smith, Ph.D., to Testify Regarding, Evidence Made Known to Him During Trial	04/01/11	15	3415-3531
88	Stipulation and Order to Modify Briefing Schedule	04/21/11	15	3532-3535
89	Defendant's Response in Opposition to Plaintiff's Request for Attorney Fees	04/22/11	15	3536-3552
90	Defendant's Amended Response in Opposition to Plaintiffs' Request for Attorney Fees	04/22/11	15	3553-3569
91	Plaintiffs' Brief in Favor of an Award of Attorney's Fees Following Default Judgment	04/22/11	15	3570-3624

92	Stipulation and Order to Modify Briefing Schedule	04/22/11	15	3625-3627
93	Decision and Order Regarding Plaintiffs' Motion to Strike Defendant's Answer	04/22/11	16	3628-3662
94	Notice of Entry of Order to Modify Briefing Schedule	04/25/11	16	3663-3669
95	Notice of Entry of Order to Modify Briefing Schedule	04/26/11	16	3670-3674
96	Notice of Entry of Order Regarding Motion to Strike	04/26/11	16	3675-3714
97	Plaintiffs' Memorandum of Costs and Disbursements	04/26/11	16	3715-3807
98	Minutes of Hearing Regarding Status Check	04/28/11	16	3808-3809
99	Judgment	04/28/11	16	3810-3812
100	Defendant's Motion to Retax Costs	04/29/11	16	3813-3816
101	Notice of Entry of Judgment	05/03/11	16	3817-3822
102	Stipulation and Order to Stay Execution of Judgment	05/06/11	16	3823-3825
103	Notice of Entry of Order to Stay Execution of Judgment	05/09/11	16	3826-3830
104	Plaintiffs' Opposition to Defendant's Motion to Retax Costs	05/16/11	16	3831-3851
105	Defendant's Motion for New Trial	05/16/11	17	3852-4102
			18	4103-4144
106	Certificate of Service	05/17/11	18	4145-4147
107	Subpoena Duces Tecum (Dr. Rosler)	05/18/11	18	4148-4153
108	Plaintiffs' Motion for Attorneys' Fees	05/25/11	18	4154-4285
109	Defendant's Reply to Opposition to Motion to Retax Costs	05/26/11	18	4286-4290
110	Plaintiffs' Motion to Quash Defendant's Subpoena Duces Tecum to Jan-Jorg Rosler, M.D. at Nevada Spine Institute on Order Shortening Time	05/26/11	18	4291-4305
111	Notice of Appeal	05/31/11	19	4306-4354
112	Case Appeal Statement	05/31/11	19	4355-4359
113	Judgment	06/01/11	19	4360-4373
114	Defendant's Opposition to Motion to Quash	06/01/11	19	4374-4378
115	Minutes of Hearing Regarding Motion to Retax	06/02/11	19	4379-4380
116	Notice of Entry of Judgment	06/02/11	19	4381-4397

117	Plaintiffs' Reply to Defendant's Opposition to Motion to Quash Defendants' Subpoena Duces Tecum to Jans-Jorg Rosler, M.D. at Spine Institute on Order Shortening Time	06/06/11	19	4398-4405
118	Transcript of Hearing Regarding Motion to Quash	06/07/11	19	4406-4411
119	Defendant's Opposition to Motion for Attorney Fees	06/13/11	19	4412-4419
120	Order Denying Defendant's Motion to Retax Costs	06/16/11	19	4420-4422
121	Notice of Entry of Order Denying Motion to Retax Costs	06/16/11	19	4423-4429
122	Plaintiffs' Opposition to Defendant's Motion for New Trial	06/24/11	19	4430-4556
			20	4557-4690
123	Amended Notice of Appeal	06/27/11	20	4691-4711
124	Amended Case Appeal Statement	06/27/11	20	4712-4716
125	Defendant's Motion to Compel Production of Documents	07/06/11	20	4717-4721
126	Receipt of Appeal Bond	07/06/11	20	4722-4723
127	Defendant's Reply to Opposition to Motion for New Trial	07/14/11	20	4724-4740
128	Plaintiffs' Reply to Defendant's Opposition to Motion for Attorneys' Fees	07/14/11	20	4741-4748
129	Minutes of Hearings on Motions	07/21/11	20	4749-4751
130	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	07/25/11	20	4752-4754
131	Notice of Entry of Order Granting Motion to Quash	07/25/11	20	4755-4761
132	Plaintiffs' Opposition to Defendant's Motion to Compel Production of Documents	07/26/11	20	4762-4779
133	Minutes of Hearing on Motion to Compel	08/11/11	20	4780-4781
134	Order Denying Defendant's Motion for New Trial	08/24/11	20	4782-4784
135	Notice of Entry of Order Denying Defendant's Motion for New Trial	08/25/11	20	4785-4791
136	Order Denying Defendant's Motion to Compel Production of Documents	09/01/11	20	4792-4794
137	Notice of Entry of Order Denying Defendant's Motion to Compel Production of Documents	09/02/11	20	4795-4800
138	Second Amended Notice of Appeal	09/14/11	21	4801-4811

139	Second Amended Case Appeal Statement	09/14/11	21	4812-4816
140	Order Granting Plaintiffs' Motion for Attorney's Fees	09/14/11	21	4817-4819
141	Notice of Entry of Order Granting Plaintiffs' Motion for Attorney's Fees	09/15/11	21	4820-4825
142	Final Judgment	09/23/11	21	4826-4829
143	Notice of Entry of Final Judgment	09/30/11	21	4830-4836
144	Notice of Posting Supersedeas Bond	09/30/11	21	4837-4845
145	Request for Transcripts	10/03/11	21	4846-4848
146	Third Amended Notice of Appeal	10/10/11	21	4849-4864
147	Third Amended Case Appeal Statement	10/10/11	21	4865-4869
148	Portion of Jury Trial - Day 6 (Bench Conferences)	03/21/11	21	4870-4883
149	Portion of Jury Trial - Day 7 (Bench Conferences)	03/22/11	21	4884-4900
150	Portion of Jury Trial - Day 8 (Bench Conferences)	03/23/11	21	4901-4920
151	Portion of Jury Trial - Day 9 (Bench Conferences)	03/24/11	21	4921-4957
152	Portion of Jury Trial - Day 10 (Bench Conferences)	03/25/11	21	4958-4998
153	Portion of Jury Trial - Day 11 (Bench Conferences)	03/28/11	21	4999-5016
154	Portion of Jury Trial - Day 12 (Bench Conferences)	03/29/11	22	5017-5056
155	Portion of Jury Trial - Day 13 (Bench Conferences)	03/30/11	22	5057-5089
156	Portion of Jury Trial - Day 14 (Bench Conferences)	03/31/11	22	5090-5105



93

93

003628

003628

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

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.
Nevada Bar No. 6551
MAINOR EGLET
400 South Fourth Street, Suite 600
Las Vegas, Nevada 89101
Ph: (702) 450-5400
Fx: (702) 450-5451
dwall@mainorlawyers.com

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

003629

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

003630

003630

003630

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

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

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

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.

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.

003640

003640

003640

(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'

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

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.*

(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

[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.

003648

003648

003648

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

003650

003650

003650

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

003651

003651

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

003652

003652

003652

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. This Court's Consideration of the Law as Applied to the Facts of This Case

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

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

003657

003657

003657

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.

003660

003660

003660

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**.

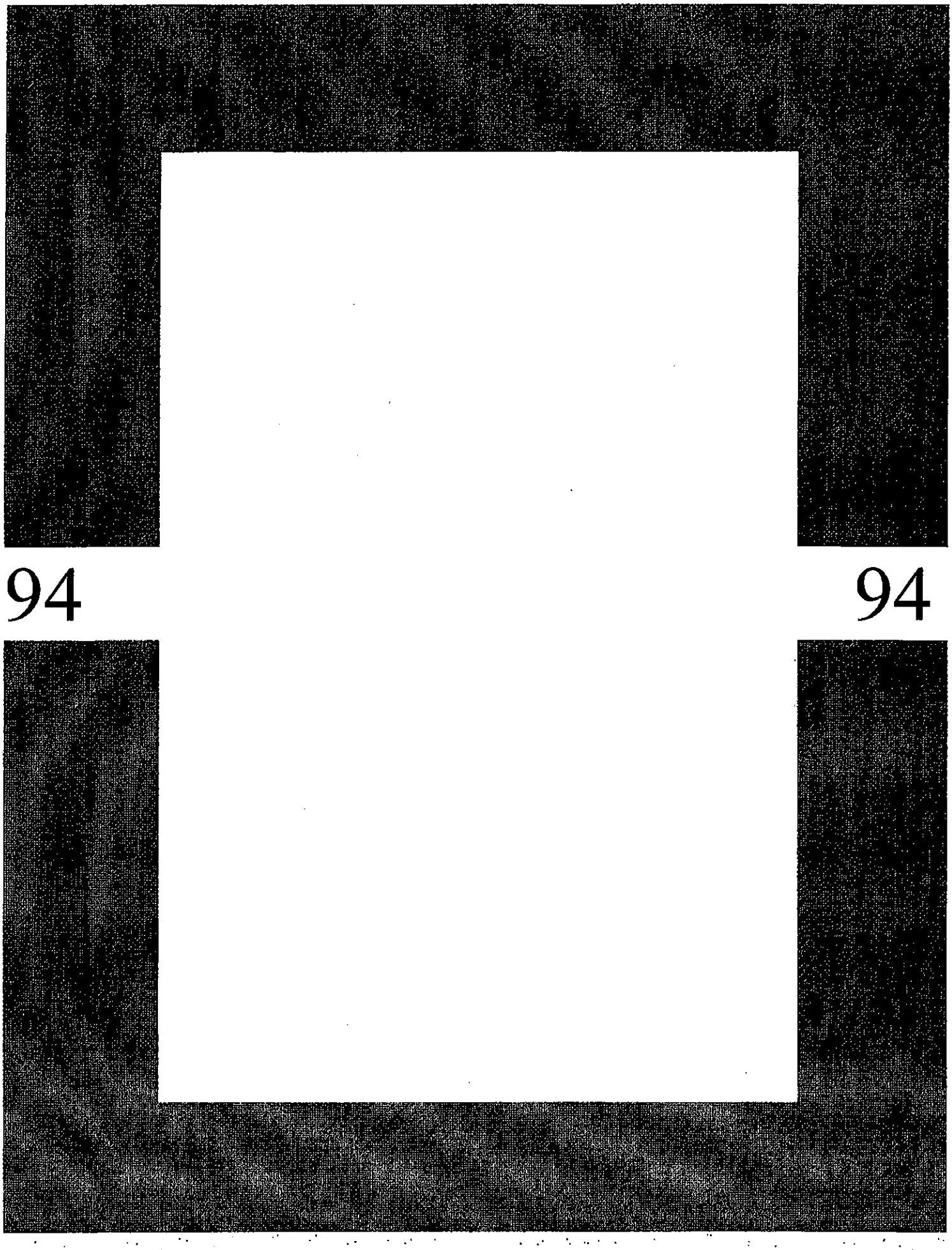
This matter stands submitted following the arguments of counsel and the prove-up hearing of April 1, 2011, pending further Order of this Court.

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



94

94

003663

003663

Electronically Filed
04/25/2011 02:31:17 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
400 South Fourth Street, Suite 600
Las Vegas, Nevada 89101
Ph: (702) 450-5400
Fx: (702) 450-5451
reglet@mainorlawyers.com
dwall@mainorlawyers.com
badams@mainorlawyers.com
Attorneys 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 1 through V, inclusive, Defendants.	CASE NO.: A539455 DEPT. NO.: X **NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order Regarding a Stipulation and Order to Modify Briefing Schedule was entered in the above-entitled matter on April 20, 2011.

DATED this 25th day of April, 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, Suite 600
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

003665

RECEIPT OF COPY

RECEIPT OF A COPY OF the foregoing **NOTICE OF ENTRY OF ORDER** in the matter of **SIMAO v. RISH; et al**, is hereby acknowledged:

Stephen H. Rogers J.P. Date: April 25, 2011 Time: 1:29 pm.

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

003666

Electronically Filed
04/21/2011 07:58:11 AM

CLERK OF THE COURT

SAO
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
dwall@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

STIPULATION AND ORDER TO MODIFY BRIEFING SCHEDULE

THE PARTIES STIPULATE to extend the due date for their brief regarding

///

attorneys' fees from April 20, 2011 to April 22, 2011.

DATED this 19 day of April, 2011

MAINOR EGLET

10558

ROBERT M. ADAMS, ESQ.
Nevada Bar No. 6551
400 South Fourth Street, Suite 600
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

DATED this ____ day of April, 2011.

LEWIS AND ROCA LLP

See next page

DANIEL F. POLSENBERG, ESQ.
Nevada Bar No. 2375
JOEL D. HENRIOD, ESQ.
Nevada Bar No. 8492
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, NV 89169

-and-

STEPHEN H. ROGERS, ESQ.
Nevada Bar No. 5755
CHARLES A. MICHALEK, ESQ.
Nevada Bar No. 5721
ROGERS, MASTRANGELO,
CARVALHO & MITCHELL
300 S. Fourth St., Ste. 710
Las Vegas, NV 89191
Attorneys for Defendant

IT IS SO ORDERED:

BY Jessie Walsh
DISTRICT JUDGE

DATED: 20 Apr 2011

003668

003668

003668

attorneys' fees from April 20, 2011 to April 22, 2011.

DATED this 19 day of April, 2011

MAINOR EGLET

ROBERT M. ADAMS, ESQ.
Nevada Bar No. 6551
400 South Fourth Street, Suite 600
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

DATED this 19th day of April, 2011.

LEWIS AND ROCA LLP

DANIEL F. POLSENBERG, ESQ.
Nevada Bar No. 2376
JOEL D. HENRIOD, ESQ.
Nevada Bar No. 8492
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, NV 89169

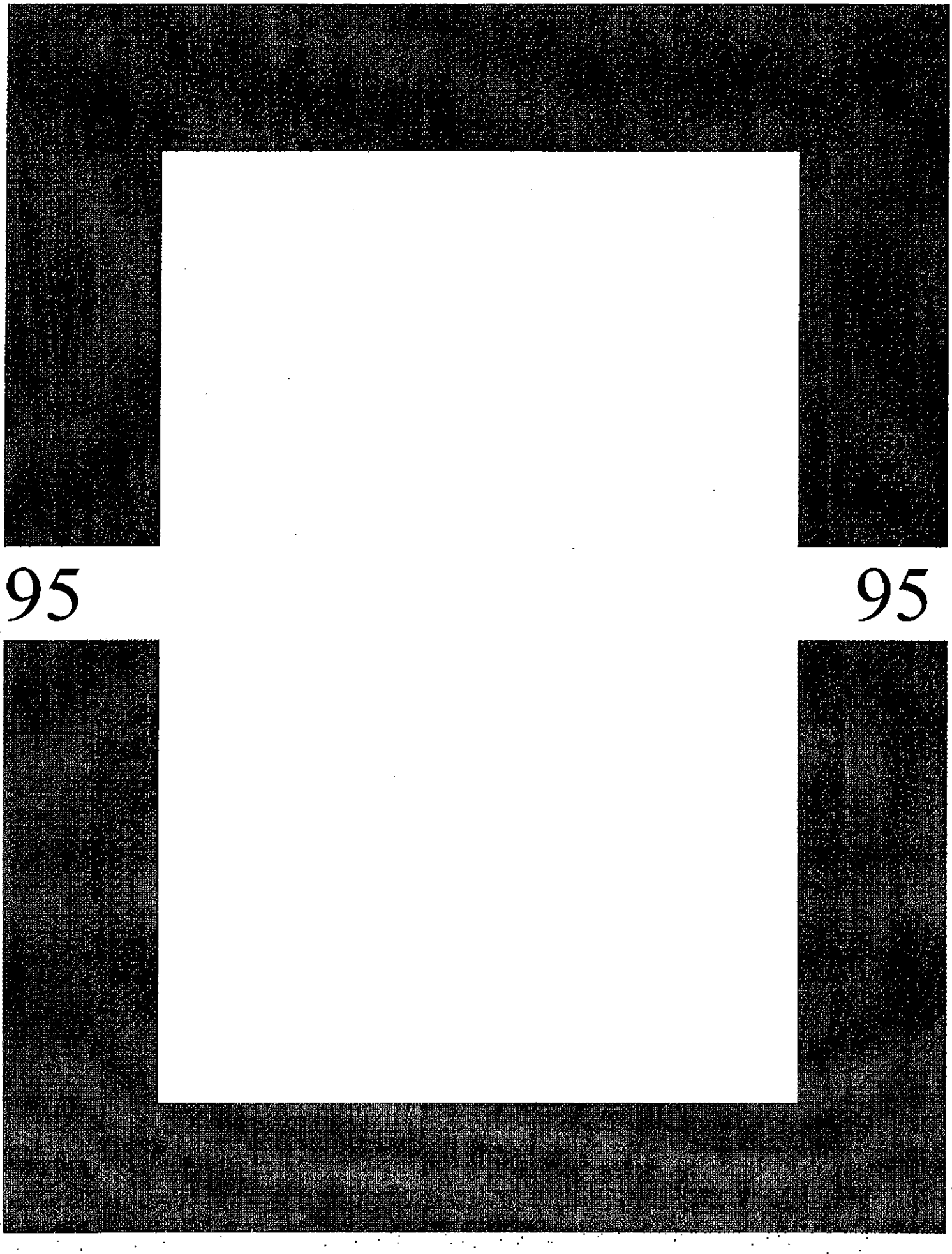
-and-

STEPHEN H. ROGERS, ESQ.
Nevada Bar No. 5755
CHARLES A. MICHALEK, ESQ.
Nevada Bar No. 5721
ROGERS, MASTRANGELO,
CARVALHO & MITCHELL
300 S. Fourth St., Ste. 710
Las Vegas, NV 89191
Attorneys for Defendant

IT IS SO ORDERED:

BY_____
DISTRICT JUDGE

DATED: _____



003670
003670
003670

Electronically Filed
04/26/2011 09:09:35 AM

CLERK OF THE COURT

NEO
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

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the court entered an order in the above entitled matter on April 22, 2011, a copy of which is attached hereto.

DATED this 26th day of April 2011.

LEWIS AND ROCA LLP

By: s/ Daniel F. Polsenberg
DANIEL F. POLSENBERG (SBN 2376)
LEWIS AND ROCA LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 474-2616

Attorneys for Defendant Jenny Rish

003671

003671

003671

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I HEREBY CERTIFY that on the 26th day of April, 2011, I served the foregoing NOTICE OF ENTRY OF ORDER by depositing a copy for mailing, first-class mail, postage prepaid, at Las Vegas, Nevada, to the following:

ROBERT T. EGLET
DAVID T. WALL
MAINOR EGLET
400 South Fourth Street, Suite 600
Las Vegas, NV 89101
702-450-5451

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

003672

003672

003672

Electronically Filed
04/22/2011 04:45:13 PM

CLERK OF THE COURT

SAO
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

STEPHEN H. ROGERS (SBN 5755)
CHARLES A. MICHALEK (SBN 5721)
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~~ 10

STIPULATION AND ORDER TO MODIFY BRIEFING SCHEDULE

THE PARTIES STIPULATE to extend the due date for their briefs regarding

///

///

///

///

///

///

///

///

003673

003673

003673

attorneys fees from April 15, 2011 to April 20, 2011.

Dated this 15th day of April, 2011.

MAINOR EGLET

#6551

DAVID T. WALL
Nevada Bar No. 2805
ROBERT M. ADAMS
Nevada Bar No. 6551
400 S. Fourth Street, Sixth Floor
Las Vegas, Nevada 89101

Attorneys for Plaintiffs

Dated this 14th day of April, 2011.

LEWIS AND ROCA LLP

DANIEL F. POLSENBERG
Nevada Bar No. 2376
JOEL D. HENRIOD
Nevada Bar No. 8492
3993 Howard Hughes Parkway,
Suite 600
Las Vegas, Nevada 89169

-and-

STEPHEN H. ROGERS
Nevada Bar No. 5755
CHARLES A. MICHALEK
Nevada Bar No. 5721
ROGERS, MASTRANGELO, CARVELHO & MITCHELL
300 S. Fourth Street, #710
Las Vegas, Nevada 89101

Attorneys for Defendant Jenny Rish

IT IS SO ORDERED:

By _____
DISTRICT JUDGE

Dated: Apr 19, 2011

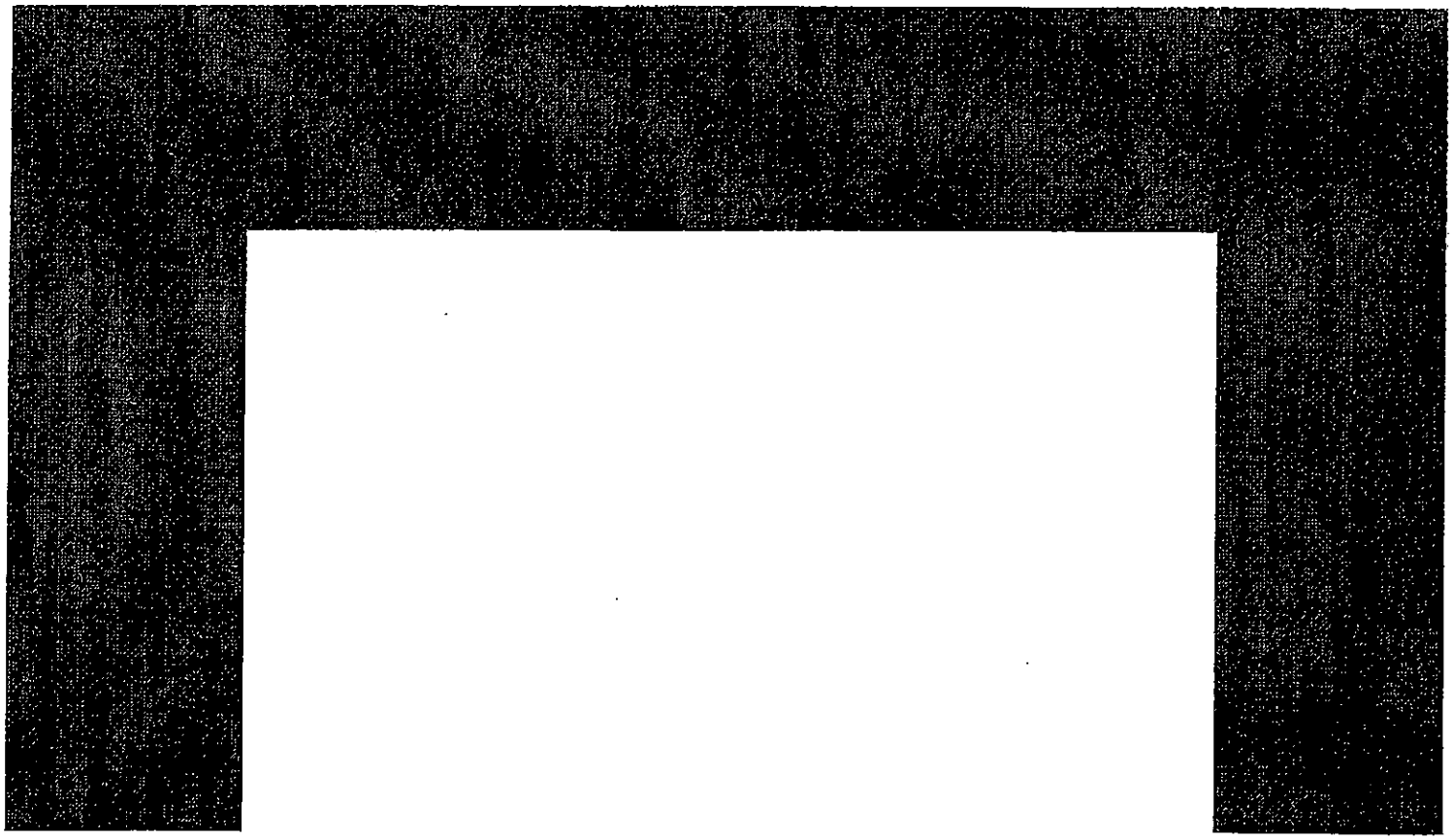
LEWIS AND ROCA LLP LAWYERS

3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169

003674

003674

003674

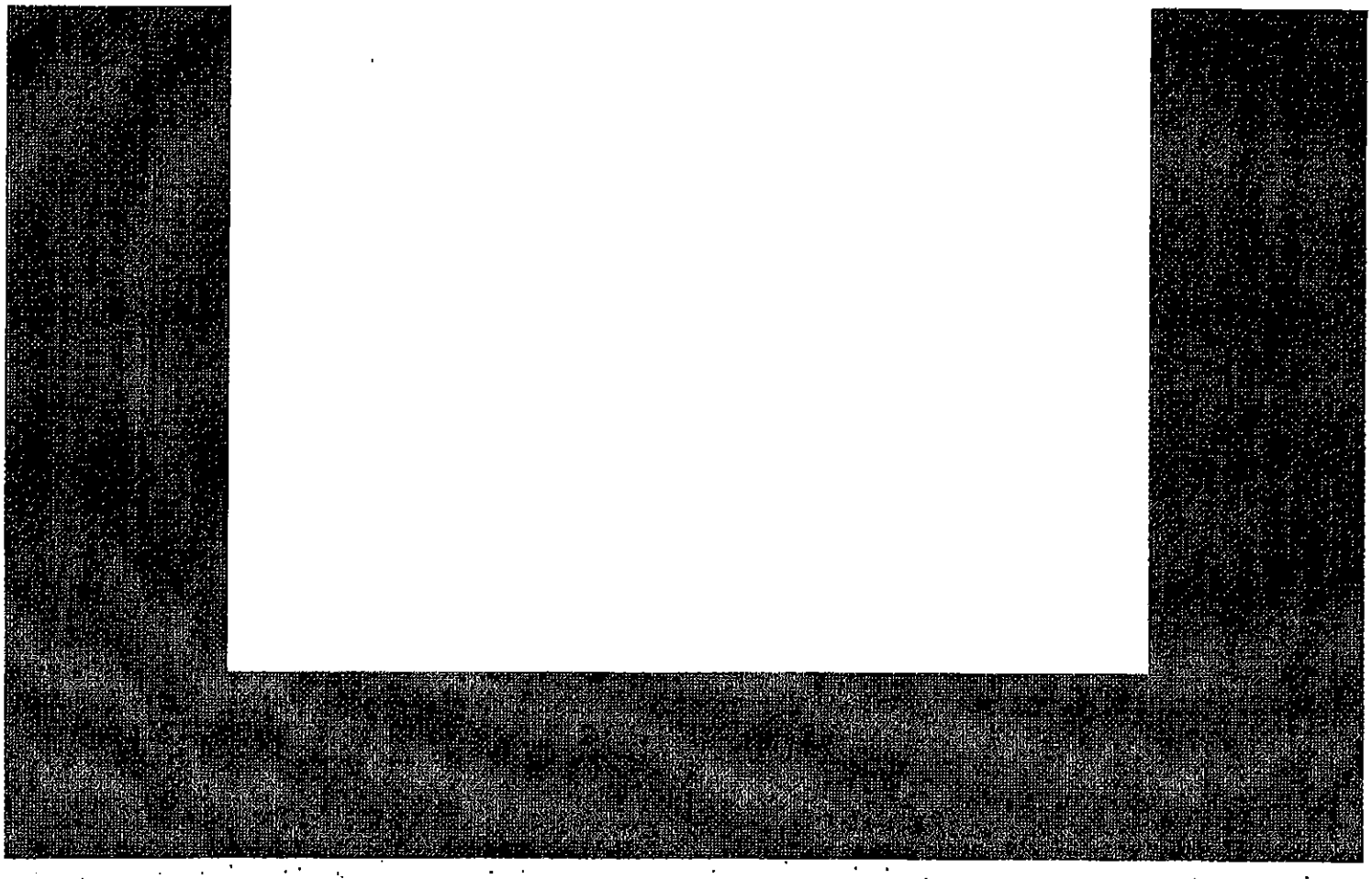


96

96

003675

003675



Electronically Filed
04/26/2011 03:21:17 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
400 South Fourth Street, Suite 600
Las Vegas, Nevada 89101
Ph: (702) 450-5400
Fx: (702) 450-5451
reglet@mainorlawyers.com
dwall@mainorlawyers.com
badams@mainorlawyers.com
Attorneys 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**

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

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

003677

003677

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

An employee of MAINOR EGLET

003678

003678

003678

003679

003679

EXHIBIT "1"

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

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.
Nevada Bar No. 6551
MAINOR EGLET
400 South Fourth Street, Suite 600
Las Vegas, Nevada 89101
Ph: (702) 450-5400
Fx: (702) 450-5451
dwall@mainorlawyers.com

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

MAINOR EGLET

003680

003680

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,

ORDR
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
dwall@mainorlawyers.com

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

003681

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

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

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

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

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

003688

003688

003688

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

003689

003689

003689

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.

003690

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.

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'

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

003696

003696

003696

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.*

(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).

003698

003698

003698

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

[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.

003700

003700

003700

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

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. This Court's Consideration of the Law as Applied to the Facts of This Case

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

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**.

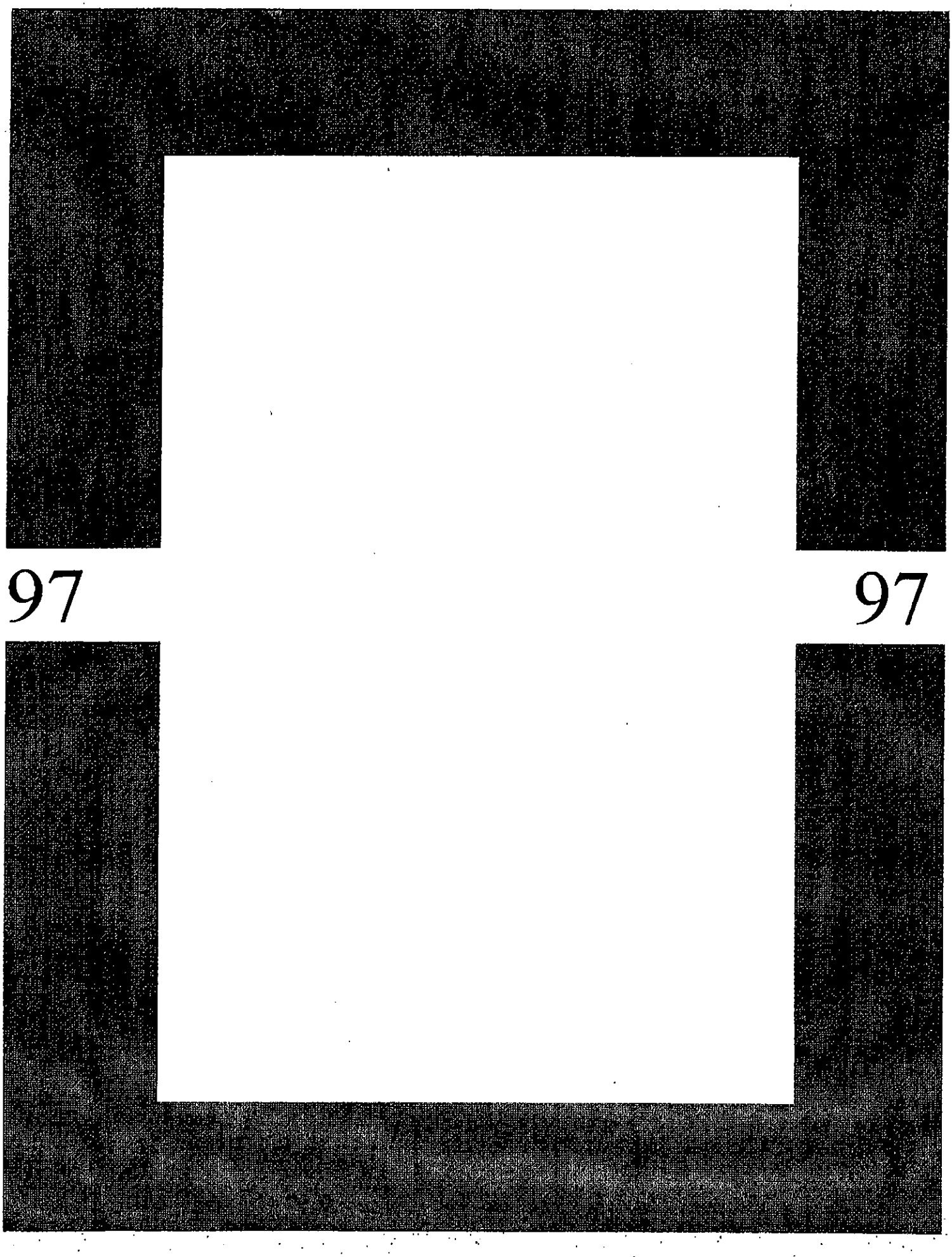
This matter stands submitted following the arguments of counsel and the prove-up hearing of April 1, 2011, pending further Order of this Court.

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



97

97

003715

003715

Electronically Filed
04/26/2011 03:50:28 PM

CLERK OF THE COURT

MEMC
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
reglet@mainorlawyers.com
dwall@mainorlawyers.com
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 1 through V; and ROE CORPORATIONS I through V, inclusive, Defendants.	CASE NO.: A539455 DEPT. NO.: X

PLAINTIFFS' MEMORANDUM OF COSTS AND DISBURSEMENTS

Plaintiffs' Expert Witness Fees:..... $ 59,028.16[1]

[1] Exhibit 1.

Adam Arita, M.D.	$ 10,100.00	
Collision Forensics & Engineers	$ 2,130.57	
Jaswinder Grover, M.D.	$ 10,000.00	
Patrick McNulty, M.D.	$ 18,875.00	
Hans Jorg W. Rosler, M.D.	$ 5,000.00	
Ross Seibel, M.D.	$ 1,000.00	
Smith Economic Group	$ 11,922.59	
Defendant's Expert Depositions		$ 4,000.00[2]
David E. Fish, M.D.	$ 2,000.00	
Jeffrey C. Wang, M.D.	$ 2,000.00	
Reporter's Fees - Depositions		$ 8,410.25[3]
Atkinson-Baker	$ 127.00	
Cameo Kayser	$ 3,434.60	
Litigation Services & Technologies	$ 4,336.30	
Manning Hall & Salisbury	$ 512.35	
Reporter's Fees - Hearings		$ 13,047.38[4]
AVTranz (trial transcripts)	$ 11,897.38	
Clark County Treasurer	$ 1,150.00	
Copying, Exhibits, Photographs, Courier, Service of Process and Miscellaneous Charges		$ 15,069.70[5]
AMPM Service	$ 80.00	
Certified Legal Video	$ 280.00	
Clark County District Court	$ 178.00	
Fax/Phone/Postage	$ 260.75	
FedEx	$ 38.55	
Get R Done (Process & Courier service)	$ 1,090.00	
Greg Hafen (Mediator)	$ 1,097.50	
Robert Lawson Investigations	$ 790.00	
Legal Copy Cats & Printing (Trial exhibits/binders/tabs/scanning for Court, Plaintiff and Defendant)	$ 6,649.95	
Legal Wings	$ 66.00	
Medical Records (Apria Healthcare)	$ 8.75	

[2] Exhibit 2.
[3] Exhibit 3.
[4] Exhibit 4.
[5] Exhibit 5.

Medical Records (CVS Pharmacy)	$	100.00
Medical Records (Desert Valley Therapy)	$	38.40
Medical Records (HealthPort for Southwest Medical)	$	723.99
Medical Records (J&R Medical for UMC)	$	244.51
Medical Records (Las Vegas Surgery Center)	$	39.49
Medical Records (Medical District Surgery Center)	$	91.02
Medical Records (Med-R)	$	220.56
Medical Records (Nevada Orthopedic & Spine Center)	$	88.40
Medical Records & Images (Nevada Spine Clinic)	$	327.97
Medical Records (Newport MRI)	$	25.00
Medical Records (SDS for Southwest Medical)	$	80.11
Medical Records and Images (Southwest Medical Associates)	$	275.00
Medical Records and Images (Steinberg Diagnostics)	$	1,305.00
Medical Records & Films (University Medical Center)	$	25.00
Nevada Highway Patrol	$	3.50
Service of Process	$	585.00
Social Security Administration	$	51.75
Wiznet	$	305.50
TOTAL	**$**	**99,555.49**

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

ROBERT M. ADAMS, ESQ., being duly sworn, states: that affiant is the attorney for the Plaintiffs WILLIAM SIMAO and CHERYL ANN SIMAO and has personal knowledge of the above costs and disbursements expended; that the items contained in the above memorandum are true and correct to the best of this affiant's knowledge and belief; and that the said disbursements have been necessarily incurred and paid in this action.

ROBERT M. ADAMS

SIGNED AND SWORN to before me
this 26th day of April, 2011.

NOTARY PUBLIC

NICHOLAS WOLD
NOTARY PUBLIC
STATE OF NEVADA

RECEIPT OF COPY

RECEIPT OF A COPY of the foregoing **PLAINTIFFS' MEMORANDUM OF COSTS AND DISBURSEMENTS** in the matter of **SIMAO v. RISH, et al** is hereby acknowledged by the following counsel of record:

Date: 4/26/11 Time: 3:08pm

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

Date: 4/26/11 Time: 3:40pm

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

003721

003721

EXHIBIT 1

003722

MAINOR EGLET, LLP / Cost Account

Adam Aritz, M.D

341

3/17/2011

232353/William J. Simao/Expert Fee/Trial Testimony/ 3,000.00

003722

Client Costs BNV 232353/William J. Simao/Expert Fee/Trial Testi 3,000.00

MAINOR EGLET, LLP / Cost Account

Adam Arita, M.D.

232353/William J. Simao/trial/nev 3/28/2011 359

2,400.00

PAYMENT RECORD

Client Costs BNV 232353/William J. Simao/trial/nev

603395 (10/10)

2,400.00

003723

003723

Patient I[illegible]	William Simao
Today's Charges $	10100
Today's Credits $	(5400)
Account Balance $	4700
Date:	3-30-11

ArtaPain Medicine, LLC

INVOICE

9708 Highridge Dr.
Las Vegas, NV 89134
Fax: (702) 866-0083
E-Mail: adamarita@cox.net

Date	Description (Time of Day)	Time (hrs)	$/Hr	Amount
3-18-11	Records Review (1823-2048)	2.42	600	$1450
3-18-11	Payment Check			($3000)
3-19-11	Meeting with Dr. Hirschfeld (1100-1215)	1.25	600	$750
3-21-11	Meeting with Attorneys (1815-2015)	2	600	$1200
3-22-11	Court Waiting (1500-1615)	1.25	600	$750
3-28-11	Payment Check			($2400)
3-28-11	Court Testimony (1615-1655)	0.67	1200	$800
3-30-11	Court Waiting (1230-1315)	0.75	600	$450
3-30-11	Court Testimony (1315-1510)	1.92	1200	$2300

Total Due **$4700**

Thank you!

003724
003724

003725

MAINOR EGLET, LLP / Cost Account

Nevada Spine Clinic

347

232353/William J. Simao/TRIAL/PLS 3/16/2011

10,000.00

PAYMENT RECORD

Client Costs BNV 232353/William J. Simao/TRIAL/PLS

10,000.00

603395 (10/10)

003725

Hi, Ashley.

Dr. Patrick McNulty
2650 N. Tenaya Way, Suite 301
Las Vegas, Nevada 89128

phone: (702) 258-3748
fax: (702) 258-5530

INVOICE

TAX ID # 88-0313907

David T. Walls, Esq. 400 South 4th St. 6th Floor Las Vegas, NV 89101 702-450-5400 P 702-450-5451 Fax	Invoice date: 3/11/11 Client name: William Simao.316311

Details:

Trial for March 16, 2011		Half day	$ 6,000.00
1:00pm			
payment needs to be in our office by			
Monday morning .			
			$ -

Total Amount Due: $ 6,000.00

003726
003726
003726

Dr. Patrick McNulty
2650 N. Tenaya Way, Suite 301
Las Vegas, Nevada 89128

phone: (702) 258-3748
fax: (702) 258-5530

INVOICE

TAX ID # 88-031 3907

David T. Walls, Esq. 400 South 4th St. 6 Floor Las Vegas, NV 89101 702-450-5400 P 702-450-5451 F	Invoice date: 3/24/11 Client name: William Simao.#31 3811

Details:

2nd day of Trial		Half day	$ 6,000.00
Mach 25, 2011 at 1: pm			
All services require pre-payment two weeks			
prior, failure to do so will result in			
automatic cancellation of appoitment			$ -

Total Amount Due: **$ 6,000.00**

003727
003727
003727

Hn: Ashley

Dr. Patrick McNulty
2650 N. Tenaya Way, Suite 301
Las Vegas, Nevada 89128

phone: (702) 258-3748
fax: (702) 258-5530

INVOICE

TAX ID # 88-0313907

Tracy A. Eglet, Esq. 400 South 4th Street Las Vegas, NV 89101 702-450-5400 P 702-450-5451 F

Invoice date: Client name: William Simao. #316811

Details:

Trial Preparation / File review	5 1/2	1250	$ 6,875.00
All services require pre-payment two weeks			
prior, failure to do so will result in			
automatic cancellation of appointment			$ -

Total Amount Due: **$ 6,875.00**

003728
003728
003728

Value Item Entry

COST ADV **(D) Client Cost**

Provider: **Rosler, Dr. Hans Jorg W.**
Nevada Spine Clinic
7140 Smoke Ranch Road, #150
Las Vegas, NV 89128
Business Phone: (702) 320-8111 **Ext:**
Fax Number: (702) 320-8112 **Ext:**

Memo: trial teslimony/prep fee/pls **Code:**

Report Requested: ☐ **Date:** 00/00/00

Payment Requested: ☐ **Date:** 00/00/00

Period: **#/Periods:**

Rate/Period: .00

Settlement Note:

Service Dates

From: 03/20/11 **To:** 03/20/11

Value Total: 5,000.00

Reduction: .00

Paid: 5,000.00 ☐ **Lien**

Due: .00

From: Us

To: Provider

Open Requests: .00

003729

003729

SOUTHWEST MEDICAL ASSOCIATES®

PAIN MANAGEMENT
INTERVENTIONAL DIAGNOSTICS AND THERAPUETICS
2300 W. CHARLESTON LAS VEGAS, NV 89102
PH: 702/877-5370 FAX: 702/366-9064

Robert Adams, ESQ.
c/o Ashley
Mainor Eglet
400 South Fourth Street, Suite 600
Las Vegas, NV 90101

RE: William Simao v. Rish, et al.

Deposition-Witness Fees:

Ross Seibel, M.D.
Southwest Medical Associates

March 28, 2011

$500/hour

2 hours: $1000.00

Please make checks payable to :
Southwest Medical Associates
Attention Carmel Fritz
P.O. Box 15645
Las Vegas, NV 89114-5645

Tax ID 88-0201420

003730

003730

003730

Smith Economics Group, Ltd.

A Division of Corporate Financial Group

Economics / Finance / Litigation Support

Stan V. Smith, Ph.D.
President

INVOICE DATE: 4/30/2009

RE: Mainor/Adams/Simao

COPY

Robert M. Adams
Mainor Eglet
City Center Place, 6th Floor
400 South 4th Street
Las Vegas, NV 89101

DATE	DETAIL	QUANTITY	RATE	AMOUNT
4/16/2009	Discussions, Data Gathering, Review of File Materials, Analysis and Preparation of Loss Evaluation Report, Preparation and In-House Review	1	3,965.00	3,965.00
4/20/2009	Materials Sent Via UPS		16.85	16.85

003731

003731

Total this invoice . . .	$3,981.85
Payments/Credits . . .	$-1,000.00
Balance Due	**$2,981.85**

Invoices are payable in 30 days to Smith Economics Group, Ltd.
SEG is a Division of Corporate Financial Group, Ltd.
On IRS Form 1099, please use "Corporate Financial Group, Ltd."
Tax ID #36-3205349. THANK YOU!

1165 N. Clark Street • Suite 600 • Chicago, IL 60610 • Fax 312-943-1016 • Tel 312-943-1551
www.SmithEconomics.com

Smith Economics Group, Ltd.

A Division of Corporate Financial Group

Economics / Finance / Litigation Support

Stan V. Smith, Ph D
President

INVOICE DATE: 1/14/2011

RE: Mainor/Adams/Simao

Robert M. Adams
Mainor Eglet
City Center Place, 6th Floor
400 South 4th Street
Las Vegas, NV 89101

DATE	DETAIL	QUANTITY	RATE	AMOUNT
12/14/2010	Dr. Smith's Time to Update Report	1	315.00	315.00
12/23/2010	Materials Sent Via UPS		20.19	20.19

003732

003732

Total this invoice . . .	$335.19
Payments/Credits . . .	$0.00
Balance Due	**$335.19**

Invoices are payable in 30 days to Smith Economics Group, Ltd.
SEG is a Division of Corporate Financial Group, Ltd.
On IRS Form 1099, please use "Corporate Financial Group, Ltd."
Tax ID #36-3205349. THANK YOU!

1165 N. Clark Street • Suite 600 • Chicago, IL 60610 • Fax 312-943-1016 • Tel 312-943-1551
www.SmithEconomics.com

Smith Economics Group, Ltd.

A Division of Corporate Financial Group

Economics / Finance / Litigation Support

Stan V. Smith, Ph.D.
President

INVOICE DATE: 2/23/2011

RE: Mainor/Adams/Simao

Robert M. Adams
Mainor Eglet
City Center Place, 6th Floor
400 South 4th Street
Las Vegas, NV 89101

DATE	DETAIL	HOURS	RATE	AMOUNT
2/11/2011	Dr. Smith's time for report supplement	1	330.00	330.00
2/11/2011	Materials Sent Via UPS		7.30	7.30

003733

003733

Total this invoice ...	$337.30
Payments/Credits ...	$0.00
Balance Due	**$337.30**

Invoices are payable in 30 days to Smith Economics Group, Ltd.
SEG is a Division of Corporate Financial Group, Ltd.
On IRS Form 1099, please use "Corporate Financial Group, Ltd."
Tax ID #36-3205349 THANK YOU!

1165 N. Clark Street • Suite 600 • Chicago, IL 60610 • Fax 312-943-1016 • Tel 312-943-1551
www.SmithEconomics.com

Smith Economics Group, Ltd.

A Division of Corporate Financial Group

Economics / Finance / Litigation Support

Stan V. Smith, Ph.D.
President

4/4/2011

RE: Mainor/Adams/Simao

Robert M. Adams
Mainor Eglet
City Center Place, 6th Floor
400 South 4th Street
Las Vegas, NV 89101

DATE	DETAIL	HOURS	RATE	AMOUNT
3/29/2011	Report addendum and supplemental calculations	1	315.00	315.00

003734

003734

Total this invoice ...	$315.00
Payments/Credits ...	$0.00
Balance Due	**$315.00**

Invoices are payable in 30 days to Smith Economics Group, Ltd.
SEG is a Division of Corporate Financial Group, Ltd.
On IRS Form 1099, please use "Corporate Financial Group, Ltd."
Tax ID #36-3205349. THANK YOU!

1165 N. Clark Street • Suite 600 • Chicago, IL 60610 • Fax 312-943-1016 • Tel 312-943-1551
www.SmithEconomics.com

Smith Economics Group, Ltd.

A Division of Corporate Financial Group

Economics / Finance / Litigation Support

Stan V. Smith, Ph.D.
President

4/4/2011

RE: Mainor/Adams/Simao

Robert M. Adams
Mainor Eglet
City Center Place, 6th Floor
400 South 4th Street
Las Vegas, NV 89101

DATE	DETAIL	HOURS	RATE	AMOUNT
3/28/2011	Review of File, Review of Analysis and Preparation (in-house) for Testimony	1	330.00	330.00
3/30/2011	Trial Testimony & Travel	18.3	330.00	6,039.00
3/30/2011	Excess travel time discretionary reduction	-10.3	330.00	-3,399.00
3/30/2011	Roundtrip Chicago Airport Transport		40.00	40.00
3/30/2011	Airfare		931.40	931.40
3/30/2011	Cabfare for Trial		30.00	30.00

003735

003735

Total this invoice ...	$3,971.40
Payments/Credits ...	$0.00
Balance Due	**$3,971.40**

Invoices are payable in 30 days to Smith Economics Group, Ltd.
SEG is a Division of Corporate Financial Group, Ltd.
On IRS Form 1099, please use "Corporate Financial Group, Ltd."
Tax ID #36-3205349. THANK YOU!

1165 N. Clark Street • Suite 600 • Chicago, IL 60610 • Fax 312-943-1016 • Tel 312-943-1551
www.SmithEconomics.com